Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED May 12, 2025 CASE NUMBER: 2025SC147
C.A.R. 50 Certiorari to the Colorado Court of Appeals, 2022CA1704 District Court, Douglas County, 2004CR706	
Petitioner: Delmart Edward Vreeland, **v.** **Respondent:** The People of the State of Colorado.	Supreme Court Case No: 2025SC147
DENIED CAR 50 CERT ORDER	

Upon consideration of the Petition for Writ of Certiorari pursuant to C.A.R. 50, and after review of the record, and now being sufficiently advised in the premises,

IT IS ORDERED that said Petition for Writ of Certiorari pursuant to C.A.R. 50 shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MAY 12, 2025.

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED March 28, 2025 CASE NUMBER: 2022CA1704
Douglas County 2004CR706	
Plaintiff-Appellee: The People of the State of Colorado, **v.** **Defendant-Appellant:** Delmart Edward Vreeland.	Court of Appeals Case Number: 2022CA1704
ORDER OF THE COURT	

To: The Parties

Upon consideration of the motion for limited remand, the Court DENIES the motion.

BY THE COURT
Tow, J.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DELMART EDWARD VREELAND,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,
Respondent.

On Writ of Certiorari to the Colorado Supreme Court

APPENDIX A-B

A

Colorado Court of Appeals 2 East 14th Ave Denver, CO 80203 Douglas County District Court, Colorado 2004CR706	DATE FILED March 14, 2025 12:17 PM FILING ID: 256DE5B1F166B CASE NUMBER: 2022CA1704
The People of the State of Colorado Appellee, v. Delmart Edward Vreeland Appellant.	
GEORGE THOMAS Brownstone P.A. P.O. Box 2047 Winter Park, FL 32790 Phone Number: (407) 388-1900 E: george@BrownstoneLaw.com W: brownstonelaw.com Atty. Reg. #57528	Case No. 2022CA1704
UNOPPOSSED MOTION FOR LIMITED REMAND	

COMES NOW Defendant, Delmart Edward Vreeland, by their undersigned counsel of record, respectfully request the Court to grant a limited remand of this matter, returning jurisdiction to the trial court. A limited remand is required in this case for resentencing on Mr. Vreeland's convictions under counts 5 through 8, as he is currently serving a sentence for crimes not alleged in the indictment.

The Defendant is requesting this Court to grant a limited remand to correct the illegal sentence and mittimus in the Douglas County District Court, in the Defendant's Motion to Correct Sentence and Mittimus and Court's Order on December 27, 2023.

Mr. Vreeland submits that a limited remand on this matter may resolve the appeal in its entirety. First, Mr. Vreeland alleged this illegality in his pleading, which is under this Court's review. During remand, Mr. Vreeland moved for relief. The state and lower court agreed that this needs to be resolved. Additionally, while pursuing habeas corpus relief in case number 2024CV30612, in the Denver District Court, chief Judge Christopher Baumann opined that the matter was being stayed in Douglas County.

Second, upon resentencing, Mr. Vreeland would be entitled to a full resentencing hearing under *Hunsaker v. People*, 2015 CO 46, ¶ 31, 351 P.3d 388, 395. In short, a resentencing hearing may resolve matters before this court and render the appeal moot.

Mr. Vreeland is entitled to a correction on his illegal sentence[1], as the mittimus shows that Mr. Vreeland is serving a sentence for charges not reflected in the

[1] Mr Vreeland submits that he is entitled to relief upon resentencing on other grounds, such as: under *United States v. Erlinger.* In *Erlinger,* the Supreme Court held that the Fifth and Sixth Amendments require a unanimous jury to make the determination beyond a reasonable doubt that the defendant's past offenses were

corresponding indictment. Within the indictment in relation to counts 5 through 8 provides two counts of C.R.S. §17-6-403(3)(a) and two counts of C.R.S. §18-6-403(3)(b). Whereas the sentencing mittimus shows four counts of C.R.S. §18-6-403(a). Moreover, as argued on page 47 of the Amended Opening Brief, C.R.S. § 18-1.3-1004(5)(a) mandates that all other sentences be consecutive to Count 9. However, they are not. The court needs to remedy this as it is a sentence contrary to the law. Even if a longer sentence results, it does not change the fact Vreeland is suffering from an illegal sentence. This not only shows that Mr. Vreeland has been serving an illegal sentence for years, but this also affects his classification within the Colorado Department of Corrections.

