No. 25-

IN THE

Supreme Court of the United States

DELMART VREELAND,

Petitioner,

v.

COLORADO DEPARTMENT
OF CORRECTIONS, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether a State violates the Due Process Clause of the Fourteenth Amendment when it limits a defendant's ability to raise all meritorious claims on direct appeal, then in collateral review refuses to address the merits of the claims it forced the defendant to abandon. Afterwards, upon the discovery of new evidence to support his claims, various state courts systematically refuse to adjudicate those claims on the merits—shifting procedural rationales at each stage of review so that no court ever reaches the substance of the constitutional violations, despite the record showing and the state acknowledging the existence of jurisdictional defects and illegal sentences.

Whether a State provides an "adequate and effective" corrective process, as required by due process, when a criminal defendant is denied merits review of conceded or facially valid claims—first in the trial court, then on direct appeal, and finally in the state court of last resort—based on continually changing procedural bars that ensure the claims can never be heard by a competent court.

Whether due process is violated where a State prosecutes a criminal case without jurisdiction and imposes an illegal sentence, yet forecloses all avenues of correction by engaging in procedural gamesmanship that renders constitutional review illusory rather than meaningful.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this Court are as follows:

Delmart Vreeland, Petitioner.

Colorado Department of Corrections, Colorado Territorial Correctional Facility*, and Jennifer Hansen, Respondents.

*Petitioner has since been transferred to Sterling Correctional.

LIST OF PROCEEDINGS

DOUGLAS COUNTY DISTRICT COURT
04CR706
PEOPLE V. VREELAND
Jury verdict entered: December 11, 2006.
Habitual-criminal findings entered: June 12, 2008.
Judgment of conviction and sentence imposed:
October 22, 2008.
Amended sentencing order entered *nun pro tunc*:
June 5, 2025.

DENVER COUNTY DISTRICT COURT
24CV30621
VREELAND V. DEPARTMENT OF CORRECTIONS
Habeas Corpus Petition Dismissed on February 27,
2025.

COLORADO COURT OF APPEALS
NO. 08CA2468
PEOPLE V. VREELAND
Notice of appeal filed: December 1, 2008.
Judgment affirmed: February 14, 2013.
Not published pursuant to C.A.R. 35(f).

No. 17CA1648
PEOPLE V. VREELAND
Judgment affirmed: August 27, 2020.
Not published pursuant to C.A.R. 35(e).

No. 22CA1704
PEOPLE V. VREELAND
Opinion issued: Affirmed denial of Postconviction relief,
October 16, 2025.

COLORADO SUPREME COURT
No. 2013SC194
VREELAND V. PEOPLE
Petition for writ of certiorari denied: January 27, 2014.

No. 25SC147
VREELAND V. PEOPLE
Petition for writ of certiorari denied: May 12, 2025.
VREELAND V. DEPARTMENT OF CORRECTIONS
No.25SA77
Dismissal affirmed November 6, 2025.

U.S. DISTRICT COURT IN COLORADO
14CV-02175-PAB
VREELAND V. ZUPAN
Denied on December 20, 2016

1:25-CV-02647-LTB-RTG
VREELAND V. LONG
Dismissed without Prejudice December 30, 2025.

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
No. 16-1503
VREELAND V. ZUPAN
Reported as *Vreeland v. Zupan*, 906 F.3d866 (10th Cir. 2018).
Judgment affirmed: October 9, 2018

UNITED STATES SUPREME COURT
Vreeland v. Zupan, 587 U.S. 954, 139 S. Ct. 1586 (2019)
Petition for Writ of Certiorari Denied on April 15, 2019

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Vreeland respectfully requests that a Writ of Certiorari be issued to review the orders, adjudications, usage, and implementation of the Colorado corrective process in collateral relief cases, as Vreeland contends that the process is illusory and deprives him of fundamental rights.

OPINIONS BELOW

Stemming from the Denver Writ of Habeas Corpus, the Colorado Supreme Court denied the appeal of the dismissal of Vreeland's habeas action on November 6, 2025 – thus ***eviscerating*** any corrective process available to Vreeland. Reproduced in App1a.

Given that Vreeland challenges the entire corrective process afforded to Colorado defendants, it is prudent to explain all relevant opinions below: Vreeland filed for Direct Appeal relief Colorado Court of Appeals (CCA) in 08CA2468. In an effort to raise every error evident through the record, Vreeland filed for leave to file an oversized brief. The CCA denied the request and forced Vreeland to waive a majority of his claims on appeal. The CCA affirmed the convictions on February 14, 2023. Vreeland filed for state Certiorari relief and was denied on January 27, 2014. Colo. Sup. Ct No. 2013SC194. Then Vreeland filed for postconviction relief and was denied relief either because the issues were raised on appeal and denied, or because they were not raised on appeal; thus, creating a cycle in which Vreeland cannot obtain meaningful review through the state-created corrective process. 04CR706. Federal courts reiterated such findings

without merits-based determination. Mr. Vreeland again filed for postconviction relief in Douglas County, Colorado. The Douglas County court denied relief on the grounds that nearly all of Vreeland's claims were time-barred and/or successive. Vreeland appealed.

Relevant here, while the appeal of was pending, Vreeland filed for collateral relief in Denver. In a habeas action, the Denver court found that the filing was duplicative to the matter pending in the CCA (22CA1704); although Vreeland has argued and continues to argue that this is a disingenuous finding just to subvert a merits-based determination. The CCA's 10/16/25 opinion which is reproduced in the Appendix ("14a"), evidences that the claims in Denver and on 35(c) are not the same and displays an avoidance to issue a merits-based ruling. The Supreme Court denied Certiorari review in the 22CA1704 case under C.A.R. 50 on May 12, 2025. Vreeland, pro se, seeks certiorari relief in 25A325.

Finally, the Colorado Supreme Court denied the appeal of Denver's denial of Vreeland's habeas action on November 6, 2025. App1a.

BASIS FOR JURISDICTION IN THIS COURT

This Court has jurisdiction under 28 U.S.C. § 1257(a) to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." To wit, the Colorado Supreme Court upheld the Denver Court's adjudication of the Petition for Writ of Habeas Corpus on November 6, 2025. App1a.

After being barred from raising all claims on direct appeal, Vreeland filed multiple Petitions for Postconviction relief, including the latest Petition under Rule 35(c) in Douglas County, Colorado and a Petition for Writ of Habeas Corpus in Denver County, Colorado. Denver County denied the Petition for Writ of Habeas Corpus on the grounds that there was no available remedy through habeas for Vreeland given the procedural posture of Vreeland's collateral claims before the CCA in 22CA1704. App.14a-36a. The CCA denied relief on claims distinct from the Denver Habeas on October 16, 2025.

Thereafter, the Colorado Supreme Court upheld the Denver Court's adjudication of the Petition for Writ of Habeas Corpus on November 6, 2025. App 1a. The issues presented herein have been fully adjudicated and exhausted in State Courts under C.R.S. 13-45-101 and C.A.R. 51.1.

This Petition is brought within the timeframe of Rule 13.

CONSTITUTIONAL PROVISIONS INVOLVED

The following provisions of the United States Constitution are involved in this case:

> U.S. Const. amend XIV, § 1: "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."

STATURORY PROVISIONS INVOLVED

The following statutory provisions are relevant to this case:

> C.R.S. §13-45-101. Petition for writ - criminal cases.
>
> (1) If any person is committed or detained for any criminal or supposed criminal matter, it is lawful for him to apply to the supreme or district courts for a writ of habeas corpus, which application shall be in writing and signed by the prisoner or some person on his behalf setting forth the facts concerning his imprisonment and in whose custody he is detained, and shall be accompanied by a copy of the warrant of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. The court to which the application is made shall forthwith award the writ of habeas corpus, unless it appears from the petition itself, or from the documents annexed, that the party can neither be discharged nor admitted to bail nor in any other manner relieved. Said writ, if issued by the court, shall be under the seal of the court, and directed to the person in whose custody the prisoner is detained, and made returnable forthwith.

CONCISE STATEMENT OF FACTS

In December 2006, a jury in Douglas County District Court convicted Vreeland, after being forced to trial without a lawyer, of multiple offenses, including inducement and solicitation of child prostitution, sexual exploitation of a child, sexual assault (despite the fact that the jury found him not guilty), contributing to the delinquency of a minor, and distribution of a controlled substance. App4a. In June 2008, following a bench proceeding, the court adjudicated six habitual criminal counts. In October 2008, the court-imposed life imprisonment on the sexual assault convictions and an aggregate sentence of 336 years, effectively life without parole. App.30a.

Significantly, Vreeland was charged and tried in a County where he was not present, the state hid the record of his challenge to such jurisdiction for 17 years, and falsified documents and withheld evidence to ensure they obtained this wrongful conviction. This includes falsified affidavits for warrants (App51a); witness tampering and violations of sequestration rules (App55a), breaks in chain of custody (App56a) and planted evidence (App56a). In fact, the trial court sanctioned the State for their discovery violations. Moreover, during trial, Vreeland was stripped of his right to have counsel, and for nearly two decades, Vreeland's rightful and meritorious claims have been intentionally discarded without just cause.

Petitioner pursued a direct appeal. On direct appeal, Vreeland was deprived of his equal protection rights and due process rights when he was forced to abandon claims on appeal. App.18a-36a. This has led to a domino effect of

Colorado failing to review meritorious claims. The CCA affirmed the convictions, and the Colorado Supreme Court denied certiorari. App.12a. Petitioner thereafter sought postconviction relief under Colorado Rule of Criminal Procedure 35(c). That petition was denied, and the denial was affirmed on appeal. Certiorari was again denied.

Over the following years, Petitioner filed additional postconviction pleadings raising challenges to the legality of his sentence, the habitual offender adjudication, and the integrity of the trial proceedings. These pleadings were repeatedly denied or dismissed on procedural grounds, without a full merits adjudication of the sentencing defects later conceded by the State.

In 2021, Petitioner filed an omnibus pleading invoking Rules 35(a) and 35(c), as well as the Colorado habeas statute, alleging that portions of his sentence were illegal and that newly discovered evidence undermined the validity of his confinement. App.15a. During these proceedings, substantial portions of the trial and postconviction record, including recorded jail calls, were declared missing or unavailable, requiring reconstruction efforts that spanned years.

While these matters were pending, the Douglas County District Court repeatedly stated that it lacked authority to rule on sentencing defects or new evidence because appellate proceedings were ongoing. At the same time, petitioner's efforts to obtain a merits ruling through habeas corpus were met with more gamesmanship. App.3a-13a.

During appellate litigation, the State expressly acknowledged that Count 9 arose from the same criminal episode as Count 8 and that the original concurrent sentence was unlawful under Colorado law. App170a. The State conceded that Count 9 must run consecutively. The sentencing court likewise acknowledged that imposed sentence was illegal. App.37a.

No dispute exists between the parties as to the illegality of the original sentencing structure.

On June 4, 2025, briefing concluded in the CCA in Case No. 22CA1704, which addressed the procedural viability of petitioner's challenges. The following day, June 5, 2025, the Douglas County District Court entered a new sentencing order sua sponte. App.37a.

That order changed petitioner's sentence significantly, resentencing Counts 7 and 8 and ordering Count 9 to run consecutively to Count 8. It was a new judgment entered after appellate briefing closed and without an opportunity to be heard. App.37a.

The June 5, 2025 order was not included in the notice of appeal and was not part of the record before the CCA in Case No. 22CA1704. Nonetheless, the Court of Appeals later issued an opinion purporting to void that order on the ground that the trial court lacked authority to act under the rule it invoked, despite the parties' consensus and it being on appeal before another division. App.32a.

While appellate proceedings concerning the Douglas County sentence were pending, petitioner filed a petition

for writ of habeas corpus in the Denver District Court, pursuant to newly discovered evidence, asserting that he was unlawfully restrained under an illegal sentence and that no state court was available to provide a timely corrective process. App.41a.

On February 27, 2025, the Denver District Court dismissed the habeas petition. App.3a. The court held that habeas relief was unavailable because petitioner's claims either had been raised previously, were currently pending before the CCA, or could be pursued through Rule 35 proceedings.

The Denver court did not adjudicate the legality of the judgment or sentence and did not dispute the acknowledged sentencing defects. Instead, it held that habeas corpus could not be used while other state remedies were theoretically available, notwithstanding that the sentencing court had disclaimed authority to act during the pendency of the appeal. The Supreme Court of Colorado affirmed on November 6, 2025. App1a.

This Court has jurisdiction.

Vreeland has no state forum to raise his claims based on and further supported by newly discovered evidence. Without granting certiorari review, Vreeland runs the grave risk of remaining wrongfully incarcerated with no avenue for relief.

ARGUMENT

I. THE STATE OF COLORADO DOES NOT AFFORD AN ADEQUATE CORRECTIVE PROCESS FOR COLLATERAL RELIEF WHEN PRESENTING FACIALLY VALID CLAIMS, VIOLATING FEDERAL DUE PROCESS.

The Fourteenth Amendment guarantees more than the existence of appellate and postconviction procedures in name; it guarantees that when a State chooses to provide such procedures, they must be administered in a manner that is fundamentally fair, evenhanded, and capable of adjudicating constitutional claims on their merits. *Johnson v. Missouri*, 143 S. Ct. 417 (2022)(Jackson, J., Sotomayor J., dissenting); *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980).

Here, Vreeland was entitled to Habeas Corpus Review because there was no available avenue for relief at the time of filing. C.R.S. §13-45-101; *Naranjo v. Johnson*, 770 P.2d 784 (Colo. 1984). Likewise, a habeas corpus petition should not be dismissed without a hearing if factual allegations in the petition make a prima facie showing of invalid confinement or demonstrate a serious infringement of a fundamental constitutional right. *Deason v. Kautzky*, 786 P.2d 420 (Colo. 1990). Vreeland made this showing. *See* App.41a. Such is shown herein and in Vreeland's companion Petition for Writ of Habeas Corpus before this Court, as well as the claims made in *Vreeland v. Long*, Case No. 1:25-CV-02647-LTB-RTG (Dist. Ct. Colo. Dec. 30, 2025). (Hereinafter "2025 §2254").

Plainly, Vreeland showed, through newly discovered evidence, that he suffers from prosecutorial dereliction,

fabrication of evidence, warrants based on false pretenses, and manifest injustice on several fronts. App.41a.

Across multiple proceedings, Mr. Vreeland raised a wide array of constitutional and statutory challenges to his convictions and sentences. These claims were not duplicative, frivolous, or facially meritless. They included challenges to the legality of the habitual criminal adjudication; defects in the charging instruments; insufficiency of the evidence for multiple convictions; denial of the right to present a complete defense; violations of the Sixth Amendment right to counsel; suppression and destruction of exculpatory evidence; *Brady* violations; unlawful admission of prejudicial evidence; violations of the privilege against self-incrimination; witness tampering and sequestration violations; jurisdictional defects; unlawful searches and seizures; and cumulative error. Many of these claims implicated facts outside the trial record and depended on evidence the State itself failed to preserve or disclose.

Rather than adjudicating these claims in a manner consistent with Colorado's own postconviction framework, Colorado's District Courts, Court of Appeals, and Supreme Court disposed of them through a patchwork of procedural rationales such as timeliness, successiveness, waiver, abandonment, and law of the case. These justifications have often been applied inconsistently, retroactively, or without regard to whether the State had ever asserted the defense or whether the trial court had enforced it. This mode of adjudication did not merely deny relief, but it deprived Mr. Vreeland of a meaningful opportunity to be heard.

Claims challenging criminal proceedings and sentencing were dismissed without hearings. Allegations of evidence suppression and destruction were rejected due to record insufficiency, while denying access to key materials. Jurisdictional claims were dismissed as untimely, despite errors not being protected by procedural default if the court exercised jurisdiction. Claims of evidentiary contamination, witness misconduct, and defense violations were summarily denied despite being valid and meritorious. All of this was done in violation of Colo. Crim. P. 35(c)(V).

This is not a case in which the state courts carefully evaluated each claim and rejected them on their merits. Nor is it a case in which a consistent, settled procedural rule was evenly applied. Instead, the record reflects a process in which procedural doctrines were invoked opportunistically, shifted over time, and applied *sua sponte* to avoid reaching constitutional questions altogether. See Colo. Crim. P. 35(c)(V); App1a-40a.

The cumulative effect of these rulings matter. The wholesale foreclosure of dozens of interrelated constitutional challenges produced a postconviction process that was arbitrary and illusory.

Here, Colorado's approach ensured that none of Mr. Vreeland's claims received full, fair, and coherent adjudication. That failure is itself a deprivation of due process. Colorado rules and statutes 13-45-101 and Colo. Crim. P. 35(c) require a hearing if a prima facie showing is made. When a state court's procedural handling of a case functions not to regulate review but to extinguish it, federal intervention is warranted to restore the basic

guarantees of justice, fairness, and reliability that the Fourteenth Amendment demands. As detailed in the analysis below, Colorado sets forth a process for collateral relief but does not *actually* provide one. Simply put, if you raise an issue on appeal, you cannot raise it in collateral proceedings. If you don't raise an issue on appeal, you cannot raise it during collateral proceedings. The avenue for relief is illusory.

II. COLORADO VIOLATES VREELAND'S PROTECTED LIBERTY INTEREST BY MAKING RULINGS THAT ARE CONTRARY TO THE RECORD AND DISPLAY JUDICIAL GAMESMANSHIP TO AVOID REACHING THE MERITS OF VREELAND'S CLAIMS.

Vreeland has continuously raised facially valid claims before competent Colorado courts. And at each step of the way, Colorado courts deviate from due process norms and guarantees to subvert a merits-based review of Vreeland's claims.

At first instance, Vreeland was deprived counsel during trial. App71a. The trial court and all appellate courts have ruled that Vreeland "waived" his right to counsel. Nothing could be further from the truth. Vreeland sought to challenge this, but Colorado hid records and recorded calls showing a breakdown in attorney-client relations and alleged blackmail that has never been adjudicated. Notably, after dozens of years of trying to get the calls before the court, Vreeland sent a hard drive to the District Court, which in turn supplemented the record with the recordings that Vreeland had (those that were usable were dispositive). When Vreeland raised this

on appeal, the appellate court stated that it would not play archaeologist of the record. App.23a. However, the supplemental record was the recorded calls. Vreeland cited to the supplemented record. App.107a. The court was then required to listen to useable calls. This statement (in a footnote) by the CCA shows that they did not even open the drive. Likewise, the Court ignored that the onus of producing the calls was improperly placed on Vreeland.

Vreeland raised this issue in habeas corpus relief, but again went unheard and denied an evidentiary hearing. Colorado has played procedural ping pong on this meritorious, constitutional claim, and refused to hear the merits of the claim given its illusory postconviction process. The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment. *Faretta v. California*, 422 U.S. 806 (1975).

Vreeland was deprived of trial counsel, as Petitioner was forced to proceed pro se. The record shows numerous instances where Vreeland was completely denied counsel. Colorado simply eradicated Vreeland's right to counsel. Colorado's failure to address the merits of this claim at every stage and engage in gamesmanship is a fatal deprivation of due process. App44a-46a; App.71a.

After new evidence was revealed, habeas relief under 13-45-101 was the only avenue for relief. See Denver Amended Petition Appx. Tab 2, p.71-73. When that was dismissed, Colorado deprived Vreeland of his due process rights. App.12a. When a state provides a

postconviction procedure, it must administer that process in a fundamentally fair manner; a state may not erect a postconviction scheme and then apply it arbitrarily or in a manner that makes it impossible for the defendant to present constitutional claims. *Johnson v. Missouri*, 143 S. Ct. 417 (2022)(Jackson, J., Sotomayor J., dissenting); *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980).

Colorado's mandatory procedures require an evidentiary hearing whenever the defendant's claims rely on facts outside the trial record, and Vreeland's claims unquestionably do[1].

By ignoring those mandatory procedures and summarily dismissing the claims, the court deprived Vreeland of a meaningful opportunity to be heard, rendering the denial constitutionally infirm. Once the trial court took that position, Denver was constitutionally required to adjudicate the habeas petition. Habeas corpus is a critical constitutional safeguard, deeply rooted in due process, and a court cannot extinguish it by procedural sleight of hand. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008)[2]. The failure to hold a hearing, despite raising

1. As to Colo. Crim. P. 35(c) - If a motion under section (c) sets forth facts constituting grounds for relief from a sentence, a prompt hearing by the trial court must be granted. *Allen v. People*, 157 Colo. 582 (1965). As to 13-45-101, et. seq. – A hearing must be held after a prima facie showing under the statute and *Ex parte Emerson*, 107 Colo. 83 (1940).

2. *Schlup v. Delo*, 513 U.S. 298, 319, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995) (Habeas "is, at its core, an equitable remedy"); *Jones v. Cunningham*, 371 U.S. 236, 243, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963) (Habeas is not "a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose").

jurisdictional defects, newly discovered evidence, and commitment under false pretenses flies in the face of C.R.S. §13-45-101-103.

Vreeland fully complied with state statutes in his filing and presented a claim deserving of merits review.

Vreeland attached detailed allegations spanning hundreds of pages, and he repeatedly sought access to recordings, investigator notes, and other discovery materials that the State conceded existed but refused to disclose. (See App41a and its Tabs.).

And while no other avenue for relief was available, as shown through the denied successive 35c, Vreeland sought habeas relief. The habeas court and the Supreme Court of Colorado denied relief and seek to force Vreeland to wait years before being able to present his meritorious, prime facie valid claims. App.1a-13a.

The summary denial prevented adjudication of substantial newly discovered evidence claims, including evidence that the prosecution's key witnesses fabricated testimony, violated the rule of sequestration, and colluded with investigators. The trial court's refusal to hold an evidentiary hearing is contrary to the mandatory language of Colorado's postconviction procedures.

The Douglas County Court denied most claims as successive or time-barred, despite the State concealing evidence and preventing him from raising claims. App90a. Once he obtained the evidence, both courts denied relief based on new evidence, even though the habeas route was the only option. App1a; App41a.

Colorado's appellate and collateral proceedings do not afford an avenue for relief; they are ritualistic and illusory.

Perhaps most illustrative of this notion is the fact that the trial court did not possess jurisdiction to try the criminal proceeding. App98a. Vreeland challenged this at trial and in postconviction matters, and each time state actors impeded his right to adjudicate the claim, whether through hiding evidence, fabricating other evidence, or deviating from the record and law of the case.

Due process forbids a State from subjecting a defendant to adjudication in a tribunal that lacks territorial or subject-matter jurisdiction. *U.S. Const. amends. VI, XIV.* The Constitution makes it clear that determination of proper venue in a criminal case requires determination of where the crime was committed. *United States v. Cores*, 356 U.S. 405, 407, 78 S. Ct. 875, 877 (1958).

The U.S. Supreme Court has long held state law may create a federally protected liberty interest when it employs mandatory language and imposes substantive limitations on official discretion. *Board of Pardons v. Allen*, 482 U.S. 369, 373–81 (1987). When a state statute commands that certain procedures must occur prior to trial, those commands become part of the "substantive predicates" that create a legitimate claim of entitlement protected by due process. *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454- 462 (1989).

Colorado's jurisdiction statute is mandatory. It provides that when jurisdiction is contested, the court **must** decide the issue before trial and before jury selection. C.R.S. § 18-1-202(11). The statute removes

all discretion; the court shall determine jurisdiction first. This mandatory language creates a state-law liberty entitlement that becomes enforceable under the Fourteenth Amendment. *See Allen*, 482 U.S. at 376; *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983).

When the trial court disregarded this mandatory directive and chose to begin trial without making the required jurisdictional findings, it stripped Vreeland of a liberty interest created by state law and protected by federal due process.

Trying a defendant in a county with no territorial connection to the alleged conduct violates these constitutional prerequisites. *United States v. Cabrales*, 524 U.S. 1, 6–7 (1998) (venue must lie where the conduct occurred; prosecution in the wrong district violates Article III and the Sixth Amendment); *United States v. Johnson*, 323 U.S. 273, 276 (1944) (venue is not merely a "formal legal procedure" but rather "touch[es] closely [on] the fair administration of criminal justice and public confidence in it").

