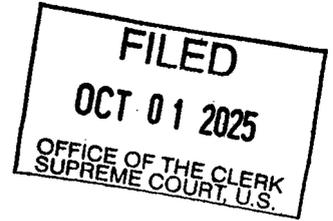


No. 25-6910



IN THE
SUPREME COURT OF THE UNITED STATES

DELMART EDWARD VREELAND,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

On Petition for a Writ of Certiorari
to the Colorado Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Delmart Vreeland
Petitioner, Pro Se
CDOC Number 143539
P.O. Box 6000 - SCF
Sterling, Colorado 80751

QUESTION PRESENTED

After the trial court denied Petitioner's request under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), for trial on habitual criminal charges by a jury, Petitioner was adjudicated a habitual criminal under state law, subjecting him to an increased maximum sentence, based on a finding by the trial judge, not the jury, that his prior convictions arose from separate and distinct criminal episodes, allegedly separately brought and tried.

The court below ignored *Apprendi* and *Blakely*, *supra*, and denied relief even after this Court held, again, that the Fifth and Sixth Amendments require a unanimous jury to determine beyond a reasonable doubt whether a defendant's past offenses were committed on separate occasions under the Armed Career Criminal Act. *Erlinger v. United States*, 144 S. Ct. 1840, 1846 (2024).

Although Petitioner is more than fifteen years past his maximum discharge date, the court below refused to address the issue presented, and the state's highest court has denied a petition for certiorari, which the Respondent, State of Colorado, did not oppose.

The question presented is: Whether Petitioner's Fifth and Sixth Amendment rights were violated when he was subjected to an increased maximum sentence based on the trial court's finding that his past offenses were committed on separate occasions and separately brought and tried on different dates.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner, the defendant below, is Delmart E. Vreeland. Respondent, the plaintiff below, is the People of the State of Colorado.

No corporate parties are involved in this case.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the Douglas County District Court, the Colorado Court of Appeals, and the Colorado Supreme Court: People v. Vreeland, Case No. 2004CR706 (Colo. Cnty. Ct.); People v. Vreeland, Case No. 2022CA1704 (Colo. App.); and People v. Vreeland, 2025SC147 (Colo. May 12, 2025).

No other proceedings directly relate to this case.

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PETITION FOR A WRIT OF CERTIORARI

Delmart E. Vreeland respectfully petitions this Court for a writ of certiorari to review the judgment of the Colorado Supreme Court in this case.

OPINIONS BELOW

The Colorado Court of Appeals unpublished orders are reproduced at Pet. App. (A). The Colorado Supreme Court's unpublished order denying Mr. Vreeland's petition for writ of certiorari is reproduced at Pet. App. (B)

JURISDICTION

Based upon facts and authority below, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1257.

August 22, 2022, the lower court denied postconviction relief. October 6, 2022, timely notice of appeal filed. After briefing begins state admits sentences are illegal. March 14th, 2025, Petitioner filed unopposed motion for limited remand to conduct resentencing. March 14, 2025, Colorado Appellate Rule 50 Petition for Writ of Certiorari was filed to Colorado Supreme Court. March 28, 2025, Colorado Court of Appeals denied unopposed motion for limited remand. April 3, 2025, Petitioner served unopposed motion to reconsider, en banc. April 11, 2025, request was denied. April 18, 2025, Colorado Supreme Court checked out appellate record from Colorado Court of Appeals. April 24, 2025, Colorado Supreme Court returned record on appeal. May 12, 2025, Colorado Supreme Court denied certiorari.

On September 24th, 2025, Justice Kavanaugh extended the time to file this petition through October 9th, 2025.

In Colorado, "Once a litigant raises a claim before the court of appeals, and relief is denied, all available remedies are deemed unavailable." *Al-Yousif v. Trani*, 11 F. Supp. 3d 1032 (C. Colo. 2014).

If a party submits a petition for writ of certiorari before or after judgment of the Colorado court of appeals under C.A.R. 50 or 51, state law deems these two

types of petitions to be complete appellate reviews on the merits. Colo. S. Ct. holds, procedure established in C.A.R. 50-57 provide for appellate review in the supreme court. Once petition for certiorari under C.A.R. 50 has been served, the study by the supreme court of the petition provided in the Colorado appellate rules and of the record on appeal to determine whether to grant or deny the petition constitutes a review. *Bill Dreiling Motor Co. v. Court of Appeals*, 171 Colo. 448, 468 P.2d 37 (1970).

