# APPENDICES

# APPENDIX A

APPENDIX A

FILED
United States Court of Appeals
Tenth Circuit

September 22, 2025

Christopher M. Wolpert
Clerk of Court

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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BERNARD JONES,

Petitioner - Appellant,

v.

MARK FAIRBAIRN,

Respondent - Appellee.

No. 25-1104
(D.C. No. 1:23-CV-02189-DDD)
(D. Colo.)

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**ORDER**

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Before **MATHESON**, **PHILLIPS**, and **McHUGH**, Circuit Judges.

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Appellant's petition for rehearing is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

# APPENDIX B

FILED
United States Court of Appeals
Tenth Circuit

July 29, 2025

Christopher M. Wolpert
Clerk of Court

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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BERNARD JONES,

Petitioner - Appellant,

v.

MARK FAIRBAIRN,

Respondent - Appellee.

No. 25-1104
(D.C. No. 1:23-CV-02189-DDD)
(D. Colo.)

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**ORDER DENYING CERTIFICATE OF APPEALABILITY***

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Before **MATHESON**, **PHILLIPS**, and **McHUGH**, Circuit Judges.

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Petitioner Bernard Jones, a state prisoner in the custody of the Colorado Department of Corrections ("CDOC") proceeding pro se,[1] seeks a Certificate of Appealability ("COA") to challenge the district court's denial of his 28 U.S.C. § 2241 petition for a writ of habeas corpus. We deny Mr. Jones's request for a COA, grant his motion to proceed in forma pauperis ("IFP"), and dismiss this matter.

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

[1] Because Mr. Jones proceeds pro se, "we liberally construe his filings, but we will not act as his advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

## I. BACKGROUND

Mr. Jones is serving three concurrent Colorado state sentences: (1) a sixty-four-year sentence for first-degree sexual assault in case number 97CR873, (2) a ninety-six-year sentence for repeated possession or sale of a schedule I/II controlled substance in the same case (97CR873), and (3) a life sentence for a second-degree controlled substance violation in case number 89CR3639.

In case number 89CR3639, the state district court concluded Mr. Jones should be given 2,211 days of presentence confinement credit ("PSCC"). And in 2018, on Mr. Jones's petition, a Colorado state court concluded he should be given 123 days of PSCC in case number 97CR873.

Mr. Jones alleges that the CDOC's Time Computation Department is required to deduct the combined PSCC from both cases—2,334 days—from that department's computation of his Parole Eligibility Date ("PED"). But the CDOC has refused, reasoning that because Mr. Jones is serving concurrent sentences, the combination of the two periods of PSCC would result in "duplicative credit" in contravention of state law. ROA at 241.

Separately, in December 2019, the CDOC informed Mr. Jones that his PED "had been increased by approximately eight (8) years[,] from November 30, 2022 to . . . November 30, 2030." *Id.* at 22. Before the recalculation, the CDOC had been calculating Mr. Jones's PED by treating his life sentence in case number 89CR3639 as the "governing sentence," and using that sentence's forty-year minimum incarceration term before parole eligibility to project his PED as November 10, 2022. *Id.* at 220. Under

his recalculated PED, however, the CDOC concluded that the appropriate sentence to guide the PED calculation was his ninety-six-year sentence in case number 97CR873. Because the ninety-six-year sentence is not parole-eligible until half of that time is served, the CDOC concluded that Mr. Jones was not eligible for parole until he had served at least forty-eight years, thereby extending his PED by eight years, to November 2030.

The CDOC "blam[ed]" the result of the PED recalculation on the Colorado Supreme Court's decision in *Executive Director of Colorado Department of Corrections v. Fetzer*, 396 P.3d 1108 (Colo. 2017) (hereinafter, "*Fetzer*"). ROA at 27. In *Fetzer*, the court rejected the CDOC's mechanistic application of Colorado's "one continuous sentence" statutory requirement in the context of multiple concurrent sentences, but deferred to the CDOC's "expertise and discretion" to devise and administer an appropriate PED computation "methodology" in such circumstances.[2] *Fetzer*, 396 P.3d at 1112–14; *see* Colo. Rev. Stat. § 17-22.5-101 ("For the purposes of this article, when any inmate has been committed under several convictions with separate sentences, the department shall construe all sentences as one continuous sentence.").

After presenting his claims regarding the constitutionality of the CDOC's calculation of his PED to the Colorado state courts without success, Mr. Jones initiated the instant habeas proceeding. In February 2024, Mr. Jones filed the operative amended

[2] Before the district court, the CDOC explained that it interpreted *Fetzer* to require it to "dramatically change the way it calculated parole eligibility dates, requiring the recalculation of hundreds, if not thousands, of offenders' sentences." ROA at 237.

habeas petition, asserting that the CDOC's refusal to deduct an additional 123 days of PSCC from his PED violated his Fourteenth Amendment procedural due process and equal protection rights. The petition further asserted that the CDOC's 2019 recalculation of his PED was undertaken pursuant to an agency-enacted rule that violated the Ex Post Facto Clause, or alternatively that the CDOC recalculated his PED pursuant to the *Fetzer* decision, and the retroactive application of that decision to his PED violated due process protections.

In March 2024, the district court directed the Respondent—Mark Fairbairn, the warden of the facility at which Mr. Jones is imprisoned—to show cause why Mr. Jones's § 2241 petition should not be granted. Mr. Fairbairn responded that (1) Mr. Jones's due process claims should be denied because he has no "liberty interest in discretionary release to parole," (2) Mr. Jones's Ex Post Facto claim fails because the CDOC's recalculation of his PED pursuant to *Fetzer* amounted to a mere "correction of a misapplied existing law" that does not violate Ex Post Facto prohibitions, and (3) Mr. Jones's equal protection allegations did not establish that he is "similarly situated" to persons he claims are receiving more favorable PED calculations. ROA at 240–41, 243–44, 246.