A trial conducted in a forum with no lawful authority affects the entire framework of the trial, which is a structural error. *Neder v. United States*, 527 U.S. 1, 8, 119 S. Ct. 1827, 1833 (1999); *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907–08 (2017). Errors are structural when: (1) they protect a fundamental interest other than accuracy of factfinding, (2) their effects are too difficult to measure, and (3) they undermine the basic fairness and integrity of the proceeding. *Id.*

This case encompasses the constitutional defect that the Constitution forbids: subjecting a defendant to trial before a court that had no lawful jurisdiction over the alleged conduct. The trial court acknowledged the challenge, admitted the statute required a pretrial ruling, yet elected to postpone the jurisdictional determination until after evidence was heard at trial. That directly contravenes the aforementioned Colorado mandatory statute and federal constitutional requirements.

Vreeland raised this before both Douglas County, Colorado (during trial and postconviction relief), Denver County (habeas proceeding), CCA, and the Colorado Supreme Court (petition for certiorari and direct appeal). App41a-125a. At each step of the way, different, unsupported reasons for denial were deployed. For instance, the Douglas County court sitting in postconviction review held that "*Mr. Vreeland claims the Eighteenth Judicial District does not have jurisdiction in claim thirty-two. This is a meritless allegation contrary to the testimony and evidence at trial as well as the Court record. Claim thirty-two is DENIED." (internal citation omitted).*

When Vreeland challenged this on appeal, the CCA moved the goal post and cited a reason for denial that is contrary to the facts and due process.

The CCA held that - "Before trial, Vreeland challenged whether Douglas County was the proper venue for his trial. Although the trial court rejected his challenge, he didn't raise any venue argument in his direct appeal. We therefore can't address the merits of his venue argument at this postconviction stage….Vreeland nonetheless

asserts that he couldn't raise venue in his direct appeal because the relevant trial court records were "hidden" from him… Nor does he advance any good cause to excuse his delay..." App.18a.

The CCA rejected Vreeland's jurisdictional challenge on the premise that he failed to raise it in a timely manner, concluding that the claim was waived because it was not asserted within twenty-one days of arraignment and was not pursued on direct appeal. App.18a. That conclusion is flatly contradicted by the record and rests on a fundamental mischaracterization of what occurred in the trial court. Once the trial court entertained the challenge and did not find it untimely, any alleged defect in timing was necessarily forfeited, and it cannot later be resurrected as a post hoc procedural bar. At this point, once new evidence was discovered and no other relief was available, Denver was required to adjudicate.

Critically, the Court of Appeals acknowledged that "[b]efore trial, Vreeland challenged whether Douglas County was the proper venue for his trial" and that "the trial court rejected his challenge." App.18a. That acknowledgment is dispositive, but also wrong. First, the trial court never actually made a jurisdictional ruling.

When a defendant raises an objection, the State responds on the merits, and the court renders a ruling, the issue is preserved for review. Timeliness is not a self-executing jurisdictional bar; it is an affirmative procedural defense that must be asserted and enforced at the time the issue is raised. Here, the State did not argue that Vreeland's motion was untimely, did not seek denial on that basis, and did not object to the court's consideration

of the claim. Instead, the trial court reserved ruling for after trial. By doing so, the court necessarily exercised its authority to adjudicate the issue, and any claim of waiver based on delay was extinguished. *Wood v. Milyard*, 566 U.S. 463, 463, 132 S. Ct. 1826, 1828 (2012) (the United States Supreme Court would count it an abuse of discretion to override a State's deliberate waiver of a limitations defense); See also *Granberry v. Greer*, 481 U.S. 129, 133, 107 S. Ct. 1671, 95 L. Ed. 2d 119 (1987).

Due process does not permit a court to both acknowledge that an issue was raised and ruled upon and then deny review by treating it as if it had never been properly asserted, and further deny an evidentiary hearing at the crux of a habeas proceeding when no other avenue for relief exists.

For these reasons, the trial court's failure to establish jurisdiction before trying Vreeland and the resulting judgment are invalid under well-established federal law. The conviction must be vacated because the lack of lawful authority to try the case taints the adjudication and violates core due process principles.

Significantly, the Colorado Supreme Court further denied relief in the Rule 50 petition and by way of its November 6, 2025, Order. App1a. To this day, a genuine merits-based review of whether Vreeland was properly brought and tried in Douglas County has never been had.

Colorado's handling of Mr. Vreeland's sentencing issues reflects a pattern of shifting rationales that deprives him of a stable, fair, and constitutionally adequate appellate process. First, Vreeland is serving a sentence

for crimes he has not been charged with. See Tab1 of State Habeas Records. Vreeland challenged this at the trial level, postconviction, habeas, appellate and Colorado Supreme Court. See generally, App1a-194a. The trial court has acknowledged that the counts 5 through 8 are not properly sentenced, but does nothing to correct it. App124a.

The sentencing mittimus does not reflect the charges submitted to the jury. The indictment included two counts under C.R.S. § 18-6-403(3)(a) and two counts under § 18-6-403(3)(b). But the mittimus lists four counts under subsection (a), even though the jury was never instructed on subsection (b) and never convicted Vreeland of the offenses now reflected on the judgment of conviction. The State trial court acknowledged the mittimus error after conceding that Counts Seven and Eight "appear[] to be an error in the mittimus" and that the jury was in fact instructed under different statutory subsections. They nonetheless refused to correct it. App124a.

A sentence imposed for an offense of conviction that does not exist, or for which the jury was never instructed, is constitutionally void. *Cole v. Arkansas*, 333 U.S. 196, 201 (1948) ("It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made."). The Fourteenth Amendment forbids imprisonment based on a conviction or sentence that does not correspond to a lawful jury verdict. *Id.*

Because the erroneous mittimus imposes punishment for offenses not legally charged, not submitted to the

jury, and not actually adjudicated, the resulting sentence violates the Fourteenth Amendment and must be vacated. The State court's refusal to correct the unlawful sentence despite acknowledging the error constitutes an unreasonable and constitutionally impermissible denial of due process. Relief is required as Colorado does not provide for a corrective process pursuant to the United States Constitution due process norms. Ultimately, Colorado has no interest in correcting an acknowledged and admitted illegal sentence. This is because their entire postconviction processes is illusory. The trial court, court of appeals, and significantly the Supreme Court have refused to correct an illegal sentence.

At every stage, Colorado has avoided engaging in the merits of Vreeland's claims. Instead, the courts have cycled through inconsistent theories: first asserting waiver, then timeliness, then abandonment, then "law of the case," and finally relying on a post-briefing *sua sponte* order entered by the trial court at a time when it indisputably lacked jurisdiction. *See* e.g., App.37a.

Again, Vreeland sought to raise sentencing issues, including the unlawful habitual enhancements under *Erlinger* (in various motions and Vreeland's citing of *Apprendi* during trial). But again, in a game of procedural ping pong, Colorado Courts have denied a meaningful avenue for relief.

This Court has long recognized that due process prohibits states from manipulating procedural rules to foreclose federal review or to insulate unconstitutional judgments from scrutiny. *Bouie v. City of Columbia*, 378 U.S. 347 (1964)("When a state court overrules a

consistent line of procedural decisions with the retroactive effect of denying a litigant a hearing in a pending case, it thereby deprives him of due process of law"); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958)("Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitution").

Colorado's conduct here is precisely the type of behavior those cases forbid.

The procedural irregularities do not end there. In a prior appeal, the Court of Appeals itself restricted Mr. Vreeland's word count, forcing him to remove more than twenty issues from his brief, including the sentencing challenges the State now claims he "abandoned." Logically, a litigant cannot abandon arguments that the court prohibited him from raising. And a prior panel has never reached the merits of his claim; therefore, Vreeland submits that there cannot be "law of the case" as it pertains to his claims, or its equivalent implications (other than that the Colorado Courts have held since 2008 that count 9 arose from the same criminal incident as the other counts). Under this Court's precedent, the law-of-the-case doctrine is a discretionary practice that applies only when a prior court has actually decided a legal question on its merits. *Arizona v. California*, 460 U.S. 605, 618 (1983). That principle is universally recognized in the federal courts: the doctrine has binding effect only where an issue was "fully briefed and squarely decided," not when a court lacked jurisdiction to reach the issue or expressly refused to adjudicate it. *See Moore's Federal Practice* § 134.20[1][a] (collecting circuit authority).

The Colorado courts invoked the doctrine in an impermissible manner when it treated a non-merits, jurisdictionally defective, and procedurally foreclosed order as binding. That application conflicts directly with this Court's guidance in *Arizona v. California*.

This Court should grant review to reaffirm that due process forbids States from using inconsistent procedural rulings and void orders, particularily for the sole purpose of avoiding the consequences of *Magwood v. Patterson*, 561 U.S. 320 (2010), to shield illegal sentences from correction, and to render the appellate and collateral processes an exercise in gamesmanship rather than law. The record shows a coordinated state effort to deny Petitioner a chance to present a Magwood petition on its merits. The state courts created a procedural trap: they forced Petitioner into postconviction paths later deemed unavailable and used that to argue federal review was barred or premature, blocking access to the §2254 vehicle *Magwood* guarantees for a new judgment. After nearly two decades of rejection, the trial court entered an intervening judgment, and the Colorado appellate court then voided it for lack of jurisdiction after Vreeland filed his habeas petition, demonstrating a coordinated effort to block his right to pursue relief under *Magwood*. *Vreeland v. Long*, Case No. 1:25-CV-02647-LTB-RTG (Dist. Ct. Colo. Dec. 30, 2025).

A system that nominally provides a forum for constitutional review but in practice denies the defendant competent assistance, or denies any real opportunity to be heard, violates due process because it renders the proceeding "nothing more than a meaningless ritual." *Evitts v. Lucey*, 469 U.S. 387, 394 (1985).

The conspiracy to hide the unlawful and corrupt conviction of Vreeland began at trial. After trial, Vreeland faced systematic denial of access to complete trial records. Courts denied Vreeland and counsel access to complete records and specifically denied access to illegally recorded and suppressed exculpatory content. See Dkt 1-23 *Vreeland v. Long*, Case No. 1:25-CV-02647.

Since Vreeland was forced to cut claims on direct appeal he has been denied any avenue of relief.

In 2017, Vreeland experienced the Court of Appeals' refusal to hear all his claims. In PCR proceedings, the court first addressed claims previously resolved on appeal. Claim One involved Vreeland's right to counsel, denied when he went to trial unrepresented. Judge King rejected this, citing the Court of Appeals' finding that Vreeland waived his right to counsel explicitly and implicitly. The appellate court noted that most trial delays resulted from Vreeland's repeated failure to cooperate with counsel, threatening lawyers, filing meritless motions, and firing attorneys before trial. The court concluded that Vreeland, described as "highly intelligent," was manipulating the system knowingly.

Claim Two concerned speedy trial rights; Judge King rejected it, citing the Court of Appeals confirmed no violation. Claim Three involved the bill of particulars, denied as no error found. Judge King stressed this was fully litigated, barring post-conviction relief. Claim Four alleged unfair treatment of Vreeland's pro se status; dismissed as "devoid of merit,' with the Court of Appeals rejecting his 'forced' claim. Claims Seven, Eight, and Nine on other transaction and CRE 404(b) evidence were

denied, as addressed by the Court of Appeals. A second, unraised claim, barred under Crim. P. 35(c)(3)(VI) and (VII), was noted, emphasizing claims already litigated or raisable on appeal can't form the basis for collateral relief. Claim Five's alleged evidentiary errors affecting fair trial rights were rejected, as such claims could have been appealed. Claim Six, involving self-incrimination, was denied since no appeal was taken. Claim Ten about expert testimony was dismissed, unavailable for collateral review. Claim Eleven on search and seizure violations was similarly dismissed. Claim Twelve about deficient charges was denied; purported deficiencies could have been challenged on appeal. Claims Thirteen and Fourteen regarding insufficient evidence for sexual assault and exploitation were found meritless; the jury's verdict was supported by evidence and legally sufficient. Claim Fifteen on jury instructions lacking a non-consent element was deemed inappropriate for Rule 35(c). Claims Sixteen to Eighteen about multiple convictions, missing defenses, and nonsensical convictions were dismissed. Claim Nineteen on habitual charges was confirmed based on sufficient evidence. Claim Twenty about flawed habitual charges and amendments was denied. Claim Twenty-One on inadmissible hearsay was dismissed as lacking merit, since these issues could have been appealed. Claims Twenty-Two and Twenty-Three regarding jury trials on habitual counts were rejected, with the court affirming Vreeland's pattern of meritless motions and misconduct. The court found these claims meritless and all could have been appealed. However, under *Erlinger* and *Apprendi*, the trial court's analysis is flawed and conflicts with constitutional law. No court has properly considered Vreeland's *Apprendi* argument.

Claim Twenty-Four was dismissed as 'no merit' by Judge King, who noted they were previously rejected; it could have been appealed. Claim Twenty-Seven involved restrictions during the appeal, with Judge King citing no right to jury trial on habitual counts under Colorado law. Vreeland's unwarranted motions repeated the pattern of meritless filings. These claims could have been raised on appeal. Claim Twenty-Eight, alleging Judge King called Vreeland 'a terrorist and a member of Al Qaeda,' was denied; the court stated no such remarks were made. Claim Twenty-Nine, about appellate limits and due process, was found 'devoid of merit.' The court likewise dismissed all claims of ineffective assistance of counsel.

Throughout the 26-page order, Judge King repeatedly characterized Vreeland's claims as "devoid of merit," "specious," "utterly worthless," "meritless," "baseless," and unsupported by law or fact, while emphasizing that many claims directly contradicted findings by the Court of Appeals that had affirmed his convictions. It was a personal attack on Vreeland.

After further appellate litigation and a renewed effort to establish the truth, Vreeland sought relief under 35c. The Douglas County court did not resolve these claims by determining whether the alleged constitutional violations had occurred. Instead, it denied relief almost entirely on procedural grounds. Claims asserting lack of jurisdiction were recharacterized as non-jurisdictional, thereby subjecting them to waiver and timeliness doctrines. Claims styled as challenges to an illegal sentence under Rule 35(a) were reclassified as Rule 35(c) claims and dismissed as untimely. Claims premised on newly discovered evidence were rejected on the ground that the

evidence could have been discovered earlier through due diligence, notwithstanding the absence of any evidentiary hearing to test that conclusion. Claims alleging ineffective assistance of counsel were dismissed as successive or previously resolved, even where the alleged deficiencies were supported by new factual allegations or newly obtained materials.

Vreeland made prima facie showings. Vreeland showed that he raised the issue of jurisdiction before trial and that Colorado law supports relief. App100a. His sentencing challenges clearly demonstrated a prima facie showing as the trial court later, sua sponte, agreed with Vreeland. App.37a. Newly discovered evidence shows that photographic evidence was fabricated and search warrants were obtained via false pretenses. App48a-81a. Likewise, the search and seizure was illegal and everything that followed is fruit of the poisonous tree. App48a-81a.

Vreeland showed that he was actually innocent because he did not even know the alleged victims during the times in the bill of particulars, and when the trial court refused to allow Vreeland to submit his alibi defense, he was deprived the right to present a defense. See 2025 §2254 Petition. Vreeland showed that the alleged acts did not occur in Douglas County. App. 78a. Moreover, the State presented photographic evidence allegedly showing the charged offenses. The State's theory was that 60 pictures were taken using a Kodak EasyShare CX7430 camera over a period of 426 seconds. However, physical analysis of the camera's specifications establishes this is impossible. The Kodak EasyShare CX7430 camera has a documented shutter speed of 2.3 seconds when the flash is activated.

See https://www.cnet.com/reviews/kodak-easyshare-cx7430-review/ (camera specifications). J.R.'s affidavit confirms that the flash was on for all photographs. Simple mathematics proves the physical impossibility: 60 pictures × 2.3 seconds per picture = 138 seconds minimum time required. Yet the metadata allegedly shows 60 pictures taken in 426 seconds, an average of 7.1 seconds per picture. The camera cannot physically take pictures faster than its 2.3-second shutter speed. The only way the camera could take 60 pictures in 426 seconds would be if it operated at approximately 0.37 seconds per picture with flash—more than six times faster than its actual mechanical capability. See 2025 §2254 Petition.

Significantly, Vreeland argued that he was subjected to blackmail by trial counsel. The moment that allegation was made, the Douglas County and/or Denver was required to hold a hearing and provide a corrective process. Moreover, Vreeland showed that the prosecutor tampered with witnesses. App55a. The list continues. Vreeland unequivocally raised facts, that on its face, required judicial inquiry. All those raised in the 2025 §2254 are the same issues and facts that were swatted by the Colorado courts without a merits review or even a mere inquiry.

The practical consequence of the Douglas County order was that none of the Vreeland's substantive claims were adjudicated on their merits. App105a. The court's analysis focused on the timing and procedural posture of the claims rather than their validity. Although the court invoked doctrines designed to promote finality, it did so without identifying any prior proceeding in which the claims had been fully and fairly resolved. And wholly

failed to provide the evidentiary hearing that Vreeland is entitled to. The same goes for the Denver County court. As argued above, after making a prima facie showing, Vreeland was entitled to an evidentiary hearing.

Vreeland appealed that ruling. App82a. While the opinion contains extensive discussion and explanatory dicta, the operative holdings rested on the same procedural grounds relied upon by the district court. App.14a-36a. Jurisdictional claims were rejected as waived or non-jurisdictional, newly discovered evidence claims were dismissed on the basis that the evidence was available earlier or insufficiently identified in the record, and ineffective assistance claims were rejected for lack of demonstrated prejudice.

Significantly, the all Colorado courts have not conducted a substantive review of the constitutional claims before them. Denver's rejection of the newly discovered evidence claims rested on the absence of record development, even though the district court had denied any evidentiary hearing that would have allowed such development to occur. The CCA's rejection of ineffective assistance claims relied on a prejudice analysis that assumed the absence of meritorious underlying claims, despite the fact that those underlying claims had never been reviewed on the merits. In this way, the collateral relief courts' rulings reinforced a circular logic in which the absence of merits review was used to justify the denial of relief for lack of prejudice, and the lack of prejudice was then used to justify the absence of merits review.

With respect to the habitual-criminal and sentencing claims, the Court of Appeals affirmed the district court's

rejection without undertaking proportionality review or examining the factual basis for the predicate-felony challenges. The appellate court treated these issues as either previously litigated, procedurally barred, or inadequately supported in the Rule 35 posture, thereby affirming denial without addressing whether the habitual adjudication or resulting sentence was substantively lawful.

As to claims alleging insufficiency of the evidence, improper jury instructions, and defects in the prosecution's proof, including failures to disprove affirmative defenses, the Court of Appeals did not conduct a de novo assessment of the trial record. Instead, it affirmed dismissal on the ground that such claims were time-barred or not cognizable in postconviction proceedings because they could have been raised earlier.

Similarly, claims alleging prosecutorial misconduct, discovery violations, *Brady* violations, fabrication or alteration of evidence, witness tampering, and chain-of-custody failures were affirmed as time-barred or not newly discovered. Although Petitioner argued that later-obtained evidence and testimony supported these claims, see App41a, the Court of Appeals relied on the absence of record development and the district court's determination that the allegations were speculative or insufficiently supported, despite the denial of an evidentiary hearing that would have allowed factual development. The appellate court did not independently assess whether the alleged misconduct occurred or whether it was material.

Claims asserting Confrontation Clause violations, denial of the right to counsel, unfair treatment while

forced to proceed pro se, and trial-court bias were also affirmed without merits review. The appellate court treated these claims as previously litigated, waived, successive, or inadequately developed, and declined to revisit them in postconviction review.

In sum, what the Court of Appeals affirmed in 22CA1704 was not a merits determination rejecting Petitioner's constitutional claims, but a comprehensive procedural disposition. The appellate court endorsed the district court's reliance on timeliness rules, successiveness doctrines, and pleading requirements to deny relief, and it did so without requiring any evidentiary development or factual findings on the substance of the allegations. As a result, although Petitioner presented numerous claims alleging fundamental defects in the conviction and sentencing process, none received a merits-based adjudication in state postconviction review.

Vreeland informs the Court of the above not only to show the grave miscarriage of justice, but to highlight that what was raised before Douglas County and Denver County was not identical, nor was any *actual* avenue for relief available at the time of discovering new evidence. Pertinent to the analysis of the existence of a corrective process, while the appeal in 22CA1704 was pending, Vreeland filed a habeas corpus petition in the Denver District Court. App41a. This filing was not an attempt to bypass the collateral or appellate process, but a direct response to the Douglas County court's determination that Rule 35(a) and (c) relief was procedurally unavailable. The habeas petition raised the claims under the new evidence of Sgt. French, who in a deposition, admitted that Det. Dea Aragon lied about the information to obtain the warrant.

Vreeland vs. Vanessa Carson, Civil Action No. 1: 18-CV-03165 (Dist. Colo. May 25, 2023). This led Vreeland down a rabbit hole, discovering additional violations. The Petition asserted that no adequate or effective state remedy remained available in Douglas County.

The Denver District Court declined to review the habeas petition on the ground that habeas relief is unavailable when other remedies exist, reasoning that the claims were "on appeal" in the Court of Appeals. App.12a. This ruling stood in direct tension with the Douglas County court's position that the claims were barred because they were successive, time-barred, or not newly discovered. One court held that relief was unavailable because the claims should have been raised earlier; another held that relief was unavailable because the claims were still pending elsewhere. Neither court accepted responsibility for adjudicating the claims on their merits.At no point did any court undertake a substantive evaluation of whether the petitioner's constitutional claims were valid.

At all levels, for nearly twenty years, Vreeland has argued the 18th Judicial District Attorney's Office and the 18th Judicial District lacked jurisdiction over the crimes charged, requiring vacatur. Significantly, this issue was raised in Douglas County, Denver County, the appellate court, and the Supreme Court.

Notably, the proof that this issue was challenged at trial was hidden by the State for approximately 17 years. Ultimately, it was found and presented. The Court of Appeals affirmed the postconviction denial, but stated the reason for denial was because Vreeland did not raise the issue in a timely manner during trial. This is the first

time, in the 20 years of litigation, that any court or party has brought up the timeliness of the motion. The reason being, the trial court and state waived any objection to the timeliness of the motion to establish jurisdiction. Thus, the CCA, Denver County, and Colorado Supreme Court all forbid relief.

Lastly, Vreeland alleged that the sentence imposed was illegal and not authorized by statute. Douglas County denied the claim as not supported by the record, emphasizing the absence of evidentiary support for the asserted illegality – but failed to grant an evidentiary hearing.

Perhaps most alarming in this disingenuous adjudication of Vreeland's claims is that Vreeland raised the issue that his sentence was illegal in his initial appeal. Each court has told him that he was wrong and that the record did not support his claim. On appeal in the 22CA1704 case, the Court of Appeals ruled on an interlocutory motion that the trial court could correct his sentence under Colo. Crim P. 36. The trial court proceeded to do so, the day after appellate briefing ended. App.37a. Then the Court of Appeals, despite the Parties' agreement on the matter, voided the trial court's order stating that the trial court did not have authority to correct the illegal sentence while the case was on appeal.

This pattern cannot be dismissed as a routine application of procedural rules. It reflects a structural flaw in the State's corrective process. Procedural default is intended to promote finality after a defendant has had a fair opportunity to present his claims. It is not intended to operate as a perpetual barrier that prevents any court from ever reaching the merits.

The State has characterized this outcome as the natural consequence of the petitioner's failure to comply with procedural requirements. The record demonstrates otherwise. The petitioner did not sit on his claims. He raised them repeatedly, in multiple forums, supported by extensive filings and newly developed evidence. He made prima facie showings requiring an evidentiary hearing under the law, but was denied such opportunity, then told he didn't have supporting records for his claims. This case therefore presents a fundamental question about the adequacy of Colorado's postconviction process. When a state provides multiple mechanisms for collateral review but structures them in such a way that each mechanism is unavailable, the promise of corrective process becomes illusory.