As these process and statutes were fully and timely complied with and completed, this Court has jurisdiction over this matter.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of laws; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Colorado Revised Statutes § 16-13-101(2) (1994) provides as relevant:

Every person convicted in this state of any felony, who has been three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, shall be adjudged an habitual criminal and shall be punished for the felony offense of which such person is convicted by imprisonment in a correctional facility for a term of four times the maximum of the presumptive range pursuant to section 18-1-105, C.R.S., for the class of felony of which such person is convicted. Such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment or information.

Colorado Revised Statutes § 18-1.3.801(2)(a)(I)(A) (2017) provides as relevant:

(2)(a)(I) Except as otherwise provided in paragraph (b) of this subsection (2) and in subsection (5) of this section, every person convicted in this state of any felony, who has been three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, shall be adjudged an habitual criminal and shall be punished:

(A) For the felony offense of which such person is convicted by imprisonment in the department of corrections for a term of four times the maximum of the presumptive range pursuant to section 18-1.3-401 for the class or level of felony of which such person is convicted.

INTRODUCTION

The Court should GVR this case because the decision below violates *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), *Blakely v. Washington*, 542 U.S. 296, 301 (2004), and *Erlinger v. United States*, 144 S. Ct. 1840, 1846 (2024), decided both before and after the lower court rulings at issue were made.

Colorado's habitual-offender scheme applies to someone convicted of certain prior offenses arising out of separate and distinct criminal episodes which are separately brought and tried. Colorado Revised Statutes, ("C.R.S."), § 18-1.3-801(2)(a)(I).

Vreeland argued below, under *Apprendi*, and *Blakely*, *supra*, the Constitution required a jury to find his alleged prior convictions were separately brought, tried, and arose out of separate and distinct criminal episodes. Pet. App. (1-A)

The trial court denied the motion, ruling the Colorado Supreme Court had already rejected *Blakely* arguments so the issue was settled; there is no right to trial by jury on habitual counts in Colorado, a judge is to determine any and all facts. (Motion hearing argument, and ruling, Pet. App.(1-B, Trans. 08/17/2007, p.69,1.8-p.71,1.6)

The habitual offender jury trial issues were raised on direct appeal. Pet. App. (1-C, at Claims 13-17, pp.143-165). Appeal counsel filed a proper motion under Colorado Appellate Rule ("C.A.R.") 28(g)(3) to exceed word limits on opening brief, Pet. App. (1-D). The Colorado Court of Appeal, ("CCOA"), denied the request, Pet. App. (1-E) forcing counsel to remove 21-claims from the second brief. Pet. App. (1-F) The appeal was denied. Pet. App. (1-G) The Colorado Supreme Court, ("Colo. S. Ct."), denied certiorari. Pet. App. (1-H)

In post conviction litigation pursuant to Colorado Rules of Criminal

Procedure, ("Crim. P."), Rule 35(c), Mr. Vreeland raised the habitual offender jury trial issue again, and asserted ineffective assistance of counsel in support, arguing counsel, via CCOA order, was forced to remove claims, also arguing alternatively, counsel, as a result of the order, removed the wrong claims. Pet. App. (2-A) The trial court rejected the claim, Pet. App. (2-B), asserting, inter alia, the claim lacked merit, and could have been raised on direct appeal.

Mr. Vreeland appealed and argued the habitual criminal trial and sentence was unconstitutional as he was denied trial by jury. Pet. App. (2-C,p.31-32, at 19-23) The CCOA refused to acknowledge the claim presented. See, e.g., opening brief, Pet. App. (2-C,p.31-32, at 19-23), CCOA ruling, Pet. App. (2-D), and denied appeal. The Colo. S. Ct. denied certiorari, again. Pet. App. (2-E)

Post-conviction counsel raised the habitual criminal trial issues again in a new Crim.P. 35(c) petition. Pet. App. (3-A) The petition was based, inter alia, on illegal sentence and new evidence, i.e., (i) new documents associated with the habitual criminal charges were released in 2022 which were not released by the state in 2007, which revealed the charges were unconstitutional and based on flawed documents and misunderstanding of what the documents meant; i.e., a conviction, sentence, and probation violation were used as three different convictions; and (ii) an arresting officer testified in 2023 that the lead investigator on the case set Mr. Vreeland up, fabricated the evidence in effort to obtain search and arrest warrants, and to convict Mr. Vreeland. Pet. App. (3-B)

The petition asserted at claims 1-4 the habitual sentence was illegal, and at claim 32 the trial court and district attorney proceeded in absence of jurisdiction to begin with.