WHEREFORE, for the reasons set forth herein, and given that the State does not oppose the requested relief of remanding to address the sentencing issues, Mr. Vreeland respectfully request that this Court grant the Unopposed Motion for Limited Remand to Resentence.

Respectfully submitted March 14, 2025.

/s/ George W. Thomas
George W. Thomas (#57528)
BROWNSTONE, P.A.
P.O. Box 2047
Winter Park, FL 32790
Telephone: (407) 388-1900
Facsimile: (407) 622-1511

---

committed on separated occasions for ACCA purpose. *Erlinger v. United States,* 602 U.S. 821, 822 (2024).

george@brownstonelaw.com
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on, March 14, 2025, a copy of this Motion was electronically served through electronic mail and via Colorado Courts E-Filing on all registered parties.

/s/ George W. Thomas
George W. Thomas (#57528)
BROWNSTONE, P.A.
P.O. Box 2047
Winter Park, FL 32790
Telephone: (407) 388-1900
Facsimile: (407) 622-1511
george@brownstonelaw.com
Attorney for Appellant

B

COLORADO SUPREME COURT
2 East 14th Avenue, Denver, CO 80203

On Petition for Writ of Certiorari to the COURT OF APPEALS, STATE OF COLORADO

Case No 2022CA1704 (Pending)

Douglas County District Court, Colorado
District Court 2004CR706 (August 18, 2022 and
Hon. Judge Patricia Herron)

DATE FILED
March 14, 2025 1:39 PM
FILING ID: 6D5B86A3D398F
CASE NUMBER: 2025SC147

Delmart EJM Vreeland, II,

Petitioner,

v.

The People of the State of Colorado,

Respondent.

Case Number:

GEORGE THOMAS
Brownstone P.A.
P.O. Box 2047
Winter Park, FL 32790
Phone Number: (407) 388-1900
E:george@brownstonelaw.com
W: brownstonelaw.com
Atty. Reg. #57528

UNOPPOSED PETITION FOR CERTIORARI

CERTIFICATE OF COMPLIANCE

I certify that this petition complies with all requirements of C.A.R. 32 and 53, including all formatting requirements set forth in these rules. The petition complies with C.A.R. 53(f)(1) in that it contains **3795** words (less than the 3,800 words allowed) and (1) an advisory listing of the issues presented for review; (2) a reference to the official or unofficial reports of the opinion of the court; (3) a concise statement of the grounds on which jurisdiction of the Supreme Court is invoked; (4) a concise statement of the case containing the matters material to consideration of the issues presented; (5) a direct and concise argument amplifying the reasons for the allowance of the writ; and (6) an appendix including a copy of the opinion delivered upon the rendering of the decision of the Court of Appeals or challenged opinion.

/s/ George W. Thomas

George W. Thomas (#57528)
BROWNSTONE, P.A.
P.O. Box 2047
Winter Park, FL 32790
Telephone: (407) 388-1900
Facsimile: (407) 622-1511
george@brownstonelaw.com
Attorney for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Petitioner/Defendant-Appellant Vreeland files this Petition, Respondent/Plaintiff-Appellee, the State of Colorado, does not oppose the filing of the Petition.

INTRODUCTION

Petitioner moves this honorable Court under C.A.R. 50 to consider the issues presented. Petitioner submits that all issues presented fall within one or more of the matters governed by C.A.R. 50.

The first issue concerns structural error and a fundamental jurisdictional defect. The trial court proceeded without proper jurisdiction under C.R.S. § 18-1-202(1). The Court of Appeals in *Slattery* ruled that the trial court committed fundamental error when venue was not properly established and determined, after being challenged. This court affirmed in Case No.2023SC544. This Court's guidance is necessary to ensure that jurisdictional prerequisites are strictly observed throughout Colorado's judicial system.

