

25-7008

FILED  
JUL 24 2025  
OFFICE OF THE CLERK  
SUPREME COURT U.S.

Docket Number:

**THE UNITED STATES SUPREME COURT**

#1 1st N.E.

Washington DC 20543

Petitioner

**Daniel Joel Wolf,**

v.

**The People of the State of Colorado,**

Respondent.

On petition for Writ of Certiorari to the Court of Appeals of Colorado,

Case Number: 23CA1706

**PETITION FOR WRIT OF CERTIORARI**

**Party appearing pro se:**

Daniel J. Wolf, DOC# 144349

Bent County Correctional Facility

11560 County Road FF. 75

Las Animas, CO 81054

(No Phone Number)

**QUESTION PRESENTED FOR REVIEW**

- I. Whether defendant could be subject to enhanced crime of violence sentencing range, for a “per se” crime of violence, without the rights to be informed against and a finding by a jury, without also violating defendant's due process and equal protection rights?

**LIST OF ALL PARTIES**

All parties appear in the caption of the case.

**LIST OF PROCEEDINGS**

**Trial**

Larimer County District Court  
2008CR281  
The People of the State of Colorado  
v.  
Daniel Joel Wolf  
Conviction date: 10/21/2008  
Sentenced: 12/19/2008

**Direct Appeal**

Colorado Court of Appeals, Division six  
2009CA248  
The People of the State of Colorado  
v.  
Daniel Joel Wolf  
Order: Judgment reversed and case remanded with directions, 11/1/2012

**Retrial**

Larimer County District Court  
2008CR281  
The People of the State of Colorado  
v.  
Daniel Joel Wolf  
Conviction date: 7/22/2013  
Sentenced: 10/24/2013

**Direct Appeal**

Colorado Court of Appeals, Division seven  
2013CA2233  
The People of the State of Colorado  
v.  
Daniel Joel Wolf  
Order: Judgment affirmed, 12/08/2016

Writ of Certiorari

Colorado Supreme Court

2017SC45

Daniel Joel Wolf

v.

The People of the State of Colorado

Order: Petition denied, 9/11/2017

Crim. P. 35(a) Post-Conviction collateral attack

Larimer County District Court

2008CR281

The People of the State of Colorado

v.

Daniel Joel Wolf

Order: Petition denied, 8/23/2023

Direct Appeal

Colorado Court of Appeals, Division one

2023CA1706

The People of the State of Colorado

v.

Daniel Joel Wolf

Order: Order affirmed and case remanded with instructions, 12/19/2024

Writ of Certiorari

Colorado Supreme Court

2025SC54

Daniel Joel Wolf

v.

The People of the State of Colorado

Order: Petition denied, 4/28/2025

**TABLE OF CONTENTS**

**CITATIONS**.....7  
**JURISDICTION**.....7  
**PROVISIONS**.....8  
**STATEMENT OF THE CASE**.....12  
**ARGUMENT**.....18

I. **Whether defendant could be subject to enhanced crime of violence sentencing range, for a “per se” crime of violence, without the rights to be informed against and a finding by a jury, without also violating defendant's due process and equal protection rights?**.....18

1. **Sentencing Scheme**.....19  
2. **Illegal Sentence**.....21  
3. **"Per se" Crimes of Violence**.....21

*a. John Edward Terry*.....23  
4. **Due Process**.....25

*a. House Bill 86-1008*.....25  
*b. Alonzo Terry*.....27  
*c. Presumptive Penalties*.....27  
5. **Equal Protection**.....30  
6. **Claim Advanced for First Time on Appeal**.....33

*a. Not First Time on Appeal*.....33  
*b. Reply To Answer Brief*.....35  
*c. Subject Matter Jurisdiction*.....40

**CONCLUSION**.....42  
**APPENDIX**.....42

**TABLE OF AUTHORITIES**

**Cases**

Alleyne v. United States, 570 U.S. 99 (2013).....34  
Apprendi v. New Jersey, 530 U.S. 466 (2000).....12-13,21,30,34  
Chavez v. People, 2015 CO 62.....31  
DePineda v. Price, 915 P.2d 1278 (Colo. 1996).....33

Hunsaker v. People, 2015 CO 46 (Hunsaker II).....	22,36,37
In re Bonner, 151 U.S. 242, 256-57 (1894).....	41
In re Winship, 397 U.S. 358 (1970).....	34
Martin v. Montezuma-Cortez School Dist. Re-1, 841 P.2d 237 (Colo. 1992).....	22
People v. Austin, 419 P.3d 587 (Colo. 2018).....	31
People v. Banks, 9 P.3d 1125 (Colo. 2000).....	31
People v. Brown, 70 P.3d 489 (Colo. App. 2002).....	19
People v. Collier, 151 P.3d 668 (Colo. App. 2006).....	40
People v. Collins, 730 P.2d 293 (Colo. 1986).....	26
People v. District Court, 673 P.2d 991 (Colo. 1983).....	40
People v. Haymaker, 716 P.2d 110 (Colo. 1986).....	26,32
People v. Hunsaker, 2013 COA 5 (Hunsaker I).....	22
People v. Jones, 2018 COA 112.....	34
People v. Montoya, 709 P.2d 58 (Colo. App. 1985)(Montoya I).....	25
People v. Montoya, 736 P.2d 1208 (Colo. 1987)(Montoya II).....	26
People v. Mozee, 723 P.2d 117 (Colo. 1986).....	26,30
People v. Terry, 791 P.2d 374 (Colo. 1990)("Alonzo Terry").....	19,23,25-29,33
People v. Thatcher, 638 P.2d 760 (Colo. 1981).....	32
People v. Van Patrick, 789 P.2d 199 (Colo. App. 1989).....	26
People v. Wenzinger, 155 P.3d 415 (Colo. App. 2006).....	13,21
People v. Williams, 2025 COA 26.....	35
People v. Wolf, case no. 08CR281.....	14,35
People v. Wolf, 2024 Colo. App. LEXIS 2545 (Dec. 19, 2024).....	7,17,21,28,33,40
Peters v. Dillon, 227 F. Supp. 487 (D. Colo. 1964).....	34,35
Snider v. Town of Platteville, 75 Colo. 589 (1924).....	35
Terry v. People, 977 P.2d 145 (Colo. 1999)("John Edward Terry").....	19,23,24,28,31,37
Wolf v. People, 2025 Colo. LEXIS 282 (Apr. 28, 2025).....	7

**Constitutional Provisions**

U.S. Constitution, Article 6.....	9,39
U.S. Constitution, Amendment 6.....	8,21
U.S. Constitution, Amendment 14.....	8,21

Colo. Const. Art. II §6.....9,21,34

**Statutes**

United States Code Service

28 USCS §1257.....7  
28 USCS §2104.....8  
28 USCS §2106.....8

Colorado Revised Statutes

§16-1-104(8.5).....37  
§16-11-309.....9,23,24,28  
§18-1.3-401.....10,19,20,29  
§18-1.3-406.....10,20-23,28-30,35,36  
§18-1.3-1003.....10,20  
§18-1.3-1004.....10,20  
§18-2-101.....24  
§18-2-201.....10,23,24  
§18-3-405.....11,19,28  
§18-4-302.....11,23

**Other Material**

Supreme Court Rule 13.....7  
Colorado Appellate Rules 35(e).....34  
Colorado Rules of Criminal Procedure 35(a).....12,13  
Colorado Court Rule 54(b).....7  
Black's Law Dictionary.....24

## CITATIONS

People v. Wolf, 2024 Colo. App. LEXIS 2545 (Colo. App. Dec. 19, 2024)

Wolf v. People, 2025 Colo. LEXIS 282, 2025 LX 50478 (Apr. 28, 2025)

## JURISDICTION

On May 2, 2023, Mr Wolf filed a motion for post-conviction relief pursuant to Colo. Crim. P 35(a). The district court denied the motion on August 23, 2023. Mr Wolf timely filed a notice of appeal, and on December 19, 2024, the Colorado Court of Appeals affirmed the district court's order. *People v. Wolf*, 2024 Colo. App. LEXIS 2545 (Dec. 19, 2024). Mr Wolf timely filed a Writ of Certiorari with the Colorado Supreme Court, and on April 28, 2025, the Court denied the petition. *Wolf v. People*, 2025 Colo. LEXIS 282, 2025 LX 50478 (Apr. 28, 2025). A petition for rehearing is not permitted according to Colorado Court Rule 54(b) (No petition for rehearing may be filed after the issuance of an order denying a petition for a writ of certiorari). This writ of certiorari is timely filed if filed on or before July 28, 2025.

### Supreme Court Rule 13

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

28 USCS §1257. State courts; certiorari.

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or

where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 USCS §2104. Reviews of State court decisions.

A review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree reviewed had been rendered in a court of the United States.

28 USCS §2106. Determination.

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

## PROVISIONS

### *Constitutional*

U.S. Constitution, Amendment 14, §1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Amendment 6. Rights of the accused.

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 accusation; 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.

