Case No.: 22-6969

Arapahoe County, Colorado District Court: 1996CR589

Colorado Court of Appeals: 2019CA1284

Colorado Supreme Court: 2022SC331

IN THE

SUPREME COURT OF THE UNITED STATES

1 First Street, N.E. Washington, DC 20543

CHRISTOPHER ASHLEY SHETSKIE – PETITIONER/APPELLANT

vs.

THE PEOPLE OF THE STATE OF COLORADO - RESPONDENT/DEFENDANT

ON PETITION FOR REHEARING

Christopher A. Shetskie, *pro se*

CDOC # 92178

P.O. Box 6000

Sterling, CO 80751

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COMES NOW Petitioner, Christopher A. Shetskie, *pro se,* and does hereby respectfully request this Supreme Court of the United States, in the interest of justice and fundamental fairness, to consider granting rehearing on his Appeal/Petition for Certiorari Review, which this Court denied on May 15, 2023. In support of this Petition, Petitioner proffers the following substantial grounds not previously considered by the Court which justify rehearing:

ISSUE I

Due to intervening circumstances of a substantial effect, *see,* Rule 44(2), the Court should grant Rehearing so that the Court may take Judicial Notice of, and allow a meaningful opportunity for both the Petitioner to assert, and this Court to consider, the substantive implications to Petitioner's Petition for Certiorari, which have been suddenly and unexpectedly raised by the stunning May 23, 2023 decision[1] rendered by the District Court in Park County, Colorado, a case inextricably related to the case before the court. This decision in Park County conflicts with decisions rendered by the lower courts in this case in such a novel and profound way that it unexpectedly raises issues not "put at question" in Petitioner's Petition for Certiorari Review as well as re affirms Petitioners claim of ineffective assistance of counsel for failure to advise of a viable defense to felony murder, raised in his Petition for Certiorari. Unless addressed, Petitioners Sixth Amendment right to effective assistance of counsel will be irrevocably violated.

OVERVIEW

The Court should take judicial notice of the Park County district court's decision summarily denying

[1] Decided eight days after this Court denied Petitioner's Petition for Certiorari Review. *See* Appx. A.

Petitioners Motion to Withdraw Plea[2] and assert ancillary jurisdiction in order to determine whether the Park decision denying Petitioner's claim of ineffective assistance of trial counsel during global plea negations violates Petitioner's due process rights because it conflicts with the Colorado Court of Appeals ruling in the related Arapahoe case –the case at bar[3]- on the same issue in such a subversive way as to circumvent Petitioners Six Amendment right to effective assistance of counsel, as well as his right to due process of law under the Fourteenth Amendment.

ARGUMENT

SUMMARY OF THE FACTS

Petitioners convictions in the Arapahoe County case, the case before the court on certiorari (the Arapahoe case, hereafter), were the result of a two-jurisdiction global plea agreement tendered in both Arapahoe County and Park County, Colorado. Significantly, Petitioner was represented during plea negotiations in both jurisdictions by counsel appointed by the Arapahoe County District Court to represent Petitioner in the Arapahoe case. Prior to the Arapahoe-appointed counsel's entering their appearance during the plea proceedings, Petitioner was never appointed, nor represented by counsel in the Park County case.

While the cases were unconnected, the terms of the global plea agreement negotiated by the Arapahoe-appointed counsel required Petitioner to tender guilty pleas in both counties. In the Arapahoe County case, Petitioner agreed to and did plead guilty to one count of Murder in the First Degree §18-3-102(1)(b) (Repealed 2021) –Colorado's former felony murder theory, and received a mandatory sentence of natural life without possibility of parole; one count each of Second Degree Burglary and Second Degree Kidnapping, receiving the maximum sentence of 20 years for burglary

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[2] *See,* Order on Defendant's Motion to Withdrew Plea, District Court, Park County, Colorado, May 23, 2023, Appx. A.

[3] *See,* Second Opinion, Colorado Court of Appeals, Pet. Cert., Appx. A, ¶ 10-28

ran consecutive to a sentence of 32 years, the maximum for kidnapping, ran consecutively to the life sentence.

In Park County, Petitioner agreed to and did pled guilty to one count of Murder in the First Degree §18-3-102(1)(c) –Colorado's after deliberation theory- for an unconnected and uncharged homicide, receiving a mandatory sentence of natural life without possibility of parole.

While the prosecution in neither jurisdiction had declared their intention to seek the death penalty (as required prior to trial under CRS §16-11-103 (1996)), nevertheless, in return for petitioner's guilty plea in both counties, the Arapahoe District Attorney agreed not to seek the death penalty and dismissed several lesser charges. The Park County district attorney agreed to and did run the natural life sentence imposed in that jurisdiction concurrent with the natural life sentence imposed in Arapahoe.

