APPENDIX

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: February 24, 2020
Certiorari to the Court of Appeals, 2018CA1714 District Court, Jefferson County, 2007CR3010 & 2008CR3161	
Petitioner: Nathan Daniel Knuth, **v.** **Respondent:** The People of the State of Colorado.	Supreme Court Case No: 2019SC970
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, FEBRUARY 24, 2020.
JUSTICE MÁRQUEZ does not participate.

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: February 26, 2020
Jefferson County 2008CR3161 Jefferson County 2007CR3010	
Plaintiff-Appellee: The People of the State of Colorado, v. **Defendant-Appellant:** Nathan Daniel Knuth.	Court of Appeals Case Number: 2018CA1714
MANDATE	

This proceeding was presented to this Court on the record on appeal. In accordance with its announced opinion, the Court of Appeals hereby ORDERS:

ORDERS AFFIRMED

POLLY BROCK
CLERK OF THE COURT OF APPEALS

DATE: FEBRUARY 26, 2020

18CA1714 Peo v Knuth 11-14-2019

COLORADO COURT OF APPEALS

DATE FILED: November 14, 2019

Court of Appeals No. 18CA1714
Jefferson County District Court Nos. 07CR3010 & 08CR3161
Honorable Randall C. Arp, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Nathan Daniel Knuth,

Defendant-Appellant.

ORDERS AFFIRMED

Division VI
Opinion by JUDGE MÁRQUEZ*
Bernard, C.J., and Martinez*, J., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced November 14, 2019

Philip J. Weiser, Attorney General, Megan C. Rasband, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Nathan Daniel Knuth, Pro Se

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2019.

¶ 1 Defendant, Nathan Daniel Knuth, appeals the district court's orders denying his change of venue and Crim. P. 35(c) motions in case numbers 07CR3010 and 08CR3161. We affirm.

I. Background

¶ 2 Knuth pleaded guilty to criminal mischief and menacing in case number 07CR3010. At the same time, he pleaded guilty to stalking in case number 08CR3161. In February 2009, the trial court sentenced him to concurrent prison terms in each case, the longest of which was eight years.

¶ 3 Over nine years later, Knuth filed identical Crim. P. 35(c) motions in both cases. He recognized the untimeliness of his motions, but argued that section 16-5-402, C.R.S. 2019, was unconstitutional as applied to him because the justifiable excuse and excusable neglect standard denies a criminally accused a meaningful opportunity to challenge "null and void judgments." He also asserted that justifiable excuse or excusable neglect existed for his untimely filing because (1) the prosecutor coerced him into pleading guilty by stating that habitual criminal counts would be added if Knuth pursued an appeal; (2) defense counsel was ineffective in telling him he would "have to give up his appeal

rights" if he pleaded guilty and in failing to advise him of his postconviction relief rights under Crim. P. 35(c); (3) he was ignorant of the law related to his appellate and postconviction rights and did not have the time or the opportunity to pursue relief until he was accused in a new case in 2014; and (4) his counsel in the 2014 case was ineffective in failing to attack the convictions in these cases at that time.

¶ 4 In a further attempt to circumvent the time limitation in section 16-5-402(1), Knuth asserted that the court rendering judgment in case number 08CR3161 "never obtained personal or subject matter jurisdiction" because Knuth was coerced into waiving the preliminary hearing by the court, the prosecutor, and his own attorney.

¶ 5 Substantively, Knuth asserted that (1) the prosecutor coerced his pleas by threatening to file habitual criminal counts; (2) plea counsel provided ineffective assistance by participating in the prosecutor's "coercion," telling Knuth he would spend the rest of his life in prison if he did not plead guilty, failing to conduct a pretrial investigation, and failing to ensure he understood the nature of the

charges; and (3) the trial court did not properly advise him of the nature or elements of the charges.

¶ 6 Simultaneous with his postconviction motions, Knuth filed motions for change of venue with attached affidavits. He argued that he could not receive "a fair judgment" from a Jefferson County District Court judge because the judges of that jurisdiction "all partake in the same unconstitutional custom" of "intentionally allow[ing] the prosecutors to thwart" section 18-1.3-801(2)(a)(II), C.R.S. 2019, by permitting them to amend the charging document to add habitual criminal charges in order to coerce guilty pleas.

¶ 7 The district court denied Knuth's change of venue motions, finding that Crim. P. 21 did not apply because Knuth had already pleaded guilty and been sentenced in his two cases. The court also denied Knuth's Crim. P. 35(c) motions, concluding that they were untimely and that Knuth had failed to establish justifiable excuse or excusable neglect for their late filing.

II. Discussion

¶ 8 Knuth contends that the district court erred in denying his change of venue and Crim. P. 35(c) motions. We disagree.

A. Standards of Review

¶ 9 We review the denial of a change of venue motion for an abuse of discretion. *See, e.g., People v. Hankins*, 2014 COA 71, ¶ 6; *see also* § 16-6-102(2), C.R.S. 2019; Crim. P. 21(a)(1). A court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, or when it misapplies the law. *E.g., People v. Zapata*, 2016 COA 75M, ¶ 20, *aff'd*, 2018 CO 82.

¶ 10 We review the summary denial of a Crim. P. 35(c) motion de novo. *E.g., People v. Trujillo*, 169 P.3d 235, 237 (Colo. App. 2007).

B. Change of Venue Motions

¶ 11 The claim underlying Knuth's change of venue motions fails. Notwithstanding the requirement that prior convictions supporting habitual criminal counts be set forth in a criminal information, nothing in section 18-1.3-801(2)(a)(II) requires the counts to be set forth at the initiation of the criminal proceedings. Rather, a prosecutor is permitted to amend, as appropriate, the information to add habitual criminal counts. *See* Crim. P. 7(e). Notably, Knuth did not allege that he could not be charged as a habitual criminal. And the threat of filing appropriate habitual criminal counts in the plea bargaining context does not constitute coercion. *See*

1

Bordinkircher v. Hayes, 434 U.S. 357, 365 (1978) (due process is not violated when a prosecutor carries out a threat made during plea negotiations to have the accused reindicted on more serious charges if he does not plead guilty to the offense with which he was originally charged); *People v. Zuniga*, 80 P.3d 965, 971 (Colo. App. 2003); *see also Smith v. People*, 162 Colo. 558, 565, 428 P.2d 69, 73 (1967) (threats by prosecutor to file additional charges, including habitual criminal charges, if defendant does not plead guilty do not constitute coercion).

¶ 12 Accordingly, we cannot conclude that the district court abused its discretion in denying the change of venue motions.

C. Crim. P. 35(c) Motions

¶ 13 Knuth concedes, and we agree, that he filed his Crim. P. 35(c) motions beyond the three-year time limitation applicable to his class 4 and 5 felonies. *See* § 16-5-402(1). But, he contends, he sufficiently alleged exceptions to the time limitation. We disagree.

1. The Trial Court Was Not Without Personal or Subject Matter Jurisdiction

¶ 14 Knuth reasserts his claim that the court entering judgment of conviction lacked personal and subject matter jurisdiction because

4

he was "coerced" into waiving his preliminary hearing and pleading guilty through the prosecutor's threat to file habitual criminal counts. Thus, in Knuth's view, he is excused from the applicable postconviction time limitation by sections 16-5-402(2)(a) and (b). As noted, a prosecutor's "threat" to file appropriate habitual criminal charges does not constitute coercion. *See Zuniga*, 80 P.3d at 971. Thus, we cannot agree with Knuth's premise that his preliminary hearing waiver or guilty plea was invalid on this basis. In any event, subject matter jurisdiction, as used in section 16-5-402(2)(a), "concerns a court's authority to deal with the class of cases in which it renders judgment." *Wood v. People*, 255 P.3d 1136, 1140 (Colo. 2011). And a district court is a court of general jurisdiction, with original subject matter jurisdiction over criminal cases involving offenses committed within Colorado. *See* Colo. Const. art. VI, § 9(1); § 18-1-201(1)(a), C.R.S. 2019; *Wood*, 255 P.3d at 1140. Likewise, "[t]he physical presence of the defendant in court confers jurisdiction over the person." *People v. Garcia*, 2013 COA 15, ¶ 15. Knuth does not contend that he was not physically present in his case. Quite the opposite, he asserts that he appeared for the preliminary hearing but waived it on advice of counsel.

9

¶ 15 To the extent Knuth asserts that the trial court was deprived of jurisdiction because his guilty plea itself was coerced by the threat of habitual criminal counts, we are likewise unpersuaded for the reasons previously stated. *See Zuniga*, 80 P.3d at 971; *see also Smith*, 162 Colo. at 565, 428 P.2d at 73.

2. The Postconviction Motion Failed to Establish Justifiable Excuse or Excusable Neglect

¶ 16 On appeal, Knuth again claims the existence of circumstances amounting to justifiable excuse or excusable neglect such that the district court should have excused his untimeliness and considered the merits of his claims. In support of this claim, he argues that (1) he was coerced into not seeking postconviction relief by the prosecutor's statement that "I will add the habitual criminal counts if you do"; (2) his counsel provided ineffective assistance by telling him that "once [he] entered a guilty plea, [he would] not be able to appeal, because [he would] have to give up [his] appeal rights"; and (3) in his postconviction "CLAIM IV," he alleged facts that, if true, would amount to justifiable excuse or excusable neglect.

¶ 17 Taking as true Knuth's claim that the prosecutor threatened to add habitual criminal counts if he pursued postconviction relief, we

nonetheless agree with the district court that this claim fails to account for Knuth's delay in filing his postconviction motion. In his motion, Knuth states that, as a result of the prosecutor's threat, "he never sought appeal, until now" because he was "very ignorant of the law" and "did not begin understanding the law until 2014." But ignorance of the law does not constitute justifiable excuse or excusable neglect. *See People v. Chang*, 179 P.3d 240, 245 (Colo. App. 2007). And Knuth offers no reason why it took him an additional four years to file his postconviction motions after he "be[gan]" to understand the law in 2014.