In February 2025, the district court denied Mr. Jones's petition. As to the due process claims, the district court concluded that because "Colorado does not create a liberty interest in parole itself, Mr. Jones 'has no subsidiary liberty interest in the process used to determine his PED, even if that process involves a nondiscretionary calculation.'" ROA at 278 (quoting *Fetzer v. Raemisch*, 803 F. App'x 181, 184 (10th Cir. 2020)

(unpublished)). As to Mr. Jones's Ex Post Facto claim, the court concluded that the CDOC's post-*Fetzer* methodology for PED computation was foreseeable and thus not violative of the Ex Post Facto Clause. Finally, the district court rejected Mr. Jones's equal protection claims on grounds that his petition did not make the threshold showing "that he . . . or any other state offender[] are similarly situated for purposes of calculating each offender's PED." *Id.* at 292. The court further denied Mr. Jones a COA.

## II. ANALYSIS

### *A. Jurisdiction: Certificate of Appealability*

Before we may exercise jurisdiction over this matter, Mr. Jones must obtain a COA. *See* 28 U.S.C. § 2253(c)(1)(A) ("Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from . . . the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court."); *Montez v. McKinna*, 208 F.3d 862, 869 (10th Cir. 2000) ("[T]his court reads § 2253(c)(1)(A) as applying whenever a state prisoner habeas petition relates to matters flowing from a state court detention order. This includes . . . challenges related to the incidents and circumstances of any detention pursuant to state court process under § 2241.").

Under 28 U.S.C. § 2253(c)(2), "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." To satisfy this standard, the applicant must "show [] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to

proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

We analyze each alleged constitutional violation through the requisite COA prism below.

**1. Mr. Jones's procedural due process claims**

Mr. Jones first seeks a COA to challenge the district court's resolution of his procedural due process claims, which the district court rejected on grounds that Colorado state law creates no protected liberty interest in discretionary parole.

Under the Due Process Clause of the Fourteenth Amendment, "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The procedural protections of the Due Process Clause are implicated only when one of the enumerated "interests is at stake." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Relevant here, a liberty interest that implicates procedural due process protections "may arise from an expectation or interest created by state laws or policies." *Id.*

In seeking a COA on his procedural due process claims, Mr. Jones focuses almost exclusively on the correctness of a Colorado state court's conclusion that under the relevant Colorado law, he "is not entitled . . . to have the CDOC add his PSCC together and deduct the sum from his concurrent sentences in both cases." ROA at 170–71. But we may not wade into this purely state law issue, because the Supreme Court has "repeatedly held that a state court's interpretation of state law . . . binds a federal court sitting in habeas corpus." *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005). And in any event,

habeas petitioners cannot vindicate alleged violations of state law unless they give rise to a violation of federal rights. *See* 28 U.S.C. § 2241(c)(3).

Mr. Jones further argues, more pertinently, that because the Colorado statute governing the administration of PSCC imposes mandatory obligations on the CDOC—as evidenced by the statute's use of "shall"—it has removed any discretion on the CDOC's part and thus amounts to a state-created protected liberty interest. *See* Colo. Rev. Stat. § 18-1.3-405. Setting aside that the statute is entirely silent on the operation of multiple periods of PSCC across multiple concurrent sentences, Mr. Jones fundamentally confuses the process he seeks—a correct PED as governed by the PSCC regime and the "one continuous sentence" requirement—with the alleged liberty interest at issue: an entitlement to parole.

Focusing on the alleged absence of discretion surrounding PED calculation, Mr. Jones does not explain how reasonable jurists could debate the district court's conclusion that Colorado prisoners have no protected right to a correct PED calculation for the simple reason that the actual liberty interest at issue—parole—is *entirely* discretionary and thus does not create a legitimate claim of entitlement. *See Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979) ("There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence."); *Beylik v. Estep*. 377 F. App'x 808, 812 (10th Cir. 2010) (unpublished) ("[T]he grant of parole is wholly discretionary under Colorado's statutory parole scheme and thus does not create a legitimate expectation of release on the

part of Colorado state prisoners.");[3] *Nowak v. Suthers*, 320 P.3d 340, 348 (Colo. 2014) ("The grant of parole is a privilege, not a right."). Mr. Jones has thus not established his entitlement to a COA for his procedural due process claims.

**2. Mr. Jones's equal protection challenges**

Next, Mr. Jones seeks a COA for his equal protection claims, which allege generally that the CDOC has computed the PED for "a Jewish inmate[]" differently, and more favorably, than its PED computation for him, "an African-American." ROA at 219. The district court denied the claim on grounds that Mr. Jones had not made the threshold showing that he and the comparator inmate were "similarly situated for purposes of calculating each offender's PED." ROA at 292.

In seeking a COA for these claims, Mr. Jones argues that the "only similar circumstance that Mr. Jones must show is that both he and [the Jewish inmate] are inmates in CDOC." Opening Br. at 11. Mr. Jones cites no authority for this proposition, and it is not debatable among reasonable jurists that Mr. Jones's equal protection claims require a similarity of circumstances well beyond identity-of-custodian. Specifically, given the many legitimate, nondiscriminatory reasons an inmate's PSCC and PED computation could differ from Mr. Jones's, his equal protection claim cannot survive in the absence of a threshold showing that he and his comparator are "similarly situated" along all nondiscriminatory criteria that affect the PSCC and the computation of PEDs. *See* ROA at 176–77 ("[T]he circumstances of some inmates' sentences and presentence

[3] We cite unpublished decisions for their persuasive value only as they are not binding precedent. 10th Cir. R. 32.1(A).

confinement may warrant that the CDOC deduct multiple awards of PSCC from those inmates' multiple, concurrent sentences. But this is not the case for every inmate."). Mr. Jones is thus not entitled to a COA for his equal protection claims.