In January 2019 Petitioner filed simultaneous *pro se* post-conviction motions in both Arapahoe County and Park County, Colorado alleging, *inter alia,* ineffective assistance of counsel during the global plea negotiations. As a component of those claims of ineffective assistance, the essence of Petitioner claims asserted that,

1. Because the global plea agreement was negotiated simultaneously in both jurisdictions by court-appointed counsel appointed by the court to represent Petitioner in the Arapahoe case, and because the global plea agreement was premised on Petitioner pleading guilty in both jurisdictions, any analysis of counsel's performance during those global plea negotiations necessarily requires both courts to independently assess counsel's performance within the context of counsel's singular representation of Petitioner in *both* jurisdictions and within the additional context of counsel's pursuit of a comprehensive resolution to both cases.[4]

[4] The degree to which each jurisdiction must consider counsel's actions in the other jurisdiction must be reasonably determined by consideration of the following facts: (a) plea negotiations for Park were

It is the Arapahoe court's decisions to *not* consider counsel's performance in Park which conflicts with the Park court's decision, which substantially rests on counsel's performance in Arapahoe that is the central issue in this Petition for Rehearing. Petitioner will clarify in Conflicting Decisions, below.

2. Due to the unique circumstances under which plea negotiations occurred (*see,* footnote 2), counsel's representation of Petitioner in the Park matter was unethical, as counsel had a conflict of interest[5] which superseded their obligation to zealously defend Petitioner against the accusations in Park. The prejudice suffered by Petitioner due to this conflict of interest is evinced by the following questionable actions taken by counsel:

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initiated by the prosecutor in Arapahoe, post-preliminary hearing; (b) at the time plea negotiations began, the Park matter had never been charged –due to insufficient evidence linking Petitioner to the Park homicide. As a consequence, independent counsel had not been appointed by the Park County court; (c) Arapahoe-appointed counsel entered into and negotiated the plea agreement without entering an appearance in Park, nor requesting the Park court appoint independent counsel. As a consequence, Petitioners rights related to the adversarial process in Park County, particularly his right to discovery were never invoked; (d) While Arapahoe-appointed counsel did conduct some amount of independent investigation into the Park matter, the fact that they engaged in plea negotiations without having been appointed to represent Petitioner means that, by definition, Arapahoe-appointed counsel advised defendant to plead guilty in Park without receiving nor reviewing discovery with Petitioner.

[5] Grounded in counsel's political and professional desire for a quick resolution to the Arapahoe case, sparked by the fact that the prosecutor refused to declare –during his election bid for the Arapahoe County District Attorney's Office- whether he intended to seek the death penalty. *See,* Footnote 4, below.

a. Counsel failed to advise of or pursue either the viable defense to the felony murder charge, Cert. Pet., p. 35-40; Original Opinion, Appx. B, ¶ 22-49, or the issue of Petitioner's methamphetamine-induced psychosis during the crime, which potentially would have mitigated both specific intent, as well as aggravating factors necessary for the death penalty *See,* Reply Brief, Court of Appeals, p. 13-14. What rational attorney, faced with the *possibility* of a death penalty prosecution would "strategically" *choose* not to even assert these facts in either the preliminary hearing –where prosecution witnesses' own testimony supported their existence Pet. Cert., Appx., H (8); or fail to advance them in plea negotiations, much less fail to advise their client of their significance? Pet. Cert., Appx. H (9).

b. The plea agreement conferred no tangible benefit to Petitioner, as the plea required him to plead guilty to the greatest possible charges in both jurisdictions –first degree murder- and receive the greatest penalty available in western law by a mere finding of guilt., natural life sentence without possibility of parole.[6] Yet, both jurisdictions dismissed this post-conviction assertion by claiming that Petitioner did receive a benefit, lesser charges were dropped in Arapahoe and the Arapahoe DA agreed not to seek the death penalty[7]. Cert. Pet., Appx. A, ¶20; Appx. A, Park Decision, p.2-3.

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[6] (Based solely on the jury's verdict finding Ring guilty of first degree felony murder, the maximum punishment he could have received was life imprisonment). *Ring v. Arizona,* 536 US 584, 597 (2002).