To this petition, Pet. App. (3-A), the lower court asserted, incorrectly, the sentence was not illegal, and claimed Mr. Vreeland did not assert the court proceeded in absence of jurisdiction, in effort to defeat procedural bar. But see,

lower court ruling Mr. Vreeland did not claim lack of jurisdiction. Pet. App. (3-C, p.9, ¶4, 1.1-2; and claiming sentence was not illegal, id., p.10-11), and see petition arguing jurisdiction and venue, Pet. App. (3-A, p.5, Claim 32, and p.74).

A timely notice of appeal was filed. Mr. Vreeland then gave proof that the state was withholding exculpatory evidence, illegally recorded attorney client telephone conversations, and pleadings, e.g., the two venue motions argued at Pet. App. (3-A, Claim 32, p.74). To this proof the CCOA ordered, (see e.g., Pet. App. (3-D)), the trial court to produce the entire record, including the new evidence which (a) the state and lower court asserted for 20-years did not exist, and (b) which the new judge asserted did in fact exist, and was stored in the former judge's desk until he retired.

To this order to produce the record, the new judge's clerk, (the case has been transferred to five different judges now) asserted she placed the new evidence, and 23-CDs of the illegally recorded calls, in the U.S. mail, but the envelope arrived to the CCOA opened and empty, so the evidence was allegedly lost. The trial judge issued an order addressing these facts. Pet. App. (3-E)

After briefing on the appeal, and being denied request for limited remand, Pet. App. (3-F) to conduct a lawful sentencing which the Colorado Attorney General's Office and Respondent herein did not oppose, Pet. App. (3-G); fifteen hours after Mr. Vreeland's counsel filed the final appeal reply brief, a state court judge unrelated to the case issued an order sua sponte, Pet. App. (3-H) altering three illegal sentences, asserting it was a mittimus correction under Crim. P. 36, but (a) the alteration caused the mittimus not to reflect the spoken words of the sentencing judge at sentencing, and (b) the alteration of the mittimus made an already illegal sentence a different type of illegal sentence, and added twenty-four years to life to the original mittimus making the sentence (i) more onerous, and (ii) an intervening judgment, and (iii) creating a new form

of illegal sentence which could cause the entire postconviction eight-year process to start all over again.

The alteration of the mittimus just hours after the reply brief was submitted, appears to be an attempt to block relief on appeal, and certiorari petition to this very Court.

The post conviction and appeal process has been sitting since 2017, over eight years of intentional state created delays.

As a result of the extraordinary delay tactics, Mr. Vreeland's counsel, unopposed and by agreement of the Colorado Attorney General's Office, filed in the Colorado Supreme Court, a Colorado Appellate Rule 50 Petition for a Writ of Certiorari to the Colorado Court of Appeals, addressing the illegal sentencing issues, the jurisdiction and venue claims, as well as Apprendi, Blakely, Erlinger claims, pointing out this Court's decision in Fields v. Colorado, 145 S. Ct. 1136, decided by this Court on January 27, 2025, and advised that Mr. Vreeland was fifteen years past his maximum statutory release date, and the lower courts were engaged in extraordinary delay tactics which is delaying his release from unconstitutional incarceration. Pet. App. (4-A).

Although the petition was un-opposed by Respondents, on May 12, 2025, the Colorado Supreme Court denied unopposed petition for a writ of certiorari, and Mr. Vreeland's immediate release, without issuing an opinion. Pet. App. (4-B)

The courts below thus ignored and affirmed the decision of the trial judge, not a jury, finding Mr. Vreeland to be an habitual criminal. This ruling not only quadrupled his maximum presumptive sentence, it enhanced it from six or eight-years maximum, to three-hundred and thirty-six years to life, twenty-one-years of which has been served day for day thus far.

While litigation was pending, however, this Court definitively rejected the Colorado court's view regarding habitual offender trials.

In Erlinger this Court held that [t]he Fifth and Sixth Amendments require a unanimous jury to find beyond a reasonable doubt whether a defendant's past offenses were committed on separate occasions under the Armed Career Criminal Act (ACCA). 144 S. Ct. at 1843. In so holding, the Court reaffirmed that, under Apprendi's prior-conviction exception, a judge may do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of. *Id.*, at 1854 (quoting *Mathis v. United States*, 579 U.S. 500, 512 (2016)). Thus, when a court finds that offenses occurred on ... separate occasions, triggering enhanced penalties, it does more than [the Constitution] allows. *Id.* That is precisely what happened here.