¶ 18 As to Knuth's claim that the ineffective assistance of counsel accounted for his delay, it is true that ineffective assistance of counsel can constitute justifiable excuse or excusable neglect. *See People v. Chavez-Torres*, 2019 CO 59, ¶ 29. But here, as the district court found, defense counsel's statement that Knuth would have to waive his right of appeal under the plea agreements was accurate. The plea agreements set forth that Knuth would "give up" the right to appeal his convictions by tendering his guilty pleas. And, to the extent Knuth reasserts his claim that plea counsel's failure to advise him of his right to collaterally attack his convictions

11

constitutes justifiable excuse or excusable neglect, we reject this claim. *See People v. Alexander*, 129 P.3d 1051, 1056 (Colo. App. 2005) (counsel's failure to offer advice on the time limits for seeking postconviction relief does not constitute justifiable or excusable neglect).

¶ 19 Last, we are not persuaded that Knuth's "CLAIM IV" adequately alleged circumstances amounting to justifiable excuse or excusable neglect. This claim reasserted plea counsel's previously alleged deficiencies and alleged that (1) Knuth lacked time and resources to pursue a postconviction motion due to his active participation in Department of Corrections programming from 2009 to 2014 and (2) his counsel in a 2014 case failed to attack his convictions in this matter. A lack of time and legal assistance do not represent the type of circumstances that would amount to justifiable excuse or excusable neglect. *See People v. Vigil*, 955 P.2d 589, 591 (Colo. App. 1997); *see also Chang*, 179 P.3d at 245 (prisoner's transfer to several different facilities and an out-of-state prison did not excuse untimely filing of postconviction motion).

3. Constitutionality of Section 16-5-402

¶ 20 Finally, we reject Knuth's claim that the district court reversibly erred in failing to address his as-applied challenge to the constitutionality of section 16-5-402. Our supreme court has held that the justifiable excuse or excusable neglect exception to the time limitations contained in section 16-5-402(1) "provides a court with a sufficient means of ensuring that the statute is applied in accordance with due process." *People v. Wiedemer*, 852 P.2d 424, 438 (Colo. 1993). That is, contrary to Knuth's claim, the justifiable excuse or excusable neglect exception sufficiently ensures a defendant the meaningful opportunity required by due process to challenge his conviction. *See id.* at 441.

III. Conclusion

¶ 21 The orders are affirmed.

CHIEF JUDGE BERNARD and JUSTICE MARTINEZ concur.

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 Jefferson County Parkway Golden, Colorado 80401	DATE FILED: August 22, 2018 Δ COURT USE ONLY Δ
Plaintiff: **THE PEOPLE OF THE STATE OF COLORADO,** v. Defendant: **NATHAN DANIEL KNUTH.**	Case no. **07CR3010** Division **9** Courtroom **5F**

ORDER RE: MOTION TO CHANGE VENUE

THIS MATTER comes before the Court on Defendant's Motion to Change Venue filed on July 30, 2018. The People did not respond. After considering the Motion, the relevant law and all other relevant information, the Court finds and orders as follows:

On February 9, 2009, Defendant pled guilty to Count #1: Criminal Mischief (F4) and Count #2: Menacing (F5). The Court sentenced him to 6 years DOC followed by 3 years of parole as to Count #1 and 3 years DOC as to Count #2. The sentences ran concurrently. Defendant now moves to change venue, arguing that he cannot receive a fair judgment from the Court.

Colorado Rule of Criminal Procedure 21 contains two provisions, one regarding change of venue, the other regarding change of judge. The change of venue procedure only applies if a fair trial cannot be had in the original judicial district. Colo. Crim. P. 21(a). Defendant has already pled guilty and has served the sentences in this case, so that provision does not apply. Defendant argues that all judges of the Court will deny him a fair judgment and therefore does not seek a change of judge within this venue. Therefore, the Colorado Rule of Criminal Procedure 21 provision regarding substitution of judges also does not apply.

IT IS HEREBY ORDERED that Defendant's Motion to Change Venue is **DENIED**.
DONE AND SIGNED: August 22, 2018.

BY THE COURT:

RANDALL C. ARP
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 Jefferson County Parkway Golden, Colorado 80401	DATE FILED: August 22, 2018 Δ COURT USE ONLY Δ
Plaintiff: **THE PEOPLE OF THE STATE OF COLORADO,** v. Defendant: **NATHAN DANIEL KNUTH.**	Case no. **07CR3010** Division **9** Courtroom **5F**

ORDER RE: MOTION FOR POST-CONVICTION RELIEF PURSUANT TO CRIM. P. 35(c)

THIS MATTER comes before the Court on Defendant's Motion for Post-Conviction Relief filed on July 30, 2018. After considering the Motion, the relevant law and all other relevant information, the Court finds and orders as follows:

I. Background

On February 9, 2009, Defendant pled guilty to Count #1: Criminal Mischief (F4) and Count #2: Menacing (F5). The Court sentenced him to 6 years DOC followed by 3 years of parole as to Count #1 and 3 years DOC as to Count #2. The sentences ran concurrently with each other and with 08CR3161. Defendant now moves for post-conviction relief pursuant to Crim. P. 35(c), arguing that his plea should be withdrawn because the prosecution coerced him to enter into a plea agreement by threatening to file habitual charges against Defendant should he proceed to trial.

II. Timeliness Standard

A petition for post-conviction relief must be timely pursuant to C.R.S. § 16-5-402. Crim. P. 35(c)(3). Where the defendant was convicted of a felony other than a class 1 felony, a petition for post-conviction relief must be filed within three years of the conviction. C.R.S § 16-5-402(1). "If a defendant's motion for post-conviction relief is untimely . . . the trial court may deny the motion without conducting a hearing." *People v. Xiong*, 940 P.2d 1119, 1119 (Colo. App. 1997). If the defendant has filed an untimely petition, he must establish justifiable excuse or excusable neglect pursuant to C.R.S. § 16-5-402(2). *Close v. People*, 180 P.2d 1015, 1019 (Colo. 2008). Defendant files this motion more than six years after the three-year limitation period for post-

conviction relief expired. The Court notes that both this case and 08CR3161 formed the basis for two habitual counts proved in 14CR572. It appears to the Court that Defendant is attempting to collaterally attack this conviction as a way of collaterally attacking those habitual counts in 14CR572, which is currently pending on appeal.

III. Analysis

Defendant argues that his untimely motion is a result of justifiable excuse or excusable neglect because (1) the prosecution threatened to file habitual charges against Defendant if he filed for post-conviction relief and (2) he received ineffective assistance of counsel. Neither argument meets the excusable neglect standard.

A. The Prosecution's Threat of Habitual Charges

"Whether a defendant has demonstrated justifiable excuse or excusable neglect is a question of fact to be resolved by" the Court. *People v.* Jackson, 98 P.3d 940, 944 (Colo. App. 2004); *People v. Alexander*, 129 P.3d 1051, 1055 (Colo. App. 2005); *People v. Clouse*, 74 P.3d 336, 340 (Colo. App. 2002). When addressing the issue of justifiable excuse or excusable neglect, the Court should consider: "(1) whether there are circumstances or outside influences preventing a challenge to a prior conviction . . . ; (2) whether a defendant had any previous need to challenge a conviction . . . or reason to question its validity; (3) whether a defendant had other means of preventing the government's use of the conviction . . . ; and (4) whether the passage of time has an effect on the State's ability to defend against the challenge." *Close v. People*, 180 P.3d at 1020. A defendant's "ignorance of the law or a recent discovery of a basis to challenge the conviction" does not constitute justifiable excuse or excusable neglect. *People v. Martinez-Huerta*, 363 P.3d 754, 757 (Colo. App. 2015).

Defendant argues that he was prevented from pursuing a timely claim of post-conviction relief because the prosecution threatened to bring habitual charges against him should he "appeal" his conviction. Defendant's Motion for Post-Conviction Relief, at 4. Defendant's allegations are difficult to parse. At the time of the prosecution's alleged threat, Defendant had already agreed to enter into a plea agreement, under which he would waive his right of appeal; therefore, the prosecution's alleged threat seems misplaced. Furthermore, under the Colorado Rules of Criminal Procedure, the prosecution would be unable to file additional charges against Defendant in response to an appeal or a collateral attack, and for the prosecution to claim otherwise would be incomprehensible to defense counsel.

Taking Defendant's allegations as true, fear of prosecutorial retaliation to a petition for post-conviction relief does not constitute justifiable excuse or excusable neglect. First, Defendant had access to counsel to determine whether the prosecution could file habitual charges against him if he collaterally attacked his conviction. Furthermore, Defendant had three years from the date of his conviction to determine whether the prosecution's threats were legally sound.

Defendant's prior ignorance of the law does not justify the untimely motion. *People v. Martinez-Huerta*, 363 P.3d at 757. Moreover, Defendant cannot persuasively argue that his guilty plea was involuntary because of the prosecution's threat to file habitual criminal charges during plea negotiations. "[T]he threat of enhancing the charges levied against a defendant should he decide to proceed to trial is not impermissible during the give and take of plea bargaining . . . ." *People v. Ivery*, 615 P.2d 80, 83 (Colo. App. 1980) (citing *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). Defendant has "demonstrated no unavoidable hindrance which would cause a reasonably prudent person to neglect to pursue timely collateral relief," and his motion is therefore untimely pursuant to C.R.S § 16-5-402. *See People v. Vigil*, 955 P.2d 589, 592 (Colo. App. 1997).

B. Ineffective Assistance of Counsel

Defendant also argues that he neglected to seek timely collateral relief because his counsel erroneously advised him that he would waive his right of appeal upon entering a guilty plea and failed to advise him of his right to collateral attack under Crim. P. 35. Defendant's Motion for Post-Conviction Relief, at 9. "Ineffective assistance of counsel can constitute justifiable excuse or excusable neglect in circumstances where counsel's ineffectiveness prevented the defendant from pursuing a timely claim for postconviction relief." *People v. Martinez-Huerta*, 363 P.3d at 757. For example, a defense counsel's "affirmative and erroneous advice" which causes the defendant to neglect to pursue timely post-conviction relief may constitute justifiable excuse or excusable neglect. *See id.* However, "the absence of, or failure to give, advice does not establish justifiable excuse or excusable neglect." *Id.*

In Defendant's allegation of ineffective assistance of counsel, he confuses a waiver of his right of appeal with a waiver of collateral attack. *See People v. Jackson*, 98 P.3d at 945. Defense counsel's advice that Defendant would waive his right of appeal under the plea agreement was accurate. *People v. Bottenfield*, 159 P.3d 643, 645 (Colo. App. 2006). Rule 35 does not provide for a right of appeal, but instead provides for post-conviction relief. Defense counsel's failure to advise Defendant of his right to collateral attack does not establish justifiable excuse or excusable neglect. *People v. Martinez-Huerta*, 363 P.3d at 757; *see also People v. Alexander*, 129 P.3d at 1055; *People v.* Rowe, 837 P.2d 260, 265 (Colo. App. 1992). As such, the alleged failure to advise does not establish unjustifiable excuse of excusable neglect pursuant to C.R.S § 16-5-402, and therefore the motion is untimely.