**3. Mr. Jones's ex post facto/retroactivity due process claim**

Finally, Mr. Jones seeks a COA to appeal his claim that the CDOC's 2019 recalculation and extension of his PED violated protections against the retroactive application of judicial constructions of criminal law or Ex Post Facto prohibitions on agency-enacted legislative rules.

The United States Constitution prohibits states from "pass[ing] any . . . ex post facto Law." U.S. Const. art. I, § 10. Among other things, the Ex Post Facto Clause prohibits states from enacting retroactive parole statutes that increase a prisoner's sentence compared to the parole law in effect when the prisoner committed his crime. *See Garner v. Jones*, 529 U.S. 244, 250 (2000). While the Ex Post Facto Clause itself limits only legislative action, "an agency regulation which is legislative in nature is encompassed by" the Ex Post Facto prohibition. *Smith v. Scott*, 223 F.3d 1191, 1193–94 (10th Cir. 2000).

Courts, however, are not constrained by the Ex Post Facto Clause. *See Marks v. United States*, 430 U.S. 188, 191 (1977) ("The Ex Post Facto Clause . . . does not of its own force apply to the Judicial Branch of government.") But "the Supreme Court has held that in certain limited circumstances the retroactive application of a judicial decision interpreting criminal law can violate the Due Process Clause." *United States v. Budder*, 76 F.4th 1007, 1012 (10th Cir. 2023). The Court instructs that this due process right is

violated only when "a judicial construction of a criminal statute is 'unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue.'" *Rogers v. Tennessee*, 532 U.S. 451, 462 (2001) (quoting *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964)).

The district court construed Mr. Jones's petition as asserting alternative retroactivity theories: (1) that the Colorado Supreme Court's *Fetzer* decision may not be retroactively applied to extend his PED, or (2) that the CDOC, independent of *Fetzer*, devised a new PED "calculation methodology" that may not be retroactively applied to extend his PED. ROA at 279–90. Mr. Jones's first theory—focused on *Fetzer*—implicates the right to be free from retroactive application of a judicial interpretation of criminal laws, which inheres in the Due Process Clause, not the Ex Post Facto Clause. *See Lustgarden v. Gunter*, 966 F.2d 552, 553–54 (10th Cir. 1992). His second theory—necessarily premised on an implicit assertion that the CDOC's new PED computation methodology amounts to a legislative rule—arises under the Ex Post Facto Clause. *See Smith*, 223 F.3d at 1193–94.

As to Mr. Jones's theory that the CDOC has implemented a legislative rule, the district court concluded it was bound by the Colorado state court's conclusion that the *Fetzer* decision itself indeed required the CDOC's recalculation of his PED. Because *Fetzer* mandated the CDOC's methodology, the state court found irrelevant Mr. Jones's "underlying assumptions that the CDOC's policy of calculating PEDs after *Fetzer* is a 'law' potentially subject to the ex post facto prohibition." ROA at 173 n.2. In seeking a COA here, Mr. Jones vigorously disputes the state court's legal conclusion that *Fetzer*

mandated his recalculated PED,[4] but he makes no argument that the district court erred by applying the state court's Colorado law conclusion to foreclose his Ex Post Facto claim. He thus has not established his entitlement to a COA on his Ex Post Facto claim premised on the existence of a CDOC-adopted policy that is legislative in nature.

As to the *Fetzer* theory governed by the Due Process Clause, the district court discerned no retroactivity defect because "*Fetzer*'s interpretation of the one continuous sentence requirement . . . was not unexpected and indefensible based on the plain language of the statute and prior Colorado Supreme Court cases interpreting the same." *Id.* at 287.

Mr. Jones's arguments in support of a COA for this theory are difficult to trace, but he appears to assert that (1) the district court wholly failed to apply the legal standard that governs the retroactive application of judicial decisions construing state law, and (2) the district court failed to survey pre-*Fetzer* precedent of the Colorado Supreme Court for purposes of the "unexpected and indefensible" analysis. Mr. Jones is wrong on both counts: the district court in fact recited and applied the "unexpected and indefensible" standard that he claims was absent from the order, and because that standard necessarily requires a review of judicial precedent as it existed before *Fetzer*, the court devoted several pages to an analysis of pre-*Fetzer* Colorado Supreme Court precedent. *See* ROA

[4] Neither this court nor the district court can review the state court's interpretation of Colorado precedent. *See Hawes v. Pacheco*, 7 F.4th 1252, 1264 (10th Cir. 2021) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." (alteration in original) (quoting *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991))).

at 284–87. Because these assertions are unfounded, and because Mr. Jones does not otherwise show that reasonable jurists could debate the district court's conclusion that *Fetzer* did not announce an unexpected or indefensible rule, he is not entitled to a COA on this claim.

### *B. Mr. Jones's IFP Motion*

Finally, we turn to Mr. Jones's IFP motion. ECF No. 12. To proceed IFP, Mr. Jones must "show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991). Mr. Jones's motion establishes his inability to pay the filing fees, and although his arguments in pursuit of a COA do not carry the day, we conclude that he has presented a "reasoned, nonfrivolous argument" in this matter; we therefore grant Mr. Jones's IFP motion. ECF No. 12.

## III. CONCLUSION

For the reasons above, we DENY Mr. Jones's request for a COA, GRANT his IFP motion, and DISMISS this matter.

Entered for the Court

Carolyn B. McHugh
Circuit Judge

# APPENDIX C

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLORADO**
**Judge Daniel D. Domenico**

Civil Action No. 23-cv-02189-DDD

BERNARD JONES,

Applicant,

v.

MARK FAIRBAIRN,

Respondent.

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**ORDER ON APPLICATION FOR WRIT OF HABEAS CORPUS**

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This matter is before the Court on the amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Doc. 19) filed *pro se* by Applicant Bernard Jones. After reviewing the record before the Court, the Court finds and concludes that the amended Application should be denied and the case dismissed with prejudice.

