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| Colorado Supreme Court<br>2 East 14th Avenue<br>Denver, CO 80203 | DATE FILED<br>January 13, 2025 |
| Certiorari to the Court of Appeals, 2023CA1529<br>District Court, Douglas County, 2013CR128 | |
| **Petitioner:**<br><br>Clifford Charles Galley, II,<br><br>**v.**<br><br>**Respondent:**<br><br>The People of the State of Colorado. | Supreme Court Case No:<br>2024SC672 |
| ORDER OF COURT | |

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

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

BY THE COURT, EN BANC, JANUARY 13, 2025.

23CA1529 Peo v Galley 09-26-2024

COLORADO COURT OF APPEALS

DATE FILED
September 26, 2024

Court of Appeals No. 23CA1529
Douglas County District Court No. 13CR128
Honorable Patricia D. Herron, Judge

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The People of the State of Colorado,

Plaintiff-Appellee,

v.

Clifford Charles Galley, II,

Defendant-Appellant.

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ORDER AFFIRMED

Division VII
Opinion by JUDGE GOMEZ
Tow and Kuhn, JJ., concur

**NOT PUBLISHED PURSUANT TO C.A.R. 35(e)**
Announced September 26, 2024

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Philip J. Weiser, Attorney General, Joseph G. Michaels, Assistant Solicitor General, Denver, Colorado, for Plaintiff-Appellee

Clifford Charles Galley, II, Pro Se

¶ 1 Defendant, Clifford Charles Galley, II, appeals the postconviction court's order denying his Crim. P. 35(c) motion. He contends that his sentences for several of his convictions are grossly disproportionate to his offenses, entitling him to an extended proportionality review. And, for the first time on appeal, he contends that some of his sentences are illegal. We reject both contentions and therefore affirm the order.

## I. Background

¶ 2 Galley was charged with multiple offenses arising out of a 2013 car chase and shootout with police officers. Initially, officers approached Galley's vehicle to execute a warrant for his arrest, but he eluded them. Soon thereafter, they tracked his location in a stolen truck at a restaurant drive-through in Castle Rock and blocked the truck in between two police vehicles. Galley used the truck to ram his way out, injuring two officers (one of them severely), and fled the scene. The parties exchanged gunfire. Galley then led officers on a high-speed chase from Castle Rock to Parker as he shot at officers and others in his path. He eventually abandoned the truck and tried to steal someone else's vehicle.

When he wasn't successful, he hid in a residential area for several hours until he was eventually taken into custody.

¶ 3 After a jury trial, Galley was convicted of the following offenses: (1) two counts of attempted first degree murder (extreme indifference); (2) attempted first degree murder of a peace officer (extreme indifference); (3) attempted first degree murder of a peace officer (after deliberation); (4) attempted manslaughter; (5) first degree assault; (6) second degree assault of a peace officer; (7) attempted first degree assault; (8) four counts of aggravated motor vehicle theft; (9) two counts of burglary; (10) attempted aggravated robbery; (11) criminal mischief; and (12) vehicular eluding. He was sentenced to a total of 169 years' imprisonment in the custody of the Department of Corrections with a combination of consecutive and concurrent sentences. As relevant here, he was sentenced to forty-eight years for each attempted first degree murder conviction (with three of the sentences running consecutively to one another and the fourth running concurrently with the others) and to thirty-two years for the first degree assault conviction.

¶ 4 Galley filed an unsuccessful direct appeal, which concluded when a mandate was issued in 2019, and an unsuccessful Rule 35(b) motion for sentence reconsideration. He then timely filed the underlying Rule 35(c) motion, arguing that the sentences for each of his convictions, as well as his total 169-year sentence, are grossly disproportionate to the offenses.

¶ 5 In a thorough and well-reasoned order, the postconviction court denied the Rule 35(c) motion. The court concluded that attempted first degree murder and first degree assault are per se grave or serious offenses, or at least were grave or serious under the circumstances of this case, and that Galley's sentences don't create an inference of gross disproportionality.

## II. Proportionality Review

¶ 6 Galley first contends that the postconviction court erred by denying his proportionality claim without an extended proportionality review. More specifically, he argues that his forty-eight-year sentences for attempted first degree murder and his

thirty-two-year sentence for first degree assault are grossly disproportionate to the offenses.[1] We disagree.