[7] Prior to Colorado's repeal of the death penalty in 2020 (*See,* Senate Bill 2020-100), *every* defendant in Colorado charged with first degree murder, treason or first degree kidnapping was TECHNICALLY eligible for the death penalty. This fact alone did not somehow mean that every defendant so charged, including Petitioner, was *actually* in jeopardy of a death penalty prosecution. As this Court well knows, even in 1996, before this Court's decision in *Ring v. Arizona,* 536 US 584

c. Counsel's failure to petition the Park County court to formally charge Petitioner for the purpose of appointing independent counsel, or at the very least, to allow Arapahoe-appointed counsel enter to their appearance and thereby invoke their client's constitutional rights.

d. In advising Petitioner to accept the plea agreement, counsel disregarded Petitioner's claims that he had not murdered the victim in the Park county case;

e. Counsel compelled Petitioner to accept a clearly inequitable plea agreement by intentionally misrepresenting to Petitioner the strength of the prosecution's case in both jurisdictions and the likelihood of a successful death penalty conviction in Arapahoe.

f. Had counsel not committed these errors, Petitioner would have insisted on going to trial in both jurisdictions, absent a more equitable plea agreement.

CONFLICTING DECISIONS

ARAPAHOE COUNTY CASE

Both lower courts' respective Orders denying Petitioner's Arapahoe County post-conviction and

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(2002) effectively struck down Colorado's death penalty procedures, in actual practice, imposition of the death penalty in Colorado was extremely rare and required substantial additional proceedings as well as specific findings of aggravating factors (aggravating factors which, had counsel competently assert factual evidence in discovery, would have foreclosed even the possibility of the death penalty)

The mere fact that the prosecutor in Arapahoe (who was running for election to be the next District Attorney in conservative Arapahoe County), had refused to declare –mid-election, whether he would seek the death penalty prior to the completion of the preliminary hearing in no way implicates that Petitioner was *actually* in jeopardy of a death penalty prosecution. The fact that the prosecutor initiated plea negotiations post-preliminary hearing, and more significantly, within hours of his successful election to District Attorney, is evidence that the facts of the case simply didn't warrant the death penalty.

appellate motions ruled that Petitioners Arapahoe-appointed counsels' representation of petitioner in the Park County Case could not be considered in the Arapahoe case. Pet. Cert., Appx A, ¶9, p.8; Appx. C(1), p.11-13. These decisions were an abuse of discretion, because the court is supposed to consider a claim of ineffective assistance of counsel in light of the circumstances and facts of which trial counsel was, or should have been aware of. *Strickland v. Washington*, 466 US 668, 690.

Given the unique circumstances of Petitioner's case, it was within either the district or the appellate courts' discretion to assert ancillary jurisdiction over the Park County case in order to fairly consider Arapahoe-appointed counsel's performance in counsels' pursuit of a resolution to the Arapahoe case. On its face, the lower court's decisions not to exercise that discretion in order to summarily deny Petitioner's motion, leaving the issue to the Park County court to resolve on its own, arguably raises the question of whether their respective decisions constituted an abuse of that discretion.

However, the May 23, 2023 decision rendered in Park County substantially changes the calculus of that question.

PARK COUNTY

In direct contravention to the post-conviction and appellate decisions in the Arapahoe case, the Park County court, in its terse four-page decision, summarily denied Petitioners ineffective assistance claims in that case by essentially and haphazardly *asserting* ancillary jurisdiction over the Arapahoe case. In fact, the Park County Decision denies Petitioner's ineffective assistance of counsel in plea negotiations claim in that case by holding that the global plea bargain was equitable by resting *almost entirely* on assertions regarding actions and circumstances in the Arapahoe case.[8]

[8] Some correct, the Arapahoe district court did deny Petitioner's ineffective assistance claim, Others incorrect, E.g., the court seemed oblivious to the fact that the Colorado Court of Appeals had held that counsel's representation of Petitioner in the two jurisdictions were to be considered by each

The Park County court also specifically cited to the Arapahoe District courts summary denial of Petitioner's related ineffective assistance of counsel in plea negotiations claim as critical to its determination that counsel's representation was sufficient in Park.

Whether intentional or not, the result of these two conflicting rulings is that the Park court, in contravention of the appellate court's ruling in the Arapahoe case, holding that the two jurisdictions must be considered separately; was the court in the least capable position of assessing the merits of Arapahoe-appointed counsel's performance in the other jurisdiction effectively asserted ancillary jurisdiction in order to deny relief, while the court in the strongest position, Arapahoe, the jurisdiction which appointed counsel and from where plea negotiations were negotiated, refuses to assert ancillary jurisdiction over counsel representation of Petitioner in Park, which was in furtherance of their representation of Petitioner in Arapahoe, the jurisdiction in which they were appointed, in order to likewise deny relief. The result being that Petitioners substantive claims of deficient performance *by the same counsel* in both jurisdictions as part of *the same global plea agreement* have been summarily denied by the issuance of seemingly independent rulings which nevertheless conspire in a uniquely unprecedented, yet nefariously complementary way so as to completely circumvent Petitioner's due process right to a meaningful consideration of the eperformance of counsel in either jurisdiction.