U.S. Constitution, Article 6, Clause 2. Supreme Law.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Colorado Constitution, Article II, §6. Equality of justice.

Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay.

*Statutory*

Colorado Revised Statutes (C.R.S.)

Section 16-1-104(8.5):

(a)(I) "Crime of violence" means a crime in which the defendant used, or possessed and threatened the use of, a deadly weapon during the commission or attempted commission of any crime committed against an elderly person or a person with a disability or a crime of murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape, criminal extortion, human trafficking for involuntary servitude of an adult or a minor, or human trafficking for sexual servitude of an adult or a minor, or during the immediate flight therefrom, or the defendant caused serious bodily injury or death to any person, other than to the defendant or another participant, during the commission or attempted commission of the felony or during the immediate flight therefrom.

(II) "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (II), "unlawful sexual offense" shall have the same meaning as set forth in section 18-3-411 (1), C.R.S., and "bodily injury" shall have the same meaning as set forth in section 18-1-901 (3)(c), C.R.S.

Section 16-11-309 (relocated to section 18-1.3-406, C.R.S. (2002)).

Section 18-1.3-401(1)(a)(V)(A):

As to any person sentenced for a felony...felonies are divided into six classes that are distinguished from one another by the following presumptive ranges of penalties that are authorized upon conviction.

Class	Minimum Sentence	Maximum Sentence	Mandatory Period of Parole
3	Four years Imprisonment	Twelve years Imprisonment	Five years

Section 18-1.3-401(1)(a)(V)(A)(c.5):

Notwithstanding the provisions of sub-paragraph (A) of this subparagraph (V), any person sentenced for a sex offense, as defined in section 18-1.3-1003(5), committed on or after November 1, 1998, shall be sentenced pursuant to the provisions of part 10 of this article.

Section 18-1.3-401(8) (appendix)

Section 18-1.3-401(9) (appendix)

Section 18-1.3-406 (appendix)

Section 18-1.3-1003(5):

"Sex offense" means any of the following offenses: (IV) Sexual assault on a child, as described in section 18-3-405.

Section 18-1.3-1004 (appendix)

Section 18-2-201(2), and (4.5). Conspiracy.

(2) No person may be convicted of conspiracy to commit a crime, unless an overt act in pursuance of that conspiracy is proved to have been done by him or by a person with whom he conspired.

(4.5) Conspiracy to commit any crime for which a court is required to sentence a defendant for a crime of violence in accordance with section 18-1.3-406 is itself a crime of violence for the purposes of that section.

Section 18-3-405(1), (2), and (3). Sexual assault on a child.

(1) Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child if the victim is less than fifteen years of age and the actor is at least four years older than the victim.

(2) Sexual assault on a child is a class 4 felony, but it is a class 3 felony if:

(a) The actor applies force against the victim in order to accomplish or facilitate sexual contact; or

(b) The actor, in order to accomplish or facilitate sexual contact, threatens imminent death, serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor has the present ability to execute the threat; or

(c) The actor, in order to accomplish or facilitate sexual contact, threatens retaliation by causing in the future the death or serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor will execute the threat; or

(d) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time must be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse, whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401 (1)(a), concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5). Prosecution for any incident of sexual contact constituting the offense or any incident of sexual contact constituting the pattern of sexual abuse may be commenced and charged in an information or indictment in a county where at least one of the incidents occurred or in a county where an act in furtherance of the offense was committed.

(3) If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to paragraphs (a) to (d) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406.

Section 18-4-302(1)(b), and (4). Aggravated Robbery.

(1) A person who commits robbery is guilty of aggravated robbery if during the act of robbery or immediate flight therefrom:

(b) He knowingly wounds or strikes the person robbed or any other person with a deadly weapon or by the use of force, threats, or intimidation with a deadly

weapon knowingly puts the person robbed or any other person in reasonable fear of death or bodily injury; or

(4) If a defendant is convicted of aggravated robbery pursuant to paragraph (b) of subsection (1) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406.

### *Colorado Court Rules*

#### Colorado Rules of Criminal Procedure 35

##### (a) Correction of Illegal Sentence.

The court may correct a sentence that was not authorized by law or that was imposed without jurisdiction at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

### **STATEMENT OF THE CASE**

This case concerns the classification of a criminal offense as a "per se" crime of violence, and how it affects (1) a criminal defendant's due process rights to be informed of the nature and cause of the accusation, and for a jury finding of enhancement factors beyond a reasonable doubt, before an enhanced sentence may be imposed; and (2) a defendant's rights to equal protection under the laws.

This court has decided that:

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. With that exception, we endorse the statement of the rule set forth in the concurring opinions in that case:

"[I]t 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. It is equally clear that such facts must be established by proof beyond a reasonable doubt."

*Apprendi v. New Jersey*, 530 U.S. 466,490 (2000) (quoting *Jones v. United States*, 526 U.S. 227, 252-253 (opinion of Stevens, J.)). The Colorado Supreme Court has circumvented these pleading and proof

requirements by interpreting, and in essence, redefining, the state legislature's statute for "Mandatory sentences for violent crimes." In so doing, the court has decided this federal question, and established a controlling precedent, in a way that conflicts with this Court's decision in *Apprendi v. New Jersey*. Additionally, this controlling precedent requires an unequal enforcement of the legislated violent crimes statute.

Mr Wolf was sentenced to an enhanced range of 20 years to life, as a "per se" crime of violence, for a conviction of Sexual Assault on a Child- Pattern of Abuse (SAOC-Pattern).<sup>1</sup> Mr Wolf was neither charged with, nor was there a finding by a jury of the requisite statutory elements of, a crime of violence. Mr. Wolf's state public defender did not argue an illegal sentence on direct appeal, and the state appellate court affirmed the conviction and sentence on December 8, 2016. He has now served over 17 years of his sentence.<sup>2</sup>

#### Petition for Post Conviction Relief

Colorado Rules of Criminal Procedure 35(a) states that "the court may correct a sentence that was not authorized by law or that was imposed without jurisdiction at any time." "The [Colorado Supreme] Court has held that a sentence is 'illegal' under Crim. P. 35(a) if it is 'inconsistent with the statutory scheme outlined by the legislature.'" *People v. Wenzinger*, 155 P.3d 415 (Colo. App. 2006) (quoting *People v. Rockwell*, 125 P.3d 410, 414 (Colo. 2005)). Accordingly, Mr Wolf filed a motion for post-conviction relief, alleging that: (a) "20 years to life for SAOC-Pattern is an illegal sentence;" (35(a) p.3); (b) The class 3 felony conviction is "punishable by an indeterminate prison sentence of 4-12 years to life;" (35(a) p. 3); (c) The provisions of Colorado's "Mandatory sentences for violent crimes" require that: "in any case in which the accused is charged with a crime of violence... the

---

1 Additionally, Mr Wolf was convicted of Sexual Assault on a Child-Position of Trust (SAOC-POT), Aggravated Incest, and Sexual Exploitation of a Child, and was sentenced to an aggregate indeterminate sentence of 28 years to life.  
2 Mr Wolf's original conviction was in 2008, which was reversed on direct appeal for unrelated reasons. He was retried and convicted in 2013. He has been in custody since the day of his arrest in February, 2008.

indictment or information shall so allege in a separate count..." C.R.S. §18-1.3-406(3), (5). (35(a) p.4); and (d) "[T]he jury...shall make a specific finding..." for "the penalty provisions of this section [to] be applicable." C.R.S. §18-1.3-406(4), (6). (35(a) p.4).

Because these mandates by the legislature are founded upon the federal principles of due process, this court's holding in *Apprendi v. New Jersey* was cited as "governing law," specifically that (e) "a sentence enhancement beyond a statutory maximum requires a jury finding of enhancement factors beyond a reasonable doubt," 530 U.S. 466, 120 S.Ct 2348 (2000), (35(a), p. 3), thereby initially raising the federal question on review.

In accordance with the State Supreme Court's controlling precedent, the district court denied the petition, finding that:

The defendant was sentenced pursuant to C.R.S. §18-1.3-406, not for a crime of violence but for sexual assault on a child by one in a position of trust and an indeterminate sentence under this statute is a legal sentence.

*People v. Wolf*, case no. 08CR281 (referencing the crime of violence statute, section 18-1.3-406). Mr Wolf has never challenged the "indeterminate" nature of the sentence, but only the crime of violence enhancement as it is inconsistent with "the statutory scheme outlined by the legislature" and the underlying federal principles of due process. The district court did not answer this question. Mr Wolf appealed the court's decision.

The multifaceted issue presented on appeal was that:

- I. The Post-Conviction Court upheld a sentence- of 20 years to life for Sexual Assault on a Child- Pattern of Abuse- not authorized by law and imposed without jurisdiction:
  - a) The sentence is inconsistent with the statutory scheme outlined by the Legislature;
  - b) The "provisions of section 18-1.3-406", as set forth by the General Assembly, have been disregarded;

- c) SAOC-Pattern is not, by itself, a crime of violence;
- d) The "penalty provisions" for a crime of violence are not applicable absent a separate count in the information and a finding by a jury.

