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DISTRICT Court, JEFFERSON County, Colorado 100 Jefferson County Parkway, Golden, Colorado	
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. NATHAN KNUTH, Defendant	σ COURT USE ONLY σ
Michelle Lazar, #26835 The Law Firm of Michelle L. Lazar 2373 Central Park Blvd., Ste 100 Denver, CO 80238 303.803.1530 (office) 303.246.4240 (cell) 303.957.1915 (fax) lazarlaw@smartspaceco.com	Case No. 14CR572 Division: 9

MOTION TO DECLARE §16-5-402, C.R.S. UNCONSTITUTIONAL OR , IN THE ALTERNATIVE, ALLOW NATHAN KNUTH TO PROCEED ON GROUNDS OF JUSTIFIABLE EXCUSE OR EXCUSABLE NEGLECT

Nathan Knuth, by and through his counsel, Michelle L. Lazar, moves to declare Section 16-5-402 unconstitutional or, in the alternative, to allow Mr. Knuuth to proceed on the grounds of justifiable excuse or excusable neglect. In support of this motion, Knuth states:

A. THE STATUTE IS UNCONSTITUTIONAL AS APPLIED IN THIS CASE

1. The Colorado Supreme Court has ruled that both the United States and Colorado Constitutions accord an accused substantive and procedural rights that are binding on the government in a criminal prosecution. People v. Germany, 674 P.2d 345, 249 (Colo. 1983); See, U.S. Constitution. Amends. **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, Cummings v. People, 785 P.2d 920, 923 (Colo. 1990).

2. Although the State may have an interest in the finality or criminal convictions, that interest is not a justification for permitting unconstitutional convictions to stand. Germany, supra, at 350. The governmental 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 a defendant a "meaningful opportunity" to

challenge allegedly unconstitutional convictions which the government seeks to use against him. Germany, 684 P.2d at 353; U.S. Constitutional Amends. **V, XIV;** Colorado Constitution, Article II, Section 25.

4. In its 1983 opinion in Germany, the Supreme Court held that Section 16-5-402 violated due process of law under the Fourteenth Amendment of the United States Constitution. and Article II, Section 25 of the Colorado Constitution, because it precluded challenged 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 amended, still 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 (Colo. App. 1988), the Court of Appeals adopted a civil definition of "excusable neglect" and construed the amended statute of allow late attacks. only when the failure to take proper steps at the proper time was the result of some unavoidable hindrance or occurrence. See also, People v. Brack, 796 P.2d 49 (Colo. App. 1990). The application of a civil law standard in determining "justifiable excuse or excusable neglect" infringement of a constitutional right often affects life or liberty, conventional notions of finality associated which civil litigation have no place." Germany, 674 p.2d at 350-351, 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 Germany 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 punishment in 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 (Colo. 1981); U.S. Const. Amends. **V, XIV;** Colo. Const, Article II, Section 25.

7. The Supreme Court of Colorado has repeatedly recognized that "[W]ithout 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 of Denver, 330 P.2d 1116, 1118-1119 (Colo. 1958).

8. Accordingly, when a defendant alleges that a guilty plea was taken in violation of the mandatory procedures of Rule 11 of the Colorado Rules of Criminal Procedure, the conviction is not merely reversed, but rather, it is void, a nullity that never existed. The Germany Court specifically found that the collateral attack statute was unconstitutional because, among other things, it made no provision for the out of time challenge 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.

9. Section 16-5-1402 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 governmental 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 postconviction proceeding is from the original conviction, the more difficult will be retrial but, equally, the greater the portion of the original sentence that will already have been completed." *ABA, Standards For Criminal Justice: Postconviction 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 frustrating effect of collateral challenges on repeat offender statutes. Especially in criminal litigation, where an alleged infringement 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, 10 L.Ed.2d 148, 157 (1963).
>
> "On the civil side, people rely on judicially determined rights, especially in contract and property matters, involving directly and indirectly interests of many third parties. Reopening of judgments could have great and uncertain ramifications 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: Postconviction Remedies, supra* at 22.27.

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

B. JUSTIFIABLE EXCUSE OR EXCUSABLE NEGLECT EXISTS TO ALLOW MR. KNUTH TO PROCEED WITH THIS ATTACK ON THESE PRIOR CONVICTIONS

10. Discovery provided by the prosecution alleges that Mr. Knuth has six prior felony convictions. Two of these convictions allegedly are from the state of Illinois. These convictions were allegedly obtained more than three years ago.

11. At the time Mr. Knuth entered his pleas in these cases, he was provided ineffective assistance of counsel and did not knowingly and voluntarily enter into the pleas.

12. The Colorado Supreme Court has held that "excusable neglect" can be the result of ineffective assistance of counsel. In Swainson v. People, 712 P.2d 479 (Colo. 1986), the Supreme Court remanded the case for factual finding where the attorney was alleged to have failed to file a timely 35(b) motion. The Defendant's remedy upon a finding of ineffective assistance was to extend the time under which the criminal procedure rule 35(b) motion could be filed. See also, People v. Williams, 736 P.2d 1229 (Colo. App. 1986).

13. Mr. Knuth's reliance on ineffective assistance of counsel constitutes excusable neglect under the circumstances of this case.

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Wherefore, Mr.Knuth respectfully requests that is Honorable Court either find Section 16-5-402 unconstitutional or in the alternative allow him to proceed on his motions to suppress the alleged prior convictions in these cases.

Respectfully submitted,

Law Firm of Michelle Lazar

Michelle Lazar, #26835
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2016 true and correct copies of the foregoing **MOTION TO DECLARE §16-5-402, C.R.S. UNCONSTITUTIONAL OR , IN THE ALTERNATIVE, ALLOW NATHAN KNUTH TO PROCEED ON GROUNDS OF JUSTIFIABLE EXCUSE OR EXCUSABLE NEGLECT** was served upon all counsel of record through the court.