These justifications have often been applied inconsistently, retroactively, or without regard to whether the State had ever asserted the defense or whether the trial court had enforced it. This mode of adjudication did not merely deny relief, but it deprived Mr. Vreeland of a meaningful opportunity to be heard.

For example, claims challenging the legality of the habitual criminal proceedings and sentencing structure were dismissed without a resentencing hearing, despite being plainly meritorious (it is worth noting that for 20 years, Colorado has refused to entertain this claim). Claims alleging suppression, loss, and destruction of evidence were rejected on the ground that the record did not substantiate them while simultaneously denying access to the very materials necessary to establish those facts. Claims asserting jurisdictional defects were dismissed as untimely, even though jurisdictional errors

cannot be insulated from review by procedural default where the court itself exercised authority and ruled on the issue. Claims involving evidentiary contamination, witness misconduct, and violations of the right to present a defense were summarily denied without any factual development, notwithstanding that these allegations could not be resolved from the face of the trial transcript.

This is not a case in which the state courts carefully evaluated each claim and rejected them on the merits. Nor is it a case in which a consistent, settled procedural rule was evenly applied. Instead, the record reflects a process in which procedural doctrines were invoked opportunistically, shifted over time, and applied *sua sponte* to avoid reaching constitutional questions altogether. Vreeland submits that this has been an orchestrated strategy by Colorado. Whether it is a new judge sitting at the trial court issuing an order for relief that Vreeland has been arguing for 20 years, just one day after his Reply Brief was filed; or the Court of Appeals issuing an order blocking his Magwood-based §2254 Petition just days after Vreeland files for Cert relief, at each step a new, disingenuous, intervening state force blocks and bars Vreeland's to adjudicate his meritorious claims. Vreeland submits that Colorado has acknowledged that he is unlawfully sentenced and every attempt to resolve the merits of such or issue a resentencing is just a means to delay or block the inevitable end… i.e., Vreeland's release.

In practical effect, Colorado's postconviction scheme (as applied here) offers a defendant an endless set of "available" vehicles in the abstract, but no forum that will actually adjudicate the merits of claims supported by later-developed evidence of fabrication, witness

tampering, and jurisdictional defects. The procedural default the State invokes is not a neutral enforcement of regular rules; it is the mechanism by which review is denied in every posture—Rule 35 is "available" but treated as unavailable for merits (barred); habeas is invoked to test unlawful custody, but treated as unavailable because Rule 35 review is "available" and pending.

Here, Colorado's approach ensured that none of Vreeland's claims received full, fair, and coherent adjudication. That failure is itself a deprivation of due process. When a state court's procedural handling of a case functions not to regulate review but to extinguish it, federal intervention is warranted to restore the basic guarantees of justice, fairness, and reliability that the Fourteenth Amendment demands.

RELIEF REQUESTED

Wherefore, Petitioner prays that this honorable Court grant Certiorari review, vacate the convictions, remand for further proceedings, or grant any other relief this Court deems appropriate.

Respectfully submitted,

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APPENDIX

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APPENDIX A — ORDER OF THE COLORADO SUPREME COURT, FILED NOVEMBER 6, 2025

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

Supreme Court Case No:
2025SA77

Plaintiff-Appellant:

DELMART EJM VREELAND, III,

v.

Defendants-Appellees:

COLORADO DEPARTMENT OF CORRECTIONS, COLORADO TERRITORIAL CORRECTIONAL FACILITY, AND JENNIFER HANSEN.

DATE FILED
November 6, 2025
CASE NUMBER: 2025SA77

Appeal from the Denver District Court
City and County of Denver, 2024CV30621

ORDER OF COURT

Upon consideration of the Notice of Appeal, together with the brief(s) and the record filed herein, and now being sufficiently advised in the premises,

Appendix A

IT IS ORDERED that the decision of the District Court, City and County of Denver is AFFIRMED.

BY THE COURT, EN BANC, NOVEMBER 6, 2025.
JUSTICE HART does not participate.

APPENDIX B — ORDER GRANTING MOTION TO DISMISS OF THE DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO, FILED FEBRUARY 27, 2025

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

CASE NUMBER: 2024CV30621
Case No: 24CV30621
Courtroom: 259

Plaintiff:

DELMART EJM VREELAND II,

v.

Defendant:

COLORADO DEPARTMENT OF CORRECTIONS, COLORADO TERRITORIAL CORRECTIONAL FACILITY and JENNIFER HANSEN

Filed February 27, 2025

ORDER GRANTING MOTION TO DISMISS [PETITIONER'S] PETITION FOR WRIT OF HABEAS CORPUS UNDER C.R.S. § 13-45-101(1)

THIS MATTER comes before the Court on a Motion to Dismiss [Petitioner's] Petition for Writ of Habeas Corpus Under C.R.S. § 13-45-101(1) ("Motion") filed by Defendants Jennifer Hansen, Colorado Territorial

Correctional Facility, and the Colorado Department of Corrections (collectively, "Defendants'") on May 1, 2024. Petitioner Delmart EJM Vreeland II ("Petitioner') filed his Response to Respondents' Motion to Dismiss ("Response") on May 22, 2024. Defendants filed their Reply to Petitioner's Response to Respondents' Motion to Dismiss ("Reply") on June 7, 2024. The Court, having reviewed the Petition, all pertinent pleadings and authority, and being otherwise fully advised on the matter, finds and orders as follows:

LEGAL AUTHORITY

"The essential purpose to be served by a writ of habeas corpus is to resolve the issue of whether a person is unlawfully detained." *Pipkin v. Brittain*, 713 P.2d 1358, 1359 (Colo. App. 1985); *Ryan v. Cronin*, 553 P.2d 754, 755 (Colo. 1976). Further, a writ of habeas corpus "is an appropriate remedy only when no other form of relief is available." *Kailey v. Colo. State Dep't of Corr.*, 807 P.2d 563, 566 (Colo. 1991). In filing a petition for writ of habeas corpus, the petitioner must provide a signed writing,

> setting forth the facts concerning his imprisonment and in whose custody he is detained, and shall be accompanied by a copy of the warrant of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused to be given.

C.R.S. § 13-45-101(1).

Moreover, a petition for habeas corpus relief must establish prima facie evidence that the petitioner is not validly confined and is thus entitled to immediate release or that the petitioner has suffered a serious infringement of a fundamental constitutional right resulting in a significant loss of liberty. *Jones v. Zavaras*, 926 P.2d 579, 582 (Colo. 1996). A petitioner makes a *prima facie* showing by producing evidence that, when drawing all reasonable inferences in a light most favorable to petitioner, permits the court to find that the petitioner is entitled to release. *Cardiel v. Brittian*, 833 P.2d 748, 752 (Colo. 1992).

Furthermore, a court is not required to entertain successive petitions for habeas corpus "based on the same ground[s] and the same facts, or on other grounds or facts which existed when the first application . . . was made whether or not they were presented at that time." *Blea v. Colo. Bd. of Parole*, 779 P.2d 1353, 1356 (Colo. 1989) (citing *Marshall v. Geer*, 344 P.2d 440, 441-42 (1959)); *Graham v. Zavaras*, 877 P.2d 363 (Colo. 1994) (holding courts are not required to entertain successive motions for similar post-conviction relief on behalf of same petitioner). Finally, "A writ of habeas corpus proceeding may not be used as a substitute for appeal," or as a "basis for reviewing issues resolved by another court." *Zavaras*, 877 P.2d at 363; *Ryan v. Cronin*, 553 P.2d 754, 755 (Colo. 1976); *Graham v. Gunter*, 855 P.2d 1384, 1385 (Colo. 1993).

ANALYSIS

Defendants argue that each of Petitioner's contentions should be dismissed because "all of the claims he raises

should be raised – or *were* raised – in motions brought pursuant to Crim. P. 35(a), Crim. P. 35(c), or on direct appeal." Generally, the Petition raises three contentions: (1) Petitioner was "tried, convicted, and sentenced on the basis of various evidence, testimony, and trial exhibits that were altered, fabricated, produced, and/or hidden by the office of the Douglas County District Attorney . . . "; (2) Petitioner "was forced to proceed *pro se*" in 04CR706 (the underlying criminal matter), violating his Sixth Amendment right to counsel; and (3) the mittimus produced in 04CR706 contains charges inconsistent with his actual convictions.

1. Petitioner has previously raised arguments concerning the nature and quality of the evidence on which his conviction is based and the remaining sub-arguments fail to establish entitlement to habeas corpus relief

Defendants argue Petitioner's contentions regarding the nature of the evidence admitted at trial in 04CR706 should be raised pursuant to Crim P. 35(c)(2)(V), and "as such, [Petitioner] should not be permitted to substitute a habeas petition for a motion made pursuant to Crim. P. 35 in the Douglas County district court." On the other hand, Petitioner asserts "asking [him] to file a Rule 35(c) petition would be futile," and that he "tactically filed a 35(c) Petition in Douglas County as to show the court that at the time of filing this Petition . . . there is no other available state remedy."

The Court first notes that Petitioner's argument regarding the nature of the evidence used to convict

him contains six subparts: (a) that Drug Enforcement Administration (DEA) Agent Aragon used fabricated evidence to obtain search and arrest warrants on "false pretenses"; (b) that Investigator French testified in his deposition that he never provided Agent Aragon with photos, however, evidence at trial indicated that he did; (c) that Agent Aragon lied at trial regarding the existence of a certain tape recorded phone call played for the jury; (d) that Justin Osmond, a witness in 04CR706, made a "deal" with the State, and Petitioner was not notified; (e) Agent Aragon "directly influenced the knowledge and preparation of a sequestered witness," which is "collusion and/or fabrication"; and (f) the "the [Kodak] camera that the State used during the trial was tampered with, and fabricated evidence was planted to give rise to a process based on false pretenses."

Petitioner has filed numerous post-conviction motions in his underlying criminal matter, Douglas County District Court case 04CR706, resulting in several appeals. Due to the size, age, and location of the record in Douglas County, this Court is only able to view filings made on or after January 25, 2017.

As relevant here, on March 4, 2021, Petitioner filed a 76-page "Petition for Relief Pursuant to Crim. P. 35(a), Rule 35(c) and C.R.S. § 13-45-101." ("2021 Petition") An examination of the 2021 Petition demonstrates that Petitioner raised the same or similar arguments therein regarding the evidence used to convict him at trial that he attempts to reassert here. To illustrate, the 2021 Petition asserts Sergeant French "used his position as evidence

officer to tamper with, plant and fabricate evidence," that Sergeant French "tampered with the evidence and planted photos as evidence," that "the warrants [obtained in the investigation of 04CR706] were facially invalid" and thus, "the admission of evidence obtained during those searches was error." Moreover, Petitioner stated "a deal was made with Osmond to dismiss . . . charges in exchange for testimony . . . ," which "the prosecution failed to disclose," and that "[Agent] Aragon [] met with sequestered witness Adkins and advised him of the questioning and testimony . . . occurring in the courtroom," among other witness tampering. Petitioner also argued that the Kodak camera "left the chain of custody when "police damaged the camera and sent it to an undisclosed location in New York to be repaired," resulting in "unconstitutional convictions" and "illegal sentences not authorized by statute." Finally, Petitioner argued his "position ["re: his claim that [h]e secretly tape-recorded a phone call with Mr. Vreeland" is] that the recording was a fabrication . . . ."

The Douglas County District Court issued its Order regarding the 2021 Petition on August 18, 2022, denying the 2021 Petition in its entirety. Consequently, on October 6, 2022, Petitioner filed a Notice of Appeal in Colorado Court of Appeals case 22CA1704. The matter was stayed by the Court of Appeals, effective August 29, 2023, pending the Douglas County District Court's ruling on a Motion to Settle the Record Pursuant to C.A.R. 10(g). The Douglas County District Court issued its order regarding the settlement or reconstruction of the record on March 15, 2024, and the stay in 22CA1704 was lifted on April 22, 2024.

Appendix B

22CA1704 is still pending before the Colorado Court of Appeals. "Upon the filing of [a] notice of appeal, the appellate court will have exclusive jurisdiction over the appeal and all procedures concerning the appeal unless otherwise specified." C.A.R. 3(a). Hence, this Court has no jurisdiction to preempt the Court of Appeal's ruling on an issue currently pending before it. Even if this Court did have jurisdiction to do so, Petitioner has another avenue of relief readily available to him with respect to this argument in the form of an active, pending appeal, and hence, habeas relief is inappropriate. *Zavaras*, 877 P.2d at 363 (holding habeas corpus may not be used as substitute for appeal); *Duran v. Price*, 868 P.2d 375, 377 (holding habeas corpus appropriate only where "no other form of relief is available.") Petitioner may not reassert claims currently pending before the Court of Appeals in this Court pursuant to a writ of habeas corpus in an attempt to circumvent the timeline of the appeal.

Insofar as Petitioner adds newly discovered facts to claims similar to those pending before the Court of Appeals, such claims are more appropriately brough pursuant to Crim. P. Rule 35. That the Douglas County District Court cannot at this time address Petitioner's post-conviction motions due to the pending appeal does not mean that avenue of relief is permanently unavailable, nor would that fact alone present sufficient evidentiary basis to grant habeas corpus relief.

2. The argument concerning the discrepancy between Petitioner's sentencing documents and his mittimus is currently pending before the Colorado Court of Appeals

Secondly, Defendants argue this Court:

> cannot entertain [Petitioner's argument concerning the discrepancy between the charging documents and mittimus in 04CR706] as a basis for . . . relief because [Petitioner] has raised the same claim in the Douglas County district court, and the issue is currently pending there.

Petitioner failed to directly respond to this argument.

The Court notes that in the instant matter, Petitioner asserts:

> [his] . . . mittimus shows four charges and sentences under C.R.S. § 18-6-403(3)(a). However, Petitioner was not charged with four counts of subsection (a). Instead, Petitioner was charged with two counts under subsection (a). Moreover, the jury was not properly instructed as to subsection (b), the correct subsection for two counts.

As argued by Defendants, Petitioner indeed filed a "Motion for Order Clarifying and/or Correcting Sentence and Mittimus So CDOC Can Properly Calculate Time

Computation and Program Classification Requirements" in his underlying criminal case on December 14, 2023. The Motion alleged, among other things, that according to Petitioner's charging documents, he was charged with two counts pursuant to C.R.S. § 18-6-403(3)(a) (counts 5 and 6), and two counts pursuant to C.R.S. § 18-6-403(3)(b) (counts 7 and 8). Nonetheless, Petitioner alleged, his mittimus showed four convictions pursuant to subsection (3)(a) of § 18-6-403 (counts 5-8).

As described above, the Douglas County District Court's Order on the December 14 Motion clarified that while it agreed the discrepancy in the charging and sentencing documents existed, the matter was stayed, and therefore it could not issue a ruling on the matter. Once the stay was lifted, however, Petitioner filed his opening brief in 22CA1704, arguing the following:

> the charges in the indictment related to counts 5 through 8 show two counts of C.R.S. § 18-6-403(a) and two counts of C.R.S. § 18-6-403(b). However, the sentencing mittimus shows four counts of C.R.S. § 18-6-403(a). These errors affect time computation, classification and program eligibility. As such all counts 5-8 should be vacated.

Therefore, for the same reasons described in section 1 above, the Court has no jurisdiction to issue a ruling with respect to the discrepancy discovered by Petitioner on his charging and sentencing documents because the issue is currently pending before the Colorado Court of Appeals.

3. Petitioner has previously raised the argument that his Sixth Amendment right was violated throughout the litigation in 04CR706

Third and finally, Defendants contend that Petitioner "cannot re-assert [his claim regarding the Sixth Amendment] . . . because it has already been disposed of on appeal." Petitioner did not directly respond this contention.

The Court notes that Petitioner first appealed his convictions in Colorado Court of Appeals case 08CA2468. The Colorado Court of Appeals affirmed Petitioner's convictions on February 14, 2013. Hence, Petitioner filed a Writ of Certiorari to the Colorado Supreme Court. On January 27, 2014, the Colorado Supreme Court denied the petition, and affirmed the decision of the Court of Appeals on January 28, 2014. Petitioner raised several issues on appeal in 08CA2468, including that "his constitutional right to counsel was violated because he was forced to represent himself during trial." As stated above, the Court of Appeals affirmed the district court's judgment, finding Petitioner "waived his right to counsel." The Supreme Court then affirmed the Court of Appeals' mandate.

The Colorado Supreme Court has repeatedly held that a writ of habeas corpus may not be used to review issues already determined by another court. *Cronin*, 553 P.2d at 755 (citing *King v. Tinsley*, 405 P.2d 689 (1965); *Johnson v. Tinsley*, 394 P.2d 842 (1964)). This Court is not required to entertain successive motions for post-conviction relief "based on the same ground[s] and the same facts . . . ." as previous motions or petitions. *Blea v. Colo. Bd. of Parole*,

779 P.2d 1353, 1356 (Colo. 1989) (citing *Marshall v. Geer*, 344 P.2d 440, 441-42 (1959)); *Graham v. Zavaras*, 877 P.2d 363 (Colo. 1994) (holding courts are not required to entertain successive motions for similar post-conviction relief on behalf of same petitioner). Nor may this Court reconsider issues already resolved by either the Court of Appeals or the Colorado Supreme Court.

CONCLUSION

WHEREFORE, in light of the foregoing, the Court hereby GRANTS Defendants' Motion to Dismiss [Petitioner's] Petition for Writ of Habeas Corpus Under C.R.S. § 13-45-101, as each claim made in the Petition either fails to establish *prima facie* evidence that Petitioner is not validly confined, has been asserted in previous post-conviction motions, *is* currently pending before the Colorado Court of Appeals, or *was* already resolved by the Court of Appeals. Consequently, the Motion for Attorney Access, Motion for Leave to Correct/Amend Caption, and the Notice of Filing and Request for Judicial Notice are **DENIED** as **MOOT**. There being no remaining issues for resolution in this case, it is now closed.

IT IS SO ORDERED this 27th day of February, 2025.

BY THE COURT:

/s/ Christopher J. Baumann
CHRISTOPHER J. BAUMANN
CHIEF JUDGE

APPENDIX C — OPINION OF THE COLORADO COURT OF APPEALS, FILED OCTOBER 16, 2025

COLORADO COURT OF APPEALS

Court of Appeals No. 22CA1704
Douglas County District Court No. 04CR706
Honorable Patricia D. Herron, Judge

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellee,

v.

DELMART VREELAND,

Defendant-Appellant.

Filed October 16, 2025

ORDER AFFIRMED

Division VI
Opinion by JUDGE SULLIVAN
Welling and Gomez, JJ., concur

¶ 1 Defendant, Delmart Vreeland, appeals the postconviction court's order denying his most recent motion for postconviction relief. We affirm.

Appendix C

I. Background

¶ 2 In 2004, Vreeland sexually assaulted two teenage boys after promising to pay them in exchange for letting Vreeland photograph them in their underwear. Vreeland also provided both boys with cocaine and alcohol.

¶ 3 In 2006, a jury convicted Vreeland of two counts of inducement of child prostitution, two counts of soliciting for child prostitution, four counts of sexual exploitation of children, two counts of sexual assault, two counts of contributing to the delinquency of a minor, and one count of distribution of a controlled substance. Vreeland appealed his convictions and a division of this court affirmed. *People v. Vreeland*, (Colo. App. No. 08CA2468, Feb. 14, 2013) (not published pursuant to C.A.R. 35(f)) (*Vreeland I*).

¶ 4 In 2017, Vreeland filed his first postconviction petition, which the postconviction court denied. Vreeland appealed the denial and a division of this court affirmed. *People v. Vreeland*, (Colo. App. No. 17CA1648, Aug. 27, 2020) (not published pursuant to C.A.R. 35(e)) (*Vreeland II*).

¶ 5 In 2021, Vreeland filed a second postconviction petition under Crim. P. 35(a) and 35(c), raising thirty-five separate claims. In a detailed order, the postconviction court denied the petition without a hearing. This most recent denial prompted this appeal.

¶ 6 We group Vreeland's contentions in this appeal as follows: (1) the trial court lacked jurisdiction over his case; (2) the postconviction court erred by denying most of his postconviction claims as either successive or time barred; (3) his attorneys in the postconviction phase provided ineffective assistance of counsel; (4) the postconviction court erred by denying his challenge to his illegal sentence; and (5) courts on direct appeal and in the postconviction phase have violated his right to due process by enforcing word limits in briefs.

II. Standard of Review and Applicable Law

¶ 7 We review de novo a district court's denial of a defendant's postconviction motion without a hearing. *See People v. Joslin*, 2018 COA 24, ¶ 5. To warrant a hearing on a Crim. P. 35(c) motion, a defendant must allege facts that, if true, entitle the defendant to postconviction relief. *Id.* at ¶ 4. A district court may deny a defendant's postconviction motion under Crim. P. 35(c) without an evidentiary hearing only where the motion, files, and record in the case clearly establish that the allegations presented in the motion are without merit and don't warrant postconviction relief. *Ardolino v. People*, 69 P.3d 73, 77 (Colo. 2003).

¶ 8 Postconviction proceedings are designed to prevent injustices after a defendant's conviction and sentencing, not to provide a perpetual right of review. *People v. Hampton*, 528 P.2d 1311, 1312 (Colo. 1974). As a result, a postconviction court must deny any claim that the defendant presented and the court resolved in a

previous appeal or postconviction proceeding. Crim. P. 35(c)(3)(VI). But there are exceptions. As relevant here, this bar on successive claims doesn't apply to claims "based on evidence that could not have been discovered previously through the exercise of due diligence." Crim. P. 35(c)(3)(VI)(a).

¶ 9 A postconviction court must also deny any claim that the defendant *could* have presented in a previous appeal or postconviction proceeding, except, as relevant in this case, any claim based on evidence that couldn't have been discovered previously through the exercise of due diligence; any claim over which the sentencing court lacked subject matter jurisdiction; and any claim where an objective factor, external to the defense and not attributable to the defendant, made raising the claim impracticable. *See* Crim. P. 35(c)(3)(VII)(b), (d), (e).

¶ 10 In addition, a court may correct a sentence imposed without jurisdiction or not authorized by law "at any time." Crim. P. 35(a).

III. Jurisdiction

¶ 11 We first address two of Vreeland's claims that he characterizes as "jurisdictional." *See* Crim. P. 35(c)(2)(III), (c)(3)(VII)(d). Vreeland contends that (1) the trial's venue in Douglas County, Colorado, was improper; and (2) defects in the charging information deprived the trial court of jurisdiction.

Appendix C

A. Venue

¶ 12 In general, a criminal action must be tried in the county where the offense was committed. § 18-1-202(1), C.R.S. 2025.

¶ 13 Before trial, Vreeland challenged whether Douglas County was the proper venue for his trial. Although the trial court rejected his challenge, he didn't raise any venue argument in his direct appeal. We therefore can't address the merits of his venue argument at this postconviction stage. *See* Crim. P. 35(c)(3)(VII). Contrary to Vreeland's argument, venue isn't a jurisdictional issue that can be raised at any time. *See People v. Joseph*, 920 P.2d 850, 851-52 (Colo. App. 1995).

¶ 14 Vreeland nonetheless asserts that he couldn't raise venue in his direct appeal because the relevant trial court records were "hidden" from him. But even if that were true, Vreeland's venue argument fails for a different reason—it came too late. Absent a showing of good cause, a defendant waives any challenge to venue by failing to raise it in writing within twenty-one days of their arraignment. § 18-1-202(11). Here, Vreeland was arraigned on July 6, 2005. But he didn't raise his venue challenge until seven months later. Nor does he advance any good cause to excuse his delay.

¶ 15 Accordingly, the postconviction court didn't err by denying Vreeland's venue challenge.

Appendix C

B. Sufficiency of the Charging Information

¶ 16 Vreeland argues that the trial court lacked jurisdiction because the charging information (1) didn't contain sufficient information regarding the time and location of his alleged offenses; (2) failed to allege the required mental state for inducement of child prostitution (counts one and two) and soliciting for child prostitution (counts three and four); and (3) didn't include victim information for two of the counts alleging sexual exploitation of children (counts seven and eight).