## I. BACKGROUND

Mr. Jones is a prisoner in the custody of the Colorado Department of Corrections ("CDOC") at the Arkansas Valley Correctional Facility in Ordway, Colorado. He is serving three concurrent sentences imposed by the El Paso County, Colorado, District Court:

1. A 64-year sentence for first-degree sexual assault (habitual criminal) in case number 97CR873, effective on December 9, 1997;

2. A 96-year sentence for repeated possession or sale of a schedule I/II controlled substance (habitual criminal) in case number 97CR873, effective on December 9, 1997; and

3. A life sentence for a second-degree controlled substance violation (habitual criminal) in case number 89CR3639, effective on December 16, 1997.

(Doc. 1 at 36-37, 40-41). The state district court awarded Mr. Jones 123 days of presentence confinement credit ("PSCC") in case number 97CR873, and 2,211 days of PSCC in case number 89CR3639. (*Id.*)

In the amended Application, Mr. Jones asserts that he has been denied the application of 123 days of PSCC toward his parole eligibility date ("PED"), in violation of his Fourteenth Amendment due process and equal protection rights (claims one and two). (*See* Doc. 19 at 2, 5-17). He further claims that the CDOC's recalculation of his PED in December 2019, which resulted in a later PED than under previous calculations, violates the Ex Post Facto Clause of the federal Constitution, as well as his Fourteenth Amendment due process and equal protection rights (claims three and four). (*Id.* at 18-28).

In a March 12, 2024 Order (Doc. 20), Respondent was directed to show cause why the amended Application should not be granted. On April 24, 2024, Respondent filed a Response to Order to Show Cause (Doc. 30). Respondent argues that Mr. Jones' due process claims fail because he does not have a protected liberty interest in his PED; the equal protections claims fail because

Mr. Jones has not shown he was treated differently from similarly-situated prisoners; the recalculation of Mr. Jones' PED did not increase his punishment and, therefore, did not violate the Ex Post Facto Clause; and, Mr. Jones has been awarded the PSCC to which he is entitled under Colorado law. (*See id.*).

On May 31, 2024, Mr. Jones filed a Reply (Doc. 31) in which he generally disputes Respondent's arguments and requests an evidentiary hearing on his equal protection claim.

## II. LEGAL STANDARDS

The Court must construe the amended Application and other papers filed by Mr. Jones liberally because he is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110.

An application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 "is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *see also McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 811 (10th Cir. 1997). Habeas corpus relief is warranted only if Mr. Jones "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

## III. ANALYSIS

### A. Due Process Claims

Mr. Jones claims that the CDOC has improperly calculated his PED under Colorado law, in violation of his Fourteenth Amendment due process rights. (*See* Doc. 19 at 2, 5-17).

The Fourteenth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Here, the issue is whether Mr. Jones has been deprived of a constitutionally protected liberty interest.

Generally, a liberty interest protected by due process may arise under the United States Constitution itself or from an expectation created by statute or prison policies. *See Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). *Rezaq v. Nalley*, 677 F.3d 1001, 1011 (10th Cir. 2012). But "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz v. Inmates of the Neb. Penal and Corr. Complex*, 442 U.S. 1, 7 (1979). Therefore, if Mr. Jones has a constitutionally protected liberty interest in his PED, that liberty interest must arise under state law.

Colorado state prisoners lack a liberty interest in parole because parole is discretionary under state law. *Fetzer v. Raemisch*, 803 F. App'x 181, 184 (10th Cir. 2020) (unpublished) (citing *Greenholtz*); *see also Nowak v. Suthers*,

2014 CO 14, ¶¶ 38, 39 (explaining that under Colorado law, "[t]he grant of parole is a privilege, not a right," and even after a "PED is calculated, the parole board has the ultimate discretion to grant or deny parole based on the totality of the circumstances"). Because Colorado does not create a liberty interest in parole itself, Mr. Jones "has no subsidiary liberty interest in the process used to determine his PED, even if that process involves a nondiscretionary calculation." *Fetzer*, 803 F. App'x at 184. "Put differently, absent an overarching right to parole, the mere fact that the process used to determine a PED is (allegedly) nondiscretionary is insufficient to create a liberty interest that the Due Process clause protects." *Id.* at 185; *see also Jenner v. McDaniel*, 123 F. App'x 900, 905 (10th Cir. 2005) (unpublished) (concluding that plaintiff "does not have a protected liberty interest in a particular parole hearing eligibility date"); *Baars v. Raemisch*, 814 F. App'x 376 (10th Cir. 2020) (unpublished) (affirming summary dismissal of prisoner's § 1983 action against the CDOC that alleged failure to calculate a statutorily correct PED in violation of prisoner's Fourteenth Amendment due process rights); *Pruitt v. Heimgartner*, 620 F. App'x 653, 657 (10th Cir. 2015) (unpublished) (absent a state-created liberty interest in release on parole, "there simply is no constitutional guarantee that [determinations of parole eligibility] must comply with standards that assure error-free determinations.") (quoting *Greenholtz*, 442 U.S. at 7).

Mr. Jones' due process claims based on the calculation of his PED will be denied because he does not have a liberty interest in the methodology used to determine the date he will be eligible to be considered for discretionary parole.

**B. Ex Post Facto Claims**

Mr. Jones also claims that the CDOC's recalculation of his PED in December 2019 violated the Ex Post Facto Clause of the federal Constitution by increasing his punishment. (Doc. 19 at 19-26). Mr. Jones maintains that his original 2022 PED was calculated pursuant to the "governing sentence" rule that was in effect at the time he committed his crimes in 1989 and 1997, but following the Colorado Supreme Court's decision in *Exec. Director of the CDOC v. Fetzer*, 2017 CO 77, the CDOC retroactively applied a new methodology in 2019 to unlawfully delay his PED until 2030. (*Id.*).