By: _____

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Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	
Jefferson County Case number: 2007CR3010 and 2008CR3161	
Plaintiff-Appellant: Nathan Daniel Knuth, v. Defendants-Appellees: The people of the State of Colorado.	Court of Appeals Case Number: 2018CA1714
Nathan Knuth PO Box999 Canon City, CO 81215	

OPENING BRIEF

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

It contains 5,000 words.

The brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a seperate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and 32,

Nathan Knuth

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the District Court erroneously denied Mr. Knuth's motion for change of venue.

II. Whether the District Court lacked jurisdiction over Mr. Knuth and/or the subject matter of Case No. 2008CR3161 due to Mr. Knuth being coerced into waiving his preliminary hearing in the County Court.

III. Whether the district court lacked jurisdiction to sentence Mr. Knuth due to the coerced guilty plea, thus also depriving the court of subject matter jurisdiction to use 2007CR3010 and 2008CR3161 within the habitual proceedings of 2014CR572.

IV. Whether the district court erroneously failed to address the merits of claim I of Mr. Knuth's 35(c) motion.

V. Whether the district court erred in finding that Mr. Knuth had to show justifiable excuse or excusable neglect before the district court would reach the merits of CLAIM VI, VII,, and VIII. Whether the judgment was null and void.

VI. Whether the district court erred in finding that Mr. Knuth failed to state sufficient facts within his 35(c) to establish justifiable excuse or excusable neglect.

VII, Whether the district court erred in denying Mr. Knuth's 35(c) pursuant to 35(c)(3)(IV)

STATEMENT OF THE CASE AND FACTS

Mr. Knuth was charged with felony menacing and felony criminal mischief in case number 2007CR3010. While this case was pending, Mr. Knuth was charged with felony stalking in case number 2008CR3161. Mr. Knuth entered into a plea agreement on 2/9/09, of which he agreed to be sentenced to the maximum sentence possible on all charged felonies,(R.CF. 07CR3010, pp. 64-73, and R.CF. 08CR3161, pp. 31-37). There was not a direct appeal in either case. Mr. Knuth has now sought a change of venue, and sought a motion for poat conviction relief under Rule 35(c),(R.CF. 07CR3010, pp. 78-112, and R.CF. 08CR3161, pp. 43-77). The District Court entered an order denying Mr. Knuth the relief requested,(R.CF. 07CR3010, pp.115-119 and R.CF. 08CR3161 pp. 80-84). Mr. Knuth is now seeking appeal of the District Courts opinion.

SUMMARY OF THE ARGUMENT

I. The District Court erroneously denied Mr. Knuth's motion for change of venue. Mr. Knuth sought a change of venue because the Jefferson County Judges, Prosecutors, and Defense Attorney's are all engaged in the unconstitutional custom of using the threat of adding the habitual criminal counts against the accused if he does not waive fundamental constitutional rights such as probable cause determinations and rights to trial by jury. Mr. Knuth has a federal and state constitutional right to a fair venue to hear his 35(c) motion, as well as a statutory right.

II. Mr. Knuth's factual allegations within his 35(c) are that the Prosecuting Attorney and Defense Counsel used the threat of adding habitual counts to the information if he did not waive his preliminary hearing, thus constituting coercion of the right and rendering the District Court without jurisdiction.

III. Mr. Knuth's factual allegations within his 35(c) are that the DA and defense counsel used the threat of adding the habitual counts to the information if he did not waive his fundamental rights and plead guilty, thus constituting coercion and rendering the judgment null and void and the sentencing court without jurisdiction, and then leaving the district court without subject matter jurisdiction to use 2007CR3010 and 2008CR3161 to find Mr. Knuth a habitual offender in 2014CR572.

IV. CLAIM I within Mr. Knuth's 35(c) is that 16-5-402 is unconstitutional as-applied to Mr. Knuth. Mr. Knuth has standing to challenge this issue, therefore the district court erred in not addressing this claim.

V. Mr. Knuth made factual allegations within CLAIM VI, VII, and VIII, if found true would render the judgment null and void, if 16-5-402 is to be constitutional then nuil and void judgments falls within the purview of 16-5-402 (a) and/or (b).

VI. Mr. Knuth made factual allegations within CLAIMS II, III, and IV that would establish justifiable excuse or excusable neglect to proceed on 35(c). therefore, mr. Knuth was entitled to an evidentiary hearing to establish his claims.

VII. The district court denied Mr. Knuth's 35(c) pursuant to 35(c)(3)(IV). Mr. Knuth stated sufficient facts and law to have the court cause a copy to be served on the public defender pursuant to 35(c)(3)(V), as Mr. Knuth requested the appointment of counsel within his 35(c).

ARGUMENT

I. **The district court erroneously denied Mr. Knuth's motion for change of venue, without first holding a evidentiary hearing.**

A. Standard of Appellate Review and Record Reference

Appellate courts apply the de nova standard of review on questions of law, and take a fresh look at disputed questions, **St. James v. People**, 948 P.2d 1028, 1031 n. 8 (Colo. 1997).

Mr. Knuth preserved this issue for appellate review by filing a motion for change of venue, which the district court denied,(R.CF. 07CR3010, pp. 110-112 and 119) see also: (R.CF. 08CR3161, pp. 75-77, and 84). Mr. Knuth also requested an evidentiary hearing, so that he could establish his claim, (R.CF. 07CR3010, pp. 112)(R.CF. 08CR3161, pp. 77).

B. Applicable Law

Due Process requires that a judge possess neither actual nor apparent bias, **Caperton v. A.T. Massey Coal Co.** 556 U.S. 868, 884 (2009). See also: United States of America Constitution Amendments V, VI, and XIV. Colorado Constitution Article II, Section 16 and 25.