¶ 17 In a criminal case, a trial court's jurisdiction is invoked by the filing of a legally sufficient complaint, information, or indictment. *People v. Sims*, 2019 COA 66, ¶ 15. A charging document is legally sufficient if it identifies the essential elements of the crime charged in the language of the statute. *Id.* at ¶ 16.

¶ 18 We conclude that the charging information in this case was legally sufficient, thus providing the trial court with jurisdiction. For each count, the information identified the essential elements of the charged offense by generally tracking the language of the relevant statute.

¶ 19 True, the information didn't allege the specific time that Vreeland committed each alleged offense. But the time of their commission wasn't an essential element. *See People v. James*, 40 P.3d 36, 48 (Colo. App. 2001), *overruled in part on other grounds by, McDonald v.*

People, 2021 CO 64. Moreover, the information *did* identify a date range for each alleged offense, thus giving Vreeland a fair and adequate opportunity to prepare his defense. *See People v. Madden*, 111 P.3d 452, 456 (Colo. 2005).

¶ 20 The same is true regarding the place where Vreeland's offenses allegedly occurred. The county where an offense is alleged to have occurred generally doesn't constitute an element of the offense. § 18-1-202(11). But even if it did, the information alleged that each of Vreeland's offenses was "committed, or triable," in Douglas County.

¶ 21 We also reject Vreeland's argument that the information failed to allege the required mental state for counts one through four. The information alleged in counts one through four that Vreeland acted "feloniously." At trial, the court instructed the jury that the prosecution had to prove beyond a reasonable doubt that Vreeland acted "knowingly" when committing counts one through four. The word "feloniously" in a charging document is equivalent to "knowingly." *People v. Trujillo*, 731 P.2d 649, 651 (Colo. 1986). Thus, the information adequately alleged the required mental state that the prosecution had to prove at trial.

¶ 22 Nor are we persuaded that the prosecution's failure to identify the specific child victims in counts seven and eight deprived the trial court of jurisdiction over the sexual exploitation of children charges. In counts seven and eight, the prosecution alleged

that Vreeland knowingly prepared, arranged for, published, produced, promoted, made, sold, financed, offered, exhibited, advertised, dealt in, or distributed "sexually exploitative material." § 18-6-403(3)(b), C.R.S. 2004. Under the applicable version of the statute, "sexually exploitative material" means "any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct." § 18-6-403(2)(j), C.R.S. 2004. Thus, although the statute required the prosecution to prove that the visual material depicted actual children, nothing demanded "evidence of [the] child[ren]'s identification." *People v. Brown*, 313 P.3d 608, 613 (Colo. App. 2011).

¶ 23 Accordingly, the postconviction court didn't err by rejecting Vreeland's claims that he characterizes as jurisdictional.

IV. Successive Claims

¶ 24 The postconviction court determined that the bulk of Vreeland's remaining claims were procedurally barred. The People defend the court's conclusion under Crim. P. 35(c)(3)(VII), arguing that Vreeland could have presented twenty-nine of his thirty-five claims in a previous appeal or postconviction proceeding. Vreeland disagrees, contending that (1) his claims rely on new evidence; (2) an objective factor, external to the defense, made raising the claims earlier impracticable; (3) his

claims haven't been "fully and finally" resolved in a prior judicial proceeding; and (4) certain of his claims asserted that the court imposed an illegal sentence, which the court can correct at any time under Crim. P. 35(a).

A. Newly Discovered Evidence

¶ 25 Vreeland says the following, among other things, constitute new evidence favorable to him: (1) thousands of minutes of recorded telephone calls between himself and his counsel, revealing both his counsel's misconduct and the government's violation of his right to confidentiality with counsel; (2) a videotaped interview of a witness supporting his assertion that no sexual contact occurred in the home; and (3) evidence that government investigators violated a sequestration order and withheld exculpatory material by speaking to witnesses during trial and failing to disclose that an investigator was seen with a witness.

¶ 26 We conclude Vreeland's asserted new evidence didn't push his claims within Crim. P. 35(c)(3)(VII)(b)'s safe harbor for newly discovered evidence. As to the recorded phone calls and interview tape, Vreeland acknowledged in his petition that both were available either before or during trial.[1]The postconviction court

1. Vreeland's postconviction counsel partially backtracked in a supplement to the petition, saying that some of the recorded calls (those recorded while Vreeland was temporarily jailed in Iowa) were sealed and inaccessible before trial. But counsel acknowledged receiving even those recordings more than a year before the postconviction court denied Vreeland's petition. The

similarly concluded that recorded calls were available to Vreeland before trial. Thus, the recorded calls and interview tape didn't constitute new evidence that "could not have been discovered previously." Crim. P. 35(c)(3)(VII)(b).

¶ 27 In addition, the division in *Vreeland II* previously addressed Vreeland's contention that the recorded calls established his attorneys' blameworthiness, rendering this portion of his claim successive under Crim. P. 35(c)(3)(VI). *See Vreeland II*, ¶¶ 30-32.

¶ 28 Turning to the government's alleged violation of a sequestration order and withholding of exculpatory evidence, Vreeland didn't allege sufficient facts to show that he couldn't have discovered these alleged violations earlier through the exercise of due diligence. Crim. P. 35(c)(3)(VII)(b). Moreover, in resolving Vreeland's first postconviction motion, the postconviction court rejected Vreeland's allegations that a government investigator had inappropriate relationships with witnesses in this case, again rendering this portion of his claim successive under Crim. P. 35(c)(3)(VI).

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postconviction court explained that, despite having the recordings for that period, Vreeland failed to provide "a scintilla of support" for his claim. On appeal, too, Vreeland fails to point us to any specific recording in the record that supports his claims. Like the division in *People v. Vreeland*, ¶ 31 n.2 (Colo. App. No. 17CA1648, Aug. 27, 2020) (not published pursuant to C.A.R. 35(e)) (*Vreeland II*), we decline to scour the record to determine if any of the thousands of recorded calls support Vreeland's claims. *See also People v. Gutierrez-Vite*, 2014 COA 159, ¶ 28 ("We will not play archaeologist with the record.").

¶ 29 Vreeland's remaining allegations of new evidence are undeveloped. In his opening brief, Vreeland mentions briefly that a camera allegedly fell out of the chain of custody, that a victim allegedly lied about his grandfather's suicide, and that the mother of one of the victims allegedly would have provided "impeachment evidence." He also asserts that unspecified "new evidence" supported claims one through ten and twenty-nine in his petition. But Vreeland doesn't develop these arguments, much less explain why such evidence couldn't have been discovered earlier through the exercise of due diligence. We therefore decline to address Vreeland's conclusory arguments. *See People v. Romero*, 2015 COA 7, ¶ 53 (declining to address a Crim. P. 35(c) argument that the defendant presented in a perfunctory and conclusory manner).

B. Objective Factor External to the Defense

¶ 30 We similarly conclude that Vreeland's "objective factor" argument under Crim. P. 35(c)(3)(VII)(e) is undeveloped. Without citing supporting case law, Vreeland devotes just two sentences in his opening brief to this argument. Thus, we decline to address it. *See Romero*, ¶ 53.

C. Fully and Finally Adjudicated Claims

¶ 31 Relying on *People v. Diaz*, 985 P.2d 83, 85 (Colo. App. 1999), Vreeland argues that the postconviction court should have addressed the merits of his claims that a prior court hadn't yet "fully and finally" resolved.

But *Diaz* predates the supreme court's 2004 adoption of Crim. P. 35(c)(3)(VII). *See* Rule Change 2004(02), Colorado Rules of Criminal Procedure (Amended and Adopted by the Court En Banc, Jan. 29, 2004), https://perma.cc/3TUK-PLAX. As discussed above, the current rule bars not only claims that the defendant *actually* raised in a prior appeal or postconviction proceeding but also claims that the defendant *could* have raised. *See People v. Taylor*, 2018 COA 175, ¶¶ 13-20 (discussing the 2004 adoption of Crim. P. 35(c)(3)(VII) and rejecting the defendant's reliance on pre-2004 case law construing the prior version of the rule).

¶ 32 Accordingly, because the *Diaz* division applied a version of Crim. P. 35 that is no longer in effect, Vreeland's reliance on its analysis is misplaced.

D. Illegal Sentence Claims

¶ 33 Sentences that are inconsistent with the statutory scheme outlined by the General Assembly are illegal and may be corrected at any time. Crim. P. 35(a); *People v. Jenkins*, 2013 COA 76, ¶ 11. By contrast, Crim. P. 35(c)(3) authorizes postconviction challenges to the "judgment of conviction" itself. Constitutional challenges to a defendant's conviction or sentence are also governed by Crim. P. 35(c). *People v. Collier*, 151 P.3d 668, 670 (Colo. App. 2006). The substance of the postconviction motion controls whether it falls under Crim. P. 35(a) or 35(c), not the label placed on it. *See id.*

¶ 34 With the exception of Vreeland's claim involving count nine, which we discuss below, we agree with the People that none of Vreeland's postconviction claims constitutes an illegal sentence claim under Crim. P. 35(a). While Vreeland attempts to characterize several of his claims as illegal sentence claims—including his challenges to the constitutionality of his convictions and sentence, the sufficiency of the evidence and charging information underlying the habitual criminal charges, and the evidence admitted at the habitual criminal hearing—those claims don't allege that Vreeland's sentence is inconsistent with the General Assembly's statutory scheme. Instead, the claims, at most, allege that these errors *led* to a sentence that is inconsistent with the statutory scheme. The same can be said of all postconviction claims. As a result, these claims don't fall under Crim. P. 35(a) and aren't exempt from the bar on successive postconviction claims.

V. Ineffective Assistance of Postconviction Counsel

¶ 35 Vreeland next contends that the postconviction court erred by denying his claim that the private attorney who represented him in his first postconviction appeal (first postconviction counsel) provided ineffective assistance of counsel. Vreeland also argues that, to the extent we reject his contention that new evidence requires reversal of the postconviction court's summary denial of his second postconviction petition, the attorney who represented him on his second postconviction petition (second postconviction counsel) provided ineffective assistance of counsel.

Appendix C

A. Applicable Law and Standard of Review

¶ 36 A criminal defendant has a constitutional right to the effective assistance of counsel in their defense. *People v. Rainey*, 2023 CO 14, ¶ 1. But this constitutional right doesn't apply during the postconviction phase. *Silva v. People*, 156 P.3d 1164, 1167 (Colo. 2007). Instead, a criminal defendant in Colorado has a limited statutory right to counsel in postconviction proceedings. *Id.* at 1168.

¶ 37 Like an ineffective assistance of trial counsel claim, to prevail on an ineffective assistance of postconviction counsel claim, the defendant must show that (1) counsel's performance was deficient, and (2) the deficient performance prejudiced their defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also Silva*, 156 P.3d at 1169 (*Strickland* applies to ineffective assistance of postconviction counsel claims). Prejudice in this context means that the defendant has shown a reasonable probability that, but for postconviction counsel's unprofessional errors, the outcome of the proceeding would have been different. *Strickland*, 466 U.S. at 694. A defendant must establish both prongs under *Strickland* to succeed on their ineffective assistance of postconviction counsel claim. *People v. Garcia*, 815 P.2d 937, 941 (Colo. 1991).

¶ 38 Ineffective assistance of postconviction counsel claims present a mixed question of law and fact. *People v. Corson*, 2016 CO 33, ¶ 25. We review the postconviction court's legal conclusions de novo but defer to the court's factual findings if they are supported by the record. *Id.*

B. Analysis

¶ 39 At the outset, we address two threshold issues.

¶ 40 First, Vreeland understandably didn't challenge the effectiveness of his second postconviction counsel below. *See People v. Kelling*, 151 P.3d 650, 657 (Colo. App. 2006) (defense counsel "could not be expected to litigate his own ineffectiveness"). Because that particular claim of ineffective assistance of postconviction counsel hasn't yet been presented to the postconviction court, we will not consider it in the first instance. *See People v. Cali*, 2020 CO 20, ¶¶ 33-36.

¶ 41 Second, the People argue that the limited statutory right to postconviction counsel in Colorado doesn't guarantee those defendants who retain *private* postconviction counsel the corresponding right to effective assistance of counsel under *Strickland*. *Cf. Silva*, 156 P.3d at 1171 (Coats, J., dissenting) ("It is unclear to me whether the majority's rationale contemplates a right to constitutionally effective assistance only for indigent defendants, or if it would extend the same right to non-indigent defendants who hire their own counsel for post-conviction proceedings, even without a corresponding statutory right to counsel."). We need not decide whether Vreeland was entitled to effective assistance from his first postconviction counsel because, even if he was, Vreeland's claim of ineffectiveness fails on its merits.

¶ 42 Turning to those merits, Vreeland argues that his first postconviction counsel provided ineffective assistance by advising him that counsel couldn't complete the opening brief a mere seven days before it was due, forcing Vreeland to complete the brief on his own. According to Vreeland, counsel then advised this court that he would prepare a reply brief to "cure any defects" in the opening brief but then failed to do so, requiring Vreeland to find a new lawyer to complete the reply brief. The *Vreeland II* division ultimately rejected Vreeland's contentions of error.

¶ 43 Even if we assume that first postconviction counsel's performance was deficient, Vreeland hasn't shown prejudice. To prove prejudice, Vreeland needed to show a reasonable probability that, but for his private counsel's failure to file a merits brief, he would have prevailed on appeal. *See Smith v. Robbins*, 528 U.S. 259, 285 (2000). But Vreeland's second petition for postconviction relief didn't identify any potential appellate issues that his first postconviction counsel should have raised in lieu of, or in addition to, the issues that Vreeland raised on his own. Nor did he explain how such issues were stronger or had a better chance of prevailing than the issues he was able to raise.[2] *See People v. Trujillo*, 169 P.3d 235, 238-39 (Colo. App. 2007). In the absence of such allegations, the postconviction court didn't err by denying Vreeland's ineffective assistance of counsel

2. Vreeland suggests that "prejudice can be presumed," but he devotes only one sentence of his opening brief to this argument and cites no supporting case law. We decline to address this undeveloped contention. *See People v. Romero*, 2015 COA 7, ¶ 53.

claim without a hearing. *See id.*; *see also People v. Villanueva*, 2016 COA 70, ¶ 68 (A "conclusory allegation is insufficient to establish prejudice under *Strickland*.").

¶ 44 Accordingly, the postconviction court didn't err by rejecting Vreeland's ineffective assistance of counsel claim.

VI. Vreeland's Sentence

¶ 45 Vreeland next contends that the postconviction court erred by denying his challenge to his illegal sentence. His argument is twofold: (1) the sentence on one of his sexual assault convictions (count nine) should have run consecutively to the sentences on his other convictions under section 18-1.3-1004(5)(a), C.R.S. 2025;[3] and (2) the trial court failed to exercise judicial discretion when it declined to impose concurrent sentences on the subset of convictions related to each of the two victims, with the two "batches" of sentences running consecutively.

A. Additional Background

¶ 46 In October 2008, the trial court sentenced Vreeland to an indeterminate sentence of twenty-four years to life on count nine under the Colorado Sex Offender Lifetime Supervision Act of 1998 (SOLSA), §§ 18-1.3-1001 to -1012, C.R.S. 2025, and to an aggregate 336-year

3. Vreeland acknowledges in his opening brief that his argument on this issue may result in a longer sentence, explaining that "[e]ven if a longer sentence results, it does not change the fact that [he] is suffering from an illegal sentence."

sentence on the other counts. The court's indeterminate sentence on count nine ran concurrently with the sentences on the other counts. The 336-year sentence included 48 years each on counts one through six and count ten, all running consecutively to one another. Vreeland's determinate sentences on the remaining counts ran concurrently to the 336-year sentence.

¶ 47 In June 2025, while this appeal was pending in our court, the postconviction court purported to alter Vreeland's sentence on count nine so that it ran consecutively, rather than concurrently, to his related conviction on count eight for sexual exploitation of children. The court said it was entering its amended sentence "pursuant to" section 18-1.3-1004(5)(a). The court also characterized its amended sentence as a "clerical" correction of the mittimus under Crim. P. 36.

B. Count Nine

¶ 48 We first address whether the postconviction court possessed jurisdiction in June 2025 to amend Vreeland's sentence on count nine while his appeal was pending in this court. *See People v. S.X.G.*, 2012 CO 5, ¶ 9 (appellate court may raise jurisdictional defects sua sponte). We conclude that it didn't. After a party has perfected an appeal of a final judgment, the trial court lacks jurisdiction to entertain any motion for an order affecting the judgment. *People v. Dist. Ct.*, 638 P.2d 65, 66 (Colo. 1981); *see also Molitor v. Anderson*, 795 P.2d 266, 269 (Colo. 1990) ("[T]he filing of a notice of appeal divests a trial court of authority to consider matters

of substance affecting directly the judgment appealed from."). A defendant's sentence is part of the judgment of conviction. Crim. P. 32(b)(3).

¶ 49 In this appeal, Vreeland challenged multiple aspects of his sentence, including whether the sentence on count nine should run concurrently with or consecutively to his sentences on the other counts. Given the scope of his challenge, Vreeland's notice of appeal, filed well before the postconviction court's June 2025 order, divested the court of jurisdiction to consider matters directly affecting his sentence. *See Molitor*, 795 P.2d at 269. As a result, the portion of the June 2025 order amending Vreeland's sentence on count nine is void. *See People v. Jones*, 631 P.2d 1132, 1133 (Colo. 1981).

¶ 50 The postconviction court's characterization of the amendment as a "clerical" correction under Crim. P. 36 doesn't change our conclusion. Crim. P. 36 doesn't allow a trial court to amend a sentence itself; rather, the rule permits the court to make "perfunctory changes" so that the judgment conforms to the sentence actually imposed. *People v. Wood*, 2019 CO 7, ¶ 39 (quoting *People v. Emeson*, 500 P.2d 368, 369 (Colo. 1972)).

¶ 51 Here, the trial court's original sentence on count nine ran concurrently with Vreeland's sentences on the other counts. Attempting to alter the sentence on count nine so that it now runs consecutively to the other sentences doesn't constitute a mere perfunctory change, so Crim. P. 36 doesn't apply. *See id.*

¶ 52 As to the merits of Vreeland's sentencing contentions, the People agree with Vreeland's first sentencing argument in part. They assert that section 18-1.3-1004(5)(a) required the trial court to impose a sentence on count nine that ran consecutively to Vreeland's related conviction on count eight for sexual exploitation of children, reasoning that those two offenses arose from the same incident. The People disagree, however, that Vreeland's indeterminate sentence on count nine must run consecutively to his remaining sentences.

¶ 53 A sentencing court ordinarily has discretion to impose either concurrent or consecutive sentences when the defendant is convicted of multiple offenses. *Juhl v. People*, 172 P.3d 896, 899 (Colo. 2007). But under section 18-1.3-1004(5)(a), which has remained unchanged since Vreeland's offenses, the trial court must impose consecutive sentences in SOLSA cases involving multiple convictions arising from the "same incident" if the court imposes an indeterminate prison sentence for the sex offense.

¶ 54 We decline to disturb the trial court's sentence on count nine. Vreeland doesn't point us to any portions of the record establishing that his conduct underlying count nine and the remaining counts occurred as part of a single incident. *See* C.A.R. 28(a)(7)(B) (appellant's opening brief must contain "citations to the authorities and parts of the record on which the appellant relies").

¶ 55 While the People come closer on the narrower question of whether Vreeland's conduct underlying counts eight and nine occurred as part of a single incident, their supporting record citations also don't show an illegal sentence. Instead of pointing us to evidence introduced at trial, the People rely on the prosecution's closing argument, the charging information, pretrial pleadings, and statements supporting law enforcement's request for an arrest warrant. Absent "affirmative evidence" showing otherwise, we presume that the trial court didn't err when imposing sentence. *LePage v. People*, 2014 CO 13, ¶ 15; *cf. Juhl*, 172 P.3d at 900 (explaining, in the identical-evidence context, that the "mere possibility" that identical evidence may support two convictions isn't sufficient to remove the trial court's sentencing discretion; the evidence must support "no other reasonable inference than that the convictions were based on identical evidence").

¶ 56 Accordingly, we discern no basis for disturbing the trial court's original sentence on count nine.

C. Judicial Discretion at Sentencing

¶ 57 Vreeland's contention that the trial court failed to exercise appropriate discretion at sentencing to impose concurrent sentences on all convictions corresponding to a single victim constitutes an illegal manner claim under Crim. P. 35(a). *See People v. Swainson*, 674 P.2d 984, 986 (Colo. App. 1983), *rev'd on other grounds*, 713 P.2d 479, 480 (Colo. 1986).

¶ 58 An illegal manner claim must be filed "within the time provided [in Crim. P. 35(b)] for the reduction of sentence." Crim. P. 35(a). Where, as here, the defendant filed a direct appeal of the judgment, they must file their illegal manner claim "within 126 days (18 weeks) after entry of any order or judgment of the appellate court denying review or having the effect of upholding a judgment of conviction or sentence." Crim. P. 35(b)(3).

¶ 59 The division in *Vreeland I* issued its mandate affirming Vreeland's convictions on January 28, 2014. But Vreeland didn't file his illegal manner claim until March 4, 2021, more than seven years later. Accordingly, Vreeland's illegal manner claim is untimely.

VII. Word Limitations

¶ 60 Finally, Vreeland contends that his right to due process has been violated because courts on direct appeal and during the postconviction phase have enforced word limits in briefs (including in this appeal), requiring that he abandon certain arguments.

¶ 61 To the extent Vreeland challenges word limits imposed in either *Vreeland I* or *Vreeland II*, those claims either were brought or could have been brought in those proceedings. *See Vreeland II*, ¶ 36. They are therefore barred as successive. Crim. P. 35(c)(3)(VI), (VII).

¶ 62 To the extent Vreeland challenges restrictions imposed by the postconviction court related to his

most recent petition for postconviction relief, he fails to identify those restrictions with specificity, so we don't address them. *See Romero*, ¶ 53.

¶ 63 We also aren't convinced that Vreeland was denied a fair opportunity to present his contentions of error in this appeal. *See People v. Oglethorpe*, 87 P.3d 129, 133 (Colo. App. 2003) ("Procedural due process . . . requires notice and a fair opportunity to be heard."). Although this court denied Vreeland leave to file an oversized 12,708-word opening brief, he doesn't identify any specific argument that he was forced to abandon as a result. *See* C.A.R. 28(g) (an opening brief is limited to 9,500 words).

¶ 64 Moreover, having reviewed Vreeland's briefs in detail, we conclude that certain portions could have been "editorially revised to a more concise form without any loss, and probably with significant gain, in impact." *People v. Galimanis*, 728 P.2d 761, 763 (Colo. App. 1986); *see also Watts v. Thompson*, 116 F.3d 220, 224 (7th Cir. 1997) (appellate court's enforcement of page limits is a "rather ordinary practice" and didn't amount to a due process violation).

¶ 65 Accordingly, we perceive no due process violation.

VIII. Disposition

¶ 66 We affirm the order.

JUDGE WELLING and JUDGE GOMEZ concur.

APPENDIX D — ORDER OF THE DISTRICT COURT FOR THE DOUGLAS COUNTY, STATE OF COLORADO, FILED JUNE 5, 2025

DISTRICT COURT, DOUGLAS COUNTY,
STATE OF COLORADO

Case Number: 2004CR706
Division: 4

THE PEOPLE OF THE STATE OF COLORADO

v.

DELMART VREELAND,

Defendant.

Filed June 5, 2025

ORDER RE: CORRECTION OF THE MITTIMUS PURSUANT TO COLORADO RULE OF CRIMINAL PROCEDURE 36

THIS MATTER comes before the Court, *sua sponte*, to correct clerical errors in the Mittimus. Crim. P. 36 allows that "[c]lerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders." Therefore, the Court Orders the following to be corrected in the Mittimus.

Appendix D

1. Count Seven (7) shall be modified to 18-6-403(3)(b) to be consistent with the Complaint and the jury's conviction. See February 13, 2024 Order.

2. Count Eight (8) shall be modified to 18-6-403(3)(b) to be consistent with the Complaint and the jury's conviction. See February 13, 2024 Order.