ISSUE I CONCLUSION

The circumstances under which the global plea agreement was negotiated were unique and raise serious constitutional questions regarding the actions taken by all the parties involved. Complicating the case further, these constitutional questions are not limited to those actions which occurred during the trial, sentencing and direct appeal stages, but have been exponentially exacerbated by the lower

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court separately. *See* Pet. Cert., Appx. A, ¶19, P.8; or that the appellate court reversed and remanded on an issue of ineffective assistance of counsel *Id.,* at ¶27-28).

courts' several mistakes and abuses of discretion during the post-conviction and appellate proceedings which have conspired to completely circumvent Petitioner's due process rights in the case before the Court.

Perhaps most catastrophically, the lower courts' failure to appoint counsel in the Arapahoe post-conviction and appellate proceedings, or hold a single hearing in either jurisdiction in the face of the overwhelming complexity of the substantial and meritorious issues raised by the unique facts at issue in this case, have placed not only the Petitioner, but this Court in a preposterous appellate position. In the interest of justice and fundamental fairness, this Court must take the extraordinary step of taking jurisdiction in the present Arapahoe case and assert ancillary jurisdiction in the Park County case, in order to resolve the conflict and restore Petitioners due process rights.

Petitioner asserts that, ultimately, relief in this issue may well require a complete reset of petitioner's post-conviction rights back to the district court in both jurisdictions. At the very least, given the convoluted nature of this case, the Court should grant Rehearing, appoint counsel and allow counsel time to review the situation with leave to file a supplemental motion clarifying either this Petition for Rehearing or Petitioner's Petition for Certiorari.

ISSUE II

As grounds for Rehearing regarding Petitioner's Claim I in his Petition for Certiorari Review challenging the constitutionality of Colorado's former Murder in the First Degree statute, §18-3-102(1)(b) (Repealed 2021), the Court should take Judicial Notice of the fact that the lower courts made errors of law, abusing their discretion and thereby violating Petitioner's Fourteenth Amendment due process right, by failing to apply the correct legal standard when they summarily denied Petitioners Claim.

Consideration of this Issue is proper for this Court to consider as a basis for rehearing as this issue was not "put in question", as required under 18 U.S.C.§1257, and thereby "raised" in Petitioner's *pro se* petition for Certiorari review, as required by Rule 44.

ERROR OF LAW LEGAL STANDARD

([A] court "by definition abuses its discretion when it makes an error of law". *Philippines v. Pimentel*, 553 U.S. 851, 864 (2008), *citing, Koon v. United States*, 581 U.S. 81, 100 (1996). *Cf., Ohlander v. Larson,* 114 F.3d 1531 (10th Cir, 1997) (A clear example of abuse of discretion exists where the trial court fails to consider the applicable legal standard or the facts upon which the exercise of its discretionary judgement is based.); ([A] magistrate judge's failure to apply the correct legal standards to plaintiff's request for appointment of counsel constituted an abuse of discretion.) *Loftin v. Dalessandri*, 3 Fed. Appx. 658 (10th Cir., 2001), *citing, Koon v. U.S.,* 581 U.S. 81, 100.

FACTS WHICH SUPPORT REHEARING

In his *pro se* post-conviction and appellate motions to the lower courts, Petitioner clearly and plainly asserted his claim under the substantive component of the Fourteenth Amendment's due process clause, which challenged the constitutionality of Colorado Revised Statute §18-3-102(1)(b) Murder in the first Degree (Repealed, 2021), for violating Petitioner's fundamental right, grounded in the Sixth Amendment's jury-trial guarantee, to a *mens rea* element component for the material element of "a death ... caused by anyone".

CORRECT LEGAL STANDARD REQUIRED TO ADJUDICATE PETITIONER'S SUBSTANTIVE DUE PROCESS CLAIM

The Fourteenth Amendment's Due Process Clause protects substantive as well as procedural due process. Substantive due process rights fall into two categories The first consists of rights guaranteed by the first eight amendments. The second are held to be implicit in the constitution. See, *Dobbs v. Jackson Woman's Health Org.*, 142 S. Ct. 2228, 2246 (2022).