It is fundamental that a defendant is entitled to a fair trial by an impartial jury,**Maes v. District Court**, 503 P.2d 621, 624 (Colo. 1972).

C. Facts and Analasys

Mr. Knuth filed 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" (R.CF. 07CR3010, pp. 110)(R.CF. 08CR3161, pp. 75) Mr. Knuth also filed an affidavit in support of the motion for change of venue,(R.CF. 07CR3010,pp.78-71)(R.CF.,08CR3161,pp.43-46).

This Court and the District Court are bound by the following laws to

construe Mr. Knuth's pro se filings liberally and apply the applicable law, **Haines v. Kerner**, 404 U.S. 519, 520-521(1972); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir.1991); **People v. Bergerud**, 223 P.3d 686 (Colo.2010).

The facts stated within Mr. Knuth's motion for change of venue and supporting affidavit require the District Court Judge to:

(a) recuse himself pursuant to the Colorado Code of Judicial Conduct Canon 3 (c) (1), which mandates recusal whenever a judges impartiality might reasonably be questioned, **People v. Julien**, 47 P.3d 1194, 1203, (Colo.2002). Due process also requires recusal, **V,VI, and VIV amendments U.S. Const., Art.II, Sec. 16 and 25 Colo. Const.** see also: **C.R.S. 16-6-201 (1)(d).**

(b) grant Mr. Knuth an evidentiary hearing to prove his allegations, as requested within his motion for change of venue, as required by **C.R.S. 16-6-102, C.R.S., Crim. P. 21 (a),(2),(III), V, VI, and XIV amend. U.S. Const. Art. II, Sec. 16 and 25 Colo. Const.**

(c) grant Mr. Knuth's motion for change of venue

The facts stated within Mr. Knuth's motion for change of venue if established as true, would establish that Mr. Knuth can not receive a fair judgment on his 35(c) claims by the District Court Judge sitting on his case or any other judge in Jefferson County. Mr. Knuth's claim is that the Jefferson County Judges are all a part of an unconstitutional custom that coerces the accused into waiving fundamental constitutional rights,id.

The Jefferson County Judges have been working with the Jefferson County District Attorney's for atleast 40 years. The Judges know their conduct is prohibited by the U.S. Constitution, but they still allow the DA to amend the indictment or information to add the habitual counts if the accused does not surrender to the DA's coercive tactics and waive his fundamental constitutional rights to trial by jury,(R.CF.2007CR3010,pp.110)(R.CF.2008CR3161 pp.75).

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VII. THE DISTRICT COURT ERRED IN DENYING MR. KNUTH'S 35(c) PURSUANT TO 35(c)(3)(IV)

A. Standard of Review and Record Reference

Appellate courts apply the de nova standard of review on questions of law, **St. James v. People supra** at 1031 n. 8.

B. Applicable Law

C.R.Crim.P 35, V,VI, and XIV Amendments U.S. Constitution.

C. Facts and Analasys

The claims and facts alleged within Mr. Knuth's 35(c) are sufficient for the District Court to have caused a copy to be served on the Public Defender. as provided within **35(c)(3)(V)**, (R.CF.2007CR3010,pp.78-104)(R.CF.2008CR3161,pp 43-74). Mr. Knuth requested the Court to appoint counsel,(R.CF.2007CR3010,pp. 84)(R.CF.2008CR3161,pp.49).

Mr. Knuth has provided the Court with sufficient allegations to invoke his Sixth amendment rights to the assistance of counsel,**Silva v. People**, 156 P.3d 1164(Colo.2007).

Procedural dup process requires the District Court to follow the correct procedures of C.R.Crim.p. 35(c) and provide Mr. Knuth with the effective assistance of counsel as provided within 35(c)(3)(V)

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CONCLUSION

For the foregoing reasons, this Court of Appeals should reverse the District Court's order and remand for further proceedings and/or any other appropriate order it deems necessary consistent with the relief requested within these pages.

RESPECTFULLY SUBMITTED.

Nathan Knuth 3/19/19

Nathan Knuth

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CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the above to be served on the following parties by placing in the Colorado Department of Corrections inmate filing system with postage pre paid to:

Colorado Attorney General

1300 Broadway, 10th floor

Denver, CO 80203

Nathan Knuth 3/19/19

Nathan Knuth

SUPREME COURT, STATE OF COLORADO 2 East, 14th Avenue Denver, CO 80203	
NATHAN KNUTH, Petitioner, v. THE PEOPLE OF THE STATE OF COLORADO, Respondent.	
Court of Appeals, State of Colorado Case No. 18CA1714	**COURT USE ONLY**
Jefferson County District Court Case No. 2007CR3010 and 2008CR3161 Hon. Randal Arp, Judge	Case Number: 19SC _____
Nathan Knuth, pro se PO Box 999 Canon City, CO 81215	

PETITION FOR WRIT OF CERTIORARI

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 53 and C.A.R.32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 53(a).

It contains 3799 words.

Nat Knuth

NATHAN KNUTH

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CASES

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STATUTES

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OTHER AUTHORITIES

Pursuant to C.A.R. 49 and 53, The petitioner, Nathan Knuth, respectfully petitions this Supreme Court to issue a writ of certiorari to the court of appeals in the above captioned case. The petitioner sets forth the following grounds in support of this petition.

STATEMENT OF JURISDICTION

This Court's certiorari jurisdiction is invoked pursuant to Colo. Const. Art. VI, § 2(2); § 13-4-108, C.R.S. (2012); and C.A.R. 49. The unpublished decision, People v. Knuth,18CA1714 (11-14-19), is attached.

STATEMENT OF THE ISSUES

I. Whether the District Court lacked jurisdiction over Mr. Knuth and/or the subject matter of Case No. 2008CR3161 due to Mr. Knuth being coerced into waiving his preliminary hearing in the county court.