IV. Conclusion

Defendant filed this petition well-after the three year deadline imposed by Rule 35(c) and C.R.S. § 16-5-402(2). Thus, Defendant had the burden of showing that he missed the deadline due to justifiable excuse or excusable neglect. Defendant has failed to do so, as neither of his arguments meets the standards outlined in the law. The Court therefore finds that the motion is untimely and will not address the merits.

17

IT IS HEREBY ORDERED that Defendant's Motion for Post-Conviction Relief is **DENIED**.

DONE AND SIGNED: August 22, 2018.

BY THE COURT:

RANDALL C. ARP
District Court Judge

18

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 Jefferson County Parkway Golden, Colorado 80401	DATE FILED: August 22, 2018 Δ COURT USE ONLY Δ
Plaintiff: **THE PEOPLE OF THE STATE OF COLORADO,** v. Defendant: **NATHAN DANIEL KNUTH.**	Case no. **08CR3161** Division **9** Courtroom **5F**

ORDER RE: MOTION FOR POST-CONVICTION RELIEF PURSUANT TO CRIM. P. 35(c)

THIS MATTER comes before the Court on Defendant's Motion for Post-Conviction Relief filed on July 30, 2018. After considering the Motion, the relevant law and all other relevant information, the Court finds and orders as follows:

I. Background

On February 9, 2009, Defendant pled guilty to Count #1: Stalking (F4). The Court sentenced him to 8 years DOC, followed by 3 years of mandatory parole, and awarded him 95 days of presentence confinement credit. The sentence ran concurrently with his sentence in case no. 07CR3010. Defendant now moves for post-conviction relief pursuant to Crim. P. 35(c), arguing that his plea should be withdrawn because the prosecution coerced him to enter into a plea agreement by threatening to file habitual charges against Defendant should he proceed to trial.

II. Timeliness Standard

A petition for post-conviction relief must be timely pursuant to C.R.S. § 16-5-402. Crim. P. 35(c)(3). Where the defendant was convicted of a felony other than a class 1 felony, a petition for post-conviction relief must be filed within three years of the conviction. C.R.S § 16-5-402(1). "If a defendant's motion for post-conviction relief is untimely . . . the trial court may deny the motion without conducting a hearing." *People v. Xiong*, 940 P.2d 1119, 1119 (Colo. App. 1997). If the defendant has filed an untimely petition, he must establish justifiable excuse or excusable neglect pursuant to C.R.S. § 16-5-402(2). *Close v. People*, 180 P.2d 1015, 1019 (Colo. 2008). Defendant files this motion more than six years after the three-year limitation period for post-

19

conviction relief expired. The Court notes that both this case and 07CR3010 formed the basis for two habitual counts proved in 14CR572. It appears to the Court that Defendant is attempting to collaterally attack this conviction as a way of collaterally attacking those habitual counts in 14CR572, which is currently pending on appeal.

III. Analysis

Defendant argues that his untimely motion is a result of justifiable excuse or excusable neglect because (1) the prosecution threatened to file habitual charges against Defendant if he filed for post-conviction relief and (2) he received ineffective assistance of counsel. Neither argument meets the excusable neglect standard.

A. The Prosecution's Threat of Habitual Charges

"Whether a defendant has demonstrated justifiable excuse or excusable neglect is a question of fact to be resolved by" the Court. *People v.* Jackson, 98 P.3d 940, 944 (Colo. App. 2004); *People v. Alexander*, 129 P.3d 1051, 1055 (Colo. App. 2005); *People v. Clouse*, 74 P.3d 336, 340 (Colo. App. 2002). When addressing the issue of justifiable excuse or excusable neglect, the Court should consider: "(1) whether there are circumstances or outside influences preventing a challenge to a prior conviction . . . ; (2) whether a defendant had any previous need to challenge a conviction . . . or reason to question its validity; (3) whether a defendant had other means of preventing the government's use of the conviction . . . ; and (4) whether the passage of time has an effect on the State's ability to defend against the challenge." *Close v. People*, 180 P.3d at 1020. A defendant's "ignorance of the law or a recent discovery of a basis to challenge the conviction" does not constitute justifiable excuse or excusable neglect. *People v. Martinez-Huerta*, 363 P.3d 754, 757 (Colo. App. 2015).

Defendant argues that he was prevented from pursuing a timely claim of post-conviction relief because the prosecution threatened to bring habitual charges against him should he "appeal" his conviction. Defendant's Motion for Post-Conviction Relief, at 4. Defendant's allegations are difficult to parse. At the time of the prosecution's alleged threat, Defendant had already agreed to enter into a plea agreement, under which he would waive his right of appeal; therefore, the prosecution's alleged threat seems misplaced. Furthermore, under the Colorado Rules of Criminal Procedure, the prosecution would be unable to file additional charges against Defendant in response to an appeal or a collateral attack, and for the prosecution to claim otherwise would be incomprehensible to defense counsel.

Taking Defendant's allegations as true, fear of prosecutorial retaliation to a petition for post-conviction relief does not constitute justifiable excuse or excusable neglect. First, Defendant had access to counsel to determine whether the prosecution could file habitual charges against him if he collaterally attacked his conviction. Furthermore, Defendant had three years from the date of his conviction to determine whether the prosecution's threats were legally sound.

Defendant's prior ignorance of the law does not justify the untimely motion. *People v. Martinez-Huerta*, 363 P.3d at 757. Moreover, Defendant cannot persuasively argue that his guilty plea was involuntary because of the prosecution's threat to file habitual criminal charges during plea negotiations. "[T]he threat of enhancing the charges levied against a defendant should he decide to proceed to trial is not impermissible during the give and take of plea bargaining . . . ." *People v. Ivery*, 615 P.2d 80, 83 (Colo. App. 1980) (citing *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). Defendant has "demonstrated no unavoidable hindrance which would cause a reasonably prudent person to neglect to pursue timely collateral relief," and his motion is therefore untimely pursuant to C.R.S § 16-5-402. *See People v. Vigil*, 955 P.2d 589, 592 (Colo. App. 1997).

B. Ineffective Assistance of Counsel

Defendant also argues that he neglected to seek timely collateral relief because his counsel erroneously advised him that he would waive his right of appeal upon entering a guilty plea and failed to advise him of his right to collateral attack under Crim. P. 35. Defendant's Motion for Post-Conviction Relief, at 9. "Ineffective assistance of counsel can constitute justifiable excuse or excusable neglect in circumstances where counsel's ineffectiveness prevented the defendant from pursuing a timely claim for postconviction relief." *People v. Martinez-Huerta*, 363 P.3d at 757. For example, a defense counsel's "affirmative and erroneous advice" which causes the defendant to neglect to pursue timely post-conviction relief may constitute justifiable excuse or excusable neglect. *See id.* However, "the absence of, or failure to give, advice does not establish justifiable excuse or excusable neglect." *Id.*

In Defendant's allegation of ineffective assistance of counsel, he confuses a waiver of his right of appeal with a waiver of collateral attack. *See People v. Jackson*, 98 P.3d at 945. Defense counsel's advice that Defendant would waive his right of appeal under the plea agreement was accurate. *People v. Bottenfield*, 159 P.3d 643, 645 (Colo. App. 2006). Rule 35 does not provide for a right of appeal, but instead provides for post-conviction relief. Defense counsel's failure to advise Defendant of his right to collateral attack does not establish justifiable excuse or excusable neglect. *People v. Martinez-Huerta*, 363 P.3d at 757; *see also People v. Alexander*, 129 P.3d at 1055; *People v.* Rowe, 837 P.2d 260, 265 (Colo. App. 1992). As such, the alleged failure to advise does not establish unjustifiable excuse of excusable neglect pursuant to C.R.S § 16-5-402, and therefore the motion is untimely.

IV. Conclusion

Defendant filed this petition well-after the three year deadline imposed by Rule 35(c) and C.R.S. § 16-5-402(2). Thus, Defendant had the burden of showing that he missed the deadline due to justifiable excuse or excusable neglect. Defendant has failed to do so, as neither of his arguments meets the standards outlined in the law. The Court therefore finds that the motion is untimely and will not address the merits.

21

IT IS HEREBY ORDERED that Defendant's Motion for Post-Conviction Relief is **DENIED.**

DONE AND SIGNED: August 22, 2018.

BY THE COURT:

RANDALL C. ARP
District Court Judge

22

ORIGINAL

District Court, Jefferson County, Colorado 100 Jefferson County Parkway Golden, CO 80401	2008 JUL 30 AM 8:56 FILED COMBINED COURT JEFFERSON COUNTY, CO
People of the State of Colorado v. Nathan Daniel Knuth	Case Number: 2007CR3010 2008CR3161
Nathan Knuth PO Box 999 Canon City, CO 81215	

MOTION FOR CHANGE OF VENUE

Nathan Knuth, pro se, submits the following on behalf of his motion for change of venue:

Pursuant to the Constitution of the United States of America, the Constitution of the State of Colorado, 16-6-101 Et seq. C.R.S., and Rule 21 of the Colorado Rules of Criminal Procedure, Mr. Knuth is entitled to a fair venue to hear the above matter.

Mr. Knuth can not recieve a fair judgment from a Jefferson County District Court Judge, as they all partake in the same unconstitutional custom he has been subjected to. The Jefferson County Judges intentionally allow the prosecutors to thwart the habitual criminal statutes mandates of 18-1.3-801(2)(a)(II).

The DA's intentionally do not file the habitual counts at commencment so they can coerce the accused into pleading guilty and waiving several fundamental rights, such as trial by jury and right to confront accusors. The Jefferson County Judges know the DA's use this unconstitutional conduct in this manner, but do or say nothing about it, and grant the DA's motion to amend the charging document after the DA has coerced the accused into waiving his fundamental rights. These Judges have an ethical duty not to willfully partake in this conduct, but they joyfully partake in this coercive tactic so that the judicial machinery will be sped up, and they can make more money and do less work, by placing the accused in prison faster after a plea of guilt is coerced.

