SUPREME COURT OF THE UNITED STATES OF AMERICA
1 1ST St. NE
Washington, DC 20543

Jefferson County District Court,
Case No. 2007CR3010 and 2008CR3161
Colorado Court of Appeals Case No. 2018CA1714
Colorado Supreme Court Case No. 2019SC970

Petitioner:

Nathan Daniel Knuth,

v.

Respondents:

THE PEOPLE OF THE STATE OF COLORADO.

Nathan Knuth, 125833
PO Box 999
Canon City, CO 81215

PETITION FOR A WRIT OF CERTIORARI

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV, V, VI, and XIV

COLORADO REVISED STATUTES

16-5-402

18-1.3-801 - 804

CASES

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER SECTION 16-5-402 OF THE COLORADO REVISED STATUTES IS UNCONSTITUTIONAL, AS IT CREATES A TIME BAR TO ATTACK PRIOR CONVICTIONS BASED SOLELY ON THE PASSAGE OF TIME, WHICH INTURN VIOLATES DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, THIS CONSTITUTIONAL VIOLATION IS AFFECTING MR. KNUTH AND THOUSANDS OF THOSE SIMILARLY SITUATED.

II. WHETHER COLORADO'S PROCESS OF INTENTIONALLY THWARTING DUE PROCESS OF IT'S HABITUAL CRIMINAL STATUTES IN ORDER TO COERCE WAIVERS OF RIGHTS HAS VIOLATED MR. KNUTH'S CONSTITUTIONAL RIGHTS AND THE RIGHTS OF THOUSANDS OF THOSE SIMILARLY SITUATED.

LIST OF PARTIES

Colorado Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203

BASIS FOR JURISDICTION

Mr. Knuth's petition for writ of certiorari to the Colorado Supreme Court was denied on February 24th, 2020(App. pg. 1). The Colorado Court of Appeals entered it's opinion on November 14th, 2019(App. pg.3), then issued the mandate on February 26th, 2020(App. pg. 2).

USCS Supreme Court Rules 10, 11 and 20, confer on this Court jurisdiction to review the issues at hand.

STATEMENT OF THE CASE

Mr. Knuth filed a Motion for Post Conviction Relief pursuant to the Colorado Rule of Criminal Procedure 35(a). Within said motion, Mr. Knuth alleged that Colorado's 16-5-402 was unconstitutional as-applied to him as it did not allow for challenges to null and void judgments solely on the basis of the passage of time. Also, within this motion, Mr. Knuth alleged that the Jefferson County Colorado Judges and prosecutors willfully partake in a unconstitutional custom of intentionally violating constitutional due process by intentionally not following the statutory mandates found within 18-1.3-801-804,C.R.S. which requires the prosecutors to file the habitual counts at commencement of prosecution, but they intentionally do not file the habitual counts as mandated by due process and the habitual statutes so they can gain a tactical advantage on the accused and coerce them into waiving fundamental constitutional rights.

Mr. Knuth sought post conviction relief of both of the above questions with Jefferson County, Colorado, District Court on July 30, 2018,(App. pg 29) (App. pg. 32-36). The District Court entered an order denying relief on August 22, 2018,(App.14&15,). Mr. Knuth then appealed to the Colorado Court of Appeals, who entered an opinion denying relief to these questions on November 14th, 2019,(App. pg. 3, 13, 5). Mr. Knuth then sought certiorari to the states highest court, who denied relief on February 24, 2020,(App. pg. 1).

ARGUMENT FOR QUESTION I.

WHETHER SECTION 16-5-402, C.R.S. IS UNCONSTITUTIONAL AS APPLIED TO MR. KNUTH,AND ON ITS FACE.

Mr. Knuth, was found guilty of habitual criminal charges in 2016, there after Mr. Knuth sought to attack his prior convictions, and was subsequently time barred.

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 prosectuion, **People v. Germany**, 674 P.2d 345, 349 (Colo.1983); U.S. Constitution. Amenments. **V,VI,XVI.** 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 of 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 oppurtunity" to challenge allegedly unconstitutional convictions which the government seeks to use against him. **Germany**, 684 P.2d at 353; U.S. Constitution Amends. **V,XIV**;

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, because it precluded challenge to prior convictions solely on the passage of time. Thereafter the legislation amended the statute to permit collateral attacks outside 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 "meamingful 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 to allow late attacks only when the failure to take proper steps at the proper times was the result of some avoidable hindrance or occurence. 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" infringes on constitutional rights which often affects life or liberty, conventional notions of finality associated with 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.**

7. The Supreme Court of Colorado has repeatedly recognized that "Without an affirmative showing of compliance with the mandatory provisions of C.R.Crim. P. 11, a plea of guilty can not be accepted and any judgment and sentence which is entered following the plea is void"**People v. Drke,** 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 "niether life nor incipience...". **Davidson Chevrolet v. City and Couinty of Denver,** 330 P.2d 1116, 1118-1119 (Colo.1958).

8. Accordinly, when a defendant alleges that a gulty 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 16-5-402 is arbitrary and capricios and will lead to unjust results. The statute essentially effects a forfeiture of a defendants 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, and 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 Fourtrrnth Amendment to the United States Constitution.