II. Whether the district court lacked jurisdiction to sentence Mr. Knuth due to the coerced guilty plea.

III. Whether 16-5-402, C.R.S. is unconstitutional on its face and as-applied to Mr.Knuth.

IV. Whether the District Court erred in finding that Mr. Knuth had to show justifiable excuse or excusable neglect before the district court would reach the merits of CLAIM VI, VII, and VIII. Whether the judgment was null and void.

V. Whether the district court erred in finding that Mr. Knuth failed to state sufficient facts within his 35(c) to establish justifiable excuse or excusable neglect.

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STATEMENT OF THE CASE AND FACTS

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Mr. Knuth appealed, and the Court of Appeals affirmed the conviction and sentence in an unpublished opinion.(Appendix) Mr. Knuth now seeks certiorari review by this Supreme Court.

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ARGUMENT

I The District Court Lacked Jurisdiction Over Mr. Knuth and/ or the Subject Matter of Case No. 2008CR3161 Due To Mr. Knuth Being Coerced Into Waiving His Preliminary Hearing.

A. Standard of Review and Record Reference

Lack of Subject matter jurisdiction is a jurisdictional defect that goes to the heart of the Courts Power to issue enforceable judgments; as a consequence, this defense is not waived by a party's failure to present it to the trial court and may be raised at any stage of the proceeding, as well as for the first time on appeal, **Paine, Webber, Jackson, and Curtis, Inc. v. Adams**, 718 P.2d 508 (Colo.1986)

The issue of subject matter jurisdiction is reviewed de nova, **City of Boulder v. Public Service Co.**, 996 P.2d 196 (Colo.App.1999).

B. Applicable Law

Probable cause is required to justify governmental intrusions upon interests protected by the Fourth Amendment, **Ornelas v. U.S.**, 517 U.S. 690, 695 (1996). **Amen. IV, U.S. Const.** Under the Fourth Amendment, a state "must provide a fair and reliable determination of probable cause..." **Gerstein**, 420 U.S. at 125, 95 S.Ct. at 868-69.

Mr. Knuth was represented by counsel at the times in question, therefore he was entitled to the effective assistance of counsel at all critical stages of the proceedings, **Strickland v. Washington**, 466 U.S. 668 (1994). See also: **McDonald v. District Court**, 576 P.2d 169,161 (1978)(a preliminary hearing is a critical stage in the prosecution of a defendant and should not be conducted in a "perfunctory fashion")

The Fifth and Fourteenth Amendments provide that no state shall " deprive any person of life, liberty, or property without due process of law" **Amend. V, XIV, Sec. 1, U.S.Const.** When a state creates a law, that creates

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a liberty interest, and said law uses mandatory language such as shall and also provides the states mandatory duties in executing this law, federal due process mandates fair procedures in the execution of these state laws, **United States v. Salerno**, 481 U.S. 739, 746 (1987); See also: **Swarthout v. Cooke**, 562 U.S. 216, 219 (2011)(setting forth the courts two step inquiry for procedural due process claims).

The Fourth, Fifth, and Sixth amendments are made applicable to the states through the Fourteenth amendment, **Wolf v. Colo.**, 338 U.S. 25, 27-28 (1949)(overruled on other grounds) **Article II, Sec. 7 and 25, Colo. Const.** are also violated.

C. Facts and Analasys

Mr. Knuth appeared for preliminary hearing in case number 2008CR3161 on 12/19/08, (R.CF. 08CR3161,pp.23-25). Mr. Knuth asserts that the waiver of preliminary hearing in the county court was coerced, thus ineffective, thus depriving the district court of subject matter and/or personal jurisdiction. There has not been an evidentiary hearing on this matter, as Mr. Knuth is raising this issue for the first time on appeal. Mr. Knuth is seeking an evidentiary hearing in the Court of Appeals or a remand.

Mr. Knuth has filed a verified motion under penalty of perjury,(R.CF. 08CR3161,pp.49-69), and a supporting affidavit(id.pp.43-46). These filings provide factual allegations that Mr. Knuth was coerced into waiving his preliminary hearing by (1) the prosecuting attorney: Upon appearance for Mr. Knuth's preliminary hearing he heard DDA Johnson tell attorney Seibold that if Mr. Knuth did not waive his preliminary hearing he would file habitual criminal counts against Mr. Knuth,(id.pp.62). (2) ineffective assistance: Defense Counsel Seibold informed Mr. Knuth that "if you proceed to preliminary hearing, the DA will file habitual counts against you and you will spend

rest of your life in prison(08,p59(3) an unconstitutional custom: in Mr. Knuth's cases and hundreds of others, the DA intentionally violates C.R.S. 18-1.3-801(2)(a)(II) and due process by intentionally not filing the habitual counts at commencment of prosecution, so they can then later use them as a tool of coercion to extract waivers of fundamental rights such as preliminary hearings and rights to trial by jury and rights to confrontation. As the DA and Defense Counsel have done in Mr. Knuth's cases and countless others, they work together and coerce these rights by informing Mr. Knuth and other accused that if they do not waive these rights the habitual counts will be filed upon them. I have even seen the DA's and defense attorneys use this conduct on accused people who are not even eligable to receive the habitual penalty. The Jefferson County Judges are aware of this conduct by the DA's and defense attorney's, but still allow the DA to amend the indictment or information at will.(id.pp. 08cr3161,pp.45).