*(Opening Brief, p. 1).* Mr Wolf's own public defender did not know he was defending against a charge of a crime of violence, but maintained during sentencing that the alleged offense was "not a crime of violence," because "it wasn't charged that way." *(Opening Brief, p. 27).* Clearly he understood crimes of violence to be charged a certain way. The requirement for a defendant to be informed against was violated, thereby denying Mr Wolf the ability to defend against the charge. While Mr Wolf's argument focused primarily on "the sentencing scheme outlined by the legislature," he responded to the government's position, and contended against the "per se" crime of violence designation, frequently arguing that the legislature's sentencing mandates were founded upon federal and state due process and equal protection rights:

Current case law defines Sexual Assault on a Child- Pattern of Abuse as a "per se" crime of violence. This classification eliminates a substantial portion of the sentencing statute, and is contrary to the legislative intent and the Constitutions of the State of Colorado and the United States.

*(Opening Brief, p. 4).*

"The provisions of" the Criminal Code "are intended to create, define, and protect rights...as distinguished from matters wholly procedural," §16-1-102, "and shall be construed to secure...the fundamental human rights of individuals." §16-1-103.

*(Opening Brief, p. 15).*

The purpose of the Colorado Criminal Code is, in part, "to identify certain minimum standards for criminal justice which, within the concept of *Due Process of Law*, have the substantive rights of persons accused of crime." §18-1-102(d). These Constitutional rights to due process have been accomplished through "the provisions of section 18-1.3-406."

...

The Constitution requires that "the accused shall enjoy the right to a speedy and public trial, by an impartial jury...and to be informed of the nature and cause of the accusation." U.S. Const. Amend. VI; Colo. Const. Art. II, §16.

*(Opening Brief, p. 29).*

The U.S. Supreme Court has held that "a sentence enhancement beyond a statutory maximum requires a jury finding of enhancement factors beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466 (2000). And "any fact that increases the penalty for a crime beyond the mandatory minimum is an element of the crime and must be submitted to a jury." *Alleyne v. U.S.*, 133 S. Ct 2151 (2013) (holding that *Apprendi* applies to mandatory minimum sentences.)

*(Opening Brief, p. 31).*

The General Assembly has declared these rights to be "inviolable and a matter of Substantive Due Process of Law as distinguished from one of 'practice and procedure.'" §16-10-101; Colo. Const. Art. II, §23

*(Opening Brief, p. 30).*

"The denial of a fair and impartial trial as guaranteed by the Sixth Amendment of the Constitution is also a denial of Due Process demanded by the Fifth and Fourteenth Amendments, and failure to strictly observe these constitutional safeguards renders trial and conviction for criminal offense illegal and void..." *Baker v. Hudspeth*, 129 F.2d 779 (10th Cir. 1942).

The right to a jury trial is a fundamental reservation of power meant to ensure that the people have ultimate control of the judiciary. "Under the Due Process clause of the Fifth Amendment, the prosecution is required to prove beyond a reasonable doubt every element of the crime with which a defendant is charged." *In re Winship*, 397 U.S. 358 (1970).

"The reasonable doubt standard applies to both state and federal prosecutions." *Id.* at 358.

*(Opening Brief, p 31).*

### Findings of the Court of Appeals

As we understand Wolf's motion, he contends that his aggravated-range prison sentence isn't authorized by statute because (1) SAOC-pattern isn't a per se crime of violence; (2)

his indictment didn't include a separate count charging a crime of violence; and (3) the jury didn't find that he had used a deadly weapon; used threat, intimidation, or force against the victim; or caused bodily injury to the victim. He is incorrect.

...

[H]e asserts that the bottom end of the sentencing range for SAOC-pattern is four to twelve years, rather than eight to twenty-four years, because SAOC-pattern isn't "a sex offense . . . that constitutes a crime of violence," absent a separate jury finding that it was a crime of violence. See 18-1.3-406(1)(d).

Wolf's interpretation of the relevant statutes is contrary to settled law. The Colorado Supreme Court has interpreted sections 18-3-405(2)(d) and 18-1.3-406(1)(d) to mean that SAOC-pattern is a per se crime of violence, subject to crime-of-violence sentencing.

We can't depart from our supreme court's controlling precedent.

*People v. Wolf*, 2024 Colo. App. LEXIS 2545, ¶¶ 5, 8-9 (Colo. App. Dec. 19, 2024) (citing *Hunsaker v. People*, 2015 CO 46, ¶¶ 17-18, 27 (*Hunsaker II*); and *People v. Hunsaker*, 2013 COA 5, ¶¶ 42-43, *aff'd*, (*Hunsaker II*)) (omitting other internal citations). To Mr Wolf's pleading and proof contentions, the Court of Appeals held:

But because *SAOC-pattern is a per se crime of violence* that involves a sex offense, *it need not "otherwise contain any of the basic elements for a crime of violence."* *People v. Brown*, 70 P.3d 489, 495 (Colo. App. 2002).

In other words, *SAOC-pattern is, in itself, a crime of violence.*

Because SAOC-pattern is a per se crime of violence, "*the prosecution was not required to charge and prove a separate crime of violence count" to the jury.* *Id.*

The prosecution was required to prove the sentence-enhancing "pattern of sexual abuse," and it did so. See *id.* at 491.

*People v. Wolf*, 2024 Colo. App. LEXIS 2545 at ¶¶ 10-11 (emphasis added).

Mr Wolf had asked the Supreme Court to review its holdings in *Alonzo Terry* and *John Edward Terry*, specifically asserting that these holdings could not be the proper interpretation of the sentencing scheme without violating a defendant's rights to due process and equal protection. In essence, if these "controlling precedents" are considered the proper interpretations of the sentencing scheme, then the

scheme itself violates Mr Wolf's due process and equal protection rights.

*Alonzo Terry* is an untenable interpretation of these sentencing statutes. The Legislature has declared that "in enacting a statute, it is presumed that compliance with the Constitutions of the State of Colorado and The United States is intended." §2-4-201(1)(a). The provisions of subsections 18-1.3-406(3),(4),(5), and (6) were intended to safeguard a defendant's Sixth Amendment information and jury trial rights. If *Alonzo Terry* were a proper interpretation of the mandate to sentence in "accordance with the provisions of section 18-1.3-406," then it too would have done the same. It did not. It eliminated them.

*(Opening Brief, p. 33).*

If *Alonzo Terry* were the proper interpretation of the sentencing scheme, the constitutional safeguards of equal protection, information, and jury trial rights would be protected. They are not.

*(Writ of Cert., pp. 19, 21).*

*Alonzo Terry*, however, has nullified these provisions, eliminating these constitutional protections and contravening the Legislature's authority.

To Mr Wolf's knowledge, no case before this court has expressly asked for a review of this precedent concerning SAOC-Pattern convictions, and for the following reasons, respectfully does so now.

*(Writ of Cert., p. 7).* The Court denied the Writ of Certiorari.

Finally, the Court of Appeals found that Mr Wolf "advanced for the first time" on appeal the claim that "classifying SAOC-pattern as a 'per se crime of violence' is unconstitutional." *People v Wolf*, 2024 Colo. App. LEXIS 2545 at ¶ 13. Mr Wolf contends with this finding.

## ARGUMENT

- I. **Whether defendant could be subject to enhanced crime of violence sentencing range, for a "per se" crime of violence, without the rights to be informed against and a finding by a jury, without also violating defendant's due process and equal protection rights?**

The denial of a defendant's rights to be informed of the nature and cause of the accusation, and

for a specific finding by a jury, before crime of violence sentencing may be imposed, has been challenged in many cases concerning SAOC-Pattern in the state of Colorado. Each time, the Colorado Supreme Court's holdings in *John Edward Terry v. People*, 977 P.2d 145 (Colo. 1999), and *People v. Alonzo Terry*, 791 P.2d 374 (Colo. 1990), are cited as controlling. One such case is *People v. Brown*, 70 P.3d 489 (Colo. App. 2002), which was cited in this case. Here, the Court of Appeals held that “[b]ecause SAOC-Pattern is a per se crime of violence, ‘the prosecution was not required to charge and prove a separate crime of violence count’ to the jury.” *People v. Wolf*, 2024 Colo. App. LEXIS 2545, ¶¶ 10-11 (Colo. App. Dec. 19, 2024) (quoting *Brown*, 70 P.3d at 495).

In *Brown*, the Court further concluded that “*no different result is warranted in light of Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000), *on which defendant relies.*” *Brown*, 70 P.3d at 495 (emphasis added).