If this conduct is challenged by the accused or his attorney, the Jefferson Couty Judge then enters an intentional erroneous judgment and denies the accused relief and an evidentiary hearing in order to hide this unconstitutional custom that is employed by all Jeffco Judges.

(1 of 2)

23

COPY

By not filing the habitual counts at commencment this gives the DA's and Judges additional power to coerce these fundamental rights. Due process of the United States and Colorado Constitutions does not permit the intentional abuse of these statutes to give the Court and DA this additional power. For further review of this unconstitutional custom, Mr. Knuth hereby incorporates by reference the entire substance of the "MOTION FOR POST CONVICTION RELIEF PURSUANT TO Crim. P. 35(c)" filed simultaneously with this motion. Mr. Knuth further incorporates by reference the following attached affidavit, that is in support of this motion.

Wherefore, Mr. Knuth requests the Court to enter an order for change of venue, or in the alternative grant him an evidentiary hearing to establish his claim.

Sincerely Nat Knuth 7/16/15

Nathan Knuth

Appendix

MOTION FOR POST CONVICTION RELIEF
AFFIDAVIT OF NATHAN KNUTH

(2 of 2)

ORIGINAL

District Court, Jefferson County, Colorado 100 Jefferson County Parkway Golden, CO 80401	2010 JUL 30 AM 8:56 FILED COMBINED COURT JEFFERSON COUNTY, CO
People of the State of Colorado v. Nathan Daniel Knuth	Case Number: 2007CR3010 2008CR3161
Nathan Knuth PO Box 999 Canon City, CO 81215	

AFFIDAVIT OF NATHAN DANIEL KNUTH

I, Nathan Daniel Knuth hereby swear under penalty of perjury under the laws of the United States and State of Colorado that the following is true and correct. (after being placed under oeth) Mr. Knuth hereby incorporates by reference "motion for post convictionrelief"

Pursuant to the Due Process Clause of the Constitution of the United States of America, when a state law uses mandatory language such as shall and provides the Courts mandatory duties in executing this law, due process requires fair procedures in the execution of said law.

Therefore, 18-1.3-801-804 are governed by federal due process, **Swarthout v. Cook**, 562 U.S. 216, 219 (2011). see also: **United States v. Salerno**, 481 U.S. 739, 746 (1987). Therefore it is a violation of federal due process, the habitual statutes, and other constitutional provisions for the Court, DA's, and defense counsel to engage in the conduct depicted on these pages.

Pursuant to **18-1.3-801(2)(a)(II)**, "such former conviction or convictions and judgment or judgments **shall** be set forth in apt words in the indictment or information" Pursuant to the habitual statutes and **People v. Kemp**, 885 P.2d 260, 265 (Colo. App. 1994), and **People v. Martinez**, 18 P.3d 831, 837 (Colo App 2000), the habitual counts are mandated to be filed on every person who is eligible to receive the penalty. The Courts have interpreted the habitual statutes as, that if the DA has knowledge of the requisite amount of prior convictions and they believe they can prove these prioe convictions, then the habitual counts shall be set forth in apt words in the indictment or

information, 18-1.3-801-804, The DA's decision to prosecute the accused an the habitual counts must not be based off arbitrary classifications and unjustifiable standards, **Oyler v. Boles**, 368 U.S. 448, 456 (1962); **People v. Macfarland**, 540 P.2d 1073, 1075 (1975); **People v. Anaya**, 194 Colo 345, 347-52 (1977); **People v. Thomas**, 542 P.2d 387, 494-95 (1975). Therefore the DA should base their decision to prosecute the accused on the habitual counts, based off their ability to prove the prior convictions, and if they have knowledge of the prior convictions, they shall be set forth in apt words in the **indictment** or information. The DA's obtain the accused's full criminal history prior to commencment in all cases, as the rules of discovery mandate this.

Therefore, the habitual states, due process, and the above cited case laws reqire the DA's to file the habitual counts on every person eligible if the requisite amount of convictions are known about and can be proven.

The Jefferson County DA's pick and choose on a whim who to file the habitual counts on. If the nature of your case personally offends the DA, then they will file the habitual counts on you at commencment and take you to trial. If the DA just wants to get a plea bargain made, they will intentionally violate the habitual statutes provisions and not file the habitual counts at commencment, so they can use them as a tool of coercion to get the accused to waive fundamental constitutional rights such as probable cause determinations, trial by jury, right to confront accusors, etc. The Jefferson County Defense Attorneys join in this ploy with the DA's. The Jefferson County Judges are well aware of this unethical and unconstitutional conduct, but do nothing. They in fact even join in, by allowing the DA to have the indictment or information amended at any time in the proceedings if the accused does not surrender to their demands and waive their fundamental rights. The Courts are fully aware their conduct is prohibeted by the code of ethics and the Constitution of the United States of America and State of Colorado.

I have been personally witnessing the above depicted conduct of the Jefferson County Courts, DA's, and defense Attorney's for years. I have spent much time in the Jeffeco jails, courtrooms, and interview rooms, witnessing and being subjected to this conduct. I have been charged and convicted for felonies when the alleged conduct was misdemeanor due to this conduct, I have been coerced into waiving my preliminary hearings, rights to trial by jury, and rights to confront my accusors due to this conduct.

COPY

I have personally witnessed hundereds of other accused persons be subjected to this same conduct by the Courts, DA's, and Defense Attorney's. All three of these "performers of justice" have intentionally coerced thousands, perhaps millions of additional years in prison from the accused of Jefferson County.

Further, by picking and choosing on a whim whom to file the habitual counts on for reasons such as the nature of the case, or because the accused will not waive a fundamental right, they are violating the accused's rights to equal protection and due process. The Jeffco Judges willfully allow this conduct to run rampart in their courtrooms and do nothing, Judge Arp seemed to think that it was even funny.

Sincerely Nathan Knuth 7/20/18

Nathan Knuth

VERIFICATION

I, Nathan Knuth, being duly sworn, depose and say: I am over the age of 18 years, and hereby swear under oeth, and under penalty of perjury that the statements set forth above are true and correct to the best of my knowledge and belief.

Nathan Knuth 7/20/18

State of Colorado
County of Jefferson
Signed before me on JUL 20 2018 by Nathan Knuth CDOC#125833

Yvette J. Brown
Notary Public
My commission expires: 04-11-2020

YVETTE J. BROWN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20004009088
MY COMMISSION EXPIRES 04-11-2020

ORIGINAL

District Court, Jefferson County 100 Jefferson County Parkway Golden, CO 80401	2018 JUL 30 AM 8:56 FILED COMBINED COURT JEFFERSON COUNTY, CO
People of the State of Colorado v. Nathan Knuth	Case Number: 2007CR3010
Nathan Knuth PO Box 999 Canon City, CO 81215	

MOTION FOR POST CONVICTION RELIEF PURSUANT TO CRIM. P. 35(c)

Comes now, Nathan Knuth, pro se, requesting the Honorable Court to grant him relief in the above matter pursuant to Crim. P. 35(c).

PROCEDURAL HISTORY

Mr. Knuth was sentenced to 32 years under the habitual criminal statutes on 6/29/16. The case(s) in the above matter were used as prior conviction(s) to support the habitual criminal conviction in 14CR572.

Mr. Knuth entered a plea of guilty in both case no. 2007CR3010 and 2008CR3161 on 2/9/09 and the cases were ran concurrent.

Mr. Knuth was represented by Private Counsel Martha Eskesen during the preliminary proceedings of the above matter, and then was represented by Public Defender Stephanie Siebold during the entry of the guilty plea.

There was no direct appeal filed in this matter, nor has there been any previous Crim. P. 35 motions filed.(no habeas corpus either).

REQUEST FOR COUNSEL

Mr. Knuth is humbly requesting to be represented by counsel at the states expense during this critical stage. People v. Hubbard, 519 P.2d 945 (1974) (an accused has the right to counsel at every stage of the proceeding).
I do not authorize counsel to amend this filing without my express written consent.

28

COPY

CLAIM I

I, WHETHER SECTION 16-5-402 IS UNCONSTITUTIONAL AS APPLIED TO MR KNUTH, AS IT IS IN VIOLATION OF People v. Germany, 674 P.2d 345 (Colo. 1993) AND THE CONSTITUTIONS OF THE UNITED STATES AND STATE OF COLORADO

Mr. Knuth, hereby moves the Court to declare C.R.S. 16-5-402 unconstitutional as applied to him in the above matter:

A. Because the Germany Court found that 16-5-402 made no provisions for guilty pleas that were accepted in violation of the constitution, therefore were null and void, and the revised statute has not corrected this matter.

B. Because the standards for justifiable excuse and excusable neglect adopted by the higher courts has been taken from a civil law standard, and the civil definition adopted should not apply in a criminal matter where life and liberty are at issue.

1. The Colorado Supreme Court has ruled that both the United States and Colorado Constitutions accord the accused both procedural and substantive rights that are binding on the government in a criminal prosecution. People v. Germany, 674 P.2d 345, 349 (Colo. 1983); See also, U.S. Constitution V, VI, XIV: Colorado Constitution Article II, Sections 16, 18 and 25. The very authority of the government to prosecute and imprison an accused is abolished when a defendant is deprived of basic due process rights. Germany, 674 P.2d at 349; See also, Cummings v. People, 785 P.2d 920, 923 (Colo. 1990).

2. Although the State may have an interest in the finality of criminal convictions. that interest is not a justification for permitting unconstitutional convictions to stand. Germany, supra, at 350. The government interest in eliminating stale claims, while a legitimate interest, is offset by the decreasing state interest in punishment because the defendant may have either completed or significantly exhausted, the term of his sentence. Id. at 350. note 5.

3. Although the state may enact reasonable requirements for collateral challenges under due process, it may not do so without providing defendant a "meaningful opportunity" to challenge allegedly unconstitutional convictions which the government seeks to useagainst him. Germany, 684 P.2d at353; U.S. Constitution amendments V, XIV; Colo. Const. Article II, Section 25.