**1. Calculation of Mr. Jones' PED**

The CDOC originally calculated Mr. Jones' PED using only his life sentence, which was deemed to be his governing sentence. (*See* Doc. 1 at 49). Under that sentence and in accordance with Colo. Rev. Stat. ("C.R.S.") § 17-22.5-104, C.R.S.,[1] Mr. Jones could be considered for parole after serving 40

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1 Section 17-22.5-104 states, in relevant part:

"Except as described in section 18-1.3-401(4)(c), C.R.S., and in subparagraphs (IV) and (V) of paragraph (d) of this subsection (2), no inmate imprisoned under

years. *Id.* His PED was calculated based solely on the 40-year minimum and his separate 96-year sentence was disregarded. *Id.* Under that calculation, Mr. Jones was deemed eligible for parole in November 2022. *Id.* The CDOC later determined that the methodology used to calculate Mr. Jones' PED did not comport with *Fetzer*.

In *Fetzer*, the Colorado Supreme Court addressed an offender's petition to compel the CDOC to recalculate his PED on the ground that the CDOC's "governing sentence" method, which calculated his PED based solely on his concurrent 30-year sentences that were effective in 2000, and ignored the remainder of his concurrent sentences, two of which were 20-year sentences that were effective in 1988, violated the "one continuous sentence" requirement in § 17-22.5-101, C.R.S.[2] *Fetzer*, 2017 CO 77, ¶¶ 1, 3. The Colorado Supreme Court determined that the CDOC's "current governing sentence method," was

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a life sentence for a crime committed on or after July 1, 1985, shall be paroled until such inmate has served at least forty calendar years, and no application for parole shall be made or considered during such period of forty years."

§ 17-22.5-104(2)(c)(I), C.R.S. (2024).

2 Section 17-22.5-101, C.R.S., states: "For the purposes of this article, when any inmate has been committed under several convictions with separate sentences, the department shall construe all sentences as one continuous sentence." The statute was in effect at the time Mr. Jones committed his crimes in 1989 and 1997. *See, e.g., Nowak,* 2014 CO 14, ¶ 32 ("Significantly, section 17-22.5-101 had been in effect since July 1, 1984.").

an erroneous application of the statutory one continuous sentence requirement. *Id.* at ¶ 17. The Court held that § 17-22.5-101, C.R.S., requires the CDOC to treat all of an offender's active concurrent sentences as "a composite continuous sentence," and, therefore, the CDOC may not calculate an offender's PED based solely on the longest of an offender's concurrent sentences, without regard to the other sentences. *Id.* at ¶¶ 20-21.

Respondent states that in accordance with *Fetzer* and other Colorado law, Mr. Jones' PED was recalculated in December 2019 as follows:

> 1. Jones' multiple sentences are combined into one continuous sentence starting from the earliest date. In Jones' case, for parole eligibility purposes, he has concurrent 96- and 64-year sentences effective from December 9, 1997, and a concurrent 40-year (minimum) sentence effective from December 16, 1997. Exhibit 1 at 1. Because the 64- and 40-year sentences are both shorter and start on the same date or later than the longer, concurrent, 96-year sentence, they are subsumed by the 96-year sentence, so the one continuous sentence length (before reduction) is 96 years. *See* Exhibit 1 at 5; see also ECF No. 1 at 52 ("Total Govn Sentence(s): 96 [years]").
>
> 2. In accordance with section 17-22.5-403, C.R.S., Jones must serve at least 50% of his sentence before he can be considered for parole. His one continuous sentence length after reduction is thus 48 years. Exhibit 1 at 5 ("OCS Length After Reduction"); ECF No. 1 at 52 ("Total Sent Reduct Applied").
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> 3. Jones is credited with serving 6 years, 1 month, and 14 days of presentence confinement toward his total sentence. Exhibit 1 at 5 ("PSCC of OCS"); ECF No. 1 at 52 ("Jail Time"). Thus, after the application of presentence confinement credit, Jones must serve a minimum 41 years, 10 months, and 16 days, less any earned time or other deductions, before he can be considered for parole.
>
> . . .

> 5. To arrive at Jones' parole eligibility date, the minimum total sentence that Jones must serve is added to his earliest sentence effective date, or the sentence effective date of his one continuous sentence, of December 9, 1997. As of December 18, 2019, that led to the parole eligibility date of November 10, 2030. ECF No. 1 at 52. As of November 14, 2023, that led to the parole eligibility date of April 22, 2029. Exhibit 1 at 5. Of course, as Jones continues to earn time at CDOC's discretion or if he loses good time due to disciplinary action, his parole eligibility date will change.

(Doc. 30 at 3-5; Doc. 30-1, CDOC Official Time Computation Report).[3]

**2. Does the *Fetzer* Decision Violate Ex Post Facto Principles?**

Mr. Fetzer argues that to the extent the CDOC's recalculation of his PED was required by *Fetzer*, the Colorado Supreme Court's decision violates ex post fact principles.

The federal Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . . ." U.S. Const., Art. I, § 10.[4] The Ex Post Facto Clause bars legislation which, by retroactive operation, increases the punishment for a crime after its commission. *Collins v. Youngblood*, 497 U.S. 37, 42 (1990) (citing *Beazell v. Ohio*, 269 U.S. 167, 169-170 (1925)). "Retroactive changes in laws governing parole of prisoners, in some instances, may be violative of this precept." *Garner*

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3 The Court takes judicial notice of the CDOC's inmate locator website which shows that Mr. Jones has a current PED of November 2028. *See* https://www.doc.state.co.us/oss/ (last visited Feb. 20, 2025).

4 Article I, § 9, cl. 3, has a similar prohibition applicable to Congress: "No Bill of Attainder or ex post facto Law shall be passed."

*v. Jones*, 529 U.S. 244, 249-50 (2000) (citing *Lynce v. Mathis*, 519 U.S. 433, 445-446 (1997) (other citations omitted). The fact that parole is discretionary under state law "does not displace the protections of the Ex Post Facto Clause." *Peugh v. United States*, 569 U.S. 530, 547 (2013) (citing *Garner*, 529 U.S. at 253).