Mr Wolf challenged the State Supreme Court's “per se” crime of violence designation particular to the offense of SAOC-Pattern, but also challenged the Court's general holdings in *Alonzo Terry* and *John Edward Terry* in that they require an unconstitutional result. Mr Wolf contends that “a different result” is in fact, “warranted in light of *Apprendi v. New Jersey*,” as the following facts will establish:

1. Sentencing Scheme

“Sexual assault on a child is a class 4 felony, but is a class 3 felony if” it is committed “as a part of a pattern of sexual abuse.” §18-3-405(2)(d) (“SAOC-Pattern”). The presumptive range for class 3 felonies is four to twelve years in prison. See §18-1.3-401(1)(a)(V)(A). “Notwithstanding” this, “any person sentenced for a sex offense, as defined in section 18-1.3-1003 (5)...shall be sentenced pursuant to the provisions of part 10 of this article 1.3.” §18-1.3-401(1)(a)(V)(A)(C.5). Accordingly, a defendant convicted of SAOC-Pattern is to be sentenced “for an indeterminate term of at least the minimum of the presumptive range specified in section 18-1.3-401 for the level of offense committed

and a maximum of the sex offender's natural life.” §18-1.3-1004(1)(a); §18-1.3-1003(5)(IV); §18-1.3-401(1)(a)(V)(A)(C.5). Therefore, a class 3 felony conviction of SAOC-Pattern requires an indeterminate sentence of 4-12 years to life in prison. The legislature clearly intended this as a base sentence with other provisions to further govern its intended punishment for the offense. Section 18-1.3-1004(1) continues, specifying that:

- (b) If the sex offender committed a sex offense that constitutes a *crime of violence, as defined in section 18-1.3-406*, the district court shall sentence the sex offender to the custody of the department for an indeterminate term of at least the midpoint in the presumptive range for the level of offense committed and a maximum of the sex offender's natural life.

(emphasis added). Unrelated to this case, subsections 18-1.3-1004 (c) to (e) enhance the sentence further for cases of habitual offenses, positive HIV testing, acts of penetration, and such.

Section 18-3-405 (SAOC) provides that:

- (3) If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to paragraphs (a) to (d) of subsection (2) of this section, the court shall sentence the defendant *in accordance with the provisions of section 18-1.3-406*.

(emphasis added). This provision agrees with subsection 18-1.3-1004(1)(b) above.

“The provisions of section 18-1.3-406,” Mandatory sentences for violent crimes, (a) require a criminal offense first be enumerated within either of the two definitions of a constituted crime of violence; (b) require at least one of the elements of a crime of violence, namely, a deadly weapon, serious bodily injury, death; or bodily injury, threat, intimidation, or force; (c) require a charge of a crime of violence *be alleged in a separate count in the information*; (d) require the *jury to make a specific finding* of these elements; and finally, only then, (e) shall “the penalty provisions” of the section “be applicable.” See §18-1.3-406(2) – (6).

The [Colorado] Supreme Court has identified section 18-1.3-406 as a “sentencing scheme.” Montoya II at 1208. This section is entitled “Mandatory Sentences for Violent Crimes,” and is located in Article 1.3, “Sentencing in Criminal Cases.” It is indisputable that section 18-1.3-406 is a component of the statutory sentencing scheme outlined by the Legislature, and “a sentence is illegal unless all the components of a sentence fully

comply with the sentencing statute.” *Delgado v. People*, 105 P.3d 634, 637 (Colo. 2005).

(*Opening Brief*, pp. 32-33).

## 2. Illegal Sentence

“The [Colorado Supreme] Court has held that a sentence is 'illegal' under Crim. P. 35(a) if it is 'inconsistent with the statutory scheme outlined by the legislature.’” *People v. Wenzinger*, 155 P.3d 415 (Colo. App. 2006) (quoting *People v. Rockwell*, 125 P. 3d 410, 414 (Colo. 2005)).

The pleading and proof requirements found within the sentencing “*provisions of section 18-1.3-406*,” were mandated and “outlined by the legislature,” and were intended to support and protect a defendant's constitutional rights. These subsections clearly articulate the requirements that a separate charge of a crime of violence be charged in the information, §18-1.3-406(3) and (5), and for a jury to find the elements of a crime of violence, before “the penalty provisions of this section shall be applicable.” §18-1.3-406(4) and (6). This was not accomplished, therefore, a sentence of 20 years to life for SAOC-Pattern is contrary to the sentencing scheme outlined by the legislature.

To these contentions, the Court of Appeals held that Mr Wolf's interpretations of these statutes was “contrary to settled law.” This ruling, and the controlling precedent of *Alonzo Terry* and *John Edward Terry*, specifically the “per se crime of violence” designation, have subsequently denied Mr Wolf his Sixth and Fourteenth Amendments due process, information, and jury trial rights, and has denied to him the equal protection of the laws. *U.S. Const. Amends. VI and XIV; Colo. Const. Art. II, §16; see also Apprendi v. New Jersey*, 530 U.S. 466 (2000); (*Opening Brief*, p. 29; *Reply Brief*, pp. 13-14).

## 3. "Per se" Crime of Violence

The Colorado Supreme Court holds that:

Only in the absence of *express definitions* will statutory terms be construed according to the various interpretive rules governing the construction of statutes.

Moreover, "an exception not made by the Legislature cannot be read into the statute."

Absent constitutional infirmity, it is not within the judicial power to exclude from a statute that which the legislature expressly includes.

*Martin v. Montezuma-Cortez School Dist. Re-1*, 841 p.2d 237 (Colo. 1992) (citations omitted, emphasis added). The legislature has *expressly defined* within "the provisions of section 18-1.3-406" what constitutes a crime of violence. §18-1.3-406(2). The Court therefore, did in fact, "read into the statute" an exception not made by the Legislature" by its interpretation of sections 18-3-405(2)(d) to mean that "SAOC-Pattern is a *'per se'* crime of violence, subject to crime-of-violence sentencing." See *People v. Wolf*, 2024 Colo. App. LEXIS 2545, ¶9 (Colo. App. Dec. 19, 2024) (citing *Hunsaker v. People*, 2015 CO 46, ¶¶ 17-18, 27 (Hunsaker II)).

In *Hunsaker I*, the Court of Appeals explained:

When the statute defining an offense prescribes crime of violence sentencing for the offense by reference to section 18-1.3-406, the offense is called a *per se* crime of violence. See *People v. Banks*, 9 P.3d 1125, 1130 (Colo. 2000). Crime of violence sentencing applies equally when (1) the defendant is convicted of a *per se* crime of violence, or (2) the prosecution pleads and proves the elements of a crime of violence as enumerated in section 18-1.3-406(2), C.R.S. 2012. Id.

Here, section 18-3-405(3) expressly states that a defendant convicted of the offense of sexual assault on a child as part of a pattern of abuse shall be sentenced "in accordance with the provisions of section 18-1.3-406." Thus, this crime is a *per se* crime of violence.

*People v. Hunsaker*, 2013 COA 5, ¶¶42-43 (Hunsaker I), *aff'd Hunsaker II*.

Sexual assault on a child is a class 4 felony, but when it is committed as a pattern of abuse, the crime becomes a class 3 felony that requires sentencing under section 18-1.3-406, the mandatory sentencing statute. §18-3-405(2)(d)-(3).

It is what we have termed a "per se" crime of violence.

*Hunsaker v. People*, 2015 CO 46, ¶18, 351 P.3d 388, 392-93 (*Hunsaker II*) (citing [John Edward] Terry v. People, 977 P.2d 145, 149 (Colo. 1999)) (defining *per se* crimes of violence as those crimes for

which a court must sentence a defendant in accordance with the mandatory sentencing statute (citing *People v. [Alonzo] Terry*, 791 P.2d 374, 379 (Colo. 1990)). The Court, by its "per se" crime of violence designation, has *excluded* from the crime of violence statute the very "**provisions**" the legislature required a defendant to be sentenced "**in accordance with.**"

*a. John Edward Terry*

The Colorado Supreme Court first began applying the "per se crime of violence" designation in 1999, concerning a case of conspiracy to commit aggravated robbery. *John Edward Terry v. People*, 977 P.2d 145 (Colo. 1999). The legislature has required, for defendants convicted of aggravated robbery, that: "if during the act of robbery or immediate flight therefrom: ...(b) He knowingly wounds or strikes the person robbed or any other person with a deadly weapon or by the use of force, threats, or intimidation with a deadly weapon knowingly puts the person robbed or any other person in reasonable fear of death or bodily injury," §18-4-302(1)(b), then "the court shall sentence the defendant **in accordance with the provisions of section 16-11-309.**" §18-4-302(4), C.R.S. (1999) (emphasis added).<sup>3</sup>

To be convicted of *conspiracy to commit* this crime, which would require sentencing "in accordance with the provisions of section 16-11-309," (C.R.S. 1999), the legislature has required that "an overt act in pursuance of that conspiracy" must be "**proved to have been done** by him or a person with whom he conspired." §18-2-201(2) (emphasis added). Therefore, the overt act **itself** must be proved to a jury to have included the **use of a deadly weapon** to be convicted of conspiracy to commit aggravated robbery. The legislature has additionally and expressly provided that:

Conspiracy to commit any crime for which a court is required to sentence a defendant for a crime of violence **in accordance with section 16-11-309**, C.R.S. is **itself** a crime of violence for the purposes of that section.

§18-2-201(4.5), C.R.S. (1998) (emphasis added).