4. In its 1983 opinion in Germany, the Supreme Court held that 16-5-402 violated due process of law under the Fourteenth Amendment of the United States Constitiution, and Article II, Section 25 of the Colorado Constitution, because it precluded challenges to prior convictions solely on the

basis of a time bar. Thereafter the legislature amended the statute to permit collateral attacks outside of the applicable time period if the failure to seek relief within that time was the result of circumstances amounting to justifiable excuse or excusable neglect. See. Section 16-5-402(2)(d); 1984 Colo. sess. laws, principal. 486-487. Section 16-5-402 as amendedstill does not provide such a"meaningful opportunity" and continues to result in arbitrary effects as it did prior to its amendment by the legislature in 1984.

5. In People v. Fultz, 761 P.2d 242, 244 (Colo.App.1988), the Court of Appeals adopted a civil definition of "excusable neglect" and "justifiable excuse" and construed the amended statute to allow late attacks only when the failure to take proper steps at the proper times was the result of some unavoidable hindrance or occurrance. See also, People v. Brack, 796 P.2d 49 (Colo. App. 1990). The application of a civil law standard in determining "justifiable excuse" and "excusable neglect" has no place in a criminal proceeding when life and liberty are at hand. Infringement of a constitutional right often affects life and liberty, conventional notions of finality associated with civil litigation have no place." Germany, 674 P.2d at 350 51, note 5; Accord, Sanders v. United States, 373 U.S. 1, 8 (1963); People v. Moore, 562 P.2d 749 (Colo. 1977). In light of this interpretation of "excusable neglect", the amended statute still suffers from most of the constitutional infirmities that led the German Court to strike down the original statute as an unconstitutional violation of due process.

6. It is axiomatic that under the constitutional provisions of due process, an unconstitutional conviction may not be used to prove guilt or enhance punishmentin a subsequent unrelated prosecution. See, e.g. Loper v. Beto,45 U.S. 473(1977); United States v. Tucker, 404 U.S. 443(1972); Burgett v. Texas, 389 U.S. 109(1967); People v. Swann, 770 P.2d 411 (Colo 1989); People v. Quintana, 634 P.2d 413(Colo1981); U.S. Const. Amends. V, XIV; Colo. Const., Article II, Section 25. See also Germany at 352.

7. The Supreme Court of Colorado has repeatedly recognized that "Without an affirmative showing of compliance with the mandatory provisions of Crim P. 11, a plea of guilty cannot be accepted and any judgment and sentence which is entered following the plea is void."
People v. Drake, 785 P.2d 1257, 1268 (Colo.1990)(citations omitted)(emphasis added); Accord, People v. Randolph, 488 P.2d 203, 204 (Colo. 1971). When a judgment is void, it is "a nothing a nullity" and has "neither life nor incipience...".Davidson Chevrolet v. City and County oif Denver, 330 P.2d 1116, 1118-1119(Colo.1958). See also Germany at 352.

8. Accordingly, when a defendant alleges that a guilty plea was taken in violation of the mandatory procedures of Crim. P. 11, the conviction is not merely reversed, but rather, it is void, a nullity that never existed. The Germany Court specifically found that 16-5-402 was unconstitutional because, among other things, it made no provisions for out of time challenges of void and null judgments. Germany, 674 P.2d at 352. The legislature failed to correct the statute on this ground, and the civil law definition of a "justifiable excuse or excusable neglect" adopted by the fultz court did not provide an exception for the challenges of Colorado guilty plea convictions which were taken in violation of rule 11 therefore are void.

COPY

9. Therefore, Section 16-5-402 is arbitrary and capricious and will lead to unjust results. The statute essentially effects a forfeiture of a defendant's right to challenge an unconstitutional conviction solely on the basis of the passage of time, without regard to whether the convicted defendant made a knowing, intelligent, or voluntary waiver of his right to preclude the use of the conviction as a factor in imposing punishment, finding guilt, or restraining his freedom. As such, it violates due process of law under the Fourteenth Amendment to the United States Constitution and Article II, Section 25 of the Colorado Constitution.

> While the government interest in eliminating stale claims is a legitimate one, it must be remembered that any increasing staleness is offset by a decreasing state interest in punishment: "The farther in time a post conviction proceeding is from the original conviction, the more difficult will be retrial but, equally, the greater the portion of the original sentence that will have already been completed." ABA, Standards For Criminal Justice: Post Conviction Remedies Commentary to Standard 22-2.4 at 22.27 (2d ed. 1982). See People v. Roybal, 618 P.2d 1121, 1127 n. 7(Colo.1980)(difficulties of proof, "though real and substantial, cannot be permitted to be used to erode constitutional rights of accused persons"). The same reasoning applies to the state's interest in avoiding the frustratinf effect of collateral challenges on repeat offender statutes. Especially in criminal litigation, where an alleged infringment of a constitutional right often affects life or liberty, conventional **notions** of finality associated with civil litigation have no place. Sanders v. United States, 373 U.S. 1, 8, 83 S.Ct. 1068, 1073, 10L.Ed.2d 148, 157 (1963)
>
> "On the civil side, people rely on judicially determined rights, especially in contract and property matters, involvig directly and directly interests of many third parties. Reopening of judgments could have great and uncertain ramifcations affecting many persons. This element is almost totally lacking in criminal judgments, which are peculiarly personal and which only rarely give rise to inextricable acts of reliance by others. " ABA, Standards For Criminal Justice: Post conviction Remedies, supra at 22.27.

People v. Germany, 674 P.2d 345, 351, fn.5(Colo.1983)

Wherefore, Mr. Knuth respectfully requests that this Honorable Court find Section 16-5-402 unconstitutional, as applied to him, because:

A. 16-5-402 makes no provisions for out of time challenges to null and void convictions. and

B. The "justifiable excuse and excusable neglect" legal standard adopted by the higher courts is a civil standard that still denies a criminally accused a "meaningful opportunity" to challenge null and void judgments based solely on the passage of time.

This same argument is also supported by Licenced Attorney Michelle L. Lazar, No. 26835 (see attached appendix) 31

COPY

CLAIM II

WHETHER MR. KNUTH CAN SHOW "JUSTIFIABLE EXCUSE" OR "EXCUSABLE NEGLECT" TO PROCEED UNDER CRIM. P. 35(c) DUE TO THE PROSECUTION COERCING HIM INTO NOT SEEKING POST CONVICTION RELIEF.

RELEVANT FACTS

Mr. Knuth and his Attorney DPD Stephanie Siebold appeared for arraignment of case No. 2007CR3010 and 2008CR3161 on 2/9/09. At this hearing, a plea offer was extended to Mr. Knuth. While Mr. Knuth was waiting with his attorney, prior to be called by the Court for arraignment, DDA Eric Johnson stated to Mr. Knuth and his Attorney, "if he does not accept the plea agreement and plead guilty today, I will add habitual criminal counts to the information and take him to trial." After, consulting with PD Siebold, I agreed to accept the "plea agreement" on her advice that DA Johnson would be able to follow through on his threat and I would spend the rest of my life in prison. While DA Johnson and PD Siebold were discussing how to proceed, I stated "I will be seeking appeal" DA Johnson then stated "I will add the habitual counts if you do" After hearing this and consulting with my attorney, I agreed to enter guilty pleas in both cases, and never sought appeal, until now.At this point in time I was very ignorant of the law, I did not even begin understanding the law until 2014.

This is not the first time DA Johnson has used this type of conduct to coerce waivers of rights from the accused. I have spoken with several people since 2/9/09 that have been subjected to the same type of coercive conduct by DA Johnson. In fact this is not the first time I have been subjected to this type of conduct by a Jefferson County Prosecutor. in 2003CR3457 Mr. Knuth heard DA Tolle inform his Attorney Brent Martin that "if he does not plead guilty I will be adding habitual counts." Mr. Knuth was informed by his Attorney, DPD Siebold in Case No. 2008CR3161 "if you proceed with preliminary hearing, the DA will file Habitual counts." Then again in 2014CR572 Mr. Knuth appeared at preliminary hearing, represented by Attorney Martha Eskesen, Ms. Eskesen has provided an affidavit that states "The plea offer made by DDA Jensen was that if Mr. Knuth pleaded guilty to the charge of second degree assault, a class 4 felony all other charges would be dismissed. If Mr. Knuth did not so plead, and did not waive his right to the preliminary hearing then DDA Jensen stated his offices intention of amending the charges to include additional habitual criminal charges" SEE (Eskesens Affidavit [redacted]). Mr. Knuth waived the preliminary hearing in both of the above matters, due to the DA's coercion.

The facts are, is the Jefferson County District Attorneys and Defense Attorneys have been unconstitutionally using the threat of amending the information or indictment to add habitual counts in order to coerce the accused into waiving constitutional rights for many, many years.I have even spoken with people who were ignorant to the law, where their attorneys and the DA coerced them into pleading guilty by threatening habitual counts, when they were not even eligible to receive the habitual penalty. The habitual statutes mandate the habitual counts to be filed upon everyone eligible at commencement of prosecution. unless the DA does not know about the defendants criminal history, or the DA does not believe that they can prove the prior convictions at trial. The Jefferson County District Attorneys only file the habitual counts on the people who's case personally offend them, or on people who will not waive a certain constitutional right.This unconstitutional

custom has also been stated on record by DDA Kate Knowles in 14CR572, she provides:

"what was offered to Mr. Knuth at the preliminary hearing stage was a plea offer, and part of the plea offer was the understanding that if he did not accept the plea offer his case would be staffed for the possibility of habitual charges.

Habitual charges are not appropriate to bring in every case, but in certain cases if we are trial bound, whisch is the posture in this case, they are appropriate to be brought and to be filied. So the procedure that is commonplace in our office was followed in this case.." **(Hr'g Tr. 5:7-17, 10/24/14)**

and then later adds:

"As the Court is well aware, and perhaps the defendant is at this point, it is not the typical practice of our office to file habitual charges with every single defendant who is eligible.

Habitual criminal charges should be used judiciously, and thy are used when they are seen as appropriate...and in this case, because of the nature of the charges, because of the defendants criminal history with the same victim at felony level domestic violence, it was considered a strong possibility from the very beginning." See: **(Hr'g Tr. pgs. 110-111,3/25/16).**

Due to the above unconstitutional custom and DDA Johnsons statement Mr. Knuth declares that he was coerced into not seeking post conviction relief of the above matter until now.