Due to the existence of this unconstitutional custom, I knew if I did not waive my preliminary hearing they would follow through with there threat and file the habitual counts upon me. Once the habitual counts are filed, the DA can no longer drop those charges, and the court is bound by C.R.S. 18-1.3-801-804 to sentence the accused pursuant to these statutes and sentence the accused to either three or four times the maximum presumptive range penalty for the felony charged. This is why the DA's do not file the habitual counts at commencment as required by 18-1.3-801(II)(a)(2). Occosionally the Jefferson County DA:s do file the habitual counts at commencment but this is only when they are personally offended against the accused or the nature of his offense. In fact, the only accused that gets sentenced as an habitual offender are the accused individuals who will not waive there fundamental constitutional rights or if the DA is biased against them.

The prosecutors duties under the habitual statutes are that if they have knowledge of the accuseds prior convictions, and they believe they can prove the requisite amount of convictions, then there only duty is to file the habitual counts at commencment,**C.R.S. 18-1.3-801-804.** Procedural due process protects the process required by statute. The Courts have long held the DA's decision to prosecute the accused on the habitual counts must not be based off arbitrary classifications or unjustifiable standards, **People v. Thomas** 542 P.2d 387, 496(1975);**People v. Anaya**, 194 Colo. 345,346 (1977); **People v. Macfarland**, 540 P.2d 1073,364 (1975). **Bordenkircher v. Hayes**, 434 U.S. 357,364 (1978).

By the prosecution intentionally thwarting the due process of 18-1.3-801-804 and then using the habitual counts to coerce waivers of preliminary hearings, rights to trial by jury, confrontation, etc. it is resulting in the accused being vindivtively and selectively prosecuted on a daily basis in the Colorado Court system. In the present matter, the conduct alleged to have been committed at Mr. Knuth's preliminary hearing has resulted in Mr. Knuth being coerced into waiving his preliminary hearing, thus rendering the waiver involuntary and ineffective, **North Carolina v. Pearse**, 395 U.S. 711, 723 (1969)(Defendant should not be subjected to pressure of the type used to coerce him into waiving a right). See also: **People v. Talley**, 677 P.2d 394,391 (Colo.App.1983). The coerced waiver of Mr. Knuths prelim. was also a coerced waiver of his Fourth, Fifth, and Fourteenth amendment rights. **People v. Macrander**, 756 P.2d 356, 599-601 (Colo.1988)(preliminary hearing has constiutional foundation). "The Fifth Amendment requires that waivers of constitutional right's must be made knowingly, intelligently, and voluntarily. **Brady v. United States**, 397 U.S. 742, 748 (1970). Waivers of Constitutional rights must also be made in open court and appear in the record.

"In general, the burden is on the prosecutionto show effective waiver of a fundamental right, Barker v. Wingo...See People v. Fowler 516 P.2d 428 (1973)(right to jury trial)....**People v. Curtis**, 681 P.2d 504, 517 (1984) There is a written waiver in the record, but this waiver does not meet constitutional requirements. There was never a hearing held in open court in regards to this issue. (1) Thus, this Court must vacate 2008CR3161, because the District Court never obtained jurisdiction, because there is not a constitutionally sufficient waiver in the record. (2) Because Mr. Knuth was coerced into waiving the preliminary hearing. (3) Because Mr. Knuth received ineffective assistance by his attorney allowing him to be subjected to this conduct without bringing this unconstitutional conduct to the courts.

In order for the district court to obtain jurisdiction from the county court, there must be a constitutionally sufficient waiver in the record. Due to this insufficiency a constitutional bar was created depriving the sentencing court of jurisdiction**North Carolina v. Pearce supra** at 717.

Procedural Due Process also protects the process required by the Colorado Rules of Criminal Procedure(C.R.Crim.P.) in the proceedings concerning the execution of a preliminary hearing, as Mr. Knuth had a liberty interest at stake, and the rules use mandatory language defining the Courts duties, Swarthout supra, and Salerno supra. Therefore, pursuant to **C.R.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 there right to a preliminary hearing....**(jurisdictional language)

Furthermore, under the Fourth Amendment, a state "must provide a fair and reliable determination of probable cause...**Gersteinsupra at 125**[1]

Wherefore, this Court must vacate 2008CR3161 or remand for further factfinding.

[1] the very authority of the government to prosecute and imprison an accused is abolished when a defendant is deprived of basic due process rights **People v. Germany**,674 P.2d 345,349 (Colo.1983); **Cummings v. People**,785 P.2d 920, 923 (Colo.1990).

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II. The District Court lacked Jurisdiction to sentence Mr. Knuth due to the Coerced guilty plea, Thus Also Depriving the Court of Subject Matter Jurisdiction To Use 2007CR3010 and 2008CR3161 Within the Habitual Proceedings of 2014CR572

A. Standard of Review and Record Reference

Lack of subject matter jurisdiction is a jurisdictional defect that goes to the heart of the courts power to issue enforceable judgments, as a cosequence, this defense is not waived by a party's failure to present it to the trial court and may be raised at any stage of the proceeding, as well as for the first time on appeal, **Paine, Webber, Jackson, and Curtis, Inc. v. Adams**, 718 P.2d 508,513(Colo.1986). See also: **Hancock v. Boulder CountyPublic Trustee**, 920 P.2d 854,858 (Colo.App.1995)(void judgment may be attacked at any time, and Court of Appeals was therefore obligated to address plaintiffs contentions).

The issue of subject matter jurisdiction is reviewed de nova in the appellate court, **City of Boulder v. P.S.C.C.**, 996 P.2d 196 (Colo.App.1999).

B. Applicable Law

The **Sixth Amendment** entitles the accused to the effective assistance of counsel at all critical stages, **Strickland v Washington**, 466 U.S. 668 (1994). The Fifth and Fourteenth amendments provide that no state " shall deprive any person of life, liberty, or property without due process of law" **Amendment V, XIV Section 1, U.S. Const.**. When a state creates a law, that creates a liberty interest, and said law uses mandatory language such as shall and also provides the states mandatory duties in executing this law, federal due process mandates fair procedures in the execution of these state laws, **United States v. Salerno**, 481 U.S. 739, 746 (1987); See also: **Swarthout v. Cooke**, 562 U.S. 216, 219(2011)(setting forth the courts two step inquiry for procedural due process claims). **Article II, Sec. 7, 23, and 25 Colo. Const.** are also implicated and violated.