---

<sup>3</sup> §16-11-309, C.R.S. relocated to §18-1.3-406, C.R.S. (2002).

The Court later held that:

Under *Alonzo Terry*, those crimes for which a court "is required to sentence a defendant...***in accordance with section 16-11-309***" are *per se* crimes of violence: namely, the offenses identified in the 1986 omnibus bill as mandating violent crime sentencing.

Therefore, *we interpret subsection (4.5)* to mean that conspiracy to commit *a per se* crime of violence "***is itself*** a crime of violence for purposes of [section 16-11-309]."

*John Edward Terry*, 977 P.2d at 149 (citing §18-2-201(4.5) with emphasis added). As "per se" simply means: "by itself," (Black's Law Dictionary), this designation is appropriate, at most, for cases of conspiracy to commit aggravated robbery.<sup>4</sup> Quite literally,

Conspiracy to commit any crime for which a court is required to sentence a defendant for a crime of violence ***in accordance with section 16-11-309***, C.R.S. is [*a per se*] crime of violence for the purposes of that section.

(emphasis added). Therefore, "aggravated robbery"<sup>5</sup> -when "***conspired to be committed...*** by a person during ("***an overt act in pursuance of that conspiracy,***" in) which...the person: used, or possessed and threatened the use of, a deadly weapon" -is defined as a crime of violence." §16-11-309(2)(a)(I)(A) (C.R.S. 1999); §18-2-201(2) (emphasis added).

Clearly, the Court's use of the phrase, "in accordance with section 16-11-309," is a direct quote from section 18-2-201(4.5), Criminal Conspiracy. (C.R.S. 1999). This has been misapplied to the nine offenses "identified in the 1986 omnibus bill as mandating violent crime sentencing," where the legislature has actually required sentencing fully "in accordance with ***the provisions of*** section 18-1.3-406." (C.R.S. 2002) (emphasis added). The "per se" crime of violence designation can only properly be applied to the inchoate offenses, otherwise, "***the provisions of*** section 18-1.3-406" must still apply.

---

<sup>4</sup> See also Criminal Attempt, §18-2-101(3.5).

<sup>5</sup> See §18-1.3-406(2)(a)(II)(F) (Aggravated robbery enumerated in definition for crime of violence).

#### 4. Due Process

##### a. *House Bill 86-1008*

In *Alonzo Terry*, the Colorado Supreme Court provides a history of House Bill 86-1008, clearly demonstrating the legislation was in reaction to the appellate court's ruling in *Montoya I*. Montoya was convicted of first degree assault, where "the jury found that defendant intended to, and did, cause serious bodily injury by means of a deadly weapon." *People v. Montoya*, 709 P.2d 58, 61 (Colo. App. 1985) (*Montoya I*). The prosecution "did not allege or prove that Montoya committed any acts other than those necessary for the offense of first degree assault, which requires the use of a deadly weapon." *Alonzo Terry*, 791 P.2d at 377. "However, the jury made an additional specific finding, as required by the mandatory sentencing interrogatory, that the defendant used a deadly weapon during the commission of first degree assault." *Montoya I*, 709 P.2d at 61. The court held that for the prosecution to obtain mandatory violent-crime sentencing, it was required to prove the essential elements of the section, and could not use the same proof, i.e. "use of a deadly weapon," it had used to convict Montoya of first degree assault. See *Alonzo Terry*, 791 P.2d at 377-78.

In anticipation of the State Supreme Court upholding *Montoya I*, the Legislature felt it was necessary to rewrite the statutes, "specifically setting forth and allowing the enhanced penalties" for crimes of violence, without violating equal protections. See *Id.* at 378. Of particular concern were crimes against "the elderly and handicapped," and "unlawful sexual offenses against children," specifically involving the use of "**force, threat, or intimidation.**" *Id.* (emphasis added). The Legislature enacted H.B. 86-1008 to amend nine criminal statutes.<sup>6</sup> "Importantly, each of the statutes **contains elements of bodily injury or use of a deadly weapon**, the same elements necessary to impose a sentence under section 16-11-309." *Id.* At 377 (emphasis added).

<sup>6</sup> §18-3-103(4) Murder in the second degree; §18-3-202(2)(c) Assault in the first degree; §18-3-203(2)(c)(I) Assault in the second degree; §18-3-209 Assault against the elderly or persons with disabilities; §18-3-302(4)(b) Second degree kidnapping; §18-3-404(3) Unlawful sexual contact; **§18-3-405(3) Sexual Assault on a child**; §18-4-102(3) First degree arson; §18-4-302(4) Aggravated robbery. See *John Edward Terry v. People*, 977 P.2d at 152, n. 5-6.

While the Legislature was working to defend its sentencing scheme, the Court "disapprove[d] the court of appeals' conclusion in *Montoya* that the *sentencing scheme* for violent crimes...violates equal protection." *People v. Haymaker*, 716 P.2d 110, 118 (Colo. 1986) (emphasis added, showing the violent crimes statute is a sentencing scheme). See also *Montoya II* at 1208, 10. "It does no more than set a penalty range for *particular crimes involving use of a deadly weapon*." *Id.* (emphasis added).

The State Supreme Court applied the *Haymaker* decision to a number of cases in the same year,<sup>7</sup> including *People v. Mozee*, 723 P.2d 117 (Colo. 1986), where the court found that "the legislature rationally could perceive that the mere *use of a weapon*...during the commission of a specific offense justifies an increased penalty. The crime of violence statute accomplishes that result." *Id.* at 128 (emphasis added). The following year, the Court reversed *Montoya I*. See *People v. Montoya*, 736 P.2d 1208 (Colo. 1987) ("*Montoya II*"). House Bill 86-1008 was unnecessary, as the crime of violence sentencing provisions were found to be constitutional. Nevertheless, the bill had become law by the time the case reviewed in *People v. Van Patrick*, 789 P.2d 199 (Colo. App. 1989), had commenced. The nine statutory offenses now required sentencing "in accordance with *the provisions of* section 16-11-309." *Id.* at 200 (emphasis added). On review, the Court of Appeals held that:

Based upon an analysis of *the statutory scheme adopted by the General Assembly*...we conclude that, before the enhanced sentence may be imposed under §16-11-309(1)(a), *the procedural safeguards contained in §16-11-309(4) and (5) must be satisfied*. These subsections require a separate charge of crime of violence and a specific finding by the trier of fact as to that charge.

The initial basis for our conclusion is that §16-11-309(1)(a) requires imposition of an enhanced sentence under §18-1-105<sup>8</sup> for a "person convicted of a crime of violence."

In order to be "convicted," it necessarily follows that there must be a charge made.

*Id.* (emphasis added). Clearly, following the passage of HB 86-1008, the pleading and proof mandates of the legislature were still required.

---

<sup>7</sup> See *People v. Collins*, 730 P.2d 293, 300 (Colo. 1986) for a list of these cases.

<sup>8</sup> §18-1-105 relocated to §18-1.3-401 C.R.S. (2002).

**b. Alonzo Terry**

The Colorado Supreme Court later found ambiguity while "attempting to construe" the nine amended statutes with the violent crimes sentencing statute. See *Alonzo Terry*, 791 P.2d at 376. The Court concluded that:

The legislative history reveals that the purpose of House Bill 1008 was to mandate sentencing under section 16-11-309 irrespective of any allegation of a violent crime and irrespective of a specific finding by the trial court that a violent crime has been committed.

*Id.* at 378 (emphasis added). In his dissent, Justice Kirshbaum recognized that:

***The provisions of*** subsections 16-11-309(4) and (5) serve several important functions. This court and the Court of Appeals have recognized that these procedural provisions are mandatory and that failure to follow them constitutes error.

...notice that the enhanced sanctions established by that statute will be invoked in a particular case ***may be essential to allay constitutional due process concerns.***

While other forms of notice might suffice, the General Assembly adopted subsections 16-11-309(4) and (5) as the method for invoking the enhanced sentencing provisions of section 16-11-309.

The majority ignores this legislative directive by concluding that subsections 16-11-309(4) and (5) have no meaning...[and,] in effect repeals those provisions and ***introduces some constitutional tension*** into the application of the crime of violence statute.

*Alonzo Terry*, 791 P.2d at 380-82 (J. Kirshbaum dissent, joined by C.J. Quinn and J. Mullarkey) (emphasis added, citations omitted).

**c. Presumptive Penalties**

As the statute is written, Sexual Assault on a Child, by itself, is a class 4 felony. §18-3-405(2). The offense is enhanced to a class 3 felony if:

(a) The actor applies ***force***...

(b) The actor...***threatens*** imminent ***death, serious bodily injury***, extreme pain, or

kidnapping...

(c) The actor...*threatens* retaliation by causing in the future the *death or serious bodily injury*, extreme pain, or kidnapping...

(d) The actor commits the offense as a part of a pattern of sexual abuse...

§18-3-405(2)(a)-(d) (emphasis added). The statute then requires that:

If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to paragraphs (a) to (d) of subsection (2) of this section, the court shall sentence the defendant in accordance with *the provisions of section 18-1.3-406*.