> While the governmental interest in eliminating stale claims is a legitimate one, it must be rememberted thatany 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 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, can not be permitted to be usedto erode constitutional rights of accused persons"). The same reasoning applies to the states interest in avoiding the frustrating effect of collateral challenges on repeat offender statutes. Especially in criminal litigation, where an alleged infringment of a constitutioanl right often affects life

or liberty, conventional **notions** of finalityassociated with civil litigation have no place. **Sanders v. United States**, 373 U.S. 1, 8 83 S.Ct. 1068, 1073 (1963)

"On the civil side, people rely on judicially determined rights, especially in contract and property matters, involving direcly 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 of Criminal Justice: POstconviction remedies, supra at 22.27.**

People v. Germany, 674 P.2d 345, 351, fn 5 (Colo. 1983): See also: **United States Constitution, V, XIV Amendments.**

Wherefore, Mr. Knuth respectfully requests this Honorable Court to find Section 16-5-402 unconstitutional.

ARGUMENT FOR QUESTION II.

WHETHER COLORADO'S PROCESS OF VIOLATING DUE PROCESS HAS VIOLATED MR. KNUTH'S RIGHTS.

Mr. Knuth alleged this claim throughout his initial pleadings,(App. pgs. 24,25,33,41). The District Court entered opinion on this issue,(App. pgs. 16 and 20). The Colorado Court of Appeals recognized this due process argument within its opinion,(App.pgs. 6, 7, 8). Mr. Knuth then filed a petition for writ of certiorari to the Colorado Supreme Court alleging violations of due process in regards to this issue,(App. pgs. 64, 73-81).

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 the habitual counts in order to coerce the accused into waiving constitutional rights for decades. I have evev spoken to the accused who were ignorant to the law, where the DA and their own counselcoerced them into pleading guilty by threatening to add the habitual counts to the charging document when they were not even eligible to receive the habitual penalty, but were led to believe that they were. The Colorado habitual statutes mandate the habitual counts to be filed upon everyone eligible at **commencement** of prosecution, unless the DA is not aware of the accuseds criminal history(which is not at issue in todays times), or if the DA does not believe they can prove the requisite amount of prior convictions.

The Jefferson County DA's only file the habitual counts on the accuseds cases which personally offend them. If it is a higher class felony with more serious crimes involved, they will almost always file the habitual counts if the accused goes to trial, but if it is a lower class felony, they hardly ever file them. In sum, the DA's only only file the habitual counts on the accuseds cases that personally offend them, or that will not waive their preliminary hearing/probable cause determination or those who will not give up their rights to trial by jury.

This unconstitutional custom has been stated on record by DDA Kate Knowles in Mr. Knuth's current case 2014CR572(Jefferson County) DDA Knowles 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 counts.

Habitual charges are not appropriate to bring in every case, but in certain cases if we are trial bound, which is the posture in this case, they are appropriate to be brought and to be filed. 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 this 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 they are used as 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 possibilty from the very beginning." See: **)Hr'g Tr. pgs. 110-111, 3/25/16).**

This process violates due process and is an arbitrary and capricious custom that leads to the accused and Mr. Knuth being selectively and vindictively prosecuted on a daily basis within the Jefferson County Colorado Judicial System.

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.** When a state creates a law, that creates a liberty interest, and such law uses mandatory language such as shall and provides the states duties in executing this law, federal due procee mandates fair procedure in the execution o these laws, **United States v. Salerno,** 481 U.S. 739, 746, 107 S.Ct. 2095, 95 L.Ed. 2d 697 (1987); See also: **Swarthout v. Cooke,** 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 affenses, but rather they are sentence enhancers, **People v. Montoya,** 640 P.2d 234, 237 (Colo.App.1991). The Jefferson County DA's have taken this broad discretion as the power to intentionally thwart the mandates of the habitual criminal statutes, **18-1.3-801-804, C.R.S.,** and selectively and vindictively prosecute at will. Constitutional due process and the habitual statutes control what process must be followed in filing the 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 commencment 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" (it is common practice for the Jefferson County DA's to file the habitual counts after arrignment, when the accuse will not accept the "plea deal")

18-1.3-803(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 therafter 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" (The Jeffco Judges allow the DA to amend the charging document even up to the day of trial if the accused does not surrender to their demands and give up his rights to trial by jury).

It is hereby declared the general assembly has mandated the habitual counts to be filed at commencment of prosecution, if known about at this time(in todays times it is nearly impossible that they would not know of the prior convictions) and the DA believes he 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 every person eligible and the DA did not file them at commencment, **People v. Martinez**, 18 P.3d 831, 837 (Colo.App.2000): **People v. Kemp**, 885 P.2d 260, 265 (Colo.App.1994). (the Jeefco DA's pick and choose on a whim, or based off unjustifiable or arbitrary standards whom to file the habitual counts on.)

The DA's have taken these two cases to give them the power to intentionally thwart due process and the habitual statutes by leaving the habitual counts off at commencmet and then using them to coerce the accused

into giving up constitutional and statutory rights. 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, **Oyler v. Boles**, 368 U.S. 448, 456 (1962); **People v. Larson**, 572 P.2d 815, 818 (1977); **People v. Thomas**, 542 P.2d 387, 494-499 (1975); **People v. Macfarland**, 540 P.2d 1073, 1075 (1975).

The DA's say they "staff" each case before deciding whether to file habitual counts on the accused. I guess this is a staff meeting where a group of DA"s meet to 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 designed by the legislature to guide them in what criteria to use when making this awsome 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 to hide their use of this unconstitutional custom of coercing rights. There is also no way to appeal the DA's decision, which is also violative of due process.

Wherefore, Mr. Knuth requests this Honorable Court to find the process depicted above is violating his constitutional rights and provide him with the relief requested within his filings in the state courts.

Sincerely,

May 5, 2020

Nathan Knuth