Substantive rights, whether implicit or explicit, constitutionally or statutorily derived, "[P]rotect individual liberty against government actions regardless of the fairness of the procedures used to implement them". *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

When legislation is alleged to violate a fundamental right, the claim must be analyzed under a three-part substantive due process analytical framework. See, *Abdi v. Wray*, 942 F. 3d 1019, 1028 (10thCir.2019), quoting *Glucksberg,* 521 U.S. 702, 720 (1997).

THE THREE-STEP APPROACH

1. The first step has two parts: First, make a "careful description of the asserted right". *Glucksberg,* 521 U.S., at 721. Second, the Court must evaluate whether a fundamental right is at issue either; (a) "because the Supreme Court or the Tenth Circuit has already determined that it exists" or; (b) "because the right claimed to have been infringed by the government is one that is objectively among those 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty' such that it is 'fundamental'. *Abdi v. Wray*, 942 F. 3d, at 1028 (10th Cir. 2019) *See also, Dobbs,* 142 S. Ct, at 2246, (In deciding whether a right falls into either of these categories [explicit or implicit] the court has long asked whether the right is "deeply rooted in our nation's history and tradition" and whether it is essential to our Nation's "scheme of ordered liberty").

If the court determines that a fundamental right is implicated, the court proceeds to Step 2. See, *McDonald v. City of Chicago, 561 U.S. 742, 744 (2010);* see also, *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). If the court determines that a fundamental right is not at issue, however a lesser right is implicated (such as a liberty or property interest), the court applies the 'rational basis' test. *See, Dias v. City & County of Denver*, 567 F3d 1169, 1181 (10th Cir., 2009);

> "[The] substantive component [of due process] guards against arbitrary legislation by requiring a relationship between a statute and the government interest it seeks to advance. If a legislative enactment burdens a fundamental right, the infringement must be narrowly tailored to serve a compelling governmental interest, *Glucksberg*, 521 U.S., at 721. But, if an enactment burdens some lessor right, the infringement is merely required to bear a rational relationship to a legitimate governmental purpose. Id., at 728; *Reno v. Flores*, 507 U.S. 292, 305 (1993) (The impairment of a lesser interest ...

demands no more than a 'reasonable fit' between governmental purpose ... and the means chosen to advance that purpose.)."

2. If a fundamental right is implicated, the Court must determine whether the right at issue has been infringed through either total prohibition or 'direct and substantial interference' *Abdi*, 942 F. 3d, at 1028.

3. If the right is fundamental, the court must determine whether the government action at issue satisfies strict scrutiny, *Abdi*, 942 F. 3d, at 1028.

THE LOWER COURT'S ERRORS OF LAW

THE DISTRICT COURT

The District court analyzed and summarily denied Petitioner's post-conviction claim on the merits explicitly utilizing the "rational basis" legal standard for substantive due process claims challenging government action alleged to violate *a liberty or property interest. See,* Cert. Pet, Appx. C(1): Order Regarding Defendant's "Petition for Post-conviction relief Pursuant to Crim. P.35(c), The District Court of Arapahoe County, Colorado, P. 7-10.

THE COLORADO COURT OF APPEALS

Despite clearly outlining to the appellate court the correct legal standard under which it was obligated to conduct its *de novo* review, the Colorado Court of Appeals also failed to apply the three--part substantive due process framework[9]. Instead, the appellate court held: "[T]he Colorado supreme Court has rejected *virtually identical arguments*" [Emphasis added]. *See,* Pet. Cert., Appx. A, ¶9, p. 4.

However, as this Court is well aware, in the law, "*virtually identical arguments*" is not the same as *identical* arguments. In this instance, the distinction is critical. In support of that holding the appellate court then cites, as availing, to three cases: "*People v. Morgan*, 637 P2d 338, 345 (Colo.

[9] *See, Appeal/Petition for Certiorari.*, Appx. A, Second Opinion, Colorado Court of Appeals, ¶9.

1981); *Early v. People*, 142 Colo. 462, 473-75 (1960); *see also*, *People v. Jones*, 990 P.2d 1098, 1103 (Colo. App. 1999)." *Id* at ¶9.

Is it not the case that when a reviewing court cites, as availing on the issue at bar, to a precedential decision in a prior case, the reviewing court necessarily subsumes in its analysis of the case at bar the legal standards applied in the citied case? A reading of the cited cases will clearly show that in none of them did the plaintiff's assert, nor did the courts decide those cases by application of nor reference to anything approaching the *Glucksberg* related analytical framework for challenging legislation alleged to violate a fundamental right. By predicating its denial of Petitioner's specific substantive due process claim *solely* by citation to alleged "precedential" decisions rendered in other cases, which raised substantially different issues which were asserted and decided under categorically different legal standards, the Colorado Court of Appeals implicitly applied the wrong legal standard to Petitioner's claim and thus abused its discretion.