The courts below ignored this Court's decisions in Apprendi and Blakely, *supra*, and acted without the benefit of, and then actually ignored Erlinger, and Fields, *supra*.

It is now clear that the Fifth and Sixth Amendments require that a unanimous jury, not a judge, determine whether Mr. Vreeland's prior offenses arose out of separate and distinct criminal episodes.

The Court thus should vacate and remand this case in light of Erlinger, and Fields.

Alternatively, the Court should grant plenary review to consider how Erlinger applies to state-law schemes that track ACCA.

STATEMENT OF THE CASE

Charge Trial and Sentencing History

In 2004, while vacationing in Colorado, two teenage Colorado gang members posing as adults in local clubs, with more than twenty-six felony arrests and convictions between them, including attempted murder of one gang-member's own mother, robbed the Douglas County, Colorado vacation rental home of Vreeland while Vreeland was at a house party in Adams County, Colorado.

After discovering the theft, Vreeland made threats and told the gang members, all on violent offender felony probation at the time, inter alia, that he was going to the police, and threatened to have their probation revoked. The gang members went to the police and made up a story of drugs, prostitution, and sex on film for money, all in order to get Vreeland arrested and to get away with the robbery.

A general search warrant issued allowing police to search the vacation rental for "any evidence of any type of crime", but no evidence of crime was located. No drugs, no sexual photos or film, nothing.

Regardless, Vreeland was arrested, charged, and remained in jail from October 2004 until October 2008 at which time he was given a de facto life sentence via habitual-offender sentence enhancement.

While incarcerated in the Douglas County, Colorado jail, the prosecution and police recorded, without warrant, five-thousand-one-hundred-and-two attorney client telephone calls between Vreeland and his counsel of record. The police, prosecutor, and trial judge listened to the calls to gain information about trial tactics, strategy, and private information about witnesses they later threatened into not testifying at trial. The recordings also have the gang members admitting the crimes never took place, it was made up.

On December 11, 2006, after a jury trial wherein Vreeland was denied retained or appointed counsel and forced to try the case pro se, a jury convicted Vreeland of

multiple charges including prostitution, sexual exploitation, sexual assault, contributing, and distribution of controlled substance to the dealer. Pet. App. (5-A) After the judge ruled Vreeland was not allowed counsel at trial, the judge changed his mind, and after trial ended, the judge ruled Vreeland required counsel for sentencing.

Counsel Jurdem entered and moved for jury trial on all habitual counts. Pet. App. (1-A) Vreeland denied all elements of the habitual offender charging documents, i.e., the charges, convictions, and identity. Pet. App. (1-A)

After denying Vreeland's motion for jury trial on habitual offender counts, on June 12, 2008, the judge, not a jury, convicted Vreeland of six counts of habitual offender under C.R.S. § 18-1.3-801.

As result of judge, not jury convicting Vreeland of habitual offender charges, on October 22, 2008, Vreeland was sentenced to three-hundred and thirty-six years to life for non-violent charges, Pet. App (5-A), effectively life without parole.

Absent habitual counts Vreeland would have discharged from maximum sentences in 2009 after serving an eight-year term under Colorado statutes with earned and good time deductions, which is the normal sentence for these crimes in Colorado. See, e.g., *People v. Dominguez*, 2024 Colo. App. LEXIS 32, 4 and 6 year sentences; *People v. Maloy*, 465 P.3d 146 (Colo. App. 2020), 4 year sentences; *People v. Shannon*, 2024 Colo. App. LEXIS 41, 15 years to life, will serve 6 years; *People v. Brown*, 2021 Colo. App. LEXIS 3146, 32 years to life for eight violent counts, will serve 12 years; *People v. Kreh*, 2024 Colo. App. LEXIS 2426, 18 years, five counts, will serve 7 years; *People v. Martin*, 2023 Colo. App. LEXIS 2215, 35 years, violent, multiple convictios, will serve 15 years; *People v. Padilla*, 2022 Colo. App. LEXIS 2826, 30 years to life, six counts, violent, will serve 13 years.

These are the normal sentences issued without habitual offender enhancements by a judge. As Vreeland's charges are non violent, he falls within the 4 and 6 year

range, and should have been released 15-years ago.