To even further substatiate Mr. Knuth's claim that he was coerced into pleading guilty, is the fact that Mr. Knuth plead guilty to the highest alleged conduct. There was no reason for Mr. Knuth to plead guilty unless the DA was using the habitual counts to coerce a waiver of his rights.(there was not even sufficient probable cause to support the allegations as felony conduct)

These are not all of the factual allegations that Mr. Knuth has to submit to the Court to support these claims. Mr. Knuth would like to speak with an attorney before disclosing more facts to the Court to support these claims. Mr. Knuth is entitled to a hearing to prove his allegations of coercion, and to prove "justifiable excuse or excusable neglect" under 16-5-402. See: **Von Pickrell v. People,** 163 Colo. 591,596(1967)(no matter how improbable these allegations of coercion made here may be, so long as they are not completely incredible, the defendant was entitled to the opportunity ot trying to prove them at a hearing).

RELEVANT LAW

The Fourteenth Amendment provides that no state shall "deprive any person of lifem liberty, or property without due process of law" **U.S. Const. Amend. XIV.,S1.** When a state creates a law. that creates a liberty interest. and such law uses mandatory language such as shall and also provides the courts mandatory duties in executing this law, federal due process mandates fair procedures in the execution of this law, **United Staes v. Salerno,** 481 U.S. 739, 746, 107 S.Ct. 2095, 95 L.Ed. 2d 697 (1987); See also: **Swarthout v. Cook,** 562 U.S. 216, 219 (2011).

It is true that a prosecutor has broad discretion in deciding what charges to bring, but habitual "counts" are not substantive offenses, but rather they are sentence enhancers, **People v. Montoya**, 640 P.2d 234,237 (Colo.App1991). The Jefferson County Prosecutors have taken this broad discretion as the power to intentionally thwart the mandates of the habitual criminal statutes, **C.R.S. 18-1.3-801-804**, and selectively and vindictively prosecute at will.

Constitutional due process and the habitual statutes provide what process must be followed by the DA's in executing habitual counts on the accused.

18-1.3-801(2)(a)(II), provides:

"Such former conviction or convictions **Shall** be set forth in apt words in the indictment or information"(this is referencing commencement of prosecution). This section must be strictly construed, being in derogation of the common law, **DeGesualdo v. People**, 364 P.2d 374,434 (1961).

This is further demonstrated when the habitual statutes are read in pari materia. **18-1.3-803(3)** provides:

"Upon arraignment of the defendant, such defendant **shall** be required to admit or deny that such defendant has been previously convicted of the crimes identified in the information or indictment"

(6) provides:

"If the prosecuting attorney does not have any information indicating that the defendant has been previously convicted of a felony charge, and if thereafter the prosecuting attorney learns of the felony conviction prior to the time that sentence is pronounced by the court, he or she may file a new information"

It is hereby declared the general assembly has mandated the habitual counts to be filed at commencement of prosecution, if known about at this time, and the DA believes that they can prove the prior convictions at trial.

The high courts have previously found the information or indictment could be amended at a later time, because the habitual counts are mandated to be filed upon everyone eligible and the DA did not file them at commencement, **People v. Martinez**, 18 P.3d 831, 837 (Colo.App.2000); **People v. Kemp**, 885 P.2d 260, 265 (Colo.App.1994).(the Jeffco DA's pick and choose on a whim)

The Jefferson County DA's have taken these two cases to give them the power to intentionally thwart the habitual statutes, by leaving the habitual counts off at commencement and then using them to coerce the accused into

COPY

giving up constitutional and statutory rights. If the DA's do file the charges at commencement, it is because they are personally offended by the nature of the accused's offense. The courts have long held that the DA's decision to prosecute the accused on the habitual counts must not be based off unjustifiable standards or arbitrary classifications, and the DA's decision to prosecute must be based off their ability to prove the requisite amount of prior convictions, **People v. Larson**, 572 P.2d 815,818 (1977); **People v. Thomas**, 542 P.2d 387,494-96(1975); **People v. Anaya**, 194 Colo. 345,347-52(1977); **People v. MacFarland**, 540 P.2d 1073,1075 (1975). **Oyler v Boles 368 U.S. 448,456(1962)**

The prosecution say they "staff" each case before deciding whether to file habitual counts on the accused. [redacted]). I guess this is a staff meeting where a group of DA's meet and decide on whom deserves to be penalized 3 or 4 times greater than another in like circumstances. Do they draw straws, or pull names out of a hat in order to make their decision? The fact that this meeting even exists without a procedure designated by the legislature to guide them in what criteria is to be used in making this awesome decision is violative of due process, **Anaya supra at 350** . This meeting does not even exist in every case, the DA's use this meeting as a cover story in an attempt to hide their unconstitutional custom. (there is also no way to appeal this decision)

The facts are, the Jefferson County Courts, Prosecutors, and Defense Attorneys all rely on this uncostitutional custom to coerce the accused into waiving many different types of constitutional and statutory rights in order to speed up the judicial machinery. This saves them time, effort, and money, and therefore allows them to have more time, effort, and money.

They intentionally do not file the habitual counts at commencement, unless they are personally prejudiced against a particular defendant or his case. The DA's receive every persons full criminal history prior to filing the indictment or information, but intentionally thwart due process.

Mr. Knuth has been coerced into not pursuing his appellate rights due to DDA Johnsons direct comments of threatening him to file habitual counts if he does, and due to Mr. Knuth knowing of the existence of the above unconstitutional custom. It is well known throughout the Colorado Department of Corrections that the DA's use the habitual counts in the above depicted manner. Mr. Knuth believed if he sought appeal and won, the DA's would file the habitual counts against him and increase his sentence in the above matter.

COPY

Mr. Knuth asserts he was subjected to pressure of the type used to coerce him into not seeking post conviction relief in violation of constitutional due process of the United States and Colorado Constitutions, and **North Carolina v. Pearce**, 395 U.s. 711,725 (1969), thus resulting in a ineffective waiver of his appellate rights. **Brady v. United States**, (the fifth amendment requires that waivers of costitutional rights must be made knowingly, intelligently, and volun tary). 397 U.S.742, 743- 758 (1970)

In general, the burden is on the prosecution to show effective waiver of a fundamental right, Barker v. Wingo...If this initial burden is met by the prosecution through establishment of a prima facie case, then in order for the court to find the waiver ineffective the defendant must present evidence from which it could be reasonably inferred that waiver was not voluntary, knowing, and intelligent,...**People v. Curtis**, 681 P.2d 504, 517 (1984)

CONCLUSION

Wherefore, Mr. Knuth requests the Honarable Court to grant him an evidentiary hearing as mandated by **Von Pickrell supra** to present facts into the record, or in the alternative allow him to proceed under C.R.S. 16-5-402(2)(d) on 35(c), because justifiable excuse or excusable neglect has been shown, because he was direcly coerced by DDA Johnson, and/or because he was directly coerced by an unconstitutional custom.

CLAIM III

WHETHER MR. KNUTH CAN SHOW "justifiable excuse"OR"excusable neglect" TO PROCEED UNDER CRIM. P. 35(c) DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL

RELEVANT FACTS

Mr. Knuth and PD Siebold appeared for arraignment of case no. 2007CR3010 and 2008CR3161 on 2/9/09.(the previous relavent facts within claim 1 are hereby incorporated by reference) PD Siebold heard all of the previous statements made by DA Johnson within the relevant facts of claim 1. PD Siebold also informed me that DA Johnson was "pissed" due to me not showing up for court and then picking up new charges. She then said "if you do not accept the

COPY

offer, he is going to file the habitual counts and you will spend the rest of your life in prison." I then stated"isnt it unconstitutional for him to use the habitual counts like this" and she said "the courts let them get away with it, there is nothing I can do." I then asked her how he could file the habitual counts on me if I appealed. and she said "the courts let them get away with it, and once you enter a guilty plea we will not be able to appeal, because you will have to give up your appeal rights." After hearing all this, I entered a guilty plea in both cases. I was never informed of my post conviction relief rights under Rule 35.

RELEVANT LAW

Mr. Knuth is entitled to the effective assistance of counsel through the Sixth Amendment of the United States Constitution, made applicable to the states through the Fourteenth Amendment, See: **Strickland v. Washington**, 466 U.S.668,673 (1984)

"Justifiable excuse" or "excusable neglect" can be established through the ineffective assisstance of counsel, See: **Swainson v. People**, 712 P.2d 479,480 (Colo.1986), and **People v. Williams**, 736 P.2d 1229,1231 (Colo.App.1996)

Under the alleged facts at hand, Mr. Knuth has stated a claim of coercion of his appellate rights, due to the ineffective assistance of counsel, and is thus entitled to an evidentiary hearing to establish the factual record, **Von Pickrell supra.**

It is alleged that counsel was ineffective for the following reasons; and therefore Mr. Knuth is entitled to a hearing on"justifiable excuse" or "excusable neglect" see:

(a) Counsel allowed DA Johnson to coerce Mr. Knuth into not seeking appeal through his direct comments,without taking action.

(b) Counsel allowed DA Johnson to coerce Mr. Knuth into not seeking appeal due to the above referenced uncostitutional custom, and did not take action with the Court.

(c) Counsel engaged in conduct with DA Johnson that coerced Mr. Knuth into not seeking appeal.

(d) Counsel did not inform Mr. Knuth of his Crim. P. 35 rights.

(e) Counsel directly coerced Mr. Knuth into not seeking appeal.

37

COPY

To merit a hearing on the exception to the three year deadline, a defendant must allege facts that, if true, would establish justifiable excuse or excusable neglect. **Close v. People**, 180 P.3d 1015, 1019 (Colo.2008); **People v. Wiedemer**, 852 P.2d 424, 440 n.15 (Colo.1993). The defendant need not set forth the evidentiary support for his allegations,**Close**, 180 P.3d at 1019. See: **People v. Chavez-Torres**, 2016COA169m at (Hn2)

Colorado's controlling standard for justifiable excuse and excusable neglect is found in **Wiedemer supra at n.20**

Wherefore, Mr. Knuth requests an evidentiary hearing to establish the above as facts, or in the alternative, allow him to proceed under justifiable excuse or excusable neglect.