ISSUE II CONCLUSION

As this Court can plainly see, the analytical frameworks applied by both the lower courts omit, *inter alia,* the crucial two-part first step required under the *Glucksberg*-related standard (1) providing a careful description of the asserted right then (2) determining whether there is a fundamental right at issue, because (a) the Supreme Court or the Tenth Circuit has already determined that it exists" or; (b) "because the right claimed to have been infringed by the government is one that is objectively among those 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty' such that it is 'fundamental'.

The Court should note that Petitioner repeatedly attempted to clarify to the lower courts the proper legal standard *See,* Pet. Cert., p. 2 and Appx. (C)(2) (relating that Petitioner filed a motion for reconsideration to the district court notifying the court of its error of law). *See also*, Reply Brief,

Colorado Court of Appeals, p. 1-4; Petition for Certiorari Review, Colorado Supreme Court, p. 1 & 10-11[10].

By applying the wrong legal standard to Petitioner's claim, the lower courts analysis' were irredeemably flawed and constituted an abuse of discretion, rendering the lower court's denial of the issue a grievous error of law, and thus a violation of Petitioner's right to due process under the Fourteenth Amendment. Rehearing is warranted in this case as, essentially, it has yet to be heard in the first place.

ISSUE III

Lastly, the Court should take judicial notice of the fact that, in June, 2023 the Colorado Supreme Court granted certiorari (Sellers v. Colorado, 22SC738) to consider the issue, first raised by Petitioner, *see,* Pet. Cert., Subsidiary Question 3.1, p 33, of whether passage of SB21-124, which repealed CRS §18-3-102(1)(b) and replaced it with §18-3-103(1)(b), effectively (and non-retroactively) reducing the penalty for felony murder from a class 1 to a class 2 rendered the sentences of those convicted under the previous rule either categorically or grossly disproportionate.

This is relevant because, as Petitioner asserted, the issue of disproportionality cannot be properly addressed via the Eighth Amendment, which can only address *punishment.* In the case of the previous rule, it isn't that a life sentence for murder is disproportionate, it's that you cannot impose a mandatory life sentence for a strict liability crime, *especially for murder.* Meaning that, because the

[10] Petitioner, *pro se,* is unsure of the propriety of attaching voluminous copies of his appellate motions to this Petition for Rehearing. For fear of offending the court, given the spirit of brevity evident in Rule 44, Petitioner provides citation to Petitioner's motions filed in the Colorado Court of Appeals and Colorado Supreme Court. If the court's decision to grant rehearing hinges on the verity of these assertions in Petitioners filings, the documents can readily be provided.

violation of due process is in the guilt phase, the court cannot redress the due process violation merely by amending the sentence in the punishment phase.

ISSUE III CONCLUSION

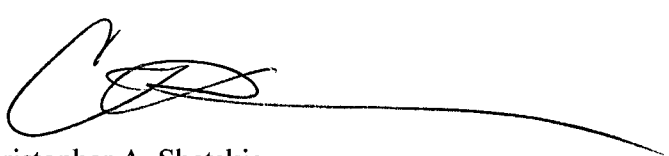
While a disproportional finding by the lower court, categorical or gross, under the Eighth Amendment can address the inherent disproportionality between the strict liability standard of guilt and the extreme punishment of a mandatory LWOP sentence prospectively, such a holding cannot redress the fundamentally tainted proceedings of every defendant prosecuted under the previous rule. The only remedy available is to overturn the convictions of every defendant convicted under the rule. Meaning, Petitioner's Fourteenth Amendment substantive due process claim, rooted in the violation of the Sixth Amendment jury-trial guarantee is the only framework that will allow the Court to acknowledge and redress the proceedings tainted by the fundamental disproportionality of the (repealed) felony murder rule. *See,* E.g., *Ring v. Arizona*, 536 U.S. 584, 610 (2002).

Additionally, unless the issue of the rule's lack of a culpable mental state is fundamentally addressed, the new rule, which also lacks a culpable mental state, will run afoul of the same fundamental Sixth, Eighth, and Fourteenth Amendment violations of the previous rule, it will just do so with a less extreme disproportionate punishment.

The fact that the lower court denied Petitioners certiorari review on this issue, yet granted it in the Sellers case only serves to demonstrate the validity of the issue and the need to grant rehearing on Petitioner's claim, to either grant Certiorari or to remand the issue back to the lower court.

WHEREFORE, Petitioner begs this court grant rehearing and the relief requested.