"The Ex Post Facto Clause is a limitation upon the powers of the Legislature and does not of its own force apply to the Judicial Branch of government." *Marks v. United States*, 430 U.S. 188, 191 (1977) (citation omitted). S*ee also Devine v. New Mexico Dep't of Corr.*, 866 F.2d 339, 342 (10th Cir. 1989). Even so, "[i]f a state legislature is barred by the Ex Post Facto Clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction." *Bouie v. City of Columbia*, 378 U.S. 347, 353-54 (1964); *see also Marks*, 430 U.S. at 191-92.

The Due Process Clause limits the retroactive application of a state court's interpretation of a criminal statute only when the judicial interpretation is

"'unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue.'" *Rogers v. Tennessee*, 532 U.S. 451, 461 (2001) (quoting *Bouie*, 378 U.S. at 354).

Applying the principles of *Marks*, *Bouie*, and *Rogers*, the Tenth Circuit Court of Appeals has adopted a two-prong inquiry to guide the federal court's

determination of whether a judicial interpretation of a statute violates ex post facto principles:

> First, we discern whether the statute is "narrow and precise" on its face. *Hawkins v. Mullin*, 291 F.3d 658, 665 (10th Cir.2002), *cert. denied*, 537 U.S. 1173, 123 S.Ct. 1012, 154 L.Ed.2d 916 (2003) (citing *McDonald v. Champion*, 962 F.2d 1455, 1458-59 (10th Cir.1992) (quotation omitted)). If so, "any judicial expansion of that statute beyond its own terms will be considered unforeseeable." *Id.* (quotation omitted). Second, if the statute is not so clearly drawn on its face, we ask "'whether the [state court's] construction is so unexpected and indefensible by reference to the law which had been expressed prior to the conduct at issue as to prevent its application retroactively.'" *Id.* at 666 (quoting *McDonald*, 962 F.2d at 1458) (alteration in original).

*Evans v. Ray*, 390 F.3d 1247, 1252 (10th Cir. 2004).

Turning to Mr. Fetzer's ex post fact claim, the Court first finds that the "one continuous sentence" requirement in § 17-22.5-101, C.R.S. is not "narrow and precise on its face." Therefore, the Court considers whether the Colorado Supreme Court's construction of the statute in *Fetzer* was unexpected and indefensible by reference to the prior law.

As discussed above, *Fetzer* held that because § 17-22.5-101, C.R.S., requires the CDOC to treat all of an offender's active concurrent sentences as "a composite continuous sentence," the CDOC may not calculate an offender's PED based solely on the longest of an offender's concurrent sentences, without regard to the other sentences. *See Fetzer*, 2017 CO 77, ¶¶ 20-21. In reaching this determination, the Colorado Supreme Court reviewed its prior decisions applying § 17-22.5-101, C.R.S., *see id.* at ¶¶ 13-15, and then concluded:

> We have, however, never suggested that there is only one governing sentence "method" or "methodology," which must apply to concurrent separate sentences for all purposes and which may not apply to consecutive separate sentences for any purpose. Similarly, we have never sanctioned a governing sentence methodology that would permit the calculation of an inmate's parole eligibility date solely on the basis of his longest concurrent sentence, in lieu of a composite continuous sentence accounting for all his separate sentences. Rather, the composite governing sentence has always controlled as an application of—not a substitute for—the statutorily required one continuous sentence. *See, e.g.*, [*Vaughn v. Gunter*, 820 P.2d 659, 661-62 (Colo. 1991); *Thiret v. Kautzky*, 792 P.2d 801, 808 (Colo. 1990); *People v. Broga*, 750 P.2d 59, 63 (Colo. 1988); *Price v. Mills*, 728 P.2d 715, 719 (Colo. 1986)]. In those few cases in which we have approved reliance on an inmate's longest sentence to determine the applicable credit or sentencing scheme, the longest or governing sentence has had either the earliest effective date of all the inmate's separate sentences or an effective date coinciding with those of the inmate's other separate sentences, and therefore the starting point of the governing sentence coincided with the starting point of the composite continuous sentence.

*Id.* at ¶ 16.

Mr. Jones contends that to the extent *Fetzer* required the CDOC to recalculate his PED based on the 96-year sentence, rather than the life sentence, the decision was unforeseeable under pre-*Fetzer* Colorado Supreme Court precedent which applied a governing sentence rule based on the sentence with the longest incarceration effect. (Doc. 19 at 22-26).

Prior to *Fetzer*, the Colorado Supreme Court's decisions in *Vaughn, Thiret* and *Price*, deferred to the CDOC's application of a governing sentence rule for offenders serving multiple concurrent sentences which was based on the sentence with the longest incarceration effect, where the CDOC applied the

relevant parole provisions of the governing sentence to the entire composite sentence. *See Price*, 728 P.2d at 718-19; *Thiret*, 792 P.2d at 808; *Vaughn*, 820 P.2d at 662. However, neither these cases, nor the other cases cited by Mr. Jones in his amended Application, specifically address whether a life sentence has a longer incarceration effect than a lengthy determinate sentence. *See id*; *see also* Doc. 19 at 25 (citing *Spoto v. Colorado Dep't of Correction*, 883 P.2d 11 (Colo. 1994) and *Bynum v. Kautzky*, 784 P.2d 735 (Colo. 1989)).