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C. Facts and Analasys

The Judgment in 2007CR3010 and 2008CR3161 are null and void due to Mr. Knuth being coerced into pleading guilty by DDA johnson, Public Defender Seibold, and an unconstitutional custom.

Mr. Knuth filed a verified motion motion and supporting affidavit under penalty of perjury to the following facts,(R.CF. 2007CR3010, pp.78-104)(R.CF.2008CR3161,pp.43-69). The Jefferson County District Attorneys intentionally did not file the habitual counts on Mr. Knuth at commencment of prosecution in both case 2007CR3010 and 2008CR3161, 18-1.3-801(II)(a)(12) and procedural due process mandate the habitual counts to be filed at commencment of prosecution. The Jefferson County 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 the defendant or the nature of his case. In Mr. Knuth's case they intentionally did not file the habitual counts at commencment.(2/9/09 Supp. Trans. pp 3)

because they wanted to later use the threat of adding the habitual counts to coerce Mr. Knuth into waiving his prelininary hearing and get him to waive his fundamental constitutional rights to trial by jury and rights to confrontation, and get Mr. Knuth to plead guilty to charges of which there was not even probable cause to support. Mr. Knuth met with his attorney at the scheduled 2/9/09 arraignment,(R.CF.07CR3010,pp88)(R.CF.08CR3161,pp.53). At this hearing, 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 counts to the information and take him to trial" After consulting with PD Seibold, I agreed to accept the "plea agreement" on her advice that DDA Johnson would be able to follow through on his threat and I would spend the rest of my life in prison. (R.CF. o7CR3010,pp. 88).

Procedural due process and 18-1.3-801-804 require the habitual counts to be filed at commencment, if known about by the prosecuting attorney, and they believe they can prove the requisite amount of prior convictions. The habitual statutes do not give the DA authority to intentionally withhold the habitual counts at commencment and then use them as additional power to obtain waivers of rights. The only time the Jeffco DA's file the habitual counts is if they are prejudiced against you or the nature of your case, or if you will not waive your rights. This is selective and/or vindictive prosecution.

Due to the facts I have alleged,I am entitled to an evidentiary hearing **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 of trying to prove them at a hearing).

If these allegations are proven true, then Mr. Knuth's guilty plea is coerced, thus inoluntary and ineffective, **U.S. v. Turner**, 177 F.3d 552,555 (8th Cir.1998)(waiver is invalid if it results from coercion). See also: **Moore v. U.S.**, 950 F.2d 656, 657(10th Cir. 1991)(coercion by trial counsel or the prosecution to induce a guilty plea renders the plea involuntary).

The fact Mr. Knuth's counsel willfully participated in this conduct with the DA, also renders the plea involuntary due to ineffective assistance of counsel. **Strickland supra.**

Therefore, the District Court does not have jurisdiction of the person and/or the subject matter of 2007CR3010 and 2008CR3161 due to the involuntary plea. Further the District Court lacked subject matter jurisdiction of both 2007CR3010 and 2008CR3161 to use them to enhance punishment under the habitual statutes within case number 2014CR572 of which Mr. Knuth is currently serving

a 32 year sentence.

It is axiomatic that, under the constitutional provisions of due process, an unconstitutional conviction may not be used to prove guilt or enhance punishment. 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. Swan**, 770 P.2d 411)colo.1989); **People v. Quintana**, 634 P.2d 413(Colo 1981);**U.S. Const. Amends. V, XIV; Colo. Const, Article II, Section 25.**

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 or sentence that 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 of Denver**, 330 P.2d 1116, 1118-1119(Colo.1958).

Accordingly, when a defendant alleges that a guilty plea was taken in violation of the mandatory prosedures of Rule 11, of the Colorado Rules of Criminal Procedure, the conviction is not merely reversed, but rather, it is void, a nullity that never existed. **People v. Germany**, 674 P.2d 345, 352 (Colo.1983).

Therefore, Mr. Knuth requests an evidentiary hearing to prove his allegations, the facts that need to be established, do not appear in the record, due to the fact there has not been an evidentiary hearing held on this subject. Due to the nature of the allegations Mr. Knuth requests the Court of Appeals to hald the evidentiary hearing. If found to be true 2007CR3010 and 2008CR3161 must be vacated, as well as the sentence in 2014CR572, as this would deprive the sentencing court of the requisite amount of felony convictions to find Mr. Knuth a habitual offender.

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III. Whether the district court erroneously failed to address the merits of claim I of Mr. Knuth's 35(c) motion

A. Standard of Review and Record Reference

Appellate courts apply the de nova standard of review on questions of law, **St. James v. People supra** at 1031 n. 8. **H.M. v. People**,169 P.3d 662,668(2007)

Mr. Knuth preserved this issue for appeal by arguing within his 35(c) motion, by arguing that C.R.S 16-5-402 is unconstitutional as applied.(R.CF. 2007CR3010,pp. 85)(R.CF,2008CR3161,pp. 50). The District Court did not address the merits of this claim, because Mr. Knuth did not establish justifiable excuse or excusable neglect,(R.CF.2007CR3010,pp115)(R.CF.2008CR3161,pp.80). The Court of Appeals reached the merits of this issue.(pp.10 of COA opinion)

B. Applicable Law

Mr. Knuth has a constitutional right to challenge whether C.R.S. 16-5-402 is unconstitutional as applied to him. **U.S. Const. Amends. V, VI, and/or XIV; Colo. Const. Article II, Section 25.** As well as a right under **C.R.Crim. P.35(c).**

C. Facts and Analasys

Mr. Knuth provided factual allegations under penalty of perjury within his 35(c) motion that if proven to be true would entitle him to relief under 35(c) and a finding that the guilty plea in both case 2007CR3010 and 2008CR3161 was coerced,(R.CF.2007CR3010,pp. 88),"If he does not accept the plea agreement and plead guilty today, I will add the habitual counts to the information and take him to trial" id. These facts if true give Mr. Knuth standing to challenge the constitutionality of C.R.S. 16-5-402 as applied to him.