Respectfully submitted this 9th day of July, 2023,



Christopher A. Shetskie, *pro se.*

APPENDIX

A: Order on Defendant's Motion to Withdrew Plea,

District Court, Park County, Colorado, May 23, 2023.

Rec 5-30-23

District Court, Park County, Colorado 300 Fourth Street PO Box 190 Fairplay, CO 80440 (719) 836-2940	DATE FILED: May 23, 2023
Plaintiffs: THE PEOPLE OF THE STATE OF COLORADO v. Defendants: CHRISTOPHER SHETSKIE	▲COURT USE ONLY▲ Case No.: 1996CR47 Division: B
Order on Defendant's Motion to Withdraw Plea	

Mr. Shetskie moves this Court to allow him to withdraw his plea pursuant to Crim. P. Rule 35(c). The People have filed a Response and Mr. Shetskie a Reply. The Court has reviewed the filings and the record and issues the following Order denying the requested relief.

Background and Factual Findings

Charged with First Degree Murder by way of information filed on November 5, 1996, Mr. Shetskie made his first appearance in the Park County District Court on November 12, 1996, with his attorneys. He pled guilty to the charge that same day and was sentenced to life in prison without the possibility of parole. The sentence was run concurrent to another life without parole sentence Mr. Shetskie received in Arapahoe County case 1996CR589. The Court takes judicial notice of its own file, specifically the information, Mr. Shetskie's signed plea agreement and the sentencing mittimus in connection with its findings of fact on these points.

In its Response to the Motion, the Prosecution discusses the Arapahoe County case. It notes that Mr. Shetskie was represented by the same attorneys in both cases and that a condition of Mr. Shetskie's plea agreement in Arapahoe County case was that he plead guilty to First Degree Murder in the Park County case. Resp., Ex. 2. The Prosecution also notes that on January 7, 2019, Mr. Shetskie filed a petition pursuant to Crim. P. 35(c) in Arapahoe County alleging ineffective assistance of counsel for both Park and Arapahoe County cases. The Petition was denied. Resp, Ex. 5. P. 20. Mr. Shetskie does not dispute these facts in his Reply and the Court adopts them in connection with this Order.

Rule of Law

Claims of ineffective assistance of counsel are properly brought and analyzed under Crim. P. 35(c). *People v. Thomas*, 867 P.2d 880, 886 (Colo. 1994). The burden rests with the Defendant and they must prove (1) his counsel's performance was deficient to the point of falling below a standard of reasonableness, and (2) the deficient performance prejudiced the defendant such that there is a reasonable probability that but for the errors the results would have been different. *Dunlap v. People*, 173, P.3d 1054, 1062 (Colo. 2007), *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

The same standard applies to plea negotiations and so the defendant must prove that but for the errors of his attorney he would have elected a trial instead of the guilty plea he or she entered in to. *People v. MoronesQuinonez*, 363 P.3d 807, 809-10 (Colo. App. 2015).

This reasonable probability standard is an objective test that does not evaluate whether the defendant would have been acquitted at trial but whether counsel's conduct affected the outcome of the plea process. *People v. Sifuentes*, 410 P.3d 730 (Colo. App. 2017). In other words, objective evidence must corroborate the defendant's assertion that he would have made a different decision about the plea if he had been properly advised by his counsel. *Id.* The trial court may deny the defense motion without a hearing if the allegations are merely conclusory or the record clearly establishes the defendant is not entitled to relief. *People v. Mills*, 163 P.3d 1129, 1133 (Colo. 2007).

Analysis

Mrs. Shetskie argues that on the record of the Park County case there exists no evidence of his attorneys having done anything on his behalf; that no hearings were held nor motions filed, no investigation done to pursue several alternate suspects or a defense based on his severe drug addiction that existed at the time he was accused of committing the murder. Mr. Shetskie also maintains that no plea bargaining took place, that his attorneys never went over his discovery with him and that he did not understand what he was pleading to and what he would get in exchange. However, when looking at the totality of the situation, the fact there were two cases in two jurisdictions where plea negotiations converged significantly alters the heft of Mr. Shetskie's argument.