Second, the State has acknowledged that Petitioner's sentencing mittimus reflects that Petitioner was sentenced under charges not in the indictment. This is a per se illegal sentence and Petitioner is entitled to immediate resentencing. Likewise, Petitioner suffers from illegal, unconstitutional sentences.

Third, as being contemplated by this court in, *In re People v. Andrew Gregg*, Case No. 2024SA000272, and as challenged by Petitioner during trial, and during

postconviction proceedings, Petitioner is suffering from an illegal conviction and sentence stemming from his habitual offender charges. As it stands, Petitioner's conviction and sentence are abrasive to principles in *Apprendi v. New Jersey,* 530 U.S. 466, 477-478 (2000) and reiterated by the United States Supreme Court in *Erlinger v. United States,* 602 U.S. 821, 822 (2024), and most recently in *Fields v. Colorado*, United States Supreme Court No. 24-5460. This precedent establishes constitutional limitations on habitual offender statutes that were not properly considered in Petitioner's case. The continued enforcement of Petitioner's sentence under these circumstances presents a clear deprivation of constitutional rights.

Review is particularly appropriate because these errors impact Petitioner's fundamental liberty interests and he unquestionably (and as admitted by the State) is wrongfully incarcerated and suffering from an illegal sentence. Each day Petitioner remains incarcerated under an improper sentence or pursuant to a conviction from a court lacking jurisdiction represents a continuing injustice that this Court has the power to remedy.

Petitioner respectfully requests that this Court grant certiorari to review these important questions of law and to finally put an end to Petitioner's unlawful incarceration.

ISSUES PRESENTED

1. Whether Petitioner is entitled to immediate relief given that the trial court situated

is in Douglas County, Colorado, but the alleged events, if true, could only have been committed in Denver, Colorado, as shown during trial and various postconviction proceedings.

2. Whether Petitioner is entitled to immediate relief given that his sentencing does not conform to the charges in the indictment, contains duplicitous sentences and does not conform to well-established notions of due process.

3. Whether Petitioner is entitled to resentencing under *Erlinger*, which would lead to Petitioner's immediate release.

DECISION BELOW

The decision below dated August 18, 2022, is the district court of Douglas County's Order denying post-conviction relief under 35(a), 35(c), C.R.S. § 13-45-101, and other motions. Attached as Appendix A. Timely Notice of Appeal was filed on October 6, 2022. Appendix B. Briefing has begun in the appeal, and Appellant's Opening Brief is attached as Appendix C.

JURISDICTION

This appeal is pending in the Court of Appeals, *People v. Vreeland*, Case No. 22CA1704 This Court may invoke jurisdiction over the appeal under C.A.R. 50, C.R.S. § 13-4-109(3), and COLO. CONST. art. VI, § 2.

PENDING CASE ON SAME ISSUE

This Court is presently considering the issue of the imposition of habitual offender enhancements in the case of *In re People v. Andrew Gregg*, Case No. 2024SA00272.

STATEMENT OF THE CASE

On December 11, 2006, a jury convicted Vreeland of multiple charges including child prostitution, sexual exploitation, sexual assault, contributing to delinquency of a minor, and controlled substance distribution. CF 1291. On June 12, 2008, the Court (not a jury) convicted Vreeland of six counts of habitual offender under C.R.S. § 18-1.3-801, while finding him not guilty of two habitual charges. CF 1291. On October 22, 2008, Vreeland was sentenced to life imprisonment for sexual assault convictions plus an aggregate 336-year sentence, effectively life without parole. CF 1291.

Vreeland appealed to the Court on December 1, 2008; convictions were affirmed and the Colorado Supreme Court denied Certiorari. CF 1291. On January 27, 2017, Vreeland filed for postconviction relief under Rule 35(c), which was amended and denied on August 28, 2017. CF 1291. On August 27, 2020, The Court affirmed the denial of his initial 35(c) petition, and the Colorado Supreme Court denied Certiorari. CF 1291.