A. Standard of Review and Applicable Law

¶ 7 We review de novo a postconviction court's summary denial of a Rule 35(c) motion. *People v. Nozolino*, 2023 COA 39, ¶ 7. Likewise, we review de novo whether a sentence is constitutionally disproportionate. *See Wells-Yates v. People*, 2019 CO 90M, ¶ 35.

¶ 8 The United States and Colorado Constitutions both prohibit "extreme sentences that are 'grossly disproportionate' to the crime." *Id.* at ¶¶ 5, 10 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring in part and concurring in the judgment)); *see also* U.S. Const. amend. VIII; Colo. Const. art. II, § 20.

¶ 9 Colorado courts conduct a two-step analysis when considering a proportionality challenge. *Wells-Yates*, ¶ 10. The first step — an abbreviated proportionality review — includes two subparts. *Id.* at

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[1] In the postconviction court, Galley also raised proportionality challenges to his sentences for his other convictions. He hasn't reasserted those challenges on appeal and, thus, has abandoned them. *See People v. Hunsaker*, 2020 COA 48, ¶ 10, *aff'd on other grounds*, 2021 CO 83.

¶¶ 10-11. In the first subpart, the court assesses the gravity or seriousness of the offense. *Id.* at ¶ 11. In the second subpart, the court considers the harshness of the sentence imposed, including whether eligibility for parole may reduce the actual period of confinement. *Id.* at ¶¶ 11, 14. If, and only if, the abbreviated proportionality review in step one gives rise to an inference of gross disproportionality does the court proceed to step two — an extended proportionality review comparing the sentence to sentences for other crimes in the same jurisdiction and for the same crime in other jurisdictions. *Id.* at ¶¶ 15, 17.

B. Sentences for Attempted First Degree Murder

¶ 10 Galley contends that the postconviction court erred by concluding that his forty-eight-year sentences for attempted first degree murder after deliberation and attempted first degree extreme indifference murder aren't grossly disproportionate to the offenses.

¶ 11 We decline to weigh in on whether these offenses are per se grave or serious, as we conclude that they are grave or serious under the circumstances of this case.

¶ 12 If an offense isn't per se grave or serious, we consider the facts and circumstances underlying the defendant's conviction, including

the harm the defendant caused or threatened to the victim or society and the defendant's culpability. *Id.* at ¶¶ 12-13. In assessing the actual or threatened harm, we consider the magnitude of the offense, whether it is a lesser included offense or the greater inclusive offense, whether it involves a completed or attempted act, and whether the defendant was a principal or an accessory after the fact in the criminal episode. *Id.* at ¶ 12. And in assessing the defendant's culpability, we consider the defendant's motive and whether the defendant's acts were negligent, reckless, knowing, intentional, or malicious. *Id.*

¶ 13 While Galley was convicted of attempted first degree murder and not the completed crime, the underlying facts confirm that the offenses were grave or serious. Galley not only used a vehicle as a weapon, injuring two officers (one of them severely), but also shot indiscriminately at officers and others as he led officers on an extended high-speed chase. These acts were intentional, were committed by Galley himself, and directly threatened the lives of others. Accordingly, they were grave or serious. *See id.*

¶ 14 In assessing the harshness of Galley's penalty, we can't conclude that any of the forty-eight-year sentences give rise to an

inference of gross disproportionality. The sentences are within the aggravated sentencing range for attempted first degree murder. *See* § 18-2-101(4), C.R.S. 2024 (criminal attempt to commit a class 1 felony is a class 2 felony); § 18-3-102(3), C.R.S. 2024 (first degree murder is a class 1 felony); § 18-1.3-401(1)(a)(V)(A), (6), C.R.S. 2024 (the presumptive maximum sentencing range for a class 2 felony committed in the relevant timeframe is twenty-four years, but it doubles to forty-eight years if the court finds extraordinary aggravating circumstances). And, as the postconviction court noted, they are parole eligible. *See* § 17-22.5-403, C.R.S. 2024.

¶ 15 Thus, we agree with the postconviction court's assessment that the sentences are not disproportionate to the offenses, particularly given that Galley "acted maliciously and showed no regard for [others'] lives as he attempted to flee from arrest."

C. Sentence for First Degree Assault

¶ 16 Galley also contends that the postconviction court erred by concluding that his thirty-two-year sentence for first degree assault isn't grossly disproportionate to the offense.