First, it is maintained several times in Mr. Shetskie's pleadings that "[t]here is nothing in the record to suggest the prosecution was seeking or could even seek the death penalty." Motion to Withdraw Plea, ¶37. That the "absolute worst outcome Mr. Shetskie could have received from this case was a life without parole sentence." *Id.*, ¶37. That Mr. Shetskie pleaded guilty to the most serious charge with the harshest penalty—first degree murder with a mandatory life without parole sentence. This was the wors[t] case scenario if he'd kept all his rights and lost after subjecting the prosecutions' case to the adversarial testing process of a jury trial." Petition for Post Conviction Relief, Attached Memorandum of Law to Form 4 Application for Post-Conviction Relief, p. 4 (filed January 8, 2019)(hereinafter referred to as Memorandum). The notion that Mr. Shetskie wasn't facing execution is incorrect since Colorado still had the death penalty at the time he was prosecuted in both matters. Thus, the maximum sentence was death. Whether the prosecutor in either

Arapahoe County or Park County did or didn't articulate his or her intention to pursue death[1], whether any such declaration was a bluff and whether any such prosecution would have been successful are all strategic considerations Mr. Shetskie and his attorneys had to grapple with because he was charged with a class one felony. Mr. Shetskie's allegations that his attorneys' representation fell below an objective standard of reasonableness by inducing him to plead guilty to the charges in this case are not supported by the record. The record shows he was charged in two different cases with class one felonies in each and that he avoided the death penalty between either one of those cases by pleading guilty in both of them. Any notion that his attorneys were simply trying to avoid another embarrassing loss of a death penalty case (Memorandum, p. 4) or that they simply did not want to work harder to secure a better plea agreement is conclusory and the Court takes no action on such arguments.

Second, Mr. Shetskie asks this Court to consider his Motion in a vacuum, without reference to the Arapahoe County case. Mot., ¶11. But he cites no authority for such a request and the Court declines the invitation. The cases resolved with guilty pleas by way of a global disposition and so it is appropriate to review them under Rule 35 according to that global disposition. This is different than acknowledging that Park County has no jurisdiction over Arapahoe's case and vice-versa. This Court is only considering Mr. Shetskie's guilty plea in Park County in light of the one he entered in Arapahoe County. The Court is doing nothing more than recognizing another jurisdiction's conviction, which is not the same as weighing in on the constitutionality or propriety of that conviction. The matters in Arapahoe and Park counties are quite linear; Mr. Shetskie had a case pending in Arapahoe County for a class one felony charge of murder, among other charges. His attorneys secured a plea agreement for him where he would serve life in prison without parole (not death) so long as he pled guilty to the charge in the Arapahoe County case as well as the charge in this Park County case. Had Mr. Shetskie rejected that offer because he wanted to litigate the case in Park County, then that decision would have served as a rejection of the offer made in Arapahoe County, thus putting the death penalty back on the table. When he agreed to plead guilty in Park County, it was to receive the benefit of a bargain he was given by prosecutors in both counties and in each county. His conviction in Arapahoe County has been reviewed for ineffective assistance of counsel and that petition was denied. Order Regarding Defendant's Petition for Post Conviction Relief Pursuant to Crim. P. 35(c), 1996CR589, issued May 23, 2019. Mr. Shetskie maintains in his Memorandum that the ineffectiveness in this case can be seen by looking to the ineffectiveness in Arapahoe County. Had there been a finding that his attorneys in Arapahoe County were ineffective, then his Motion to Withdraw in Park County may have had more heft. But considering the effect his Arapahoe County case and its plea agreement had on decisions he made in Park County, the record reflects that his attorneys' representation did not fall below an objective standard of reasonableness.

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[1] "There [was] no Colorado statute requiring the prosecutor to give notice of intent to seek the death penalty." *People v. District Court, Gilpin County*, 825 P.2d 1000, 1002 (Colo. 1992). And the prosecutor in Park County certainly would not have to announce such intention at Mr. Shetskie's arraignment and first appearance.

Finally, Mr. Shetskie maintains that his attorneys did not show him discovery. (Memorandum, p. 5 and Mot. ¶7). Even assuming the truth of this allegation, the failure to review discovery is not the mouth-gaping allegation it appears to be once one considers the global nature of his plea agreements. Thus, the arguments related to alternate suspects and lack of evidence do not undo the benefit of the bargain Mr. Shetskie received. The argument is not supported by the record and the Court declines to set a hearing on it. This same conclusion is reached with regard to his argument that his attorneys in Park County failed to investigate into his severe drug addiction in order to negate the elements of the murder charge or provide other mitigation that may have led to a reduced plea agreement. Again, the Court notes his conviction in Arapahoe County has survived his post-conviction petition. The resolution of that case greatly affected the investigation, negotiations and outcome of this one and the same can be said of the matter under post-conviction review.

Conclusion

Mr. Shetskie's Motion to Withdraw Plea is DENIED.

IT IS SO ORDERED.

By the Court, this 23rd day of May, 2023.
/s/*Amanda Hunter*, District Court Judge