Significantly, on February 9, 2006, Vreeland filed a motion challenging jurisdiction. CF 1102-1250. The trial court judge refused to enter an order, until after trial. CF 1099.

Concerning the habitual offender charges, Michigan cases (counts 24-25) were reportedly brought and tried together on the same day in Michigan court, with documentation showing shared arraignment dates, motions, and trial scheduling. Additionally, a Florida plea agreement prohibited use of that conviction for habitual offender purposes, which Vreeland claims was violated. CF 631; 757-773; 1142.

Colorado's earned-time credit statute, C.R.S. § 17-22.5-405, allows inmates to accrue credits to reduce their sentences. As of November 18, 2024, Vreeland has earned *at least* 6 years, 6 months, and 20 days of earned time, which would have qualified him for release approximately 5 years and 6 months ago, underscoring the necessity of his immediate release to prevent continued harm from an already overdue sentence.

ARGUMENT

Colorado Appellate Rule 50 authorizes this Court to grant a petition for writ of certiorari to review a case pending before the Court of Appeals. The case must meet one of three criteria:

> (1) the case involves a matter of substance not yet determined by the supreme court of Colorado, or that the case if decided according to the relief sought on appeal involves the overruling of a previous decision of the supreme court; or
>
> (2) the court of appeals is being asked to decide an important state question which has not been, but should be, determined by the supreme

court; or

(3) the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate determination in the supreme court.

C.A.R. 50(a).

I. THE TRIAL COURT DID NOT HAVE JURISDICTION UNDER SLATTERY.

Under section C.R.S. § 18-1-202(1), a criminal action must be tried either "in the county where the offense was committed" or in a county "where an act in furtherance of the crime occurred." See COLO. CONST. art II, § 16; see U.S. Const. amend. VI, XIV. *People v. Lewis*, 2017 COA 147, ¶ 15. Significantly, this Court had ruled that the aforementioned provision limited where a defendant can sit for trial. *Wafai v. People*, 750 P.2d 37, 46 (Colo. 1988). This was later affirmed in *People v. Slattery*, 20CA823, June 15, 2023 and the Court of Appeals' ruling was affirmed by this Court in *Slattery v. People*, Supreme Court Case No. 2023SC544.

Here, reversal is required, as the error is structural. *People v. Munsey*, 232 P.3d 113 (Colo. App. 2009), an error is structural when it fundamentally affects the framework within which the trial takes place or denies the defendant a basic protection with unquantifiable results. *Bogdanov v. People*, 941 P.2d 247, 253 (Colo.), amended, 955 P.2d 997 (Colo. 1997); see also *Sullivan v. Louisiana*, 508 U.S. 275, 281 (1993) (denial of right to jury trial is structural error because

consequences are "necessarily unquantifiable and indeterminate," rendering criminal trial unable to reliably serve its function.

As explained in *People v. Burgess*, 946 P.2d 565 (Colo. App. 1997), in contrast to subject-matter jurisdiction, venue is the place of trial. Venue is for the benefit of defendants and may be waived. Any challenge to venue "shall be made by motion in writing no later than twenty days after arraignment, except for good cause shown." Section C.R.S. § 18-1-202(11). Furthermore, consistent with the statute, Vreeland challenged venue prior to trial. CF 1102-1250.

Similarly, Venue also affects the very authority of the State to prosecute. Nothing in Colorado's constitutional or statutory scheme...vests a district attorney with authority to initiate a criminal prosecution for crimes committed outside his judicial district." *People v. Taylor,* 732 P.2d 1172, 1177-78 (Colo. 1987).