3. Count Nine (9) shall run consecutive to Count Eight (8) pursuant to C.R.S. § 18-1.3-1004(5)(a). See *Juhl v. People*, 172 P.3d 896, 900 (Colo. 2007).[1]

SO ORDERED June 5, 2025

BY THE COURT:

s/ Victoria Ellen Klingensmith
Victoria Ellen Klingensmith
District Court Judge

1. "A sentencing court is mandated to impose concurrent sentences only when the evidence will support no other reasonable inference than that the convictions were based on identical evidence. In all other instances, the trial court retains its sentencing discretion[.]" *Juhl v. People*, 172 P.3d 896, 900 (Colo. 2007). Cout Nine must run consecutive to Count Eight. However, the sentencing court retains discretion as to the other counts.

APPENDIX E — ORDER OF THE COLORADO SUPREME COURT, FILED MAY 12, 2025

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

C.A.R. 50 Certiorari to the Colorado Court of Appeals,
2022CA1704
District Court, Douglas County, 2004CR706
CASE NUMBER: 2025SC147
Supreme Court Case No:
2025SC147

DELMART EDWARD VREELAND,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

DENIED CAR 50 CERT ORDER

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

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

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

APPENDIX F — ORDER OF COURT OF THE COLORADO SUPREME COURT, FILED JANUARY 4, 2024

COLORADO SUPREME COURT

Supreme Court Case No: 2023SA89

DELMART VREELAND,

Plaintiff-Appellant,

v.

ED CALEY, WARDEN OF THE COLORADO TERRITORIAL CORRECTIONAL FACILITY AND COLORADO DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

Filed January 4, 2024

ORDER OF COURT

Upon consideration of the Notice of Appeal, together with the brief(s) and the record filed herein, and now being sufficiently advised in the premises,

IT IS ORDERED that the decision of the Fremont County District Court is AFFIRMED.

BY THE COURT, EN BANC, JANUARY 4, 2024.

APPENDIX G — AMENDED PETITION FOR WRIT OF HABEAS CORPUS OF THE DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO, FILED MAY 7, 2024

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case Number: 2024CV30621
(Div 259)

DELMART E.J.M. VREELAND III,

Petitioner,

v.

JENNIFER HANSEN, COLORADO TERRITORIAL CORRECTIONAL FACILITY, AND COLORADO DEPARTMENT OF CORRECTIONS BY AND THROUGH ITS EXECUTIVE DIRECTOR, MOSES STANCIL,

Respondents.

Filed May 7, 2024

AMENDED PETITION FOR WRIT OF HABEAS CORPUS UNDER C.R.S. § 13-45-101(1)

COMES NOW, Petitioner Delmart Vreeland, and files this Petition for Writ of Habeas Corpus. "The essential purpose to be served by a writ of habeas corpus

is to resolve the issue of whether a person is unlawfully detained." *Pipkin v. Brittian*, 713 P.2d 1358, 1359 (Colo. App. 1985); *Ryan v. Cronin*, 553 P.2d 754, 755 (Colo. 1976).

Petitioner brings this petition, setting forth the facts concerning his imprisonment and an affidavit regarding the attempt to retrieve the warrant of commitment. C.R.S. § 13-45-101(1). By the same, this Court has jurisdiction to hear the present Petition.

Petitioner shows unto this Court prima facie evidence that Petitioner is not validly confined and is thus entitled to immediate release and that Petitioner has suffered a serious infringement of fundamental constitutional rights resulting in the wrongful deprivation of his liberty. *Jones v. Zavaras*, 926 P.2d 579, 582 (Colo. 1996); *see also Cardiel v. Brittian*, 833 P.2d 748, 752 (Colo. 1992) (detailing that all reasonable inferences are to be made in favor of Petitioner and may entitle Petitioner to release.).

The Colorado Habeas Act reads:

> "If it appears that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:
>
> a. Where the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum, or person;

b. Where, though the original imprisonment was lawful, yet by some act, omission, or event which has subsequently taken place, the party has become entitled to his discharge;

c. Where the process is defective in some substantial form required by law;

d. Where the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process or orders for imprisonment or arrest to issue;

e. Where, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same or where the person having the custody of the prisoner under such process is not the person empowered by law to detain him;

f. Where the process appears to have been obtained by false pretense or bribery;

g. Where there is no general law, nor any judgment, order, or decree of a court to authorize the process, if in a civil suit, nor any conviction if in a criminal proceeding."

CO Rev Stat § 13-45-103 (2016) (emphasis added).

Appendix G

JURISDICTIONAL STATEMENT

Under C.R.S. §13-45-101, this Court has jurisdiction over this Petition for Habeas relief. *See also Duran v. Price*, 868 P.2d 375, 378 (Colo. 1994).

As shown below, Petitioner asserts that this Petition shows that Petitioner's search, arrest and conviction are based on false pretenses and resulted in a miscarriage of justice.

Attached hereto is a copy of the sentencing mittimus and an affidavit from counsel detailing the attempt to obtain the warrant of commitment. Appendix Tab 1 Habeas relief is appropriate when a sentencing court has issued a sentence which was beyond its jurisdiction. Additionally, the court has the power to substitute a legal sentence while habeas proceedings are pending. *Stilley v. Tinsley*, 385 P.2d 677 (Colo. 1963).

STATEMENT OF FACTS

Delmart Vreeland was prosecuted in Douglas County, under Case No. 04CR706. On February 9, 2006, Vreeland, *pro se*, filed two motions asserting that the alleged acts did not occur in Douglas County, Colorado. The first motion alleged that any and all events which may have led to the accusations which made the basis of this matter occurred in either Adams or Denver County, not in Douglas County. The second motion became moot during pre-trial proceedings. But as to Motion One, the trial court failed to follow the mandatory provision of C.R.S. §18-1-202(11),

which requires the court to make a venue determination prior to commencement of trial and jury selection. Motion One, stating that the trial court did not have jurisdiction, nor did it comply with. This motion was the basis of a Petition for Writ of Habeas Corpus previously filed and has since been adjudicated.

Additionally, all evidence of both Motion One and Two disappeared following the trial. The Motions did not exist in the court record throughout the direct appeal, 08CA2468. Therefore, this issue was never brought before any appellate court for an additional fourteen (14) years.

In 2006, Vreeland's attorney also learned that thousands of Vreeland's phone calls, including calls with his attorney, were recorded onto CDs. The recordings disappeared at some point following trial and could not be located for many years until they were located through other post-conviction litigation in 2021. Somehow, CDs of these calls ended up in the court record under seal. Technological difficulties delayed the conversion of the calls into a usable format. In August 2022, the calls were converted, and at least one call with Vreeland's attorney confirms that video surveillance exists, which shows that the events of the evening in question did not occur in Douglas County. To this date, many of the videos remain in unusable format and the State has yet to provide a copy and is placing the onus on Mr. Vreeland to produce them.

Yet, within the pattern of interference created in this case by the DA's office and Investigator Dea Aragon, all of the aforementioned recordings were once again

lost. Vreeland's attorney received a Notice from the Colorado Court of Appeals that on February 23, 2023, these recordings were mailed to the Court as part of the appellate record. However, upon arrival, the envelope was opened, and the CDs were missing. They were unable to be located and now appear to be permanently lost.

Vreeland filed his initial reply with the Douglas County District Court on August 2, 2022. In it, he made jurisdictional claims that were not addressed in the Order issued by the Court on August 18, 2022, dismissing all claims. In her Response to Vreeland's Petition, filed on December 12, 2021, the District Attorney stated that no motions challenging jurisdiction existed in the record, and therefore the issue was not properly preserved for appeal.

The Douglas County Court failed to address the C.R.S. §18-1-202(11) issue, leaving Vreeland with no opportunity to appeal. As a result, Vreeland filed a habeas petition in Fremont County. That Court issued a Show Cause Order, to which the Attorney General filed her Response, and Vreeland replied. The Petition was dismissed on December 5, 2022, and a Motion to Reconsider was denied on January 3, 2023. An appeal followed.

Presently, Mr. Vreeland still has the Rule 35(c) appeal pending before the Colorado Court of Appeals. Significantly, the Colorado Court of Appeals remanded the appeal back to the lower court to complete the record. However, as noted above, the trial court has since lost much of the record. This has been a repeat instance, i.e., the trial court "losing" portions of the record. Significant

to the cause herein, Mr. Vreeland is left without any remedy other than seeking habeas corpus relief.

I. Initial Meeting and Events Leading to the alleged conduct.

In 2004, the State of Colorado in Douglas County charged Delmart Vreeland with various offenses related to allegations of exploitation. These allegations arose from an alleged incident between Delmart Vreeland and two minors, N.M. and J.R. Many of the pertinent details of the alleged conduct remain in dispute, including the trial court's lack of jurisdiction.

Vreeland arrived in Colorado on vacation from Canada. After contacting each other on a website called Connexions[1], Vreeland met Layne Adkins, on September 29, 2004. On October 6, 2004, one week after Vreeland met Adkins, Adkins introduced Vreeland to N.M. at Adkins' house in Colorado.

On Saturday, October 9, 2004, Vreeland had a third meeting with Adkins. This time, the meeting included Justin Osmond, an associate of Vreeland, as well as N.M. and J.R. Significantly, the alleged victims state that the meeting occurred elsewhere, at a Sinclair gas station at the intersection of Dry Creek and Broadway – this is patently false.

1. Connexions was a popular social media platform where people with like interests met and organized meets in person.

Following the meeting on the same day, a room was rented at the Mon Chalet Hotel under the aliases Clay Steves and Justin Osmond. Vreeland, Adkins, Osmond, N.M., and J.R. all went to the Diamond Cabaret strip bar, where N.M. purchased cocaine from his dealer Mario Brio. Vreeland, Adkins, Osmond, N.M., and J.R. all attended a house party at 4662 Cornish Way in Denver, Colorado. The same night, Saturday, October 9, Osmond sought to purchase more cocaine from N.M., and asked Vreeland for money to do so. Vreeland refused, and Osmond returned to Vreeland's vacation rental with N.M. and J.R., while Vreeland stayed at the house party.

On October 10, 2004, Vreeland became aware that N.M. and J.R. had robbed the vacation rental of jewelry, electronics, and cash, which totaled around $30,000. Vreeland heatedly demanded that N.M. and J.R. return the stolen items by the next day. The items were not returned; instead, N.M. and J.R. went to Douglas County police and made the allegations, which formed the basis of the action against Vreeland.

II. Facts giving rise to the arrest, indictment, and conviction based on false pretenses.

Vreeland was tried, convicted, and sentenced on the basis of various evidence, testimony, and trial exhibits that were altered, ***fabricated***, produced, and/or hidden by the office of the Douglas County District Attorney of the State of Colorado.

Vreeland was tried by a jury in Douglas County, Colorado.[2] Significantly, Vreeland was denied counsel during his trial.

On May 5, 2023, the landscape changed. Vreeland took the deposition of Sergeant Investigator Robert French ("Investigator French" or "French") nearly seventeen (17) years after the trial[2].

A. Dea Aragon's use of fabricated evidence to obtain search and arrest warrants based on false pretenses.

Investigator French assisted in the search of Vreeland's vacation rental home on October 15, 2004. In his deposition, French stated he was advised that the lead Investigator, Dea Aragon, and the lead prosecutor in Vreeland's case were accused of fabricating evidence and tampering with witnesses. *French Testimony*, Appendix Tab 2 at p. 71, line 5; p. 73, line 7.

French was told that at Vreeland's trial in 2006, Aragon testified that she obtained **all relevant photo evidence in the case** from French. *Id.* at 73, lines 4-7. During interrogatories French was asked whether he had provided the photo evidence to Aragon, in which he replied, "**Absolutely not**." *Id.* at 73, lines 11-16, 17-18; p. 74, line 19 (emphasis added). In fact, French went as far as to say that Aragon lied.

2. *Delmart E.J.M. Vreeland, III vs. Vanessa Carson, Christopher T. Harrigan, M.D.*, Civil Action No. 1: 18-CV-03165-PAB-SKC (Dist. Colo. May 25, 2023).

Investigator French's deposition led to additional discovery, much of which reveals exculpatory evidence withheld by Aragon and the DA's office for seventeen years, the suppression of which effectively disallowed Vreeland from pursuing any viable appeal in the interest of justice.

Similarly, Dea Aragon lied about the tapes, in her affidavits. The District Attorney gave that tape to the jury. This tape only had one side of the conversation recorded. Aragon and the District Attorney note that the tape came from the dresser, but we know now that is not true. Ultimately, the tape was fabricated evidence to the jury.

B. Connexions Evidence Photos

Aragon testified at trial in 2006 that she obtained eight (8) internet Connexions profiles from Investigator French to enter into evidence in Vreeland's case. T: 12/6/2006, p. 224, lines 14-20. At the preliminary hearing on May 12, 2005, Aragon testified that three days before Vreeland's computer—which allegedly contained an *estimated* 450 photos—was seized, she logged onto "Investigator French's computer . . . in the Sheriff's office" to look up Connexions profiles. *Id*. Aragon testified that 448 photos were ***recovered from one of Vreeland's*** computers at his vacation home.

Upon information and belief, the eight (8) specific Connexions profile pages contained photos that, when added, total exactly 448 photos. Investigator French's deposition indicates that he never provided Aragon with

any photos from Connexions or otherwise, but ***Aragon's testimony at trial and in the affidavits supporting Vreeland's search and arrest warrant explicitly state that he did.*** It must be surmised, along with other forthcoming discussions of factual and procedural background, that Aragon and the District Attorney's office fabricated such evidence, by asserting that the 448 photos were found on Vreeland's computer when they, in fact, were not.

At the trial, expert testimony was presented from Mike Harris, who advised as to the computer evidence and registry of the photos allegedly found on Vreeland's computer. T: 12/08/2006, p.158-201. In his testimony, Harris explains that, based on the digital evidence found on Vreeland's computer, the only way the particular file Item No. 42 could display the digital registry it does is if it was placed there **while the machine was off**. *Id*. at 171-172.

Additionally, Items No. 34 and No. 35 are particularly notable because Item No. 35 has the exact same date and time as the prior entry, which Harris explained is "highly unlikely and highly improbable." *Id*. at 174. Furthermore, Item No. 1625 presents a physical impossibility, given that the file access date and time are the same. Such consistency is impossible since, for such an anomaly to occur, one must "open up Internet Explorer, type in a URL or Internet address, and view the page all within the same amount of time. [and that would be] within the same 100th of a second."

This anomaly is at issue because the DA and Aragon used these 448 photos to charge Vreeland with pornography at the preliminary hearing before the trial, even when Vreeland demonstrated that such photo evidence was planted. It follows that the items used to procure the indictment are based on false pretenses, as the photos were added after the State seized the computer.

C. Alleged Tape-Recorded Conversation Between N.M. and Vreeland

After French's deposition on May 25, 2023, Vreeland's attorney received even more suppressed exculpatory evidence in the discovery produced by the DA's office in June 2023. Among other things, these disclosures contained handwritten notes by Investigator Aragon taken during a call with one of the alleged victims N.M. Aragon's notes indicate that they discussed details pertaining to an alleged recording made on an answering machine by N.M. of an alleged phone call between Vreeland and N.M. Appendix Tab 3, Discovery p. 3541-3542.

In her Affidavit in Support of Warrant for Arrest, Aragon, the lead arresting officer, stated under oath that she "took [N.M.] to his house and collected the cassette tape of the phone call with [Vreeland] that he recorded. The broken tape was on a dresser in N.M.'s bedroom, and it was sitting next to an answering machine that was also broken." Appendix Tab 4, Affidavit for Search Warrant, p. 31; *see also* Appendix Tab 5, Affidavit in Support of Warrant for Arrest, p. 29. In her testimony at trial, Aragon asserted that she personally saw an answering

machine and a tape in N.M.'s bedroom, and physically seized it in an effort to obtain a search and arrest warrant. T: 12/5/2006, p. 246, line 6—p. 248; p. 270, lines 1-21.

However, N.M. testified at trial that Aragon had never been in his bedroom at all, and therefore would not have been able to retrieve any such answering machine or tape. T: 11/29/2006, p. 129. Rather, Aragon's handwritten notes from April 2006, two years after she allegedly saw and seized an answering machine and tape herself, state that "it wasn't an answering machine, it was a small tape recorder. Radio Shack". Discovery p. 3541-3542. Aragon's notes indicate that she only knew that it was a small tape recorder and not an answering machine from speaking with N.M. on the phone in April 2006. *Id*. Aragon's October 2004 statement in the affidavit for search and arrest asserted that she entered the bedroom, saw, and seized a tape next to a broken answering machine on October 13, 2004. *See* Affidavit in Support of Warrant for Arrest. Yet, the handwritten notes where Aragon wrote that the device was not an answering machine but a small tape recorder, are dated April 2006, which is long after she allegedly saw and seized the device herself.

Allegedly, this recording, the source of which is highly suspect, was also played for the jury as evidence at trial. Only one person, N.M., could be heard in the tape played at the trial, and the prosecution subsequently allowed the jury to assume that the other person on the line was Vreeland. T: 12/5/2006, p. 246, line 6—p. 248. These handwritten notes were produced close to seventeen (17) years after the trial demonstrate that Aragon knew that

the alleged recording either did not exist or was destroyed and lied under oath in the affidavit and in the trial, that it did exist. Further, the search and arrest warrants were issued on the basis of false statements contained in the affidavits that were used to support them.

D. State of Colorado's Deal with Justin Osmond

The new discovery disclosed in 2023 also revealed emails between Aragon, Justin Osmond, and Justin's father, David, that were not previously disclosed. These emails explicitly promise that Justin Osmond would not be prosecuted for anything if he testified in Vreeland's trial. Discovery p. 3775, 3180. In one of the emails, Investigator Aragon stated to Justin and David:

> Justin shouldn't have any reason to be afraid. If I wanted to arrest him, I would have done that a long time ago . . . All Justin needs to do is testify and tell the truth at trial, and his case in Colorado will be closed, and he will be back on a plane to Canada. The prosecutor has already made a formal record of that. Appendix Tab 3, Discovery, p. 3775.

In another, Aragon emailed, "Justin, you have my word that [Charlottetown Police Officer] will NOT arrest you." Appendix Tab 3, Discovery, p. 3180. These emails display a deal that was not duly disclosed to Vreeland at the time it was made or at any time proximate to one where it would affect the outcome of the trial. Contrary to these emails, Osmond testified at trial that nothing was ever

promised to him, and no deal was made between him and the prosecution. Aragon also asserted under oath that no deal of any kind was made with Osmond. T: 11/30/2006, p. 194, lines 5-24; T: 12/07/2006, p. 42, lines 4-25. However, a deal was clearly made, and Vreeland was not notified of it.

E. Witness Tampering by Investigator Aragon

In 2006, after the trial, L.G. McGee of Elite Protection and Investigation conducted an interview with Layne Adkins. In this interview, Adkins disclosed he was advised by Investigator Aragon before trial that Vreeland would present questions regarding the location of any possible tattoos, specifically below the waist. Appendix Tab 6, Adkins Post-trial Interview p. 1544-45. Adkins was a sequestered witness in Vreeland's trial, and any advisement of possible questioning or the like by either party violates that sequestration. Aragon directly influenced the knowledge and preparation of a sequestered witness, which may very well be legally viewed as collusion and/or fabrication. *Martin v. Porak*, 638 P.2d 853 (Colo. App. 1981).

However, the witness tampering and interference by Aragon and the DA was not localized to Adkins. Another witness, Anthony Muniz Jr., provided an affidavit attesting to the fact that he planned to appear to testify at trial but was called by the DA and told that the trial was canceled but would be told a new date when it was set. Muniz was called by the DA's office with a new trial date after being told the trial was canceled, but it was short notice and would be impossible because of work. See Appendix

Tab 6. After that phone call, Muniz was never contacted again. Without advising the defense, the DA and Aragon misinformed and/or misled a sequestered witness in such a way that he was unable even to appear to testify at the trial. The District Attorney and Aragon also made no further effort to advise the witness of the ultimate trial date when it was set, or in enough time that he could be there to testify.

Notably, the stories – which is exactly what they are . . . stories—from all the witnesses and victims are inconsistent. For instance, the drawings of the homes and pictures deployed by the State during the trial are entirely different residences. Again, a product of fabrication and false pretenses.

F. Kodak Evidence and Kodak Witness Testimony was Fabricated and Planted

The camera that the State used during the trial was tampered with, and fabricated evidence was planted to give rise to a process based on false pretenses. First, the Kodak Camera's chain of custody is missing several links. Second, the camera was in possession of several sheriff departments. Then the camera was sent the Colorado Bureau of Investigation, then to Kodak. Notably, all of this happened without notice to the defendant, which deprived him of the right to call expert witnesses or object to the transmittal of the camera.

Appendix G

ARGUMENT IN SUPPORT OF RELIEF

Here, all information leading to the search, arrest, and conviction of Petitioner was obtained via false pretenses.

I. PETITIONER IS SERVING AN UNLAWFUL SENTENCE.

In the trial court, Petitioner's judgment of conviction and sentence and the corresponding mittimus shows four charges and sentences under C.R.S. § 18-6-403(3)(a). However, Petitioner was not charged with four counts of subsection (a). Instead, Petitioner was charged with two counts under subsection (a). Moreover, the jury was not properly instructed as to subsection (b), the correct subsection for two counts. Importantly, the jury rendered decisions which negate any findings of physical force and any adjudication of guilty under any statute requiring force.

Under *Leyva v. People*, 184 P.3d 48 (Colo. 2008), Petitioner's sentence is illegal and requires an amended judgment. Notably, when one aspect of the sentence is illegal and does not follow sentencing statutes, the entire judgment shall be amended.

II. NEWLY DISCOVERED EVIDENCE SHOWS THAT THE SEARCH AND ARREST WARRANTS WERE OBTAINED VIA FALSE PRETENSES.

A. Legal Framework Governing Search Warrants and the Exclusionary Rule

The Fourth Amendment commands that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amends. IV, XIV. Article II, section 7 of the Colorado Constitution similarly protects its citizens from unreasonable searches and seizures. *See* Colo. Const. art. II, § 7.

The longstanding remedy for unlawful government conduct that contravenes the constitutional rights of individuals is to exclude the government from using that which it illegally procured. *Weeks v. United States*, 232 U.S. 383 (1914); *Murray v. United States*, 487 U.S. 533, 536-37 (1988); *People v. Morley*, 4 P.3d 1078, 1080 (Colo. 2000). The exclusionary rule is a judicially created remedy designed primarily to deter unlawful police conduct. *People v. Schoondermark*, 759 P.2d 715, 718 (Colo. 1988); *Wong Sun v. United States*, 371 U.S. 471, 485 (1963).

Recognized first in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920), the independent source doctrine is an exception to the exclusionary rule where evidence is legally seized after an illegal search. In *Segura v. United States*, 468 U.S. 796, 814 (1984), the Supreme

Court held that evidence obtained during the second search pursuant to a valid warrant was admissible under the independent source doctrine. The Court emphasized the independent nature of the second search:

> None of the information on which the warrant was secured was derived from or related in any way to the initial entry into Petitioner's apartment; the information came from sources wholly unconnected with the entry and was known to the agents well before the initial entry. Id. At p. 814 (internal citations omitted).

Later, in *Murray*, the Supreme Court formulated its inquiry as follows:

> "The ultimate question, therefore, is whether the search pursuant to warrant was in fact a [genuinely independent source of the information and tangible evidence at issue here. This would not have been the case if the agents' decision to seek the warrant was prompted by what they had seen during the initial entry, or if information obtained during that entry was presented to the Magistrate and affected his decision to issue the warrant.

See Murray v. United States, 487 U.S. 533 (1988).

In *Schoondermark*, 759 P.2d 715, 718 (Colo. 1988), the Colorado Supreme Court similarly held that under the

independent source doctrine, "unconstitutionally obtained evidence may be admitted if the prosecution can establish that it was also discovered by means independent of the illegality." It applies "[s]o long as a later, lawful seizure is ***genuinely independent*** of an earlier, tainted one." *Id.* at p. 719 (emphasis added). Here, there is no genuine independence. Rather, the entire investigation, pre-trial, and trial proceedings are based on false pretenses, as detailed above. Dea Aragon repeatedly lied regarding the information in the search and arrest warrants. The photos and evidence used during the trial were fabricated, and now evidence has mysteriously gone missing.