On December 1, 2008, through counsel, Vreeland appealed to the Colorado Court of Appeals, ("CCOA"). The state refused to provide the entire record on appeal, and took over four-years to provide partial transcripts. That took the case into 2011. After several motions to vacate due to denial of timely appeal were filed, the CCOA ordered a brief filed regardless of not having the entire record and all transcripts.

In response to the CCOA order, appeal counsel submitted a brief with 26-claims, Pet. App. (1-C, addressing habitual Claims 13-17, pp.143-165), and a request to exceed word limits due to what counsel labeled as intentional cumulative error, with judicial and prosecutorial misconduct, filing pursuant to C.A.R. 28(g)(3). Pet. App. (1-D) The CCOA denied request to exceed word limits, Pet. App. (1-E), forcing counsel to cut 21-claims from the original brief. Counsel served an amended brief, Pet. App. (1-F)

The CCOA affirmed convictions and sentence on 2/14/2013; *People v. Vreeland*, 2013 Colo. App. LEXIS 2244. The Colo. S. Ct. denied certiorari on January 27, 2014; *Vreeland v. People*, 2014 Colo. LEXIS 28. This was Vreeland's 9th-year of incarceration, seven of the years waiting for direct appeal resolution.

In 2014 Vreeland attempted to file a timely Crim. P. 35(c) postconviction challenge to the trial court. Vreeland asserted every claim which was cut from the original opening brief on appeal. Vreeland argued he had not been provided full and fair opportunity to present and to litigate all of his valid claims, and was incarcerated in violation of state and federal law and constitution. The trial judge received the petition, and refused to allow the petitions to be docketed.

After three attempts to file postconviction motions pro se were impeded by the original trial judge, on January 17, 2017, a lawyer's secretary went to the trial court and hand delivered a postconviction petition under Crim. P. 35(c) The

judge reject habitual claims raised at Pet.App. (2-A, Claims 19-23,pp.94-110). The judge simply accepted the petition, allowed it to be marked as filed, and then without response from the state the judge denied the petition on August 28, 2017, Pet. App. (2-B).

Vreeland appealed, addressing habitual claims at Pet. App. (2-C, Claim 19-23, pp.31-32, and as IAC Claim 26,p.38). On August 27, 2020, the CCOA affirmed denial of the 35(c) petition; People v. Vreeland, 2020 Colo. App. LEXIS 1538; and the Colo. S. Ct. denied certiorari on January 19, 2021; Vreeland v. People, 2021 Colo. LEXIS 36. At this point Vreeland has served 17-years due to delayed and denied appeals, and habitual sentencing by a judge, not jury.

Concerning habitual offender charge claims and current petition:

Respondent presented a Michigan case with multiple counts, all brought and tried together on the same day in a Michigan court, with documents showing shared arraignment dates, motions, and trial scheduled for the charges on the same date.

Respondent presented a Florida case plea agreement, made between the Michigan and Florida prosecutors' office together to get the accused to act as witness for both states, with promise to place the accused into the federal witness protection program, the plea agreement, just like the Michigan case above, prohibited the use of the convictions for habitual purposes. Clearly the agreement has been violated.

These were not separately brought and tried convictions which arose out of separate and distinct criminal episodes.

As example; the trial court took a conviction, the sentence of probation to that conviction, and a probation violation sentence from that conviction, and counted them as three separately brought and tried criminal convictions which allegedly arose out of distinct criminal episodes on different dates. But this was false, and the judge found this by reading a 20-year old court file from another state. These are facts only a jury should have reviewed and decided.

Relevant to understanding here is that, in each court process listed above,

relevant court documents, transcripts, and physical evidences were withheld from Mr. Vreeland, his counsel, and lied about the existence thereof to the state and federal courts.

One appeal had a partial record, the second appeal had a partial record which contained materials not in the original appeal, and had missing therefrom materials that were in the original appeal. All in all the record was altered five times.

Between the denial of the January 19, 2021 certiorari petition to the Colo. S. Ct., and to date, two motions challenging venue have reappeared that state actors asserted Vreeland lied about ever filing. The pleadings revealed the trial court and prosecutor knowingly proceeded to trial and sentence in total absence of jurisdiction, and suppressed the information until the judge retired. See, e.g., Pet, App. (4-A, claim I at p.13.)