Therefore the district court erred in not reaching the merits of CLAIM I, "Whether section 16-5-402 is unconstitutional as applied..." Mr. Knuth requests a remand for the district court to enter conclusions of law on this claim, or for this Court of Appeals to enter conclusions of law on this claim as this court of appeals has jurisdiction to do so, **Kinsey v. Preesen**, 746

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P.2d 542(Colo.1987)(body execution statute)(dicta); **People in Interest of A.M.D.**, 648 P.2d 625(Colo.1982)(considering but rejecting constitutional challenges).[1] Further, Mr. Knuth also challenged that the excusable neglect and justifiable excuse standard was unconstitutional,(R.CF,07CR3010,pp. 85).

IV. Whether the district court erred in finding that Mr. Knuth had to show justifiable excuse or excusable neglect before the district court would reach the merits of CLAIM VI-WHETHER THE JUDGMENT IN 2007CR3010 and 2008CR3161 IS NULL AND VOID ,(AND CLAIM VII , AND VIII)

A. Standard of Review and Record Reference

Appellate Courts apply the de nova standard of review on questions of law, **St. James v. People supra** at 1031 n. 8.

Mr. Knuth preserved this issue for appeal by arguing within his 35(c) motion that the judgment was null and void,(R.CF.2007CR3010,pp. 99)(R.CF.2008CR3161, pp.64). The district court did not address these because Mr. Knuth failed to show justifiable excuse or excusable neglect,(R.CF.2007CR3010,pp.115)(R.CF. 2008CR3161,pp. 80).

B. Applicable Law

The District Court found Mr. Knuth was time barred pursuant to C.R.S. 16-5-402,(R.CF.2007CR3010,pp.115)(R.CF.2008CR3161,pp.80). Pursuant to **C.R.S. 16-5-402(2)(a) and (b)** the issue of subject matter jurisdiction and personal jurisdiction are exceptions to the time bar and may be raised at any time. Mr. Knuth's claims allege that the district court lacks subject matter and or personal jurisdiction, due to Mr. Knuth being coerced into entering the guilty plea,(R.CF,2007CR3010,pp.104)(2008CR3161,pp.69). Mr. Knuth alleges that his CLAIMS whether the judgment was null and void falls within the purview of 16-5-402 (a) and/or (b), therefore the District Court had a duty to reach the merits of this claim. Procedural Due Process also directs the correct

[1] This argument is also supported by ADC Michelle Lazar,(R.CF.2007CR3010, pp.105)(R.CF.2008CR3161,pp.70).

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process the Court has to follow when applying 16-5-402 to Mr. Knuth's claims. **Swarthout supra, Salerno supra, Amends. V, VI, XIV, U.S. Const.** Mr. Knuth also has Constitutional access to the court rights as well as due process rights to have this claim reviewed by the Ccourts, **U.S. Const. Amends. V, VI, XIV,**

The Colorado Supreme Court in **People v. Germany supra at 352** recognizes that null and void judgments relates to the jurisdiction of the court, "It might be argued at this point that a Const. violation that precludes the state from obtaining any conviction at all, regardless of how much the state endeavers to correct the constitutional defect, relates to the subject matter jurisdiction of the court and thus comes within the exception of subsection 16-5-402 (2)(a)." id at 352. The Supreme Court then goes on to provide "nothing in subsection (2)(a), however, indicates that the "subject matter" exception applies to anything other than statutory jurisdiction of the court over the particular crime for which the accused was convicted" id at 352.

Some courts have used this statement by the Germany Court to deny claims providing the exceptions within 16-5-402(a) applies to only the Colorado Constitutions general jurisdiction provisions and the Courts statutory jurisdiction. However, other courts have allowed challenges to null and void judgments under 16-5-402(2)(a) and (b), See: **People v. Shephard,** 151 P.3d 580, 583(Colo.App.2004). This Court allowed the defendant to proceed on his insufficiency of the evidence claim, because it related to the subject matter jurisdiction of the Court. "defendants sixth claim alleged the trial court lacked subject matter jurisdiction This claim sqarely fits the exception to the time bar set forth in 16-5-402(2)(a) C.R.S. 2005" id.

In its 1983 opinion in Germany, the Supreme Court held that Section 16-5-402 violated due process of law under the Fourteenth Amendment of the United States Constitution, and Article II, Section 25 of the Colorado Constitution.

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.** Thereafter, the legislature amended the statute to permit collateral attacks outside of the applicable time periods 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.

Mr. Knuth hereby alleges that the legislation did not specifically amend 16-5-402 to allow for null and void judgments outside of the applicable time frames, because null and void judgments falls within the purview of 16-5-402(2)(a) and/or (b). If not, then Mr. Knuth's argument that 16-5-402 was unconstitutional because it made no provisions for out of time challenges to null and void judgments would stand. See: **Germany at 352,** "A few examples will illustrate the arbitrary effects of this time bar... a felony conviction entered in violation of the constitutional protection of double jeopardy would nonetheless be admissable against an accused in any subsequent prosecution commenced more than three years later, even though the proceeding resulting in the prior conviction was a complete nullity See **Menna v. New York,** 423 U.S. 61...(1975)(per curiam)(defendant has right to challenge guilty plea on Double Jeopardy grounds because Double Jeopardy Clause precluded the state from obtaining a valid conviction)

Therefore, this court must remand for the district court to rule on Mr. Knuths CLAIMS OF NULL AND VOID JUDGMENT, because if not then 16-5-402 is unconstitutional as applied to Mr. Knuth.

V. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT MR. KNUTH FAILED TO STATE SUFFICIENT FACTS WITHIN HIS 35(c) TO ESTABLISH JUSTIFIABLE EXCUSE OR EXCUSABLE NEGLECT.

A. Standard of Review and Record Reference

Appellate courts apply the de nova standard of review on questions of law, **St. James v. People supra** at 1031 n. 8.

Mr. Knuth preserved this issue for appeal by arguing within his 35(c) that he had showed justifiable excuse or excusable neglect, R.CF,2007CR3010,pp. 88)(R.CF.2008CR3161,pp. 53).

The District Court found that Mr. Knuth had not established justifiable excuse or excusable neglect,(R.CF.2007CR3010,pp. 115(R.CF.2008CR3161,pp. 80).

B. Applicable Law

"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." Cited in **People v. Chavez-Torres**, 2016 COA 169m(Hn2).

Colorado's controlling legal standard for justifiable excuse and excusable neglect is found in **Wiedemer supra at n. 20** "whether a defendant satisfies the justifiable excuse or excusable neglect standard under C.R.S. 16-5-402 (2)(d) is a weighing of the various inreests at stake" id. **Amend. V,VI,andXIV**

C. Facts and Analasys

Within Mr. Knuth's 35(c), he made the following factual allegations that if proven to be true at an evidentiary hearing, would establish Mr.

Knuth's claims and allow him to proceed under the justifiable excuse and excusable neglect standard:

(1) Mr. Knuth's CLAIM II within his 35(c) is that he was coerced into not seeking post conviction relief by the prosecution,(R.CF.2007CR3010, pp. 88)(R.CF.2008CR3161,pp. 53). Mr. Knuth provides that DDA Johnson then stated "I will add the habitual counts if you do" Id. Mr.Knuth believed that if he sought either his direct or collateral appeal the DA would file the habitual counts against him and enhance his sentence. It was due to these direct comments and Mr. Knuth's awareness of the unconstitutional custom that Mr. Knuth never sought either his direct or collateral appeal,Id.pp. 57 . Mr. Knuth asserts that he was coerced into not seeking post conviction relief, this establishing justifiable excuse or excusable neglect, and violating his Fifth, Sixth, and Fourteenth Amendment rights, **North Carolina v. Pearce**, 395 U.S. 711,725(1969)

(2) Mr. Knuth's CLAIM III within his 35(C) is that he established justifiable excuse and excusable neglect due to the ineffective assistance of counsel,(R.CF.2007CR3010.pp.93)(R.CF.2008CR3161,pp.58). The releavant facts stated within this claim three, if found to be true, establish that Mr. Knuth's counsel provided him ineffective assistance, thus establishing justifiable excuse or excusable neglect. **Swainson v. People**, 712 P.2d 479, 480(Colo.1986); **People v. Williams**, 736 P.2d 1229,1231(Colo.App.1996); See also: **People v. Chang**, 179 P.3d 240,243(Colo.App.2007)(justifiable excuse or excusable neglect would be established if the public defenders failure to file a motion for post conviction relief on behalf of defendant was the result of ineffective assistance). Here Mr. Knuth's counsels statements that "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

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rights" id. Due to these statements, Mr. Knuth never sought his direct or collateral appeal. Mr. Knuth believed if he sought either one the DA would enhance his sentence, as they have in other cases pursuant to the unconstitutional custom that Mr. Knuth's counsel and the DA were employing on Mr. Knuth to get him to plead guilty and not seek direct or collateral relief. Further, Mr. Knuth's counsel had a duty to provide him ineffective assistance, **Strickland v. Washington**, 466 U.S. 668,673(1984). By Mr. Knuth's counsel engaging in this unconstitutional custom with the DA, and not seeking relief from the Courts on Mr. Knuth's behalf, and misleading Mr. Knuth to coerce him into not seeking either the direct or collateral appeal has resulted in Mr. Knuth receiving ineffective assistance of counsel in regards to not seeking either direct or collateral relief, and thus constitutes justifiable excuse and excusable neglect.

> We conclude...counsel is obligated to give such advice...when there are circumstances present that indicate that defendant may benefit from receiving such advice...Because error affecting the validity of the plea or the jurisdiction of the court will result in the setting aside of the guilty plea, defendant will also have shown that he or she was prejudiced under the strickland test by the failure to notify of the right to appeal...If counsel knew the plea was coerced by threat, counsel had a duty to inform that the plea could be set aside on appeal.
>
> **Marrow v. United States**, 772 F.2d 525,528(1985).

Therefore, Mr. Knuth's counsel had a duty not to mislead Mr. Knuth and deprive him of the right to seek direct and/or collateral appeal of the conduct he was subjected to, and this Court should remand for an evidentiary hearing pursuant to **VonPickrell supra.**

(3) Also, within CLAIM IV, Mr. Knuth alleged facts, that if true would amount to justifiable excuse or excusable neglect,(R.CF.2007CR3010,pp. 95)(R.CF.2008CR3161,pp.60). Mr. Knuth is also entitled to an evidentiary hearing on the facts alleged within this claim.

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CONCLUSION

For the foregoing reasons, this Supreme Court should grant the petition for writ of certiorari to correct the Court of Appeals' erroneous rulings in this matter.

RESPECTFULLY SUBMITTED

Nat Knuth 12/9/19

Nathan Knuth

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **Petition for Writ of Certiorari** upon the attorney generial via U.S.mail at 1300 Broadway, 10th Floor, Denver CO. 80203, with postage pre paid.

Nat Knuth 12/9/19

Nathan Knuth