¶ 17 Again, we decline to determine whether this offense is per se grave or serious. *Cf. People v. Oldright*, 2017 COA 91, ¶ 14

(concluding, before *Wells-Yates*, that first degree assault is per se grave or serious). It is certainly grave or serious under the circumstances. This conviction is based on Galley's actions when he rammed a truck out of a drive-through, striking an officer in the head, face, and upper body and then running over the officer's legs, causing serious bodily injury. These actions were intentional, taken in an effort to evade arrest at all costs; were committed by Galley himself; established a completed crime; and caused serious bodily injury to the victim. They were grave or serious.

¶ 18 Considering Galley's disregard for the safety of police officers as he rammed his way out of the drive-through, as well as the extent of injuries caused to the victim, the thirty-two-year sentence doesn't give rise to an inference of gross disproportionality. As the postconviction court remarked, Galley "use[d] . . . a weapon and [exhibited a] wanton disregard for life." And the sentence is within the presumptive range for first degree assault, which is a per se crime of violence. *See* § 18-3-202(2)(b)-(c), C.R.S. 2024 (first degree assault is ordinarily a class 3 felony and is subject to crime of violence sentencing); § 18-1.3-401(1)(a)(V)(A), (10) (the presumptive maximum sentence for a class 3 felony committed in the relevant

timeframe is twelve years, but under the extraordinary risk provisions applicable to crimes of violence, it is increased by four years to a total of sixteen years); § 18-1.3-406(1)(a), C.R.S. 2024 (the maximum sentence for a crime of violence is twice the maximum of the presumptive range). Moreover, the sentence is parole eligible. *See* § 17-22.5-403.

D. Aggregate Sentence

¶ 19 Lastly, Galley contends that his aggregate 169-year sentence is disproportionate to his offenses. We decline to consider this contention.

¶ 20 A proportionality review applies only to the individual offenses "because each sentence represents a separate punishment for a distinct and separate crime." *Wells-Yates*, ¶ 24. Otherwise, a proportionality review of the cumulative effect of combined sentences "could result in an inference of gross disproportionality merely because the defendant committed multiple crimes." *Id.* Thus, Galley cannot take refuge in the fact that he committed seventeen different offenses over the course of his crime spree, many of which resulted in consecutive sentences.

## III. Legality of the Attempted Murder Sentences

¶ 21 For the first time on appeal, Galley contends that his four forty-eight-year sentences for attempted first degree murder are illegal because he wasn't convicted of any separate crime of violence counts to justify such long sentences. We disagree.

### A. Preservation

¶ 22 The People assert that we should decline to address this argument because Galley didn't raise it in the postconviction court.

¶ 23 We ordinarily don't address appellate arguments that weren't presented to the postconviction court that considered a Rule 35(c) motion. *See People v. Stovall*, 2012 COA 7M, ¶ 3. However, Galley claims that his sentence is illegal — an issue that can be raised at any time, including for the first time on appeal. *See* Crim. P. 35(a); *see also Fransua v. People*, 2019 CO 96, ¶ 10 ("There is no preservation requirement for a Rule 35(a) claim."); *Lucero v. People*, 2012 CO 7, ¶ 20 ("A court has the power and the duty to correct an illegal sentence at any time."); *People in Interest of J.C.*, 2018 COA

22, ¶ 12 ("[A] defendant may raise the legality of his sentence for the first time on appeal."). Thus, we opt to consider the issue.[2]

B. Standard of Review and Applicable Law

¶ 24 Under Rule 35(a), a court "may correct a sentence that was not authorized by law . . . at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence."

¶ 25 It is clear that Galley didn't raise this issue within the timeframe provided for the reduction of a sentence — which would've been within 126 days of the conclusion of his merits appeal in 2019. *See* Crim. P. 35(b); *People v. Bryce*, 2020 COA 57, ¶ 3. Thus, Galley is limited to an argument that his sentence is illegal — that is, it is "not authorized by law" — as opposed to an argument that it was "imposed in an illegal manner." Crim. P. 35(a).

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[2] We acknowledge that earlier in this appeal, this court denied Galley's motion to supplement the record on this issue and indicated that any Crim. P. 35(a) claim should be raised first in the district court. But based on the claim Galley has now fully developed, we conclude that we can resolve the claim at this time using the existing record.