Although these issues could be addressed here, as it was in the Colo. S. Ct. cert petition below, it is not presented here as Vreeland is simply seeking a summary GVR from this Court, just like Mr. Fields, supra, to cause a legal sentence, that will cause Vreeland's immediate release. The issues are raised herein only to detail this Court's jurisdiction on petition for a writ of certiorari.

In addition to the two pleadings, the recordings of attorney client calls appeared. New technology and documents revealed the lead investigator altered evidence and her expert witness assisted her and lied on the stand about it.

Witnesses then admitted they were told to lie to the jury about identifying Vreeland, and one investigator testified in federal deposition that the lead investigator lied about and fabricated evidence to set Vreeland up. Pet. App. (3-B; Trans: p.71,1.5;p.73,1.7;p.73,1.4-7;p.73,1.11-16, 17-18;p.74,1.19)

As a result of this information and other materials, a new Crim.P. 35(c) postconviction petition was served by Attorney G. Thomas.. Pet. App. (6-A)

Eventually the Colorado Attorney General Office agreed that Vreeland was to be

resentenced, and that Vreeland's sentence were in fact not just illegal, Vreeland was even issued habitual offender sentences totalling one-hundred and ninety-two-years for crimes he was never charged with in the indictment. (The CCOA ordered these issues cut from the original opening brief on appeal)

To these claims made by Vreeland, the state, Respondent herein, asserted they did not oppose a remand for resentencing, that would cause Vreeland's immediate release. See, e.g., Pet. App. (3-G) But the CCOA refused to grant the remand requests, Pet. App. (3-F), and request to reconsider. Pet. App. (3-F-2).

Counsel then filed, un-opposed by the state, a C.A.R. 50 Petition for a Writ of Certiorari to the Colorado Court of Appeal addressing the lack of jurisdiction and three illegal sentencing issues as stated herein. Pet. App. (4-A).

The petition set forth the following issue relevant here, and which jurisdiction of this Court is invoked by right for this petition:

Starting at Pet. App. (4-A), Colo. S. Ct., Unopposed Petition for a Writ of Certiorari, p.22, Claim III: "Petitioner is Entitled to Relief ... He is suffering an unconstitutional sentence as contemplated in Erlinger

Relatedly, Petitioner suffers from yet another aspect of illegal sentencing and incarceration. As explained in Petitioner's opening brief on appeal. The state alleged habitual offender charges in counts 21-25. ... Colorado habitual offender scheme applies to someone convicted of certain prior offenses arising out of separate and distinct criminal episodes. C.R.S. § 18-1.3-801(2)(a)(I); see C.R.S. § 16-13-101(2) (1994).

In *Erlinger v. United States*, 602 U.S. 821, 822 (2024), the Supreme Court held that any fact that increases a defendant's exposure to punishment must be proven to a jury beyond a reasonable doubt. Recently, in *Fields v. Colorado*, United States Supreme Court No. 24-5460, the Court deemed it unconstitutional and vacated a sentence based on habitual offender when the trial court judge withheld questions of

fact, such as being separately brought and tried, from the jury.

Significantly, Petitioner raised this concern at trial, but the judge ignored it. There can be no meaningful contention, particularly after Fields, that Vreeland's habitual offender conviction is unconstitutional. It is per se unconstitutional and clear on the face of the record.

Again, Vreeland has been deprived of any opportunity to be heard and to litigate this issue. He was silenced at trial. He was silenced during postconviction proceedings. Now, the time is ripe for this Court to cure this constitutional defect, and correct the miscarriage of justice herein through its plenary power to do so."

The petition was, however, denied without opinion or reason.

Urgency of Vreeland's petition and request for release on bail pending litigation of this petition and resentencing:

C.R.S. § 17-22.5-405 allows for ten days a month to be deducted from the sentence, after applying a 50% reduction for good time pursuant to C.R.S § 17-22.5-403, which specifically states that a person shall be eligible for parole after serving fifty percent of the sentence, less time authorized for earned time pursuant to C.R.S. § 17-22.5-405.

As of October 1st, 2025, as Vreeland has been incarcerated for 21-years with zero disciplinary reports, Vreeland has earned seven years, and ten-days earned time, which would qualify him for release approximately, absent habitual offender enhancement, fifteen-years ago at the minimum, underscoring the necessity of his immediate release to prevent continued harm from an already overdue sentence.

Even without the earned time credits, Vreeland is still entitled to immediate release as, take away the habitual sentences, Vreeland has served twenty-one continuous years on what should only be an eight year maximum sentence.