CLAIM IV

WHETHER MR. KNUTH CAN SHOW JUSTIFIABLE EXCUSE OR EXCUSABLE NEGLECT DUE TO ALL THE RELEVANT FACTS AND CIRCUMSTANCES AT HAND

Mr. Knuth hereby incorporates by reference all previous paragraphs.

RELEVANT FACTS

Mr. Knuth was sentenced on 2/9/09 to 8 years in the Department of Corrections in Case No. 2008CR3161. This case was "ran concurrent" with case No. 2007CR3010which Mr. Knuth received a 6 year and 4 year sentence on. Mr. Knuth plead guilty on 2/9/09 in both cases and was sentenced the same day.

At this time Mr. Knuth was very ignorant to the law. Mr. Knuth knew what an appeal was, but did not understand the process, or the law that would have enabled him to complete an appeal.

Mr. Knuth was relying on the assistance of counsel to provide him his Sixth Amendment rights. Mr. Knuths' counsel Stephanie Siebold never informed Mr. Knuth of error in law and facts that would have entitled him to either a direct or callateral appeal, nor did she inform him of his rights to a direct or collateral appeal.

There was never anything filed in regards to an appeal in this matter. Mr. Knuth then entered into DOC, where he was immediately entered into a 1 year faith based program. Upon completing this program, he immediately

COPY

entered into a Therapuetiv Community(TC), where he remained until he went to PEER 1. Mr. Knuth entered the PEER 1 program on or about June 1, 2011. From this time, until 2/28/14 when Mr. Knuth was accused in Case No. 2014CR572 Mr. Knuth remained part of the PEER 1 program. Upon commencement of 2014CR572 Mr. Knuth recieved the assistance of counsel.

On June 27th, 2016, Mr. Knuths' counsel Michelle Lazar recognized that Mr. Knuth received ineffective assistance on 2/9/09, but never attacked the prior convictions in the above matter.

RELEVANT LAW

Mr. Knuth has a constitutional right to the effective assistance of counsel. **Sixth Amendment U.S. Constitution.**

Mr. Knuths'counsel had a duty to inform him of his rights on appeal. **Marrow v. U.S.** 772 F.2d 525, 528 (1985). See also: **Lozado v. Deeds**, 488 U.S. 430 111 S.Ct. 860 (1991).

The right to appeal is a fundamental constitutional right, and waivers of this right must appear on record, and cannot be presumed by a silent record. **Johnson v. Zobrist**, 304 U.S. 458, 464 (1938).

Mr. Knuth did not intelligently waive his rights to appeal, nor did he receive effective assistance of counsel in the appellate process after entrance of the guilty plea.

Mr. Knuth further asserts that from the time he entered his plea on 2/9/09 until accused in 14CR572 on 2/28/14 he can establish justifiable excuse or excusble neglect due to the programming he was participating in as referenced above. Mr. Knuth could not seek his post conviction rights even if he wanted to. Mr. Knuths freedom and liberty was attached to his active participation in these programs. If he did not comply with these programs, he would have spent many more years in D.O.C. than he did. While in these programs, Mr. Knuth was not provided the time and opportunity to "work on an appeal" Therefore Mr. Knuth asserts he has a justifiable excuse or excusable neglect between 2/9/09 until 2/28/14

Then upon commencement of 2014CR572 on 2/28/14 Mr. Knuth was entitled to the effective assistance of counsel in attacking the prior convictions in the above matter.He has not received this to date and therefore justifiable excuse or excusable neglect exists until present, because Michelle Lazar recognized Mr. Knuth did not receive effective assistance in the entrance of

of his pleas in the above matter, therefore had a duty to investigate whether justifiable excuse or excusable neglect existed in the above matter for Mr. Knuth to proceed under 35(c). **Strickland v. Washington**, (passim), 104 S.ct 2052(1984) (Counsel has a duty to make reasonable investigations).

Wherefore, Mr.Knuth requests the Court to find he has shown justifiable excuse or excusable neglect to proceed., or in the alternative provide an evidentiary hearing to establish counsels ineffective assistance in her failure to attack the prior convictions in the above matter(2014CR572), and to establish justifiable excuse in regards to the time period from 2/9/09 to 2/28/14.

CLAIM V

WHETHER THE COURT RENDERING JUDGMENT WAS WITHOUT JURISDICTION OVER THE PERSON OF THE APPLICANT OR THE SUBJECT MATTER IN CASE NUMBER 2008CR3161

Relevant Facts

Mr. Knuth was charged by information in Case number 2008CR3161 on 11/13/08. Mr. Knuth was incarcerated in the Jefferson County jail until he was sentenced. On 11/20/08 Attorney Siebold demanded preliminary hearing, which was then set for 12/19/08. Upon appearenace for the prelim. Mr. Knuth heard DDA Johnson tell Attorney Siebold that if Mr. Knuth did not waive his preliminary hearing that he would file habitual criminal counts against Mr. Knuth. After speaking with Ms. Siebold and being informed by her "if you proceed with preliminary hearing, the DA will file habitual counts and you will spend the next 32 years in prison" at this point I agreed to waive the prelim. and my case was then bound over to the District Court. The above depicted unethical conduct is used by the Jefferson County Judges, prosecutors and defense attorney's to illegally extract waivers of preliminary hearings from myself and several hundereds and possibly thouands of other individuals. Due to the above conduct at this hearing and my knowledge and belief that I would get 32 years pursuant to this unconstitutional custom the waiver of my preliminary hearing was coerced thus ineffective.

Relevant Law

Pursuant to C.R.S. 16-5-402(a),(b) the following issues of jurisdiction may be heard at any time.(all previous paragraphs incorporated by reference)

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property without due process of law" **U.S Const. Amend. XIV.,S 1.** When a state creates a law, that creates a liberty interest, and such law uses mandatory language such as shall and provides the courts mandatory duties in executing this law, constitutional due process requires fair procedures in the execution of this law. **United States v. Salerno,** 481 U.S. 739, 746(1987). See also: **Swarthout v. Cook,** 562 U.S. 216, 219(2011).

Therefore constitutional due process protects the execution of C.R.S. 18-4-404 and C.R.Crim.P. 5. Further the preliminary hearing has a constitutional foundation and thus this also makes it protected by federal due process. **People v. Macrander,** 756 P.2d 356, 599-601 (Colo. 1988).

Pursuant to the Colorado Rules of Criminal Procedure, a District Court only obtains jurisdiction over the accused or the subject matter of the offense after probable cause is found at a preliminary hearing or a valid waiver of the preliminary hearing is entered on record.**C.R.Crim.P.5.**

Here Mr. Knuth demanded his preliminary hearing and upon appearance for the hearing on 12/19/08 he was coerced into waiving the hearing by the Court , prosecutor, and his own attorney.

The execution of Mr. Knuths' preliminary hearing is protected by due process, and thus the waiver of such is an issue of constitutional dimension. The waivers of constitutional rights must be intelligent, knowing, and voluntarily made. **Brady v. United States,**397 U.S 742, 748 (1970). Further, the preliminary hearing has a constitutional foundation. **Macrander supra.** This is due to the accuseds' Fourth Amendment right to a probable cause determination for any extended deprivation of liberty following an arrest. **Albright v. Oliver,** 510 U.S. 266, 273 (1993). Therefore Mr. Knuth had a fundamental constitutional right to his preliminary hearing.

Due to the previous alleged facts Mr. Knuth is entitled to an evidentiary hearing to prove his allegations of coercion. **Von Pickrell v. People.** 163 Colo. 591, 596 (1967). If Mr. Knuths' allegations of coercion are found to be true, then the waiver of Mr. Knuths' Fourth and Fourteenth Amendment rights to his probable cause determination/preliminary hearing are ineffective thus invalid. (**United States v. Turner,** 177F.3d 552, 555 (8th Cir.(1998) see also: **North Carolina v. Pearce,** 395 U.S. 711, 723 (1969).

If the waiver of the preliminary hearing/probable cause determination is ineffective, then the District Court never obtained personal or subject matter jurisdiction. Due Process requires the fair application of of C.R.Crim.P. 5. **Crim. P. 5(a)(5)** "in no case shall the defendant be bound over for trial to another court until the preliminary hearing has been held...or the parties have waived their right to a preliminary hearing.

Here, the unconstitutional custom of the Jefferson County Courts, Prosecutors, and defense lawyers and the direct conduct of DDA Johnson and PD Siebold violated Mr. Knuths Fourth Amendment rights to a probable cause determination, his Fourteenth Amendment rights to due process, and his C.R.Crim.P. 5 rights to a probable cause determination.

Wherefore, it is requested the Honorable Court find the waiver of Mr. Knuths Crim P. 5 rights was ineffective, therefore pursuant to the same, the District Court did not obtain jurisdiction or provide Mr. Knuth an evidentiary hearing to prove his allegations. Furhter Mr. Knuths Fifth and Fourteenth Amendment Due Process rights were violated at this hearing which created a constitutional bar in the County Court, therefore the District Court never obtained jurisdiction.Without a preliminary hearing or valid waiver the District Court does not obtain jurisdiction and the appropriate remedy is dismissal of the charges.

CLAIM VI

WHETHER THE JUDGMENT IN 2007CR3010 and 2008CR3161 IS VOID DUE TO MR. KNUTH BEING COERCED INTO PLEADING GUILTY BY DDA JOHNSON

Relevant Facts

Mr. Knuth hereby incorporates all previous paragraphs by reference.

The Jefferson County District Attorney's intentionally did not file the habitual counts on Mr. Knuth at commencment of prosecution in both case number 2007CR3010 and 2008CR3161. The Jeffco DA's intentionally do not file the habitual counts at commencment in almost every case where the accused is eligible, unless they are personally prejudiced against a certain defendant or his case. In Mr. Knuths' case they intentionally did not file them at commencment, so they could later use them to coerce Mr. Knuth into waiving his constitutional rights to trial by jury and to plead guilty to charges of which there was not probable cause to support the allegations.

Which is exactly what happened on 2/9/09. Mr. Knuth and his attorney DPD Siebold appeared for arraignment of case number 2007CR3010 and 2008CR3161 on 2/9/09. At this hearing, a plea offer was extended to Mr. Knuth. While Mr. Knuth was waiting with his attorney, prior to being called by the Court for arraignment, DDA Johnson stated to Mr. Knuth and his Attorney, "if he does not accept the plea agreement and plead guilty today, I will add habitual criminal counts to the information and take him to trial." After consulting with PD Siebold, I agreed to accept the "plea agreement" on her advice that DA Johnson would be able to follow through on his threat and I would spend the rest of my life in prison. Due to this I plead guilty.