Mr. Jones' reliance on *People v. Montgomery*, 737 P.2d 413 (Colo. 1987) in his Reply brief is also misplaced. (*See* Doc. 31 at 4). In *Montgomery*, the Colorado Supreme Court concluded that "a sentence to a term of twenty-five to fifty years is not harsher than a sentence to life imprisonment" where parole is discretionary and the life sentence could have resulted in a term of life imprisonment, but the defendant would have been released unconditionally upon expiration of the 50-year sentence. 737 P.2d at 416. *Montgomery* is factually distinguishable from the present action because Mr. Jones' 96-year sentence will effectively result in a term of life imprisonment, absent discretionary parole. The 96-year sentence also arguably has the longest incarceration effect because Mr. Jones must serve 48 years to be eligible for parole,[5] as opposed to the mandatory minimum of 40 years on the life

5 See § 17-22.5-403(1), C.R.S. (2024) (a person sentenced to a class 4 or class 5 felony is eligible for parole after he has served fifty percent of the sentence

sentence.[6] The 96-year sentence is the longest sentence with the earliest effective date, consistent with Colorado Supreme Court decisions prior to *Fetzer*. *See Fetzer*, 2017 CO 77, ¶ 16.

The Court finds that *Fetzer's* interpretation of the one continuous sentence requirement of § 17-22.5-101, C.R.S., was not unexpected and indefensible based on the plain language of the statute and prior Colorado Supreme Court cases interpreting the same. *Cf. Bouie*, 378 U.S. at 356 (state's interpretation was "clearly at variance with the statutory language" and without "the slightest support in prior . . . decisions"); *Marks*, 430 U.S. at 191-96 (challenged decision was unexpected and "marked a significant departure" from prior precedent). Therefore, the CDOC's application of *Fetzer* to recalculate Mr. Jones' PED did not violate Mr. Jones' federal due process rights based on ex post facto principles.

**3. Did the CDOC Apply a PED Calculation Methodology not Required by *Fetzer*?**

Mr. Jones contends in the alternative that the CDOC's recalculation of his PED based on an unforeseeable and unexpected new methodology not required by the *Fetzer* decision violated ex post facto principles. (*See* Doc. 19 at

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imposed).

6 *See* § 17-22.5-104(2)(c)(I), C.R.S. (2024) (offender sentenced to life in prison must serve 40 years to be parole eligible).

22-26). According to Mr. Jones, *Fetzer* simply requires the CDOC to calculate his PED based on the earliest sentence effective date of his concurrent sentences (December 9, 1997) but does not mandate a recalculation based on the 96-year sentence instead of the life sentence. (*Id.*).

In *Smith v. Scott*, 223 F.3d 1191 (10th Cir. 2000), the Tenth Circuit recognized that "an agency regulation which is legislative in nature is encompassed by [the federal constitutional prohibition against ex post facto laws] because a legislative body cannot escape the Constitutional constraints on its power by delegating its lawmaking function to an agency." *Id.* at 1193-94 (internal quotation marks and citations omitted). Even if the CDOC's PED calculation methodology constitutes a regulation enacted pursuant to a delegation of legislative authority, the ex post facto claim lacks merit for the reasons discussed below.

Mr. Jones challenged the CDOC's recalculation of his PED in a state court declaratory judgment action. After the state district court denied relief, the Colorado Court of Appeals determined:

> Under section 17-22.5-101, when an inmate such as Jones "has been committed under several convictions with separate sentences, the [CDOC] shall construe all sentences as one continuous sentence." In *Fetzer*, the supreme court "broke no new ground," ruling simply that the CDOC's previous method of calculating PEDs "could not violate [this] legislative enactment." *Owens v. Carlson*, 2022 CO 33, ¶ 40 (citing *Fetzer*, ¶ 20). Following *Fetzer*, then, the CDOC was required to calculate Jones's PED while construing his multiple concurrent sentences as "one continuous sentence." *See Fetzer*, ¶ 20. In doing so, the CDOC correctly

> applied section 17-22.5-101 in determining that a composite sentence — of Jones's forty-eight-year minimum time served before parole eligibility in 97CR873, running concurrently to his forty-year minimum on his life sentence in 89CR3639 that became effective one week later — would require him to serve the longer of the two minimums before he was eligible for parole.

*Bernard Jones v. Exec. Dir. Colorado Dept. of Corrections, et al.*, No. 21CA0680 (Colo. App. Jan. 19, 2023) (unpublished) (Doc. 15-3 at 22-23).

The Colorado Court of Appeals' determinations, as a matter of state law, that the CDOC's recalculation of Mr. Jones' PED was required by *Fetzer* and was a correct application of the statutory one continuous sentence requirement, as interpreted in *Fetzer*, are binding on this federal habeas court. *See Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) (recognizing that "a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus."); *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions."); *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) (concluding that state courts are "the ultimate expositors of state law" and that federal courts are "bound by their constructions except in extreme circumstances").

Moreover, as discussed in the preceding section, the CDOC's current interpretation of the statute was foreseeable under *Fetzer* and the Colorado Supreme Court precedent cited therein. The CDOC's change in methodology

following *Fetzer* to ensure that it was correctly applying the "one continuous sentence" directive in § 17-22.5-101, C.R.S., did not violate federal ex post facto principles. *See Stephens v. Thomas*, 19 F.3d 498, 500 (10th Cir. 1994) (the Ex Post Facto Clause does not prohibit "the correction of a misapplied existing law which disadvantages one in reliance on its continued application."); *Smith*, 223 F.3d at 1195 ("When a state law has been applied using different interpretations, the proper inquiry in an ex post facto challenge is whether the current interpretation was foreseeable.") (citing *Stephens*, 19 F.3d at 500).

Mr. Jones' ex post facto claims based on the CDOC's recalculation of his PED in December 2019 will be denied.

**C. Equal Protection Claims**

Mr. Jones next claims that the CDOC has violated his Fourteenth Amendment equal protection rights in calculating his PED. (Doc. 19 at 16). Mr. Jones alleges that inmate Ryan Maples, who is Jewish, "was awarded all of his presentence confinement time and all of it was deducted from his sentence," which resulted in Mr. Maples' PED "being shortened by several months" while the method used by the CDOC to calculate the PED of Mr. Jones, who is African American and indigent, resulted in an eight-year increase. (*Id.* at 17).

"The equal protection clause provides that '[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws,'" *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 659 (10th Cir.