According to *People v. Reed*, 132 P.3d 347, 350 (Colo. 2006), once jurisdiction and venue were challenged, the court was obligated to resolve factual disputes regarding whether the alleged offense occurred in Douglas County. However, the trial court failed to do so. Creating a grave departure from Colorado and United States constitutional guaranteed. On February 9, 2006, Vreeland filed a motion to dismiss the case for lack of jurisdiction, which was argued before Judge King on February 16, 2006. CF 1099. Judge King eluded this determination, stating it was a "matter of evidence to be brought out at trial" with a ruling to follow after

hearing trial evidence. This decision by Judge King directly contradicts statutory requirements that jurisdictional determinations must be made prior to trial. Evidence including phone calls and testimony from Richardson and others established that Vreeland was in Denver County at the relevant time, though this jurisdictional issue has yet to be competently heard. The first motion alleged that any and all events which may have led to the accusations made the basis of this matter occurred in either Adams or Denver County, not in Douglas County. The trial court failed to follow the mandatory provision of C.R.S. §18-1-202(11), which requires the court to make a venue determination prior to commencement of trial and jury selection. Additionally, all evidence of the motion disappeared following the trial. The Motions did not exist in the court record throughout the direct appeal, 08CA2468. Therefore, this issue was never brought before any appellate court for an additional fourteen (14) years.

Proceeding with trial in an improper jurisdiction renders the entire trial proceedings unconstitutional and contrary to Colorado statutory law and deprives the Douglas County District Attorney of the authority to bring the proceedings.

Here, this issue fits squarely within the framework "the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate determination in the supreme court." As raised above, this Court affirmed in *Slattery* the precise notion that Vreeland argues before

the trial court, Court of Appeals, and now this Court. The particular issue of public importance is this Court cementing the duties and obligations of a trial court when venue is being challenged. This implicates all cases in this State, not just criminal cases. Venue is one of the fundamental notions of American jurisprudence, and deviation from national and statewide judicial norms will unquestionably create a constitutional crisis.

The entire trial should be void ab initio based on the facts involving this issue alone. Furthermore, when considering the issues presented below, this Court will find a void trial, illegal sentencing, and a wrongful and an improper conviction.

II. PETITIONER IS ENTITLED TO IMMEDIATE RESENTENCING, AS ADMITTED BY THE STATE, AND IS FURTHER ELIGIBLE FOR RELIEF ON DUE PROCESS AND DOUBLE JEOPARDY GROUNDS.

A sentence which is beyond the statutory authority of the court is illegal. *People v. Dist. Court of Denver*, 673 P.2d 991, 995 (Colo. 1983) citing *Hemphill v. District Court,* 197 Colo. 431, 593 P.2d 972 (1979); *see People ex rel. Gallagher v. District Court,* 632 P.2d 1009 (Colo. 1981). People *v. Dist. Court of Denver* went on to rule that the Supreme Court does have jurisdiction to review defendant's sentence if the trial court's sentence was illegal. People *v. Dist. Court of Denver*, 673 P.2d at 995; see also Crim. P. 35(a). It stands that this Court has ruled that this Court does have jurisdiction over these claims. And as further described below, the Supreme Court's involvement in cases of improper sentencing is not only

to rectify particular mistakes but also to ensure the adherence to the legal system – a concern that should interest the public most; thereby squarely fitting into the third prong of the governing C.A.R. 50.

A. The State and Trial Court have agreed and determined that Vreeland is serving a sentence that he was not charged with and is entitled to resentencing.

Significantly, the court and the state agree that the mittimus is faulty but refuse to correct the issue. As alleged in CF 1573: The charges in the indictment related to counts 5 through 8 show two counts of C.R.S. § 18-6-403(a) and two counts of C.R.S. § 18-6-403(b). However, the sentencing mittimus shows four counts of C.R.S. § 18-6-403(a). These errors affect time computation, classification and program eligibility. In its order, the trial court opined that "The Court has reviewed the Complaint, Jury Instructions, and Jury Verdict forms and agrees with the People's Response that this appears to be an error in the mittimus of Counts Seven and Eight which were tried pursuant to C.R.S. § 18-6-403(3)(b). Counts Five and Six were correct as stated under C.R.S. § 18-6-403(3)(a)." CF 1641. The trial court's denial shows that it did not give adequate review of this issue, or any issue for that matter, and unjustly denied these claims.