Moreover, both Colorado and federal courts have applied the independent source doctrine to admit evidence seized pursuant to warrants based on partially tainted information. *Franks v. Delaware*, 438 U.S. 154 (1978); *People v. Kazmierski*, 25 P.3d 1207 (Colo. 2001). This exemption from the exclusionary rule is based on an unwillingness to put the police in a worse position than they would have had if they not acted illegally. *Murray*, supra, 541. When police have a source of evidence that is genuinely independent of the prior illegal conduct, suppression of the evidence would put the defendant in a better position than prior to the illegal police conduct. *Schoondermark*, supra, 718-19.

Significantly, however, neither the federal nor state constitutions permit police, with reckless disregard for the truth, to make material misrepresentations to seek a warrant that would otherwise be without probable cause.

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The Supreme Court has stated that officers cannot intentionally lie in warrant affidavits or recklessly include or exclude material information known to them. *Franks*, supra, 155-56. Further, the consequences that must follow in cases where intentionally or recklessly misstatements appear in a search warrant affidavit is clear. If those statements were necessary to find probable cause, the search warrant is void, and the fruits thereof are suppressed. *Id*. at p. 168-69; *Kazmierski*, supra, 1213-14.

As to the arrest warrant – this Court has previously determined that the review and issuance of a warrant is a "judicial function." See *Hernandez v. People*, 385 P.2d 996, 999 (Colo. 1963). One that has roots in the Colorado Constitution's requirement that a written oath or affirmation of probable cause precede the issuance of an arrest warrant. Colo. Const. art. II, § 7; *Hernandez*, 385 P.2d at 999 (the constitutional requirement of a written affirmation exists to facilitate and necessitate judicial review to avoid issuance of warrants based on beliefs or whims of government officers).

Here, the misinformation, lies, and deceit that led to Vreeland's arrest reach far beyond beliefs or whims of government officers, as contemplated in *Hernandez*. Rather this case shows a reckless disregard for justice and a trail of fabrication and false pretenses.

B. Misrepresentation in Obtaining both the Search and Arrest Warrants

1. Allegations of Fabrication

In the instant case, the integrity of the search warrant process is seriously questioned due to the fabrication and misrepresentation by law enforcement officials. The fundamental requirement for a search or arrest warrant is that it must be based on probable cause, a standard that necessitates honesty and accuracy in presenting facts to a judicial officer. This standard is not merely procedural but goes to the heart of protecting the rights guaranteed under the Fourth Amendment of the U.S. Constitution and Article II, section 7 of the Colorado Constitution.

The allegations in this case suggest a significant deviation from these constitutional requirements. It is contended that the affidavit used to secure the search warrant for Petitioner's property was replete with false statements and omissions, thereby undermining the premise of probable cause. Fabrication in the information provided to obtain a warrant constitutes a grave violation of constitutional rights, as it leads to the issuance of a warrant without a legitimate basis.

The truthfulness of the affidavit is the fundamental basis for the warrant process. A warrant based on falsified information, or deceitful representations, is not merely an administrative oversight; it represents a fundamental breach of the judicial process and a direct affront to the constitutional rights of the individual subjected to

the search. The use of fabricated evidence to establish probable cause contaminates the legal process and results in the unlawful intrusion into an individual's privacy and liberty.

In this case, if the allegations of fabrication in the affidavits are substantiated, it would render the search warrant constitutionally infirm. Such a situation demands rigorous scrutiny and corrective measures, as it strikes at the core of the judicial system's integrity and the protection of individual rights against state overreach. The implications of such a breach extend beyond the immediate case, potentially eroding public trust in the legal system and the rule of law.

2. Testimony of Investigator French

The credibility of the information underpinning the issuance of the search and arrest warrant in this case is further called into question by the testimony of Investigator French. His deposition provides critical insights that challenge the veracity of the assertions made in the affidavit to secure the search and arrest warrants. Investigator French, who was actively involved in the initial investigation and search of Petitioner's property, has categorically denied providing any photo evidence that was claimed to have been obtained from him in the affidavit. This contradiction is not trivial; it strikes at the heart of the probable cause that justifies the issuance of the warrant. The affidavit, which serves as the foundational document for a search warrant, must be a repository of truth and accuracy. When such a document contains

statements that are directly contradicted by the testimony of a key investigator in the case, it raises serious concerns about the legitimacy of the entire warrant process.

Moreover, Investigator French's deposition uncovers a pattern of evidence fabrication and witness tampering within the investigation. This not only discredits the specific pieces of evidence alluded to in the affidavit but also casts a shadow over the entirety of the investigative process. If the court finds that the information used to justify the search warrant was tainted by falsity, it undermines the legitimacy of the warrant itself.

In light of Investigator French's testimony, it becomes imperative to scrutinize every piece of evidence and statement used to establish probable cause for the search or arrest warrant. The criminal justice system's integrity relies on the trustworthiness of the information presented to the courts. When this trust is breached, especially in a manner that categorically violates constitutional rights, it necessitates a thorough and rigorous judicial response.

The discrepancy in testimonies is not merely a matter of differing recollections but suggests a deliberate misrepresentation of facts to the court. Such conduct speaks to broader misconduct issues and the violation of due process rights.

The implications of the misrepresentations in the affidavit used to obtain the search warrant are significant and far-reaching. According to the precedent set by the U.S. Supreme Court in *Franks v. Delaware*, 438 U.S.

154 (1978), and further expounded upon in *People v. Kazmierski*, 25 P.3d 1207 (Colo. 2001), if a search warrant affidavit contains statements that were intentionally false or made with reckless disregard for the truth, and if such statements were necessary to the finding of probable cause, then the warrant is rendered void. As a result, any evidence obtained pursuant to such a warrant must be excluded.

This principle is rooted in the fundamental idea that the judicial process must be one of integrity and truthfulness. When law enforcement officers make material misrepresentations to a court to secure a warrant, they not only breach the trust placed in them by the judicial system but also violate the constitutional rights of the individual who is the subject of the search.

The requirement for suppression in such cases is not merely punitive towards law enforcement; it is a necessary measure to maintain the sanctity of the judicial process and the protection of individual rights. It serves as a deterrent against the use of untruthful practices to infringe upon an individual's privacy and liberty. In a system where the rule of law is paramount, adherence to constitutional standards in the warrant process is not optional but mandatory.

Therefore, the misrepresentations and fabrications in the affidavit used to obtain the warrants against Petitioner necessitate the exclusion of all evidence that was subsequently obtained. This is not just a matter of upholding legal standards but of preserving the very

principles of justice and fairness upon which the criminal justice system is built.

C. Inapplicability of the Independent Source Doctrine

1. No Independent Source

In the context of the current case, the application of the independent source doctrine is challenged by the nature of the evidence presented to obtain the search warrant. According to the doctrine as established in cases such as *Segura v. United States*, 468 U.S. 796 (1984), and *Murray v. United States*, 487 U.S. 533 (1988), for evidence to be admissible under this principle, it must be derived from a source wholly independent of the unconstitutional conduct.

The critical question, then, is whether the evidence leading to the issuance of the search warrant for Petitioner's property was truly independent of any alleged illegal activity or misrepresentation by law enforcement. If the information used to obtain the warrant was tainted by the same misconduct that is alleged to have occurred in securing the initial evidence, then the independent source doctrine cannot logically apply.

In this case, the allegations and evidence, particularly the testimony of Investigator French, suggest that the information used to obtain the warrant may not have been independent, but rather a product of the same problematic conduct that tainted the initial investigation.

If it is established that the decision to seek the warrants or the information presented to the magistrate was influenced or affected by the initial unconstitutional entry or misrepresentations, the independent source doctrine would not apply.

The independent source doctrine is predicated on the premise that the later, lawful seizure of evidence is genuinely independent of any earlier, tainted one. This doctrine is intended to prevent the exclusion of evidence that is legitimately obtained and has no causal connection with illegal conduct. However, if the evidence used to secure the search warrant in this case was not obtained independently of the alleged misconduct, then its admission would contravene the very purpose of the independent source doctrine.

The application of this doctrine must be approached with caution, ensuring that it does not serve to legitimize evidence that is indirectly a product of unconstitutional actions. In the current case, the burden rests on demonstrating that the evidence used to secure the search warrant was indeed independent of any alleged illegal conduct. If this cannot be satisfactorily shown, the doctrine cannot be used to admit evidence that may have been otherwise obtained in violation of constitutional rights.

2. Policy Considerations

The independent source doctrine, while serving as an exception to the exclusionary rule, must be applied

within the confines of its intended purpose and policy considerations. The doctrine is not an automatic way to admit evidence that may have been tainted by prior illegal conduct. Instead, its application is contingent upon a rigorous assessment of whether the subsequent evidence was genuinely independent of any earlier illegality.

In *Murray*, the Supreme Court underscored the importance of ensuring that the evidence admitted under this doctrine is not influenced by prior unconstitutional conduct. This reflects a critical policy consideration: the need to deter law enforcement from engaging in unconstitutional actions and then using the independent source doctrine as a backdoor to introduce tainted evidence.

Applying these principles to the present case, the independent source doctrine must be scrutinized in light of the allegations of fabrication and misrepresentation in obtaining the initial search warrant. The policy behind this doctrine is to prevent the government from benefiting from its own unconstitutional conduct.

The Colorado Supreme Court's interpretation of this doctrine, as seen in *Schoondermark*, further emphasizes that the subsequent seizure of evidence must be genuinely independent of the earlier, tainted one. This standard is vital to maintain the integrity of the judicial process and uphold constitutional protections.

In this case, if the evidence used to obtain the search warrant is found to have been influenced by the same

misconduct alleged in the initial investigation, it would be contrary to the policy considerations underlying the independent source doctrine to admit such evidence. Doing so would put the police in a better position than they would have been had they not engaged in the alleged unconstitutional conduct, contrary to the intent of both the exclusionary rule and the independent source doctrine.

In conclusion, the allegations and evidence presented in this case, particularly the testimony of Investigator French, raise substantial concerns about the integrity of the warrant process and, by extension, the admissibility of the evidence obtained as a result of the search warrant. The constitutional protections enshrined in the Fourth Amendment and mirrored in Article II, section 7 of the Colorado Constitution are not merely procedural safeguards; they are fundamental rights that underpin the legitimacy of our criminal justice system.

III. MANIFEST INJUSTICE

In *United States v. Gonzalez-Huerta*, the Tenth Circuit provides critical insights into the concept of manifest injustice within the context of plain error review. *See United States v. Gonzalez-Huerta*, 403 F.3d 727 (10th Cir. 2005). This case is particularly relevant to the present matter as it outlines the standards and considerations for determining when an oversight or error in a trial reaches the level of manifest injustice.

Gonzalez-Huerta emphasizes the importance of identifying clear or obvious errors, even when they are

not raised at trial. This aligns with the circumstances in Petitioner's case, where potential errors and injustices, such as evidence tampering and witness coercion, may not have been immediately apparent or contested during trial. The Tenth Circuit's approach in *Gonzalez-Huerta* underscores the judiciary's duty to rectify such errors when they are later revealed and are of a magnitude that undermines the fairness of the trial. In *Gonzalez-Huerta*, the court dives into how errors can affect the defendant's substantial rights, thereby constituting a manifest injustice. The case reflects the principle that a fair trial is a fundamental right, and any error that compromises this right must be seriously considered. In Petitioner's case, the alleged evidentiary and procedural irregularities would have had a substantial impact on his right to a fair trial, like the concerns raised in *Gonzalez-Huerta*.

In addition to the principles outlined in *Gonzalez-Huerta*, several other circuits cited therein further illuminate the concept of manifest injustice, particularly in the context of sentencing errors and their impact on the fairness and integrity of judicial proceedings. In *United States v. Paladino*, the Seventh Circuit emphasized the severity of injustice when a defendant receives an illegal sentence that increases his punishment. *See United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005). This perspective is crucial in the context of Petitioner's case, where any procedural or evidentiary errors could have led to an unjustly harsh sentence.

Paladino suggests that a miscarriage of justice is not just about the conviction itself, but also about the

consequences and punishments that result from that conviction. Further, in *United States v. Smith*, the D.C. Circuit recognized that a misapplication of the burden of proof resulting in a longer sentence for a defendant adversely affects the fairness and integrity of the judicial proceeding. This principle is particularly relevant if Petitioner's conviction was based on evidence or testimonies that were not scrutinized with the appropriate burden of proof, thereby potentially leading to a greater sentence than justified. *See United States v. Smith*, 267 F.3d 1154 (D.C. Cir. 2001). Finally, in *United States v. Martinez-Rios*, the Second Circuit found there was profound injustice in depriving a citizen of liberty due to judicial or procedural errors. *See United States v. Martinez-Rios*, 143 F.3d 662 (2d Cir. 1998).

The principles from these cases, when applied to Petitioner's situation as seen below, underscore the critical need for a reexamination of both the conviction and the sentence. The potential errors and irregularities in Petitioner's trial, from evidence tampering to witness tampering, and discrepancies in photographic evidence, align with the concerns raised in these cases. They collectively suggest that Petitioner may have been subjected to manifest injustice in terms of the conviction and the severity of the sentence imposed.

A. Petitioner was deprived counsel during trial.

Nearly a century ago, in a watershed moment in the expansion of the right to counsel, the U.S. Supreme Court held:

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[I]n a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble- mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case. *Powell v. Alabama*, 287 U.S. 45, 71 (1932).

Three decades after *Powell*, the Supreme Court extended the right to appointed counsel in felony criminal trials to the states. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

In *United States v. Cronic*, 466 U.S. 648 (1984), the Supreme Court explained: [Lawyers] are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself would be "of little avail," as this Court has recognized repeatedly. "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." Id. at 653-54. "Unless the accused receives the effective assistance of counsel, 'a serious risk of injustice infects the trial itself.'" Id. (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980)). On the same day Cronic was issued, the Supreme Court declared, "An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984).

All of the claims herein are coupled with Petitioner being deprived of trial counsel, as Petitioner was forced to proceed *pro se*. The record is littered with instances in which Petitioner was denied counsel altogether.

This is not a case of ineffective assistance of counsel. This is a case in which the Court itself deprived Petitioner of access to the justice system and the assistance of counsel.

B. Evidentiary Concerns Unveiled by Investigator French's Testimony

1. Kodak Camera Evidence Discrepancies

The Kodak camera seized and used during the trial was integral to the State's case. So integral that when the camera did not have the facts they hoped for, the photos and camera were manipulated, misplaced, and fabricated. Importantly, this is not conjecture. As shown below, steady facts support this notion of manifest injustice.

Discovery in the case shows that Dea Aragon manipulated the camera and reset its internal data. Significantly, when Dea Aragon had the camera in her possession, there were 767 total pictures on the camera, per Aragon's notes. Mr. Lentz, Kodak Expert, testified that it had 830 photos. Thereby, proving that 60 extra pictures were taken by the State.[3] (T: 12/6/2006 p. 84 lines

3. Here, there is a discrepancy; 767 plus 60 equals 827, not 830.

3-7). As such, the camera should have never been admitted into evidence, as it was tampered with during the break of the chain of custody[4].

Additionally, Lentz's testimony is an additional basis of false pretenses and shows a manifest miscarriage of justice. The program Lentz claimed he wrote is omitted from discovery, but after further examination, Vreeland located the hidden evidence. See Appendix Tab 7.

The new evidence shows that Lentz knowingly lied about everything related to the camera. Lentz lied about the camera itself, the program he *did not* actually write, and who received, handled, and repaired the camera. For instance, Lentz initially says that the camera's internal memory *was not* reformatted the State, because the 60 photos show up. T:12/6/2006 p. 71. However, later, Lentz proclaims that it had, in fact, been reformatted. *See* Appendix Tab 7 (Lentz statement noting that "otherwise the preceding images—reference to those images would have been listed here also" and asserting that pictures were deleted before the listed dates).

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4. Lentz says all he did was provide dates and times, and factual data. (T: 12/6/2006 p. 78-80), then Vreeland asks whether anyone other than him worked on the camera after it was shipped back after being sent a first or second time, and he said nobody besides him worked on it. (T: 12/6/2006 p. 81).

Significantly, Aragon's progress report notes, not received until new discovery in 2023, says a Thomas McGarrity repaired the camera. (Discovery p. 3627). A document called *Explanation of Repair*; reveals Lentz never touched and/or repaired that camera (Discovery p. 3651).

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Another significant truth that proves the camera was tampered with is the fact that the residual data points show a date and time that is factually impossible, as Vreeland did not meet NM and JR as of October 3-4, 2004.

2. Alterations Were Made to the Kodak Camera After Seizure

In the discovery, there are 60 picture sequential data point entries in order, but the number 805 is missing. That document was allegedly computer generated, and there is an impossibility that the number 805 could be left out by a computer, as such, 805 had to be hand created. It is not from Kodak, regardless of where it came from. (Discovery p. 3558, Appendix Tab 7).

Significantly, Lentz testified that the angstrom symbol means a data point entry had been deleted. The file size at the far right tells how big the actual photo was at the time before it was erased and the date and time the photo was taken. Vreeland shows the court the following, which proves a manufacturing of evidence and a miscarriage of justice.

- Number "å00_0805 jpg" is missing. Appendix Tab 7
- This is significant because a computer program would not make this mistake. This shows that the data log was manually inputted.
- The "favorites" photos are missing in this exhibit. Appendix Tab 7 *See* p. 3558.

  The favorite photo has an empty file size.

This is directly contrary to the statements made by Lentz and Aragon.

Moreover, the data log shows the camera took pictures at a rate faster than what the camera is capable of. *See* Appendix Tab 7 p. 3558. The exhibit has 60 data points listed, each with a time slot, all in order by the time the shutter button was pressed. The camera is not capable of taking photos at the speed that the Kodak exhibit reflects. Appendix Tab 7. Discovery p. 3558.[5]

The tampering and manipulation of the Kodak camera evidence has far-reaching implications for Petitioner's conviction. If the jury was presented with evidence that was in any way altered or misrepresented, it unquestionably and significantly influenced their perception of the facts and, ultimately, the verdict. The integrity of a trial is heavily dependent on the accuracy and reliability of the evidence presented. It is physically impossible for the camera to take pictures in the manner of the State's evidentiary submission.

The revelations regarding the Kodak camera evidence necessitate thoroughly re-examining the trial proceedings. The possibility that key evidence was compromised directly impacts the fairness of the trial and suggests a potential miscarriage of justice. In cases

5. Total of 60 pictures in 426 seconds. The camera has a 2.3 second shutter speed while the flash is on. https://www.cnet.com/reviews/kodak-easyshare-cx7430-review/ (Appendix Tab 7) In the Affidavit for Search Warrant, JR noted that the flash was on the entire time. (Appendix Tab 4, Affidavit for Search Warrant, p. 759).

where the integrity of crucial evidence is in question, it is imperative to reassess the evidence's role in the trial and the extent to which it may have influenced the jury's decision.

3. Witness Tampering Allegations

Investigator French's testimony led to subsequent discoveries that have also brought to light allegations of witness tampering, raising grave concerns about the fairness of the trial proceedings.

Witness tampering fundamentally undermines the reliability of testimonies presented at trial. If witnesses were coerced, influenced, or otherwise tampered with, their testimonies may no longer reflect their true recollections or knowledge of the events in question. This not only compromises the integrity of individual testimonies but also casts a shadow over the entire evidentiary framework of the trial. The adversarial system relies on the accuracy and honesty of witness testimonies to uncover the truth; any tampering with witnesses jeopardizes this process and can lead to unjust outcomes.

The implications of witness tampering in Petitioner's case are profound. The integrity of the trial and the validity of the verdict are contingent upon the truthful and unimpeded testimonies of witnesses. The revelation of potential witness tampering necessitates critically examining how these actions may have influenced the trial's outcome and whether they contributed to a manifest injustice against Petitioner.

4. Discrepancies in Photographic Evidence of the House

The testimony and evidence presented have revealed significant discrepancies in the photographic evidence of the house, which was central to Petitioner's case.

The disparities between the photographs of the house as presented at trial and the actual scene raise questions about the authenticity and accuracy of the evidence. If the jury was shown photographs that misrepresented or inaccurately depicted the crime scene, it could have led to an erroneous understanding of key facts. Misrepresentation of scene evidence can significantly alter the narrative presented to the jury, potentially affecting their deliberations and the trial's outcome.

The credibility of a verdict largely depends on the accuracy and reliability of the evidence upon which it is based. If the photographic evidence was misleading or incorrect, it would have shaped the jury's perception of the case under false pretenses. The integrity of a verdict is compromised if it is based on evidence that is not a true and accurate representation of the relevant facts. Such a scenario is antithetical to the principles of a fair trial and due process, which require that verdicts be grounded in truth and factual accuracy.

The revelation of these discrepancies in the photographic evidence necessitates a reconsideration of the evidentiary foundation of Petitioner's conviction. It underscores the need for a thorough review of how

this evidence may have influenced the jury's decision-making process and the overall fairness of the trial. When key evidence is shown to be potentially misleading or misrepresented, it is imperative to assess its impact on the verdict to ensure that justice is served.

C. Application to Petitioner's Case

The cumulative impact of the various evidentiary and procedural errors identified in Petitioner's case, as highlighted by Investigator French's testimony and the subsequent revelations, suggests a scenario of manifest injustice.

The combined effect of the discrepancies in the Kodak camera evidence, the allegations of witness tampering, and the inconsistencies in the photographic evidence of the house must be evaluated in their totality. This assessment involves considering how each of these errors, individually and collectively, may have prejudiced Petitioner's case, potentially leading to an unfair trial and wrongful conviction.

Given the severity of the potential injustices uncovered, judicial intervention is warranted to correct any miscarriages of justice. This may involve a re-examination of the evidence, a reassessment of the verdict, or other remedial actions to ensure that the principles of fairness and due process are upheld. The court must address these issues to restore the integrity of the judicial process and ensure that Petitioner's rights are protected.

The implications of these findings are profound. The revelation of such significant errors in the investigative and trial processes calls into question the reliability and validity of Petitioner's conviction. It is incumbent upon the judicial system to address these concerns comprehensively to rectify any injustices and prevent the erosion of public confidence in the legal system.

The uncovering of new evidence and the revelations from Investigator French's testimony necessitate a reevaluation of Petitioner's case, guided by the following considerations:

The emergence of new evidence, particularly that which contradicts the facts and circumstances presented at trial, mandates a thorough reexamination of Petitioner's conviction. This involves assessing how this new information might have altered the course of the trial and whether it would have likely led to a different outcome. The discovery of such evidence after the trial underscores the necessity of revisiting the case to ensure that the verdict was based on a complete and accurate representation of the facts.

The judiciary has a fundamental responsibility to ensure that justice is administered fairly and impartially. When presented with evidence that suggests a miscarriage of justice, it is imperative for the courts to act to rectify the situation. This may involve granting a new trial, reviewing the admissibility of evidence, or taking other appropriate measures to address the injustices identified. The goal is to ensure that Petitioner's right to a fair trial is upheld

and that the legal process remains a reliable instrument of justice.

The current case presents a compelling instance where the introduction of new evidence, coupled with the testimonies indicating procedural and evidentiary improprieties, signals a need for judicial action.

The principles of justice and fairness, foundational to the legal system, demand a reassessment of Petitioner's conviction in light of these revelations. Failure to address these concerns would not only be a disservice to Petitioner but also a detriment to the integrity and trustworthiness of the judicial process.

WHEREFORE Petitioner prays that this court grant writ of habeas corpus relief and order that Petitioner be released from custody, his sentence vacated, or any other relief this court deems appropriate.

/s/ George W. Thomas
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APPENDIX H — AMENDED APPELLANT'S OPENING BRIEF FOR THE COLORADO COURT OF APPEALS, FILED JULY 29, 2024

COLORADO COURT OF APPEALS

Douglas County District Court, Colorado
2004CR706
FILING ID: F3EEAF6B4E323
CASE NUMBER: 2022CA1704
Case No. 2022CA1704

THE PEOPLE OF THE STATE OF COLORADO,

Appellee,

v.