§18-3-405(3) (emphasis added).

The "*provisions of section 18-1.3-406*," (C.R.S. 2002), generally require the elements of (a) the use, or possession and threatened use of a *deadly weapon*, or (b) caused *serious bodily injury* or *death*; See §18-1.3-406(2)(a)(I)(A), (B); or when specifically pertaining to an "unlawful sexual offense," as defined in section 18-3-411(1), that "the defendant used *threat, intimidation, or force* against the victim." See §18-1.3-406(2)(b)(I) (emphasis added).

The Colorado Supreme Court holds that "the omnibus bill created nine automatic or per se crimes of violence where the elements of the underlying crimes overlapped with the elements of the violent crimes sentencing statute." *John Edward Terry*, 977 P.2d at 149.

While the elements of paragraphs (a) to (c) of subsection 18-3-405(2) do overlap with certain elements of the crime of violence statute, paragraph (d) - "SAOC-Pattern" - does not. The Court of Appeals has ruled, however, that:

Because SAOC-pattern is a per se crime of violence, "the prosecution was not required to charge and prove a separate crime of violence count" to the jury.

The prosecution was required to prove the sentence-enhancing "pattern of sexual abuse," and it did so.

*People v. Wolf*, 2024 Colo. App. LEXIS 2545, ¶11 (Colo. App. Dec. 19, 2024). The Colorado Supreme

Court has found that “the legislature *in enacting the bill* intended...to treat section 16-11-309 [§18-1.3-406, C.R.S. (2002)] not as a sentence-enhancing statute but as a presumptive penalty statute.” *Alonzo Terry*, 791 P.2d at 378.

Had the Colorado General Assembly intended such a result, it could have effected it through precise legislation by amending subsection 18-1.3-406(2)(b)(I) to read something like: “the defendant used threat, intimidation, or force against the victim, [*or committed the offense as a part of a pattern of sexual abuse as described in subsection (2.5) of section 18-3-401*].” Thus creating an overlapping provisory element. It did not.

Likewise, the General Assembly could have amended section 18-3-405(3) to read something like: “the court shall sentence the defendant in accordance with the [*penalty provisions of subsection 18-1.3-406(1)*].” It also did not.

Finally, section 18-1.3-401 is the “presumptive penalties” statute, while section 18-1.3-406 is not. The legislature has provided several presumptive penalties in which the court is required to sentence a defendant to a “term of at least the midpoint in the presumptive range but not more than the maximum term authorized in the presumptive range for the punishment of a felony.” §18-1.3-401(8) and (9). These provisions include when “[t]he defendant is convicted of a crime of violence under section 18-1.3-406;” §18-1.3-401(8)(a)(I); and other conditions where the defendant was on parole, probation, or confined in a correctional institution, etc., “at the time of the commission of the felony;” see §18-1.3-401(8)(a) (II) - (VI); and for convictions of class 2 or class 3 felony child abuse; see §18-1.3-401(8)(d)(I); and class 2 sexual assault committed prior to November 1, 1998. See §18-1.3-401(8)(e)(I).

If *Alonzo Terry* was the Legislature's intent, it could have made this clear by following this precedent, and mandating sentencing for the amended “per se” crimes of violence to be “in accordance

with the provisions of [*subsection 18-1.3-401(8)(?)*].” The Legislature also did not do this. Instead, it expressly required sentencing “in accordance with *the provisions of* section 18-1.3-406.”

The provisions of section 18-1.3-406 do not establish a presumptive penalty, rather, they establish an additional crime, i.e., a crime of violence, and as such, require an additional pleading and proof to a jury. The only presumptive penalty for a crime of violence conviction is established in subsection 18-1.3-401(8)(a)(I), and is only applicable after the provisions of section 18-1.3-406 have been followed, including a specific finding by a jury. See §18-1.3-406(1), (4), and (6). As this Court has found:

Since *Winship*, we have made clear beyond peradventure that *Winship's* due process and associated jury protections extend, to some degree, "to determinations that [go] not to a defendant's guilt or innocence, but simply to the length of his sentence."

*Apprendi v. New Jersey*, 530 U.S. 466, 484 (2000) (quoting *Almendarez-Torres*, 523 U.S. at 251 (Scalia, J., dissenting)), and:

Because the "consequences" of a guilty verdict for murder and for manslaughter differed substantially, we dismissed the possibility that a State could circumvent the protections of *Winship* merely by "redefin[ing] the elements that constitute different crimes, characterizing them as factors that bear solely on the extent of punishment."

*Id.* at 485 (quoting *Mullaney v. Wilbur*, 421 U.S. 684, 698). Mr Wolf contends that if the legislature could not properly circumvent these protections, then neither can the Court's interpretation of the legislated statutes.

##### 5. Equal Protection

The crime of violence statute allows for enhanced penalties for crimes of violence without running a foul with equal protection guarantees. It “accomplishes that result” through its required provisions. See *Moze*, 723 P.2d at 128. By ignoring these provisions, *Alonzo Terry* has created a new equal protection issue dissimilar to that which *Haymaker* and *Montoya II* had resolved.

In *Terry I* we assumed that each of the nine substantive criminal offenses amended in 1986 to mandate sentencing under section 16-11-309 *itself* contained an element of either *serious bodily injury or death*, or the use, or possession and threatened use, of *a deadly weapon*. We called these offenses *per se* crimes of violence and held that the prosecution need not plead and prove a separate crime of violence under sections 16-11-309(4) and (5) in order for the sentencing provisions of section 16-11-309(1) to apply.

We repeated this assumption in *Terry II*, and held that section 16-11-309(1) operates as a presumptive penalty statute for *those offenses*, meaning that it sets the penalty *without requiring separate or additional proof* of the elements under section 16-11-309(4) and (5).

*People v. Banks*, 9 P.3d 1125, 1130 (Colo. 2000) (emphasis added; omitted internal citations).

[W]e issued a caveat to this holding, noting that the procedural requirements of section 16-11-309(4) and (5) "are unaffected and may continue to require that a prosecutor plead and prove a violent crimes count against a defendant whenever the substantive criminal statute does not specifically require sentencing under the violent crimes statute."

*John Edward Terry*, 977 P.2d at 149 (quoting *Alonzo Terry*, 791 P.2d at 378, n.5).

"Per se" crimes of violence are recognized as a "class of crimes." *People v. Austin*, 419 P.3d 587, ¶8 (Colo. 2018). Under the Court's *assumption*, when a "substantive criminal offense...*itself* contain[s] an element" of a crime of violence, the pleading and proof of such element is required in order to obtain a conviction of the *inherently violent offense*. This fact, specifically, makes it a *per se* crime of violence. *John Edward Terry*, 977 P.2d at 147. Defendants in this class, therefore, are protected in their Sixth and Fourteenth Amendments due process, information, and jury trial rights, as the overlapping elements of the inherently violent offense already required a pleading and proof to the jury.

Under the issued caveat, defendants on trial for crimes *not classified* as "per se" crimes of violence, but that *do involve the elements of such*, are also protected by the constitutional pleading and proof requirements of the statute.

SAOC-Pattern is not considered a "defined" crime of violence, see *Chavez v. People*, 2015 CO

62, but is “treated” as a crime of violence even though it does “not meet the statutory definition.” *Id.* As such, defendants in this class do not enjoy these same constitutional protections and due process rights as others in the designated “per se” crimes of violence classification. Neither do they enjoy the protections as do the defendants for whom the issued “caveat” apply.

Mr Wolf falls into this unprotected class, and contends that if *Alonzo Terry* was the proper interpretation of the sentencing scheme, his Sixth and Fourteenth Amendments due process safeguards of equal protection, information, and jury trial rights would have been protected. They were not.

“The legislature certainly has the authority to establish more severe penalties for acts that it believes have greater consequences.” *People v. Thatcher*, 638 P.2d 760, 766 (Colo. 1981); see also *Haymaker*, 716 P.2d at 118 (legislature rationally could perceive that use of a deadly weapon during sexual assault is more reprehensible and dangerous than commission of sexual assault without use of a deadly weapon). *Alonzo Terry* contravenes this authority. It requires a defendant convicted of SAOC-Pattern, *without the elements of a crime of violence*, to be sentenced the same as one convicted of SAOC-Pattern with the use of threat, intimidation, or force; or even the use of a deadly weapon or death, thus nullifying the relatively “*more severe penalties*” for the violent offender. Mr Wolf was never accused of these “more reprehensible and dangerous” elements, nevertheless, without a pleading and proof to a jury, he was sentenced with the “graver consequences” intended for the violent offender, effectively making their penalties equal, and denying him equal protection in the process.

[T]he majority concludes that the language of subsections 16-11-309(4) and (5), though never repealed, no longer has meaning and therefore need not be construed.

The majority apparently means that it discerns a legislative intent to create enhanced sentencing as provided in section 16-11-309 except for subsections 16-11-309(4) and (5). Had the General Assembly in 1986 wished to repeal the mandatory procedural provisions of subsections 16-11-309(4) and (5), it surely would have done so. It did not.