Relevant Law

Previous relevant law within Claim II is hereby incorporated by reference. It is true the **prosecution** has broad discretion on when to charge the accused with a substantive offense. It is also true, the prosecution has broad discretion on why to bring a substantive offense.Habitual criminal counts are not substantive offenses, but are "counts" that are reserved for the sentencing judge.**Montoya supra. and C.R.S. 18-1.3-801-804.**

Constitutional due process of C.R.S. 18-1.3-801-804 does not afford the prosecution the luxury of using the habitual criminal counts within the plea process unless they are already attached to a substantive offense. The prosecutors only duty under the habitual statutes is, if the accused meets the criteria for the DA to file habitual counts, and the DA believes they can prove the prior convictions, then "such former conviction or convictions and judgment or judgments **shall** be set forth in apt words in the **indictment** or information" **C.R.S. 18-1.3-801(2)(a)(II)**et al.

The Jefferson County DA's are under the impression they can intentionally not file the habitual counts at commencment of prosecution and then use them as a tool of coercion to get people to give up their constitutional rights to trial by jury. Which is what happened in my case. The prosecution did not have the power to threaten me with filing habitual counts to plead guilty on 2/9/09, because the U.S.Constitution does not permit this conduct for the following reasons:

(1) The Jefferson County DA's provide it is just a formality when the habitual counts are filed, and there is no prejudice to the accused when

they do not file the counts at commencment. This is false. By not filing the habitual counts at commencment and then using them within the plea process, this gives the DA additional power to obtain guilty pleas and extract more time in prison from the accused than if they would have followed the statutes mandates and filed the habitual counts at commencment. For example, in my cases, I was charged with a Felony 4,5,and 6. The most time I could receive for the felony 4, was 8 years, Felony 5, was 6 years,and the Felony 6, was 3 years. By not filing the habitual counts at commencment and then threating to file them if I did not plead guilty to the F4,5,and 6 and take the max on all three counts, the DA was able to obtain the most time possible from me.(8 years) and extract a guilty plea on charges there was not probable cause to support, and waive my rights to trial by jury.

If the DA would have followed the statutes mandates and filed the habitual counts at commencment, then they would not have the power to use the habitual counts by themselves within the plea process. Because, when the habiutal counts are filed, they are then attached to the substantive offense, and then they can no longer be "dropped" by the DA. The DA would have to drop the substantive offense in order to drop the habitual count on that charge. **C.R.S.18-1.3-801-804.** Habitual counts are sentence enhancers reserved for the sentencing judge. The DA would not have been able to obtain a conviction on the F4 from me if they would have filed the habitual counts, because then there would have been no "plea deal" in accepting the F4. The F4 was the highest felony I was charged with. The only way the DA could get a felony conviction in both cases 2008CR3161 and 2007CR3010 was to threaten the habitual counts.The felony conviction of 2008 CR3161 would not even existunless they would have taken me to trial and won, because there is nothing to drop that charge to but a misdemeanor. Thus the only plea deal that would have been available for the DA to offer would be to case number 2007CR3010 and case number 2008CR3161 would not even exist. If case number 2008CR3161 did not exist,I would not be sitting in prison with the habitual counts attached to case number 2014CR572 because they would not have been able to prove the requisite amount of prior convictions because they needed 2008CR3161 to accomplish this result.

Therefore, by thwarting the statutory mandates and not filing the habitual counts at commencment, this gives the DA'saddtional powers to extract waivers of rights and higher charges and time. There is not a law that gives the DA's

this extra power. By intentionally thwarting the habitual statutes provisions to gain guilty pleas in both cases, and obtain a waiver of Mr. Knuth's rights to trial by jury constitutes a coerced waiver of this rightand renders the waiver of this right involuntary, therefore the judgment in both cases is null and void. **Amendment V,and XIV.**

(2) The second reason that DA Johnson did not have the power and authority to threaten to use the habitual counts to obtain Mr. Knuths' guilty plea, is because the filing of the habitual counts on Mr. Knuth would have been a arbitrary and capricious act based on arbitrary classifications and unjustifiable standards. The Courts have long held, the DA's decision to prosecute the accused on the habitual counts must not be based off arbitrary classifications and unjustifiable standards. **Larson, Thomas, Anaya, and Macfarland supra.** Therefore the DA's decision to prosecute the accused on the habitual counts must be based off their ability to prove the prior convictions.

Here, if Mr. Knuth did not plead guilty and waive his constitutional rights to trial by jury, the DA threatened to file the habitual counts. To file the habitual counts on Mr. Knuth for exercizing his constitutional rights to trial by jury would be an unjustifiable standard , and would have violated his constitutiional rights to due process and equal protection of the law.

Therefore the DA used this false power to coerce a waiver of Mr. Knuths constitutional rights and obtain the guilty plea. This constitutes coercion and renders the the guilty plea involuntary, thus ineffective. Therefore the judgment is null and void. **Moore v. United States,** 950 F.2d 656(10th Cir. 1991)(coercion by trial counsel or the prosecution to induce a guilty plea renders the plea involuntary)See also: **Vonpickrell supra at 595. 597**

(3) [1]The third reason they did not have authority to use the habitual counts in the plea process is because it would have been in violation of Equal Protection, because they picked Mr. Knuth on a whim, due to the DA's personal bias.

CLAIM VII WHETHER MR KNUTH RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN THE ENTRANCE OF HIS GUILTY PLEA, THUS RENDERING THE JUDGMENT NULL AND VOID.

Relevant Facts

All previous paragraphs incorporated by reference. The Jefferson County Public Defenders and defense Attorney's are engaged in the unconstitutional custom of helping the DA's coerce the accused into pleading guilty and waiving their constitutional rights, Instead of filing motions on the accuseds' behalf to attempt to halt this unconstitutional conduct, the Defense Lawyers join

1 The Jeffco DA's only file the habitual counts on the accuseds cases that the nature of their offense or their refusal to waive rights personally offends them in violation of Equal Protection **Fifth, Sixth, and Fourteenth Amendment,U.S. Const.**

45

in the DA's ploy. Sometimes the Defense Attorney's initiate this conduct themselves to coerce their client into pleading guilty.In the present matter PD Siebold allowed the DA to coerce Mr. Knuth into pleading guilty without motioning the Court for relief. She also never informed Mr. Knuth this conduct was unconstitutional. PD Siebold informed Mr. Knuth that if he did not plead guilty, he was going to file the habitual counts and that he would spend the rest of his life in prison.

Relevant Law

Mr. Knuth is entitled to the effective assistance of counsel. **Strickland v. Washington,**466 U.S. 668, 688 (1984). PD Siebold had a duty to inform Mr. Knuth that the conduct he was being subjected to was unconstitutional. **Marrow v. United States,** 772 F.2d 525, 528 (1985). PD Siebold also provided ineffective assistance by informing Mr. Knuth he would spend the rest of his life in prison, when the maximum sentencing range was 48 years. **Tovar Mendoza v. Hatch,** 620 F.3d 1261, 1271-72 (10th Cir. 2010). As a result of the above, Mr. Knuth received ineffective assistance in the entrance of his guilty plea and the judgement is null and void.

CLAIM VIII

WHETHER THE ENTRANCE OF MR KNUTHS GUILTY PLEA WAS TAKEN BY THE COURT INVIOLATION OF HIS RIGHTS UNDER RULE 11, AND HIS RIGHT TO EFFECTIVE ASSISTANCE

Relevant Facts

Mr. Knuth was never properly informed by the Court or his counsel to provide him sufficient information so that he understood the nature of the charge and the elements of the offense. Mr. Knuths' counsel also never performed a pretrial investigation. Further, there is not a factual basis waiver, nor is there a factual basis to support the charges.

Mr. Knuth was charged with three felonies total between both cases. In 2007CR3010 Mr. Knuth was charged with felony menacing. There was not probable cause or a factual basis to support this allegation, as ther was no deadly weapon as provided within 18-1-901(3)(e).

In 2007CR3010, Mr. Knuthwas also charged with criminal mischief over $1000.oo, which is a felony. It was alleged Mr. Knuth broke a tv worth more than $1000.oo. The TV was purchased for $850.oo.

In 2008CR3161, Mr. Knuth was charged with felony stalking. It was alleged he made a threatening phone call. There was not any act in furtherence of

this conduct to upgrade this charge to a felony.

Relevant Law

Why would anyone fully understanding the nature of the charges and elements of the offense plead guilty to all felonies charged and take the maximum amount of time on all three, unless the DA was coercing him with the habitual counts or he did not understand the nature of the charge and elements of the offense. Mr. Knuths' rights under **C.R.Crim.P. 11 and 32, and5th, 6th, and 14th Amendment were violated.**

Mr. Knuth's counsel never performed a pretrial investigation in violation of the **6th Amendment.**

Further, there is is not a factual basis within the record. Within **Lee v. United States,** 137 S.Ct. 1958,1969 (2017), this case mandates a factual basis to appear in the record. This case should be applied retroactively or nunc pro tunc.

As a result of all the above, Mr. Knuth's 6th amendment right to effective assistance was also violated.

Wherefore, the judgment is null and void.

Sincerely Nathan Knuth 7/16/18

Nathan Knuth

CLAIM IX

THE COURT LACKED PERSONAL AND/OR SUBJECT MATTER JURISDICTION BECAUSE THE JUDGMENT IS NULL AND VOID

All previous paragraaphs incorporated by reference. Pursuan to 16-5-402 the issue of personal or subject matter jurisdiction may be raised at any time.

Mr. Knuth hereby claims the judgment is null and void, due to the plea being coerced, therefore the court lacked personal and/or subject matter jurisdiction. Pursuant to **von pickrell supra,** Mr. Knuth is entitled to a evidentiary hearing to support his vlaim

VERIFICATION

I, Nathan Knuth, being duly sworn, depose and say: I am over the age of 18 years, and hereby swear under oeth, and penalty of perjury that the statements set forth above are true and correct to the best of my knowledge and belief.