DELMART EDWARD VREELAND,

Appellant.

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[TABLES INTENTIONALLY OMITTED]

Filed July 29, 2024

Appendix H

AMENDED APPELLANT'S OPENING BRIEF

ISSUES ON APPEAL

I. Whether the trial court lacked jurisdiction and venue over the indictment, trial and sentence.

II. Whether the lower court erred in dismissing a majority of the claims as successive or time-barred.

III. Whether the lower court erred in issuing a summary denial when the face of the pleadings alleged facts not on the record, which necessitated an evidentiary hearing.

IV. Whether the lower court erred in ruling that first postconviction counsel, Mr. Tondre was not ineffective.

V. Whether the lower court erred in failing to analyze Appellant's sentence and failing to find that Appellant is serving an illegal sentence.

STATEMENT OF THE CASE

I. Procedural History

On December 11, 2006, a jury convicted Vreeland of inducement of child prostitution, solicitation of child prostitution, sexual exploitation of children, sexual assault, contributing to the delinquency of a minor, and distribution of a controlled substance. CF 1291. On June 12, 2008, the Court, not a jury, convicted Vreeland of

six counts of habitual offender pursuant to C.R.S. § 18-1.3-801. CF 1291. Vreeland was found not guilty of two habitual charges. CF 1291. On October 22, 2008, the Court sentenced Vreeland to life imprisonment on sexual assault convictions and to an aggregate 336-year sentence, which amounts to life without parole. CF 1291.

Vreeland appealed to this Court on December 1, 2008. CF 1291. The convictions were affirmed, and the Colorado Supreme Court denied Certiorari relief. CF 1291.

Vreeland filed for postconviction relief under Colo. Crim. Pro. R. 35(c) on January 27, 2017, which was later amended and subsequently denied on August 28, 2017. CF 1291. Thereafter, Vreeland appealed the denial of his initial 35(c) and this Court affirmed the ruling on August 27, 2020. The Supreme Court of Colorado denied Certiorari relief. CF 1291.

Notably, in prior proceedings in the direct appeal, Vreeland was required to cut 21 of the 26 claims he planned on raising, given C.A.R.'s word-limit and the Court's order. As such, the lower court's finding of successive or time-barred claims is misguiding.

Related to this proceeding, Vreeland's omnibus Crim. P. 35(a), (c) Petition, and Habeas Petition Vreeland raised the following errors:

"Claims Related to the Habitual Criminal Trial

1 - Denial Of Extended Proportionality Review Has Resulted In An Illegal Sentence Not Authorized By Statute

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2 - The Habitual Sentence as Issued Was Not Authorized By Statute

3 - The Habitual Criminal Information Was Fatally Defective and Caused An Illegal Sentence Not Authorized By Statute.

4 - Admission Of Inadmissible Hearsay at The Habitual Criminal Trial and The Court's Reliance Upon It Caused an Illegal Sentence Not Authorized by Statute

Claims Related to Sufficiency of The Evidence

5 - Evidence Was Insufficient to Support the Sex Assault Conviction and The Jury Found Vreeland Not Guilty of Sex Assault by Force/Violence But Court Entered Conviction And Life Sentence Anyway Causing Unconstitutional Conviction And Illegal Sentence Not Authorized By Statute

6 - Evidence Was Insufficient for Two Convictions for Sexual Exploitation – The Alleged Victim Testified There Was No Camera or Photos Taken – Conviction Was Entered in Violation of The Constitution And The Sentence Was Illegal And Not Authorized By Statute

7 - Absence Of Mandatory Non-Consent Element from The Sex Assault Charge Resulted in An Unconstitutional Conviction and Illegal Sentence Not Authorized by Statute

8 - Failure To Instruct on The Statutory Affirmative Defense Caused Unconstitutional Convictions and Illegal Sentences Not Authorized by Statute

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9 - Admission Of Expert Opinion Testimony Under the Guise of Non-Expert Evidence Was Error Causing Unconstitutional Convictions and Illegal Sentences

10 - Trial Court Erred Issuing Consecutive Instead of Concurrent Sentences Under Incorrect Theory All Convictions Mandated Consecutive Sentences

Claims Related to The Ability to Present a Defense

11 - Vreeland Was Denied the Right to Put on A Complete Defense and To Call Defense Witnesses, Including His Co-Defendant or His Own Accusers

12 - Refusal To Permit Defense Testimony from Co-Defendant Justin Osmond, And from Accusers JR and NM Resulted in Unconstitutional Convictions and Illegal Sentences

Claims Related to Evidentiary Issues

13 - Violation Of Sixth Amendment Right to Counsel and Suppression of Evidence Which Overcomes Trial Court Ruling of Implied Waiver of Right To Counsel Have Caused Unconstitutional Convictions And Illegal Sentences

14 - The Trial Court and State Violated Crim. P. 16 Part II (D) And Stripped Vreeland of His Alibi and Theory of Defense Jury Instruction Thereby Causing Unconstitutional Convictions And Sentences Not Authorized By Statute

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15 - Refusal To Limit the Jury's Consideration of Extremely Prejudicial Evidence Admitted Under CRE 404(B) Was Error and Caused an Illegal Conviction And Sentence

16 - The Unlawful Admission of Evidence Under CRE 404(B) Of Alleged Sexual and Other Conduct Was Error and Caused Unconstitutional Convictions and Illegal Sentence

17 - The Numerous Intentional Erroneous Evidentiary Rulings Were Prejudicial and Demonstrated the State and Court's Taking Advantage of Vreeland's Forced Pro Se Statute And Caused Unconstitutional Convictions And Illegal Sentences

18 - The State's Attack on Vreeland's Assertion of His Privilege Against Self-incrimination Was Error, As Was the Ruling That Vreeland Deserved It, As Was a Sham Admonishment Of The Prosecution, And Caused Unconstitutional Convictions And Illegal Sentences

19 - Introduction Of Evidence of Other Criminality Was Prejudicial Error Causing Unconstitutional Convictions and Illegal Sentences

20 - The Violation of Attorney Client Privilege Caused Unconstitutional Convictions and Illegal Sentences

21 - Violation Of Disclosure Obligations Under Crim. P. Rule 16 And *Brady v. Maryland* Caused Unconstitutional Convictions and Illegal Sentences Not Authorized by Statute

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22 - State Agent Aragon's Statements to The Jury Violated Due Process Causing Unconstitutional Convictions and Illegal Sentences Not Authorized By Statute

23 - Contamination Of All Physical Evidence Caused Unconstitutional Convictions and Illegal Sentences Not Authorized by Statute

24 - The Information In 2004cr706 Is Defective – All Convictions Should Be Vacated and Charges Dismissed With Prejudice

25 - The Information Was Deficient for Counts 1-4 And Convictions Must Be Vacated. Sentences Issued Are Therefore Illegal and Not Authorized by Statute

26 - Multiple Convictions for The Same Offense Was Improper and Caused an Illegal Sentence Not Authorized by Statute

27 - Convictions For the Nonsensical "Inducement of Child Prostitution" Offense Should Be Vacated

Additional Claims

28 - The Prosecution Engaged in Misconduct and Took Unfair Advantage of Vreeland's Forced Pro Se Status and The Trial Court Treated Vreeland Unfairly With Open Bias Resulting In Convictions Obtained In Violation Of State And Federal Constitutions And Illegal Sentences Not Authorized By Statute

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29 - Fruits Of the Illegal Searches and Seizures at Vreeland's Home Should Not Have Been Admitted as Evidence – The Unconstitutional Search Warrant And Use Of Evidence Derived Therefrom Caused Unconstitutional Convictions And Illegal Sentences Not Authorized By Statute

30 - Law Enforcement Violation of Witness Sequestration Order and Other Tampering Caused Unconstitutional Convictions and Illegal Sentences Not Authorized by Statue

31 - Evidence Which Was Used by Trial Left Chain of Custody and Possession of Law Enforcement Without Knowledge Or Permission Of Vreeland And Caused Unconstitutional Convictions And Illegal Sentences Not Authorized By Law

32 - The18th Judicial District Attorney's Office and the 18th Judicial District Did Not Have Jurisdiction Over the Crimes Charged and Convictions Must Be Vacated

33 - Ineffective Assistance of Counsel on Postconviction Petition and Appeal Resulted in Convictions Obtained In Violation Of State And Federal Constitutions And Illegal Sentences Not Authorized By Statute

34 - The Sentence Imposed Was Illegal and Not Authorized by Statute

35 - Cumulative Error Warrants Relief"

CF 620-676.

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The lower court denied relief on August 18, 2022, noting that most claims were time-barred or successive.

CONCISE STATEMENT OF FACTS

The foregoing facts are brought forward as they relate to the issues raised herein.

Habitual Offender

After noting an Oakland County, Michigan Circuit Court, case no. 155613-FH, the state alleged habitual offender in counts 21-25. Notably, the conduct alleged in Count 24 and 25 was brought under the same case and tried in the same case in the Michigan court.

Additional documents confirm that these cases were brought and tried together on the same day:

- 11/03/1997 – arraignment in both cases was scheduled for the same date.

- 11/03/1997 – the same motions were heard, and identical rulings issued on each.

- 11/10/1997 – Mr. Vreeland was arraigned on both cases.

- 11/10/1997 – both cases set for trial *together* on the same date.

- 12/08/1997 – motions regarding speedy trial filed in each case.

CF 631; 757-773.

Separately, Vreeland entered a plea agreement in Florida, and it is in writing that the agreement could not be used for purposes of habitual offenders, and this notion was violated by the state. CF 757; 1142.

Sexual Assault Claims

A search warrant was obtained via false pretenses. Significantly, while the police were searching Vreeland's home, they did not find a camera that could have involved or been related to NM. Also, the victim admitted that he did not see a camera when the alleged assault occurred. CF 641. Additionally, the only photographs that the police found while searching Vreeland's home were planted in Vreeland's home by former Douglas County Sergeant French. CF 641. French admitted that these photos and websites were in fact his and he created the photographs before Vreeland arrived in Colorado. CF 641. Later in a deposition detailed below, French alleges that Aragon was the wrongdoer of the planted evidence.

The trial court erroneously failed to instruct the jury on the affirmative defense of consent because NM, the victim, stated that the sexual acts between Vreeland and himself were consensual. CF 641.

Vreeland filed a motion for a Bill of Particulars requiring the State prove the exact date the incident

occurred, and when Vreeland received it, he noticed a discrepancy because he did not know of NM or JR on the date the alleged incident took place. CF 653. Vreeland served a Notice of Alibi, and at trial questioned witnesses to create a timeline on when he met the alleged victims, NM and JR; however, the trial court refused to instruct the jury on Vreeland's alibi. CF 654. Instead, the trial court gave the jury over a month-long range of when the alleged assault could have taken place including the time before Vreeland met NM or JR. CF 654. Which subsequently stripped Vreeland of his right to present an alibi defense. Additionally, Adkins and Osmond were both at least eighteen years old when they met Vreeland, but the jury was allowed to believe they were not.

During the sexual assault trial, Osmond testified that Vreeland stole $14,000.00 from Osmond's grandfather and that this loss caused him to commit suicide due to his grandfather becoming bankrupt. CF 650. However, in 2019, Vreeland learned that this was false, and Osmond's grandfather was alive. CF 670. NM also testified that his mother had passed away; however, it was revealed in 2019 that she was also alive, and if she were to have testified in this trial, she would have testified that (1) NM was violent, (2) he attempted to murder his mother, (3) he was a gang member who gained money by selling cocaine and engaging in homosexual prostitution, (4) NM had history of making false allegations, and (5) his father would help him by corroborating his lies. CF 672. NM was charged with these allegations and the information was suppressed.

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Evidence Suppression

On November 30, 2006, while Vreeland was presenting his case in chief, the Prosecution objected and represented to the Court that Mr. Osmond's return to Canada was a matter of national security. Upon information and belief, undersigned counsel now understands that the documents memorializing the Agreement with Homeland Security permitting Mr. Osmond's entry into the United States for the purpose of testifying at Mr. Vreeland's trial allowed him to remain for an additional two weeks and potentially 30 days at the request of the Prosecution. RV3 p. 65-72.

Additionally, the trial court denied Vreeland the opportunity to properly cross NM regarding his violent past. CF 659. Additionally, Vreeland attempted to include testimony from the first police agent on scene because he stated that he believed Vreeland was innocent and being set up, but the court did not allow this information to come in. CF 662-663.

Misconduct

On November 28, 2006, the first day of trial, without consulting Vreeland, the trial court informed Vreeland that he waived his right to counsel by misconduct. CF 652. It is alleged that Vreeland created conflict with his counsel and threatened them to delay the trial, but to this day Vreeland denies that this occurred. CF 652. Vreeland asserts that the State has 4,200 hours of phone conversations between Vreeland and his counsel that demonstrate Vreeland's former counsel was blackmailing Vreeland for $50,000,000

which is substantiated in the records provided during limited remand. CF 652. Although **some** of the calls were produced only 10 days before trial, those calls equal 175 days of nonstop conversations. And it was impossible to adequately parse through them before trial. Ultimately given the facts, Vreeland was forced to represent himself *pro se* during trial. CF 652. Additionally, the State engaged in misconduct by laughing while Vreeland was crossing a witness, commenting on Vreeland's right to be free from self-incrimination, and by having Aragon shake her head yes or no while witnesses are answering questions, and thereby directing their answers during examinations. CF 680.

During the trial, the state questioned NM and JR extensively about tattoos that Vreeland allegedly has, but when it was Adkins turn to testify, he mentioned Vreeland's tattoos without being asked. CF 688. However, Vreeland was stripped nude by eight courtroom deputies and demonstrated that he had no tattoos, but the jury was not able to hear this testimony. CF 688. Adkins made videotape testimony after trial that Dea Aragon informed him, while he was sequestered, that he would be questioned about alleged tattoos below the waist and told how to respond. CF 689. First, this proves that Dea Aragon violated the rule of sequestration. Second, it proves that there was no relationship between Vreeland and Adkins, because there are no tattoos and if there had been, Adkins would have known.

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New Evidence

On July 29, 2021, after a large portion of the court file was located, counsel alleged new evidence regarding Vreeland's habitual criminal trial. CF 748. In count 22, a new document was found charging two felony counts of burglary and theft. CF 749-750. In count 23, new information was found regarding an alleged breaking and entering charge that occurred when he was eighteen. CF 750. Counts 24 and 25 involve checks that were made on closed accounts, and they were plead together on the same day on the same plea, and thus they were not separate cases. CF 750. Finally, count 27 is factually similar in nature as to counts 24 and 25. CF 750.

Additionally, Vreeland had in his possession increased discovery which supports his claims; however, attorney Griffin neglected to attach such to the petition, and a successive Petition was filed. CF 1999.

Vreeland has attempted for many years to obtain CD's that contained jail calls, and seven of the CD's are from Iowa and twenty-three are from Douglas County. CF 754. Portions of the Douglas County CDs were obtained before trial, but the Iowa CDs were sealed, and Vreeland was not given access to them. CF 754. On April 30, 2021, during the pendency of the lower court proceedings, Vreeland was transferred out of state. CF 733. Significantly, this was during the time he was seeking to obtain the testimony and evidence needed to support his claims. Notably, in Vreeland's Petition he not only sought relief under 35(c) and 35(a), he sought relief under the Habeas Corpus Act.

Transferring him out-of-state during the pendency of his Habeas petition is per se a violation of Colorado law.

To this day, the state has failed to produce the records that court has told them to produce. And without just reason, the lower court placed the onus on Vreeland to produce them. Vreeland was able to produce some but not all. In any event, the state has not even attempted to provide the court with the evidence that is in their possession.

Jurisdiction

On February 9, 2006, before the trial began, Vreeland submitted a motion for dismissal for lack of jurisdiction and the motion was argued before Judge King on February 16, 2006. CF 1102-1250. The District Attorney cited C.R.S. §18-1-202(11), and the statute states that the court must determine this issue prior to trial and selection of jury; however, Judge King ruled that this issue was a "matter of evidence to be brought out at trial and the [c] ourt will issue a ruling after hearing evidence at trial and determine based upon its review." CF 1099. Since Judge King waited to rule on the issue of jurisdiction until the trial commenced, his ruling contradicted the statute because the jurisdictional determination must be determined prior to trial. CF 1099.

Significantly, in the phone calls, testimony by Richardson and others, it was proven that Vreeland was in Denver County at the time; but this issue has yet to be competently heard.

Appendix H

SUMMARY OF ARGUMENT

Vreeland argues that the lower court erred in its summary denial and finding that many of his claims were either successive or time-barred. First, the trial court did not have jurisdiction over the trial as the State never proved jurisdiction or proper venue. Moreover, Vreeland alleged new facts and evidence that required an evidentiary hearing. Moreover, Colorado jurisprudence does not foreclose him from raising these issues, as they have never been heard on the merits. Moreover, the lower court erred in denying him relief for ineffective assistance of counsel and for failing to correct a sentence the lower court admits is an illegal sentence.

ARGUMENT

Preservation for Appeal.

Preservation for appellate review of the issue of summary denial of postconviction claims, a criminal defendant is not required to do more than raise the postconviction claims at the trial level for action by the trial court. See, e.g., *Luong*, 378 P.3d at 847. The issues Vreeland raised in his postconviction pleadings were identified with the requisite particularity in those pleadings to preserve them for appeal. See, e.g., *People v. Cordova*, 293 P.3d 114, 120 (Colo. App. 2011).

All claims and issues raised herein were raised with particularity on CF 620-783.

Appendix H

Law and Argument

I. THE COURT LACKED JURISDICTION AND VENUE TO TRY THE CASE AND SENTENCE VREELAND, AS DOUGLAS COUNTY WAS THE IMPROPER VENUE AND LACKED JURISDICTION.

Standard of review.

This court reviews a trial court's summary denial for relief pursuant to Rule 35(c) postconviction motion *de novo*. See *People v. Luong*, 378 P.3d 843 (Colo. 2016).

All claims were raised and preserved in the pleadings on CF 693; and denied on CF 1308.

Facts and Arguments.

Under section C.R.S. 18-1-202(1), a criminal action must be tried either "in the county where the offense was committed" or in a county "where an act in furtherance of the crime occurred." See Colo. Const. art II, § 16; see U.S. Const. amends. VI, XIV. The prosecution bears the burden of proving venue is proper by at least a preponderance of the evidence, given that it was challenged in this case[1]. *People v. Reed*, 132 P.3d 347, 350-51 (Colo. 2006)*; People v. Lewis*, 2017 COA 147, ¶ 15.

1. See also "At common law every offense had only one situs and thus was triable only in that county where the offense was committed." *People v. Taylor*, 732 P.2d 1172, 1177 (Colo. 1987).

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Colloquially venue is the place the jury is drawn from rather than the location of trial; however, this Court and the Colorado Supreme Court have extended this provision to limit where a defendant can sit for trial. See *Wafai v. People*, 750 P.2d 37, 46 (Colo. 1988); *People v. Rice*, 579 P.2d 647, 649 (Colo. App. 1978).

Regarding the dismissal on the court lacking jurisdiction (which on page 9 of the order the lower court says does not exist), the court alleged that this issue had not been properly raised before during trial. That is not true. See CF 1102. However, it is noteworthy that for several years, the evidence of motions filed preserving the issue was lost or not provided (R V3 at 405) and was recently located by Vreeland. Vreeland supplied these to the court, but to no avail. In any event, jurisdictional defects can be raised at any time. *People v. Torkelson*, 22 P.3d 560 (Colo. App. 2000).

Almost a year ago to date, *People v. Slattery*, 20CA823, June 15, 2023, the Court of Appeals opined that the trial court violated C.R.S. § 18-1-202. Particularly, the *Slattery* Court held:

> Thus, the validity of the court's legal conclusion rises and falls with its inference that Slattery was probably at home when he left the voicemails. We find the court's conclusion on that basis tenuous. As the court itself acknowledged, it heard no affirmative evidence of Slattery's physical location when he left the voicemails. Thus, without any evidence from which to

> base its conclusion, the court was foreclosed from finding that venue was proper based on Slattery's location. We are troubled by the court's reliance, at least in part, on Slattery's failure to disprove that he was in Leadville when he left the voicemails.

See *People v. Slattery*, 20CA823, June 15, 2023, at *14-15.

Slattery highlights the grave importance of Vreeland's claim and a failure to consider it promotes a deviation from the exceptional circumstance jurisprudence.

In the first motion, Vreeland informed the court that any alleged misconduct either happened in Adams County or Denver County. The second motion alleged that counts 18 and 19 occurred in either Denver County or California. After hearing the motions, the court ruled that they would hear trial and decide after the fact. Significantly, no ruling was made before trial and empaneling the jury, in violation of C.R.S. §18-1-202. Likewise, it is noteworthy that the DA did not have jurisdiction to file the charges against Vreeland.

Once Vreeland challenged venue and jurisdiction, the court was required to resolve factual disputes related whether the offense alleged in the indictment occurred in Douglas County. *People v. Reed*, 132 P.3d 347, 350 (Colo. 2006). This is the Prosecution's burden. *Id.* at 351.

NM and JR gave statements to police and drew a diagram of the interior of what they alleged was

Vreeland's home in Douglas County. However, the description and diagram did not in fact describe or depict Vreeland's home. The drawing produced during trial reflects the interior of a location in Denver. Moreover, in the phone calls and evidence - that the state has yet to deliver in a usable format - there are conversations therein that show that the alleged conduct did not occur in Douglas County. Various attempts were made to have the calls converted to a usable format. Finally, during the week of August 22, 2022, this was successful, in part. The significance of this is that at least one call with Vreeland's attorney's office confirms that video surveillance exists which shows that the events of the evening in question did not occur in Douglas County. Unfortunately, on Friday August 18, 2022, days before the recordings were rendered usable, the trial court denied the petition in its entirety. [R., p. 90]. Part of the basis for this denial was that recordings had not been produced. [R., p. 101].

Significantly, the record is barren of any allegations that conduct in Douglas County was in furtherance of any crimes charged. Rather, the state asserts that all relevant conduct occurred in Douglas County, which is patently false – Vreeland was never in Douglas County - and deprives the court of proper venue and jurisdiction.

Under Colo. Crim. P. 21(a)(1), a court may grant a change of venue when "a fair or expeditious trial cannot take place in the county or district in which the trial is pending." The Douglas County Court never addressed the merits of the venue/jurisdictional claim – not in trial, not on appeal, not any postconviction rule 35 pleadings.

All of the above shows structural error as (1) the right implicated by the error protects some interest other than the defendant's freedom from erroneous conviction, (2) the error's harmful effects are "simply too hard to measure," and (3) the error "always results in fundamental unfairness." *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907-08 30 (2017); See also *People v. Joseph*, 920 P.2d 850, 852 (Colo. App. 1995) ("[T]he constitutional and statutory provisions governing venue are solely for the benefit of the defendant."). And even if this court were to apply the harmless error standard, the state cannot show that the improper venue was harmless beyond a reasonable doubt. U.S. Const. amends. VI, XIV; Colo. Const. art. II, § 16; see *People v. Lewis*, 2017 COA 147, ¶ 15.

In this case, the prosecution states that specific acts occurred in a specific location. In this instance, the state's failure to prove proper venue and jurisdiction is not only a constitutional failure, but it is proof of actual innocence of the crimes alleged.

II. THE CLAIMS WHICH WERE DISMISSED AS TIME-BARRED AND/OR SUCCESSIVE WERE ERRONEOUSLY DISMISSED AS SUCH.

Standard of review.

This Court reviews a trial court's decision to deny a postconviction motion as successive *de novo*. See, e.g., *People v. Muniz*, 667 P.2d 1377, 1380-1381 (Colo. 1983).

All claims and issues raised herein were raised with particularity on CF 620-783 and denied on CF1291-1311.