...

This conclusion contravenes legislative intent clearly expressed in relevant statutory

language, departs from the rationale underlying prior decisions of this court and the Court of Appeals, overlooks pertinent legislative history and ignores certain fundamental principles of statutory construction.

*Alonzo Terry*, 791 P.2d at 379-80, 82 (J. Kirshbaum dissent).

#### 6. Claim Advanced for the First Time on Appeal

The Court of Appeals found that Mr Wolf “advanced for the first time” in his opening brief “two claims that weren’t presented in his postconviction motion: (1) classifying SAOC-pattern as a “per se crime of violence” is unconstitutional and (2) the sentencing court lacked subject matter jurisdiction to impose an aggravated sentence. *People v. Wolf*, 2024 Colo. App. LEXIS 2545, ¶13 (Colo. App. Dec. 19, 2024). These issues, however, should not be divorced from each other, or from the original issue on appeal.

The Court decided that “[b]ecause Wolf didn’t raise his first claim in his postconviction motion before the district court, we decline to address it.” *Id.* at ¶14 (citing *DePineda v. Price*, 915 P.2d 1278, 1280 (Colo. 1996) (“issues not raised before the district court in a motion for postconviction relief will not be considered on appeal of the denial of that motion”). In *DePineda*, the defendant had raised issue on habeas corpus, alleging that “his conviction and sentence are illegal and unconstitutional.” *DePineda*, 915 P.2d at 1280. On appeal of the denial of his writ, the defendant for the first time asserted that the district court “lacked jurisdiction over his case because the offense for which he was tried and convicted took place entirely in [a different] County.” *Id.* at 1281. This has no similarity to Mr Wolf’s issue on appeal.

#### ***(a) Not First Time On Appeal***

The substance of Mr. Wolf’s argument from the initial 35(a) petition forward has been that his

sentence is illegal, as it is “inconsistent with the statutory scheme outlined by the legislature.” The pleading and proof requirements of the legislature's sentencing scheme has been the basis of his entire argument. (*Opening Brief*, pp. 3-4). This Court, in *Alleyne v. United States*, holds that these same pleading and proof requirements are founded upon the Sixth Amendment “in conjunction with the Due Process Clause,” 570 U.S. 99, 104 (2013), and that the reasonable doubt standard of due process applies to both state and federal prosecutions. See *In re Winship*, 397 U.S. 358, n.3 (1970). Therefore, this Court's holding in *Apprendi v New Jersey*, specifically that “a sentence enhancement beyond a statutory maximum requires a jury finding of enhancement factors beyond a reasonable doubt,” 530 U.S. 466, 120 S.Ct. 2348 (2000), was cited as governing law. (*Opening Brief*, p.3).

Colorado has circumvented these requirements with *Alonzo Terry* in conjunction with *John Edward Terry*.

Departing from the statutory scheme has resulted in reversible error as several of Mr Wolf's constitutional rights were violated. These rights were intended to be protected by the "provisions of section 18-1.3-406."

(*Opening Brief*, p. 39). Rule Crim. P. 35(a) made no allowances to challenge this "settled law," nor did the district court have the power to grant relief. See C.A.R. 35(e); see also *People v. Jones*, 2018 COA 112, ¶37 (Colorado lower and intermediate courts are bound to follow Supreme Court of Colorado precedents.) To then require Mr Wolf to refile under a 35(c) upon the court's affirmation of the illegal sentence would constitute "justice delayed." (*Opening Brief*, p. 39); see also *Colo. Const. Art. II, §6* (right and justice should be administered without sale, denial or delay). The Federal Court for the District of Colorado has ruled that:

Where the Colorado supreme court reaches a conclusion on the substantive issues stating it in such a way that under ordinary circumstances a trial court would feel bound by the decision...and would therefore deny a motion...on the grounds that the Colorado supreme court has already decided the question, then, for all practical purposes, the petitioner has exhausted his state remedies...

*Peters v. Dillon*, 227 F. Supp. 487 (D. Colo. 1964). While this cited case involved exhausting state remedies for federal habeas corpus proceedings, Mr Wolf argues it would be as "useless to require that he raise collaterally" the issues of unconstitutionality upon the district court's denial of the petition. See *Id.* at 491. He therefore, addressed this issue directly on appeal in response to the State's position.

***(b) Reply to Answer Brief***

The Colorado Court of Appeals has said that "[a] reply brief should respond to the answer brief's assertions, not duplicate the opening brief." *People v. Williams*, 2025 COA 26, n.7 (citing C.A.R. 28(c)); and, "our supreme court has considered an argument first raised in the reply brief because 'it is made in reply to the answer brief of defendant in error.'" *Snider v. Town of Platteville*, 75 Colo. 589, 591 (1924). The Court of Appeals should have answered the claims of unconstitutionality, as the following facts will establish that these claims were made in reply to the State's answer.

To Mr Wolf's 35(a) petition:

The People responded explaining the per se crime of violence designation and its requirement that SAOC-PATT be sentenced in the crime of violence range as an indeterminate sentence even though it was not a "defined" crime of violence.

*(Answer Brief, p. 4)* (citing *People's Response* (CF p. 545)). In accordance with the controlling precedent, the district court denied the petition, finding that:

The defendant was sentenced pursuant to C.R.S. §18-1.3-406, not for a crime of violence but for sexual assault on a child by one in a position of trust and an indeterminate sentence under this statute is a legal sentence.

*People v. Wolf*, case no. 08CR281 (referencing the crime of violence statute, section 18-1.3-406).

In his opening Brief, Mr Wolf responded to the People's explanation of the "per se" crime of violence designation, plainly articulating that such designation would contradict the constitutional protections encoded by the legislature within the crime of violence statute, which, he argued, are

mandated by the Colorado and United States constitutions, and by this Court in *Apprendi v. New Jersey*.

Current case law defines Sexual Assault on a Child-Pattern of Abuse as a "per se" crime of violence. This classification eliminates a substantial portion of the sentencing statute, and is contrary to the legislative intent and the Constitutions of the State of Colorado and the United States.

*(Opening Brief, p. 4).*

The U.S. Supreme Court has held that "a sentence enhancement beyond a statutory maximum requires a jury finding of enhancement factors beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466 (2000). And "any fact that increases the penalty for a crime beyond the mandatory minimum is an element of the crime and must be submitted to a jury." *Alleyene v. U.S.*, 133 S. Ct. 2151 (2013) (holding that *Apprendi* applies to mandatory minimum sentences.)

*(Opening Brief, p. 31).*

The Legislature enacted the Criminal Code, in part, "to define offenses." §18-1-102(1) (a). "The terms 'offense' and 'crime' are synonymous and mean a violation of, or conduct defined by, any statute for which a fine or imprisonment may be imposed." §18-1-104(1). "[T]he provisions of this code govern the construction of and punishment for any offense defined in any statute of this state," §18-1-103(1), therefore, "the provisions of section 18-1.3-406" "govern the construction of and punishment for" crimes of violence.

*(Opening Brief, p. 15).* Mr Wolf then quoted the legislated provisory definitions for crimes of violence as provided in subsections 18-1.3-406(2)(a)(I), (II) and 18-1.3-406(2)(b)(I):

(2)(a)(I) "Crime of violence" means any of the crimes specified in subparagraph (II) of this paragraph (a) committed, conspired to be committed, or attempted to be committed by a person during which, or in the immediate flight therefrom, the person:

(A) Used, or possessed and threatened the use of, a deadly weapon; or

(B) Caused serious bodily injury or death to any other person except another participant.

(2)(a)(II) Subsection (2)(a)(I) of this section applies to the following crimes:

...

(E) A sexual offense pursuant to part 4 of article 3 of this title;

...

(2)(b)(I) "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (I), "unlawful sexual offense" shall have the same meaning as set forth in section 18-3-411 (1), and "bodily injury" shall have the same meaning as set forth in section 18-1-901 (3)(c).

*(Opening Brief, pp. 15,16); see also §16-1-104(8.5), C.R.S..*

The State responded:

Sexual Assault on a child...[w]hen it is committed as part of a pattern of abuse, as determined by a jury, [] is a "per se crime of violence" and is sentenced as an indeterminate class three felony crime of violence. Per se crimes of violence do not have to meet the crime of violence definition (threat, force, bodily injury) and are not subject to the pleading requirements of "defined" crimes of violence.

...

Thus, SAOC-PATT is a class three felony per se crime of violence.

*(Answer Brief, pp. 5,8).* The State cited *Hunsaker v. People*, 2015 CO 46, ¶18 ("SAOC-PATT is a "per se" crime of violence"); and *Terry v. People*, 977 P.2d 145, 149 (Colo. 1999) (*Terry II*) ("per se crimes of violence are crimes where a court must sentence defendant in accordance with the crime of violence statute"). The State's Answer continued, stating:

While defendant is correct that "defined" crimes of violence must meet the requirements of §18-1.3-406(2)(a)(I) and be separately pled in the complaint as dictated in §18-1.3-406(3), he fails to understand the "per se" crime of violence designation.