Therefore, Petitioner asks this court to remedy the erroneous mittimus and vacate illegal sentences. Significantly, when "any aspect of a sentence is inconsistent with statutory requirements, the complete sentence is illegal," *Delgado v. People*, 105 P.3d 634, 637 (Colo. 2005), and an illegal sentence is "void," *People v. Flenniken*,

749 P.2d 395, 398 (Colo. 1988). A void judgment is void ab initio. *Watt v. United States*, 162 F. App'x. 486, 503 (6th Cir. 2006) (unpublished opinion) (citing *In re James*, 940 F.2d 46, 52 (3d Cir. 1991)).

Hunsaker v. People, 2015 CO 46, ¶ 31, 351 P.3d 388, 395 held that "[t]his court has held that if any component of a sentence is illegal, the entire sentence is illegal and subject to correction under Crim. P. 35(a). *Leyva v. People*, 184 P.3d 48, 50 (Colo. 2008) (citing *Delgado v. People*, 105 P.3d 634, 637 (Colo. 2005)). As such, upon resentencing on the counts agreed to and acknowledged by the Trial Court, Vreeland is entitled to resentencing on all illegal sentences and associated counts.

B. Defects in Counts 1 through 4 and Counts 7 through 8 require intervention and relief, as these defects are fundamental, fatal, and contrary to Due Process.

1. Counts 1 through 4 are missing the essential mens rea element.

Counts 1 through 4 are as follows: Counts 1 and 2 are inducement of child prostitution under C.R.S. § 18-7-405.5 and Counts 3 and 4 are soliciting for child prostitution under C.R.S. § 18-7-401(1)(a). All four counts, as with the others discussed are from the 2004 version of the statute. [CF 915].

A court lacks jurisdiction over a defendant if an information fails to charge an essential element of an offense, or if it does not contain allegations of a chargeable offense. See *People v. Bowen*, 658 P.2d 269 (Colo. 1983); *People v. Thomas*, 832 P.2d 990, 992 (Colo. App. 1991).

2. Counts 7 and 8 do not name the victim, instead the judge assigned a victim

during sentencing.

Similarly, counts 7 and 8 do not name a victim. The victim here is an essential element of the crime and Vreeland was prejudiced by its failure, as he was not adequately put on notice. And the judge cannot simply and randomly assign a victim during the sentencing hearing, as he did here. See generally, *People v. Hunter*, 666 P.2d 570, 1983 Colo. LEXIS 583 (distinguished as the victim is essential here).

3. ***Due Process implications of the fatally and fundamentally flawed counts 1 through 4 and counts 7 and 8.***

First, the Colorado Supreme Court has consistently held that an indictment or information must set forth the essential elements of the crime to provide adequate notice to the defendant. In Cervantes v. People, the court stated that an information is sufficient if it advises the defendant of the charges he is facing such that he can adequately defend himself and be protected from further prosecution for the same offense *People v. Butler*, 929 P.2d 36 (Colo. App. 1996). An information that fails to charge an essential element of an offense is fatally defective *Esquivel-Castillo v. People*, 2016 CO 7.

Moreover, the essential elements of a crime generally include the elements of mental state, criminal conduct, and resulting harm that the prosecution intends to prove at trial *People v. Madden*, 111 P.3d 452 (Colo. 2005). This requirement is

critical to ensuring that the defendant understands the nature of the accusations and can mount a proper defense. The failure to include these elements in the indictment deprives the defendant of the fundamental constitutional right to notice of the charges against him.

C. Counts 5-8 are duplicitous.

C.R.S. 18-6-403(3) clearly states:

"A person commits sexual exploitation of a child if, for any purpose, such person knowingly: (a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the making of any sexually exploitative material; OR (b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes any sexually exploitative material;"

The "or" between subsections, not the conjunctive "and" indicates legislative intent to create alternative means of committing a single offense, not separate offenses. Therefore, Petitioner is entitled to resentencing of the illegal sentences where he was charged, convicted, and sentenced to multiple counts under subsection (a) and (b). See *People v. Abad*, 2021 COA 6, 490 P.3d 1094, 2021 Colo. App. LEXIS 89; *People v. Bott*, 2020 CO 86, 477 P.3d 137.