In addition to that, as Vreeland has already served twenty-one-years, day for

day, Vreeland has already served the entire maximum sentence and maximum amount of time he could have served on parole for the convictions sustained.

In order to give effective meaning to certiorari review and relief, Mr. Vreeland has served contemporaneous with this petition, a petition for an order directing Mr. Vreeland's release on bail pending litigation and resentencing.

REASONS FOR GRANTING THE PETITION

I. The Court should grant, vacate, and remand in light of Erlinger.

A GVR is warranted because the decisions below conflict directly with this Court's ruling in *Apprendi*, then *Blakely*, and finally, in *Erlinger*.

Colorado's habitual-criminal scheme applies to someone convicted of certain prior offenses arising out of separate and distinct criminal episodes. C.R.S. § 18-1.3-801(2)(a)(I); see C.R.S. § 16-13-101(2)(1994). The court below held that, under *Apprendi* and *Blakely* a judge, not a jury, can determine whether this requirement is met. But *Erlinger* made clear that the opposite is true.

1. *Erlinger* addressed ACCA, which imposes an enhanced sentence on defendants with three prior convictions for violent felon[ies] or serious drug offense[s] that were committed on occasions different from one another. 144 S. Ct. at 1846 (citation omitted). There, the government sought an enhanced sentence under ACCA based on a set of prior burglary convictions. *Id.* at 1847. *Erlinger* argued that these burglaries had not occurred on four separate occasions but during a single criminal episode, and that resolving this issue required a jury to find the relevant facts.

This Court agreed, explaining that deciding whether past offenses occurred on [separate] occasions is a fact-laden task: Were the crimes committed close in time? How about the proximity of their locations? Were the offenses similar or intertwined in purpose and character? *id.* at 1851 (cleaned up). All these questions, the Court recognized, may be relevant to the separate-occasion inquiry, and all require facts to be found before ACCA's sentence enhancement may be lawfully deployed. *Id.*

Given all this, the Court concluded, there is no doubt what the Constitution requires: Virtually any fact that increase[s] the prescribed range of penalties to which a criminal defendant is exposed must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted guilty plea). *Id.* (quoting *Apprendi*, 530 U.S. at 490). Erlinger was therefore entitled to have a jury resolve the separate-occasion inquiry unanimously and beyond a reasonable doubt. *Id.* at 1852.

2. The decision below plainly clashes with Erlinger. Just like ACCA, Colorado's habitual-offender law applies to someone convicted of certain prior offenses arising out of separate and distinct criminal episodes; C.R.S. § 18-1.3-801(2)(a)(I); cf. 18 U.S.C. § 924(e)(1) (requiring three predicate convictions committed on occasions different from one another).

As Mr. Vreeland argued below, this inquiry will depend on several facts besides the convictions itself, including when, where, and how the criminal episodes occurred, *Pet. App.* (1-A), so the Constitution required the jury to find that his prior convictions arose out of separate and distinct criminal episodes. Indeed, this inquiry mirrors the fact laden inquiry required under ACCA, requiring determinations regarding whether the crimes were committed close in time, the [p]roximity of their location[s], and whether the offenses were similar or intertwine in purposes and character. Erlinger, 144 S. Ct. at 1851 (cleaned up).

Without the benefit of Erlinger, the lower court declined to depart from its earlier precedent. It thus rejected Mr. Vreeland's arguments, holding that whether prior offenses occurred on separate occasions is a matter[] of law for the court that can be definitively established based on ... judicial records, and the Colo. S. Ct., has already rejected these Blakely claims. *Pet. App.* (1-B, *Trans.* 08/17/2007, p.69,1.8-p.71,1.6) But as Erlinger now makes clear, the Constitution requires otherwise.

To determine whether [Mr. Vreeland's] prior convictions triggered [Colorado's]

enhanced penalties [for habitual offenders], the court had to find that those offenses occurred on separate occasions, which require[s] facts to be found. Erlinger, 144 S. Ct. 1851, 1854. Accordingly, in making this finding and adjudicating Mr. Vreeland a habitual criminal under Colorado law which quadrupled his maximum presumptive sentence, the court did more than [the Constitution] allows. Id. at 1854.

If [p]resented with evidence about the times, locations, purpose, and character of [Mr. Vreeland's] alleged crimes, a jury might have concluded that some or all occurred on different occasions. Or it might not have done so. Id. at 1852. Either way, all that can be said for certain is that the sentencing court erred in taking that decision from a jury of [Mr. Vreeland's] peers. Id.