2006) (quoting U.S. Const. amend. XIV, § 1), "which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). *See also Straley v. Utah Bd. of Pardons*, 582 F.3d 1208, 1215 (10th Cir. 2009). An equal protection claim fails in the absence of a "threshold showing" that Mr. Jones was treated differently from others with whom he was similarly situated. *Brown v. Montoya*, 662 F.3d 1152, 1172-73 (10th Cir. 2011) (internal quotation marks and citation omitted). *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (stating that even in "class of one" equal protection claim, the plaintiff must show that he "has been intentionally treated differently from others similarly situated."). *See also Matelsky v. Gunn*, 15 F. App'x 686, 689 (10th Cir. 2001) (unpublished) ("In the absence of any specific allegations of differential treatment, the Equal Protection claim is patently inadequate under any of the three equal protection theories—fundamental rights, suspect classification, or "class of one"—and was properly dismissed as frivolous.").

Moreover, "the requirement that comparators be similarly situated in all material respects is inevitably more demanding where a difference in treatment could legitimately be based on a number of different factors." *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1218 (10th Cir. 2011) (emphasis and internal quotation marks omitted).

In support of his equal protection claim, Mr. Jones points to an affidavit

from Mary Carlson, a CDOC time computation official,[7] wherein Ms. Carlson purportedly stated that "[d]ifferent methods of calculation have been developed since the decision in *Fetzer*." (Doc. 19 at 17). Mr. Jones asserts that, based on Ms. Carlson's statement, he should be afforded an opportunity to submit evidence to demonstrate the difference between the calculation of his PED and the calculation of inmate Maples' PED. (*Id.*).

Mr. Jones does not state any specific facts in his amended Application to satisfy the required threshold showing that he and inmate Maples, or any other state offender, are similarly situated for purposes of calculating each offender's PED. As the Colorado Court of Appeals recognized in Mr. Jones' state declaratory judgment action, "the circumstances of some inmates' sentences and presentence confinement credit may warrant that the CDOC deduct multiple awards of PSCC from those inmates' multiple, concurrent sentences. But this is not the case for every inmate." (Doc. 15-3 at 24). Furthermore, because Mr. Jones' allegations in support of disparate treatment are conclusory, he fails to demonstrate that he should be afforded an opportunity to provide evidence to support his equal protection claim. *See, e.g.,*

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7 The Carlson affidavit is not part of the record in the present action. Mr. Jones appears to be referring to an affidavit submitted by the CDOC in Mr. Jones' state court declaratory judgment action in which Ms. Carlson described the method used to recalculate Mr. Jones' PED following the *Fetzer* decision. (*See* Doc. 15-2 at 1-2).

*Christopher D. Harrell v. Jeremy Lira, et al.*, No. 24-8011, 2025 WL 251832, at *4 (10th Cir. Jan. 21, 2025) (concluding that inmate was not entitled to conduct discovery on his equal protection claim where allegations in support of disparate treatment were wholly conclusory and failed to state a plausible claim for relief).

Mr. Jones' Fourteenth Amendment equal protection claims will be denied.

**D. Denial of Application of PSCC Awarded by the Sentencing Courts**

Finally, the Court will briefly address Mr. Jones' allegations that the CDOC is denying him the application of PSCC credit to which he is entitled under § 18-1.3-405, C.R.S. (2024). Mr. Jones contends that the state district courts awarded him 123 days of PSCC for time served against the 1997 sentence, in addition to the 2,211 days of PSCC awarded against the 1989 sentence, but the CDOC has refused to apply the additional 123 days of PSCC to the calculation of his PED. (*See* Doc. 19 at 5-15). Mr. Jones appears to assert that under Colorado law, he is entitled to have a total of 2,334 days of PSCC (2, 211 + 123 days) deducted from his concurrent sentences. (*See id.* at 11-15).

The Colorado Court of Appeals concluded in Mr. Jones' state court declaratory judgment action that the CDOC's application of the PSCC awarded by the sentencing courts in case numbers 89CR3639 and 97CR873 was correct under Colorado law, that the CDOC "is giving [Mr. Jones] the maximum

possible PSCC from his concurrent sentences," and "that Jones is not entitled under section 18-1.3-405 to have the CDOC add his PSCC together and deduct the sum from his concurrent sentences in both cases." (Doc. 15-3 at 18-19).

Again, this Court is bound by the Colorado Court of Appeals' determination that Mr. Jones has not been denied the application of PSCC to which he is entitled under Colorado law. *See Bradshaw,* 546 U.S. at 76; *Estelle,* 502 U.S. at 67-68; *Mullaney*, 421 U.S. at 691. Mr. Jones fails to demonstrate that the state appellate court's interpretation of state law violates the federal Constitution. *See Bowser v. Boggs,* 20 F.3d 1060, 1065 (10th Cir. 1994) ("We will not second guess a state court's application or interpretation of state law on a petition for habeas unless such application or interpretation violates federal law."); *McGregor v. Thurlow,* 435 F. App'x 779, 780 (10th Cir. 2011) (unpublished) (recognizing that if the petitioner "is being incarcerated after he should have been released under Colorado law, then his confinement violates his right to due process, and it may also constitute cruel and unusual punishment. But the determining issue is what state law requires. And on that issue the state courts have the last word.") (citing *Mullaney,* 421 U.S. at 691).

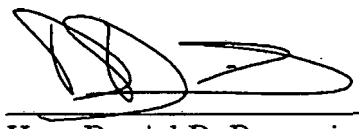
## IV. CONCLUSION

For the reasons state herein, it is ORDERED that the amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Doc. 19) is DENIED, and this case is DISMISSED WITH PREJUDICE. It is

FURTHER ORDERED that a certificate of appealability pursuant to 28 U.S.C. § 2253(c) will not issue because Mr. Jones has not made a substantial showing of the denial of a constitutional right.

DATED February 20, 2025.

BY THE COURT:



Hon. Daniel D. Domenico

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