D. Vreeland is serving a sentence on Counts in which he cannot or was not found guilty.

1. Count 9.

Count 9 was a violation of C.R.S. 18-3-402 (l)(a), (4) (a) and the indictment called for "the defendant caused submission of the victim through the actual application physical force or physical violence ..." CF 917.

However, the jury did not find evidence of physical force. CF 1064. This inconsistency is a per se illegal sentence and conviction, in which this court should remedy. *People v. Delgado*, 2019 CO 82, ¶ 12, 450 P.3d 703, 705-706 (quoting *People v. Frye*, 898 P.2d 559, 569 n.13 (Colo. 1995)).

Additionally C.R.S. § 18-1.3-1004(5)(a) mandates that all other sentences be consecutive to Count 9. However, they are not. Even if a longer sentence results, it does not change the fact Vreeland is suffering from an illegal sentence. The judge had the discretion to sentence all counts regarding victim 1 concurrent to each other and all counts regarding victim 2 concurrent to each other, with the two batches of sentences being consecutive. However, the judge took this as mandatory language, and it could have all been concurrent.

2. Count 10: Controlled substance quantity was not proved beyond a reasonable doubt.

The structure of the verdict form required the jury to find: (1) defendant's guilt of unlawful possession with intent to distribute cocaine; and (2) the quantity of cocaine. The verdict form does not expressly direct the jury to find the amount of cocaine beyond a reasonable doubt. *People v. Hinojos-Mendoza*, 140 P.3d 30, 41, 2005 Colo. App. LEXIS 1206, *12, (contemplating the same statute in the 2004 version as applicable here).

The jury instructions and indictment in this case unequivocally omit the weight, quantity, or amount needed to obtain a conviction. CF 1015-1054. At no time was there any proof of any amounts, but for during trial it was argued that "the officer who tested the cocaine that he said there was such a little amount he couldn't do a real test; he just had to spray the plate." CF 862

When courts impose per se illegal sentences, but each and every intermediate court denies the defendant to be heard, then later the trial court admits wrongdoing, but refuses to correct it – despite their statutory authority to do so, the judiciary forfeits its main function.

These sentences raise constitutional issues that include due process, cruel and unusual punishment. These are core values that cannot be taken lightly and must be applied equally to all the courts in the jurisdiction. The Supreme Court is charged with the responsibility of interpreting the constitution and hence setting the pace on such matters. Petitioner urges this Court to step in and correct the miscarriage of

justice pursuant to *People v. Dist. Court of Denver*, 673 P.2d at 995.

III. PETITIONER IS ENTITLED TO RELIEF FROM THIS COURT, NOT ONLY BASED ON THE ABOVE, BUT BECAUSE HE IS SUFFERING AN UNCONSTITUTIONAL SENTENCE AS CONTEMPLATED IN ERLINGER, AND THE GREGG CASE BEFORE THIS COURT.

Relatedly, Petitioner suffers from yet another aspect of illegal sentencings and incarceration.

As explained in Petitioner's Opening Brief on Appeal:

The state alleged habitual offender in counts 21-25. Notably, the conduct alleged in Count 24 and 25 was brought under the same case and tried in the same case in the Michigan court. Separately, Vreeland entered a plea agreement in Florida, and it is in writing that the agreement could not be used for purposes of habitual offenders, and this notion was violated by the state. CF 757; 1142.

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). 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, the Supreme Court in *Fields v. State of Colorado,* 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 tried and brought, 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 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.

CONCLUSION

Because this Court is reviewing the habitual offender issue in Gregg, and because this case otherwise satisfies C.A.R. 50, the Court should assume jurisdiction over this appeal. Under Rule 50, Vreeland requests that this Court take up his appeal.

Respectfully Submitted,

/s/ George W. Thomas
George W. Thomas (#57528)
BROWNSTONE, P.A.
P.O. Box 2047
Winter Park, FL 32790
Telephone: (407) 388-1900
Facsimile: (407) 622-1511
george@brownstonelaw.com
Attorney for Petitioner