¶ 26 A sentence is illegal if "it is inconsistent with the statutory scheme outlined by the legislature." *People v. Collier*, 151 P.3d 668, 670 (Colo. App. 2006); *accord People v. Jenkins*, 2013 COA 76, ¶ 11; *People v. Green*, 36 P.3d 125, 126 (Colo. App. 2001). By contrast, a sentence is merely imposed in an illegal manner if the court ignored procedural rights or statutory considerations in forming it. *People v. Bowerman*, 258 P.3d 314, 316 (Colo. App. 2010). Illegal manner claims include claims that a sentencing court "failed to comply with statutory procedural requirements before imposing [a] sentence." *People v. Tennyson*, 2023 COA 2, ¶ 34 (*cert. granted* Sept. 11, 2023) (citing *Collier*, 151 P.3d at 673).

C. Analysis

¶ 27 Galley argues that his forty-eight-year sentences are illegal because they exceed the presumptive statutory range for attempted first degree murder and cannot be justified under the crime of violence sentencing provisions. We disagree that any error in the sentences renders them illegal sentences subject to challenge beyond the 126-day deadline in Rule 35(b).

¶ 28 As we've noted, attempted first degree murder is a class 2 felony, which, for an offense committed at the time in question,

carries a presumptive sentencing range of up to twenty-four years. *See* §§ 18-2-101(4), 18-3-102(3), 18-1.3-401(1)(a)(V)(A). If the offense is found to be a crime of violence, the maximum sentence doubles to forty-eight years. *See* § 18-1.3-406(1)(a).

¶ 29 Galley points out that, in order to be subject to crime of violence sentencing, a defendant must be charged with and convicted of a separate crime of violence count unless the offense is a per se crime of violence. *See Chavez v. People*, 2015 CO 62, ¶ 12; *People v. Banks*, 9 P.3d 1125, 1130 (Colo. 2000); § 18-1.3-406(3)-(6). And attempted first degree murder is not a per se crime of violence. *People v. Webster*, 987 P.2d 836, 843-44 (Colo. App. 1998); *see also* § 18-2-101(3.5) (criminal attempt to commit a crime is a crime of violence if the attempted crime is a crime of violence); § 18-3-102 (first degree murder is not designated as a per se crime of violence). Thus, in order to be eligible for crime of violence sentencing, the prosecution needed to allege and obtain convictions on separate crime of violence counts for each of the attempted murder charges. Yet, Galley argues, while the prosecution initially pleaded crime of violence counts, it dismissed them during the trial.

¶ 30 Still, that doesn't mean that Galley's sentences were illegal. The court maintained the discretion to impose the same sentences under the aggravated sentencing provisions. Specifically, as noted above, if the court found extraordinary aggravating circumstances under section 18-1.3-401(6), it could double the maximum sentence to forty-eight years. Thus, the length of the sentences is within the range established by statute. And any arguable procedural flaws in the sentencing process — such as not making sufficient findings of aggravating circumstances or not requiring jury findings for any aggravators that may require a jury finding under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004) — don't call into question the legality of the sentence. Rather, such flaws would only support an illegal manner claim, which is untimely at this point. *See Tennyson*, ¶ 34; *Bowerman*, 258 P.3d at 316; *see also People v. Wenzinger*, 155 P.3d 415, 419 (Colo. App. 2006) ("*Apprendi* or *Blakely* error does not undermine a court's statutory authority to impose [a] sentence or otherwise

deprive the court of jurisdiction" and, thus, does not support an illegal sentence claim.).[3]

¶ 31 Accordingly, we conclude that Galley's four forty-eight-year sentences for attempted first degree murder are not illegal sentences and, thus, that his challenge raises only an untimely illegal manner claim.

## IV. Disposition

¶ 32 The order is affirmed.

JUDGE TOW and JUDGE KUHN concur.

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[3] Such issues could also be raised in a Crim. P. 35(c) claim, but any such claim is time barred. Galley raised the issue for the first time in his appellate opening brief, which he filed in 2024, more than three years after the 2019 mandate in his direct appeal. Thus, any Rule 35(c) claim he thereby intended to raise was untimely. *See* § 16-5-402(1), C.R.S. 2024; *People v. Stanley*, 169 P.3d 258, 259 (Colo. App. 2007).