There is a statutory definition of "crime of violence" that involves specified offenses with aggravating facts (threats, force, bodily injury); these are referred to as "defined" crimes of violence. §18-1.3-406(2); *Chavez v. People*, 2015 CO 62, ¶12.

Other crimes, such as SAOC-PATT, are treated as crimes of violence even though they don't meet subsection (2) requirements.

These "per se" crimes of violence are designated by the legislature in certain statutes that define the criminal offense; the legislature's "designation" is in the statute defining the

crime and typically includes language that the crime must be sentenced "in accordance with §18-1.3-406."

(*Answer Brief*, pp. 8,9) (citing *Chavez v. People*, 2015 CO 62, ¶¶12, 16 ("The express reference in the statute of conviction to the crime-of-violence enhancement makes this offense a per se crime of violence.")). Here, the State also and once again cited *John Edward Terry* and *Alonzo Terry* as the Colorado Supreme Court's general "per se" crime of violence precedent, and *Hunsaker*, 2015 CO 46, ¶¶14,18 n.2, which particularizes the designation to cases of SAOC-Pattern. (*Answer Brief*, p. 9).

Mr Wolf responded, contending that this "per se" designation by the State Supreme Court's holding in *Alonzo Terry* and *John Edward Terry* pertained to a case of "conspiracy to commit aggravated robbery," and that "the 'per se' crime of violence designation is only [properly] for the inchoate offenses of Criminal Attempt and Conspiracy." (*Reply Brief*, pp. 11,12). Mr Wolf argued that "SAOC-Pattern is not, by itself, a crime of violence; nor did the jury make any findings of a crime of violence..." (*Reply Brief*, p. 13).

Additionally, Mr Wolf contended in his response that this "per se" crime of violence designation would erroneously create three distinct classes of defendants; that by designating SAOC-Pattern as a "per se" crime of violence, it lowers the prosecutor's burden of proof by not requiring a pleading and proof to a jury when the offense has no elements that "overlap" with those found in the crime of violence statute. This, Mr Wolf contended, leaves defendants in this classification less protected as others who enjoy these constitutional pleading and proof jury trial rights in matters of crime of violence convictions and sentencing. For these reasons, Mr Wolf argued that these holdings could not be the proper interpretation of the legislated sentencing mandates, as it would result in not only a due process violation, but in an equal protection violation, as well. (*Reply Brief*, pp. 12, 16-18); (*Writ of Cert.*, pp. 18-20).

Mr Wolf has maintained from the start that "[t]he 'penalty provisions' for a crime of violence are

not applicable absent a separate count in the information and a finding by a jury." (*Opening Brief*, p. 27); (*Reply Brief*, p. 12); (*Writ of Cert.*, p. 13); see also (35(a), p. 4). The State responded to these contentions:

Lastly, defendant seems to believe that the jury didn't make any finding to support the pattern sentence enhancer and therefore the enhanced sentencing range wasn't applicable (OB p. 27).

...

Defendant's jury found that the charged act of SAOC was committed and was part of a pattern of abuse.... Therefore, the pattern sentence enhancer was applied to the defendant's conviction based on explicit jury findings and there was no error. See *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

Defendant was properly sentenced on his SAOC-PATT conviction as a per se crime of violence and the jury made the required findings to support the application of that enhancer.

(*Answer Brief*, pp. 10-11) (emphasis added). The State based its position on this Court's holding in *Apprendi v. New Jersey*, to which Mr Wolf responded, stating:

Mr Wolf's contentions have only to do with the lack of jury findings in regards to a crime of violence, as required by the "provisions of section 18-1.3-406," particularly subsections (3), (4), (5), and (6). These pleading and proof requirements were mandated by the legislative branch of the state, and were intended to support and protect a defendant's Sixth Amendment information and jury trial rights. Subsections 18-1.3-406(4) and (6) clearly articulate "the requirement for a jury to find the elements of a crime of violence before "the penalty provisions of this section shall be applicable." This was not accomplished, thereby denying Mr Wolf his information and jury trial rights. U.S. Const. Amend. VI; Colo. Const. Art. II, §16; *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

(*Reply Brief*, pp. 13, 14). The pattern of abuse charge already enhances SAOC from that of a class four felony, carrying a presumptive range of 2-6 years, to a class three felony, with a presumptive range of 4-12 years. See §18-1.3-401(1)(a)(V)(A). The Court's per se crime of violence designation then **doubles** this enhancement with no additional pleading and proof to, or a finding by, a jury. The statutes are clear, however, that a jury finding of pattern of abuse provides one enhancement, and a further

finding by the jury of a "defined" crime of violence provides an additional and separate enhancement. The State's position clearly contravenes legislative intent, essentially quadrupling the 2-6 year range with only a finding of pattern of abuse.

The Court of Appeals answered Mr Wolf's issues of an illegal sentence as presented. Considering his interpretations of the relevant statutes to be contrary to settled law, the Court declined to answer his contentions and based its findings on the Supreme Court's holding in *Alonzo Terry* and *John Edward Terry*. Mr Wolf believes he is fully within his rights, and bounds of law, to respond to and challenge these precedents as circumventing not only the statutory sentencing requirements, but the constitutional protections of the Sixth and Fourteenth Amendments, and this Court's holding in *Apprendi v. New Jersey*, as well.

***(c) Subject Matter Jurisdiction***

Both the Colorado Court of Appeals and Supreme Court hold that:

Crim. P. 35(a) is the proper procedural vehicle for a defendant to use to challenge an illegal sentence. A sentence is illegal if it is "inconsistent with the statutory scheme outlined by the legislature," and ***an allegation that a sentence is illegal raises questions about the sentencing court's subject matter jurisdiction.***

*People v. Collier*, 151 P.3d 668, 670 (Colo. App. 2006) (citing and quoting *People v. Rockwell*, 125 P.3d 410, 414 (Colo. 2005)) (emphasis added); and,

"A sentence that is beyond the statutory authority of the court is illegal. Courts are limited to imposing sentences within the statutory range authorized by the General Assembly ***and have no jurisdiction to enter sentence that are inconsistent with their sentencing authority as statutorily defined.***"

*People v. District Court*, 673 P.2d 991 (Colo. 1983) (emphasis added). The Court decided to address the subject matter jurisdiction claim:

We agree with Wolf that a court acts outside the scope of its jurisdiction when it imposes an illegal sentence. But because we have already concluded that Wolf's

sentence is legal, we perceive no jurisdictional defect in this case.

*People v. Wolf*, 2024 Colo. App. LEXIS 2545, ¶15 (Colo. App. Dec. 19, 2024). The Court found that Mr Wolf's sentence was legal based on the State Supreme Court's holding in *Alonzo Terry*,<sup>9</sup> *Id.* at ¶9, and held that the court "can't depart from our supreme court's controlling precedent." *Id.*

According to the State, Mr Wolf was not only sentenced for, but convicted of, a crime of violence. However, neither the information nor the findings by the jury are sufficient to support a charge, conviction, or sentence for a crime of violence. The conviction and sentence are contrary to state law and federal due process, and beyond the authority and jurisdiction of the court, and must be rendered void. As this Court has long held:

[T]he court must keep strictly within the limits of the law authorizing it to take jurisdiction and to try the case and to render judgment. It cannot pass beyond those limits in any essential requirement in either stage of these proceedings; and its authority in those particulars is not to be enlarged by any mere inferences from the law or doubtful construction of its terms.

...

When the court goes out of these limitations, its action, to the extent of such excess, is void.

*In re Bonner*, 151 U.S. 242, 256-57 (1894).

The "per se" crime of violence designation, whether a misinterpretation or a proper interpretation of the legislated crime of violence statute as it pertains to SAOC-Pattern convictions and sentences, is contrary to the United States Constitution as "the supreme law of the land," and therefore cannot stand. See *U.S. Const. Art. VI*. This controlling precedent must be overturned.

---

<sup>9</sup> See *Hunsaker II*, 2015 CO 46, ¶18 (citing John Edward Terry, 977 P.2d 145 (Colo. 1999) > citing *Alonzo Terry*, 791 P.2d 374 (Colo. 1990)).

**CONCLUSION**

For these reasons, Mr Wolf respectfully request that this honorable Court finds that his federal question was adequately raised at the court of first instance, and preserved and asked at the highest court of last resort; and that this Court accepts his Writ of Certiorari.



Daniel Joel Wolf

**Party appearing pro se:**  
Daniel J. Wolf, DOC# 144349  
Bent County Correctional Facility  
11560 County Road FF. 75  
Las Animas, CO 81054

**APPENDIX**

**Table of Contents**

Colorado Supreme Court Writ of Certiorari Denial.....	43
Colorado Court of Appeals Opinion.....	44-52
Colorado Revised Statutes	
Section 18-1.3-401(8).....	53
Section 18-1.3-401(9).....	54
Section 18-1.3-406.....	55
Section 18-1.3-1004(1).....	58