This Court should vacate the lower courts decision and remand for further consideration in light of Erlinger.

II. Alternatively, the Court should grant plenary review to address Erlinger's application to state-law recidivist schemes that mirror ACCA.

If the Court concludes that summary vacatur is not warranted, it should grant plenary review to consider Erlinger's application to state-law recidivist schemes that mirror ACCA.

As explained, Colorado's habitual-offender scheme, just like ACCA, applies where prior convictions occurred on separate and distinct occasions. Compare C.R.S. § 18-1.3-801(2)(a)(I) (arising out of separate and distinct criminal episodes), with 18 U.S.C. § 924(e)(1) (requiring three predicate convictions committed on occasions different from one another). Thus, just as [c]onvictions arising from a single criminal episode ... can count only once under ACCA, they can only count once under Colorado law. *Wooden v. United States*, 595 U.S. 360, 363 (2022).

Erlinger confirms that *Apprendi* means what it says: Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the

prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. *Apprendi*, 530 U.S. at 490 (emphasis added). It thus is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. *Id.* (quoting *Jones v. United States*, 526 U.S. 227 (1999) (Stevens, J., concurring)).

Erlinger thus leaves no doubt that the lower courts ruling that held *Apprendi*'s prior conviction exception extends to the additional statutory factual findings for each prior conviction necessary to support a habitual criminal sentence, including that they arose out of separate and distinct criminal episodes, is fundamentally misguided.

Additionally, there is no basis for reading Erlinger as limited to federal cases. The prior-conviction-exception traced to *Apprendi* and analyzed in Erlinger originates from *Jones*: [U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt. 526 U.S. at 243 n.6.

Apprendi makes clear that this language from *Jones*, which interpreted a federal statute, applies with equal force to state laws through the Fourteenth Amendment: The Fourteenth Amendment commands the same answer [as in *Jones*] in this case involving a state statute. *Apprendi*, 530 U.S. at 476. Indeed, as Justice Kavanaugh recognized in Erlinger, [u]nlike the Court's interpretation of ACCA in [other] cases, the Constitutional rule [announced in Erlinger] will apply not only to federal cases, but also to state cases, including to state laws with recidivism enhancements that require judges to find whether the defendant committed prior crimes on different occasions. 144 S. Ct. at 1866 n.2 (Kavanaugh, J. dissenting).

Erlinger confirms that the Colorado Trial court, Colorado Court of Appeals, and Colorado Supreme Court misapplied Apprendi. The courts denied Mr. Vreeland's request for jury trial on all facts associated with the habitual offender counts, and allowed the trial court to keep for it self the issue of identity, and the determination whether Mr. Vreeland's prior convictions arose out of separate and distinct criminal episodes which occurred on different occasions.

Under a straightforward application of Erlinger, this fact-laden inquiry necessarily requires facts to be found beyond the mere existence of a prior conviction, so the Fifth and Sixth Amendments require a unanimous jury to make that determination beyond a reasonable doubt. Id. at 1846.

CONCLUSION

The Court should grant the petition, vacate the decision below, and remand for further review in light of Erlinger, Supra, Fields, Supra.

Alternatively, this Court should grant plenary review to consider Erlinger's application to state-law recidivist schemes that mirror ACCA.

Additionally, the Court should order Mr. Vreeland be immediately released on recognizance bail pending resentencing and litigation of the matters in this or lower court.

Delmart Vreeland
Petitioner, Pro Se
CDOC No. 143539
P.O. BOX 6000 - SCF
Sterling, Colorado
80751

October 1st, 2025

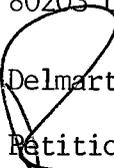
CERTIFICATE OF COMPLIANCE

I certify that this Petition for a Writ of Certiorari was prepared on a typewriter at 12-pitch, double space, 8 1/2 x 11 inch paper, and contains 20 total pages, and is within the word limits set by Court Rules.


Delmart Vreeland
Petitioner, Pro Se

CERTIFICATE OF SERVICE

I certify I have served one copy of the enclosure, and all attachments, to Respondent at Colorado Attorney General Office, 1300 Broadway, Denver, Colorado 80203 by email and or U.S. mail, all postage prepaid this 1st day of October, 2025.


Delmart Vreeland
Petitioner, Pro Se