Appendix H

A. *Rules and Jurisprudence pertaining to successive or time-barred petitions.*

Colo. Crim. P. 35 states: The court shall deny any claim that was raised and resolved in a prior appeal or postconviction proceeding on behalf of the same defendant, except the following: "***Any claim based on evidence that could not have been discovered previously through the exercise of due diligence*** ... The court shall deny any claim that could have been presented in an appeal previously brought or postconviction proceeding previously brought except the following: Any claim based on events that occurred after initiation of the defendant's prior appeal or postconviction proceeding; ***Any claim based on evidence that could not have been discovered previously through the exercise of due diligence***; ... ***Any claim where an objective factor, external to the defense and not attributable to the defendant, made raising the claim impracticable***. Colo. Crim. P. 35 (emphasis added).

Here, there is new evidence that was able to be developed through an evidentiary hearing, and new evidence alleged on the face of the pleadings. Moreover, the information was not able to be discovered beforehand with reasonable diligence, as much of it was evidence that was hidden by the State. Lastly, the fact that Vreeland was incarcerated and could not adequately depose the state actors and the fact that the state lost key evidence (as seen in this court, which necessitated the reconstructed record) proves to be an objective factor that made raising the claims involving the phone recordings and access to

counsel claims impossible to prove. Significantly, new evidence is an exception to both successive and time-barred petitions.

In the case of a successive motion for postconviction review, the appropriate consideration is whether the defendant's constitutional claim has been fully and finally litigated in the prior postconviction proceeding. *People v. Billips*, 652 P.2d 1060 (Colo. 1982)[2]. Moreover, the doctrine of res judicata and estoppel is not an appropriate standard for the resolution of postconviction claims. *Id.*; *People v. Wright*, 662 P.2d 489 (Colo. App. 1982).

The lower court declared claims 1-12, 14-18, 21 (in part), 23-29 and 35 as successive. The remaining claims, but for claims 21 (in part), 31, 32 (jurisdictional challenge), 33 (ineffective assistance of counsel), and 34 were deemed time-barred. As explained below for each of these claims, the record and the allegations necessitated a review of the

2. *People v. Wimer*, 681 P.2d 967 (Colo. App. 1983) (noting that if factual and legal allegations have not been fully and fairly decided, they must be heard).

merits and as Griffin alleged, the state had yet produced these documents.

B. *The claims should not have been dismissed as successive or time-barred given the face of the pleadings.*

1. All claims are either Rule 35(a) claims, have not been fully and finally litigated on the merits, or alleged new evidence.

Significantly, Vreeland has been consistently deprived of the opportunity to fully raise these claims and receive a meritorious ruling. On direct appeal, then on all postconviction matters (including appeals from those matters), Vreeland has been forced to cut claims and abandon arguments for one "procedural" purpose or another, including but not limited to, word limit restrictions. In the present proceeding, Vreeland was denied an expansion of the word limit. Vreeland asserts that this is a denial of his due process rights, as he is a claimant that is barred from raising all arguments necessary for the preservation of his claims. If this Court were to deem that Vreeland does not assert certain arguments, it is because he has been barred from doing so.

Claims 1 through 4 should not have been dismissed as time-barred or successive as Vreeland asserted that either new evidence was obtained or that although successive, it was a Rule 35(a) issue. The court failed to adequately explain why each of these claims did not squarely fit into a Colo. Crim. P. 35(a) claim, as well as a 35(c) claim.

Nonetheless, with the information in front of him and the new evidence that was to be developed, it shows that the habitual offender sentence is not authorized by law.

Claims 5 through 10 are not successive or time barred as there was a plethora of new evidence alleged and provided to the court. CF 637-647. The fact that this postconviction pleading was denied without a hearing is error. There was evidence uncovered since 2017 that was pertinent to the sufficiency of the evidence claims. Seemingly, the Douglas County court couched their decision under some guise of res judicate or collateral estoppel. Here, if this Court were to review the merits, the Court would find that the evidence was and remains insufficient to render a proper conviction.

For claims 11 and 12[3], counsel alleged new evidence: "By way of example only, Osmond had participated in and completed a videotaped interview that was extremely exculpatory to Vreeland and supported Vreeland's assertion that no sexual contact occurred in the home. However, Vreeland was not permitted to play the videotape during cross-examination to assist in making his points with Osmond and to impeach him. The videotape is **now** in evidence in this case and is exculpatory. (emphasis added)." As such, the court erred in finding the claims successive or time barred. During the state's case, Vreeland was required to cross-examine the witnesses. At the time, Vreeland was allowed to present his defense, the court

3. Vreeland did not present this claim in the prior proceedings as the court alleged in CF 1301 and have a ruling on the merits.

refused Vreeland the right to call the accuser and his codefendant as a key witness, which is a violation of the Confrontation Clause. CF 647-649.

Here, claim 13 unequivocally alleges new evidence and the summary denial of the claim was improper. This evidence are the tapes which have been withheld and destroyed – as alleged in lower court motions. This court should remedy the wrongdoing. Claim 14 shows that Vreeland was stripped of his right to present an alibi defense, which also supported his claim and facts related to claim 32. And has yet to be fully and finally litigated. Claims 15 through 18 show that the court erroneously allowed inflammatory rule 404 evidence and allowed the jury to hear evidence pertaining to facts not in evidence. Moreover, Vreeland's right to be free from self-incrimination was violated, which is claim 18.

The lower court declared claim 19 time barred, but the court fails to address the jurisprudence in *Diaz* and the fact that Tondre was ineffective in a later claim.

Claim 20 shows that Vreeland's right to confidentiality with his attorney was violated by the court's own admission that Vreeland and the state have conversations recorded between Vreeland and his attorney. Now these recordings are a part of the record. [See Supplemental Record upon remand of recorded attorney calls]. Likewise claims 22 and 23 allege new evidence and were improperly denied. This new evidence was ultimately uncovered in Vreeland's own investigation as detailed in his successive habeas. CF 1999.

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Claim 28 alleges several instances of prosecutorial misconduct with evidence cited that required judicial review and is meritorious. The Petition makes a prima facie case that proves, on the face of the record, that the state engaged in prosecutorial misconduct.

Claim 29 was supported by new evidence as later discovered in his successive rule 35(c) in CF 1999.

A defendant is entitled to judicial review of a Rule 35(c) motion as long as the motion states a claim that is legally cognizable under that rule and "the claim has not been **fully and finally** resolved in a prior judicial proceeding." See *People v. Diaz*, 985 P.2d 83 (Colo. App. 1999), citing *White v. Denver Dist. Court*, 766 P.2d 632 (Colo. 1988) (emphasis added).

This is because, fundamentally, "[t]he fact that a defendant did not raise his constitutional claims prior to sentencing or on direct appeal does not preclude him either from raising the claims in a Crim. P. 35(c) motion or from seeking appellate review of the trial court's denial of his motion." *Diaz*, 985 P.2d at 85, citing *Muniz*, 667 P.2d 1377 (Colo. 1993).

Here all claims raised in the trial court are supported by the evidence Vreeland got from the Record on Appeal in the appeal of his first postconviction appeal or through his own investigation. See CF 566 where the court notes that one box was not on the record on appeal, but it was found later. These records were previously unavailable, and portions of the record are still unavailable. It continues

to hold true that Vreeland has not had a merit-based decision on the claims therein and has been wrongfully deprived of the opportunity to develop the record through an evidentiary hearing. See *People v. Rodriguez*, 914 P.2d 230 (Colo. 1996).

C. *If this court were to find that no new evidence was provided to the extent that it overcame the procedural bar, Vreeland alleges that Willian Griffin was ineffective.*

It is critical for this Court to keep in mind that any failure by Vreeland's postconviction counsel is not attributable to Vreeland but rather to the ineffective assistance of that counsel. See, e.g., *People v. Russell*, 36 P.3d 92 (Colo. App. 2001)(discussing ineffective assistance of counsel as to postconviction counsel's performance when failing to raise a postconviction claim).

A criminal defendant is constitutionally entitled to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Davis v. People*, 871 P.2d 769, 772 (Colo. 1994); *People v. Melendez*, 2024 COA 21M, ¶ 27[4].

4. "A defendant's conviction may be reversed upon a determination that his counsel was ineffective, but only if the defendant establishes that (1) counsel's performance was outside the wide range of professionally competent assistance and (2) the defendant was prejudiced by counsel's substandard legal work. *Strickland*, 466 U.S. at 687. To demonstrate the second prong of *Strickland*, a defendant must establish a reasonable probability that the result of the proceeding would have been different but for counsel's unprofessional errors. Id.at 688.

To this end, Vreeland's allegations which are based on new evidence, were not properly presented by Griffin. The failure to provide evidence in this proceeding falls below professional norms and clearly has prejudiced Vreeland. Ironically, Griffin noted that "These claims are asserted as both 35(a) claims and as 35(c) claims, and if they appear successive, they are filed, in part, under the theory of the Court in *People v. Naranjo*, 738 P.2d 407 (Colo. App. 1987), and as claims based on the information and evidence discovered from the production of the records by the CCOA in 2018." However, he clearly did not present the evidence required. Nonetheless, with this allegation alone, the lower court was required to investigate the merits and not simply find the majority of the claims successive or time barred.

Vreeland's section (c) motion raising cognizable constitutional claims is not successive merely because he had unsuccessfully attempted to raise those claims in his prior appeal. *People v. Diaz*, 985 P.2d 83 (Colo. App. 1999). Prior postconviction counsel Tondre and Griffin rendered ineffective assistance of counsel when they each failed to secure a ruling from the trial court on Vreeland's claims, investigate claims, and present evidence, which were summarily denied in all instances.

As part of this appeal, Vreeland is seeking the opportunity to be afforded a real chance to put on evidence going to each of his claims that his postconviction counsel failed to litigate during the prior 35(c) and the present one.

It was postconviction counsel's responsibility to put on evidence relative to the claims presented and to present the issues in a meritorious manner that would enable

an evidentiary hearing to establish the new evidence, rather than promulgate a summary denial. See *People v. Rodriguez*, 209 P.3d 1151, 1169 (Colo. App. 2008)(counsel has the duty to ensure that they obtain a ruling from the trial court on issues raised to then be in a position to pursue relief on appeal; See, e.g., *Phillips v. People*, 443 P.3d 1016, 1022 (Colo. 2019)).

The reach of the prejudice stemming from postconviction and postconviction appellate counsels' failure to secure a complete ruling for Vreeland: (1) stripped Vreeland of the ability to pursue relief on those claims from the trial court itself and to pursue relief from this Court on the claims, and it (2) resulted in Vreeland being stripped of his ability to, as a last resort, pursue relief through the federal habeas process. See, e.g., *Sullivan v. Boerckel*, 526 U.S. 838, 842; 119 S. Ct. 1728, 144 L.Ed. 2d 1 (1999). This equates to providing the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the states' established appellate review process. See, e.g., *Wainwright v. Sykes*, 433 U.S. 72, 79, 97 S. Ct. 2497, 2502 (1977).

Vreeland had the right to the effective assistance of counsel who could and should have pursued each of Vreeland's meritorious claims. Failure of postconviction counselors to put on evidence of Vreeland's claims prejudiced Vreeland's right to raise claims for relief. Unfortunately, the record is devoid of any reason as to why postconviction counsel failed to pursue Vreeland's claims beyond the jurisdictional challenges and the ineffective assistance of first postconviction counsel.

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The prejudice caused by Griffin as postconviction counsel and his failure to seek adjudication from the trial court on Vreeland's unadjudicated claims, prejudiced Vreeland's procedural right to seek relief on appeal through the state appellate process.

The rule for finality in the postconviction context, as an ABA Standard, underscores the need for trial courts to decide postconviction claims on their merits, unless barred because of an abuse of process. See *People v. Rodriguez*, 914 P.2d 230 (Colo. 1996). Admittedly, Vreeland has filed many claims. But these prior filings were made with the hope that one of his attorneys would conduct the due diligence necessary to adjudicate his claims and prove the truth. However, after a consistent pattern of attorney pitfalls, Vreeland took matters into his own hands and deposed Robert French. That deposition proves many of the claims made in the underlying 35(c) and opened the door for Vreeland to discover evidence of the remaining.

Herein lies the problem, Vreeland's claims listed above were denied as successive or time barred. However, this is erroneous. First, on the face of the pleadings beginning on CF 626 and following through the supplements filed, Vreeland unequivocally alleged facts that are not wholly refuted by the record. And as detailed above and below, an evidentiary hearing was warranted to present new evidence and make findings afterwards. Second, counsel was ineffective for only making conclusory allegations, when he should have conducted due diligence and uncovered the truth beforehand.

Clearly, there was an impediment to Vreeland discovering the evidence supporting his claims. The impediment was his prior counsel's failure to conduct investigation, as well as the District Attorney and investigative officer, and since this matter has been pending in this court, Vreeland has uncovered such evidence. See CF 1999-2042 (Where Mr. Vreeland was forced to conduct separate investigation into supporting facts and new evidence that was utterly abandoned by Tondre and subsequently Griffin.).

III. SUMMARY DENIAL OF THE CLAIMS RAISED WAS ERRONEOUS

Standard of Review.

This court reviews a trial court's summary denial for relief pursuant to Rule 35(c) postconviction motion *de novo*. See *People v. Luong*, 378 P.3d 843 (Colo. 2016).

All claims and issues raised herein were raised with particularity on CF 620-783 and denied on CF1291-1311.

Facts and Argument.

If a defendant's postconviction motion contains at least one claim that is not subject to summary denial under Crim. P. 35(c)(3)(IV), then the motion cannot be summarily denied, and the complete copy of the motion must be subjected to the procedures of Crim. P. 35(c)(3)(V). *People v. Nozolino*, 2023 COA 39, ¶ 29, 533 P.3d 966, 970.

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A hearing should be granted where facts supporting claims appear outside record. Where the very basis of defendant's claim of error is that the trial court should have granted an evidentiary hearing because the facts he alleges in his motion do not appear in the record, then, however regular the proceedings might appear from the trial transcript, it still might be the case that the petitioner did not make an intelligent and understanding waiver of his constitutional rights at trial if the facts on which petitioner's claim is predicated are outside the record, and the court should have granted evidentiary hearing.

Here, for all claims raised, especially those the court erroneously deemed unsupported, the lower court should have held an evidentiary hearing given the facts supporting the claims were outside of the trial record.

The court's reasoning is fatally flawed. First, the state had these recordings which relate to all claims including claims related to voluntary refusal of counsel, fifth amendment, sixth amendment, and jurisdictional defect challenged, and still has not complied with any court order to provide them CF 575; 1208-1260, 1525. An evidentiary hearing on this matter was required as to provide Vreeland the opportunity to subpoena records and examine witnesses. This claim has never fully been litigated and resolved with the factual record in front of the proper adjudicating body. Moreover, to state that these claims are refuted by the record is untrue. Beginning on CF 288, Vreeland begins to detail how his right to counsel was impeded. This portion of the record alone necessitates an evidentiary hearing. Now, this court has

the power to remand and order an evidentiary hearing be held as to develop the witness testimony and requisite evidence to fully, finally and fairly adjudicate this claim. Until then, any claims related hereto cannot be deemed successive, time-barred or summarily denied. Otherwise, it is a subversion of justice.

Regarding claim 21, it is imperative to note that the newly discovered evidence shows that the state violated the rules of sequestration and withheld Brady material. Moreover, testimony from NM's mother would have revealed impeachment evidence, and in another instance unrelated to NM's mother, it was proven that Osmond lied about the suicide of his grandfather. CF 667-670.

Lastly, as claim 21 shows, Robert French and Dea Aragon conducted a sham investigation and withheld exculpatory information that showed that French and Adkins were seen together. Moreover, Dea Aragon interviewed witness Muniz, and in that interview information came forward that proves NM's testimony was wholly fabricated and unreliable.

Moreover, the court's ruling on page 14 is disingenuous. These facts were hid by the State and discovered after Mr. Tondre was off the case, after he was diagnosed with Parkinsons and was ordered to go on inactive status. Moreover, Mr. Griffin moved the court to order the state to supply these tapes, but the state failed to do so. Not only did they fail to do so, but the tapes were destroyed en route to this Court.

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Claims 24-26 are 35a issues, and required a hearing or ruling on the merits[5]. Here, the information does not adequately allege the time, place and manner of the alleged incidents. Moreover, there is no victim named in counts 7 and 8 of the information. Moreover, no mens rea was alleged or proven. Lastly, for counts five through eight, the court improperly imposed multiplicitous convictions. All of these issues are issues under Rule 35(a) and can be raised at any time. The court erred in engaging in a summary denial and this court should remand for a hearing and adjudication on the merits of the claims.

Claim 30 was not conclusory and was improperly denied. Furthermore, claim 30 is meritorious. Vreeland argued for nearly 5 pages, while citing to the transcripts, of how the state violated the rule of sequestration. CF 688-692. Moreover, the notion that the rule was violated was supported by case law. When there is a violation of the rule of sequestration, a mistrial or new trial is the appropriate remedy. *People v. P.R.G.*, 729 P.2d 380 (Colo. App. 1986). Dea Aragon coached Adkins into testimony about a tattoo. A tattoo that does not exist. The only way Adkins would have made the testimony he did was through a violation of the Rule. Likewise, the arguments show that Muniz and Dominquez were told trial was cancelled and that was not true. This deprived Vreeland of putting forward a defense. Likewise, his codefendant met with investigator French in a personal manner and same with Adkins. Given Adkins impeachable testimony, it follows that the remainder of his testimony is impeached.

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5. To this day, Vreeland has still not received a hearing or a ruling on the merits of his claim.

Again, claim 31 requires an evidentiary hearing, as it is meritorious. It is clear from investigation after the fact that the Kodak camera left the chain of custody, and it has been shown in Vreeland's successive 35(c) that the camera was tampered with. These allegations not only prove actual innocence, but alleged new evidence that required a hearing.

Similarly, the court acknowledged in claim 34 that the facts were not in the record and given the jurisprudence provided herein the lower court was required to hold a hearing on this matter. This honorable Court should remand for further investigation into the claims.

Vreeland expressly asserts that the State has continuously impeded his ability to raise these claims and get an adjudication on the merits. Lower court counsel filed several motions including: motion to access the court file, CF 612; motion to access sealed records, CF 700; motion to supplement the pleading, CF 781; motion to release discovery, CF 1075-1089. These motions were brought forward in an attempt to accomplish the basic task of obtaining the requisite information already on file to support his claims, including the phone call tapes, Dea Aragon's handwritten notes, and other discovery materials that directly impacted all of the claims therein. For instance, the recorded phone calls would have shown that Vreeland did not voluntarily relinquish his right to counsel and reaffirm his alibi defense. Other discovery materials show, as alleged in the Petition, that Vreeland suffers from an illegal sentence in several respects, that Vreeland was subject to the state tampering with

witnesses and evidence, and ultimately disrupting Vreeland's constitutional guarantees to a fair trial. However, these motions were either denied or ignored without just reason. As such, the lower court placed the onus on Vreeland to produce state records and the state's failure to comply with basic judicial norms and Colorado practice and procedure does not carry any consequence for the state, but rather the grave consequences are imposed on Vreeland.

Additionally, the lower court erred in not holding an evidentiary hearing under the habeas statute. Vreeland filed an omnibus rule 35(c), 35(a), and Petition for Writ of Habeas Corpus. Once the court deemed that Rule 35(c) and (a) were unavailable remedies, the court was required to conduct a hearing and hear the Petition for Writ of Habeas Corpus.

As such, this Court should remand the case to the lower court for further proceedings and a hearing on the claims raised by Vreeland to ensure there is no miscarriage of justice. Moreover, as shown in section IV below – Vreeland was entitled to a hearing on the issue of Tondre's ineffective assistance of counsel and when proven true, show that all claims in the petition survive summary denial.

IV. THE LOWER COURT ERRED IN DENYING VREELAND RELIEF AS HIS FIRST POSTCONVICTION COUNSEL, MR. TONDRE, WAS INEFFECTIVE.

Standard of Review.

This court reviews a trial court's summary denial for relief pursuant to Rule 35(c) postconviction motion *de novo.* See *People v. Luong*, 378 P.3d 843 (Colo. 2016)

All claims and issues raised herein were raised with particularity on CF 694 and denied on CF 1310.

Facts and Argument.

A criminal defendant is constitutionally entitled to the effective assistance of counsel. *Strickland,* 466 U.S. 668 (1984); *Davis,* 871 P.2d at 772 (Colo. 1994); *Melendez*, 2024 COA 21M, ¶ 27.

To prevail on a claim of ineffective assistance of counsel under Rule 35(c), a defendant must show that (1) his attorney's performance was deficient and (2) the attorney's deficient performance prejudiced him. *See Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Dunlap v. People*, 173 P.3d 1054, 1062 (Colo. 2007). An attorney's performance is deficient if it falls "below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. To prove that such deficient performance prejudiced him, the defendant must show "a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. If the defendant establishes those elements and meets all other requirements under Rule 35(c), the district court "shall make such orders as may appear appropriate to restore a right which was violated, such as vacating and setting aside the judgment, imposing a new sentence, granting a new trial, or discharging the defendant." Crim. P. 35(c)(3); *People v. Delgado*, 2019 COA 55, ¶ 7, 442 P.3d 1021, 1024

As alleged in Vreeland's Petition, CF 626.

> Vreeland appealed the denial of the 35(c) to the CCOA. Vreeland requested appointment of counsel for 35(c) which was denied. Vreeland retained counsel, Brice A. Tondre for appeal of 35(c). Mr. Tondre failed to prepare an appeal brief and advised Vreeland seven days before the opening brief due date that he was unable to complete it. Vreeland was forced to prepare the opening brief pro se. Mr. Tondre then advised the CCOA that he would complete the Reply Brief and cure any defects in the opening brief. The very night before the reply brief was due, Mr. Tondre advised he could not get it completed. It turned out Mr. Tondre was suffering from a neurological disorder he was trying to conceal... The CCOA admonished Mr. Tondre in written order and removed him from the case.

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Mr. Tondre's ineffective assistance is clear. First, the conduct which led to Vreeland losing the opportunity to file rehearings and prepare an appeal brief fall below professional norms. Moreover, prejudice can be presumed as the motion for leave was denied. Likewise, many of the claims presented in the Petition contemplated herein were deemed time-barred or successive. Mr. Tondre failed to investigate these claims and adequately argue them so as to receive a ruling on the merits of the claims herein. This rendered the proceeding non-adversarial and has prejudiced Vreeland for nearly 15 years.

Importantly, this claim of Tondre's ineffective assistance of counsel further proves how Vreeland's claims are not successive or time-barred. All of the allegations against Tondre encompass the fact that these so called "successive" claims are being raised once more after Tondre's ineffectiveness.

As noted in *Ardolino v. People*, 69 P.3d 73, 77 (Colo. 2003):

> "[t]he statutes and rules of this jurisdiction provide a criminal defendant with an adequate opportunity to develop the required record to establish ineffective assistance. See § 18-1-410, 6 C.R.S. (2002); Crim. P. 35(c). Because relief for ineffective assistance of counsel requires a criminal defendant to prove both deficient representation and prejudice, denial of the

> motion without a hearing is justified if, but only if, the existing record establishes that the defendant's allegations, even if proven true, would fail to establish one or the other prong of the Strickland test."

The lower court was required to hold a hearing on this matter and provide Vreeland the opportunity to prove Tondre's ineffectiveness, because when proven, all claims detailed above would no longer be successive and would be required to be fully and finally litigated with no finding of a procedural bar. *People v. Valdez*, 178 P.3d 1269 (Colo. App. 2007).

Tondre's ineffective assistance of counsel prejudiced Vreeland as he still remains unable to raise his meritorious claims.

V. THE COURT ERRED IN NOT REVIEWING AND CORRECTING THE ILLEGAL SENTENCE.

Standard of Review.

This court reviews a trial court's summary denial for relief pursuant to Rule 35(c) postconviction motion *de novo*. See *People v. Luong*, 378 P.3d 843 (Colo. 2016).

All claims and issues raised herein were raised with particularity on CF 676 and denied on CF 1307.

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Facts and Argument.

As to claims (here Claim 26) under Crim. P. 35(a) an illegal sentence may be corrected at any time. *Downing v. People,* 895 P.2d 1045 (Colo. 1995). When original judgment of conviction contains an illegal sentence on one count, the entire sentence is illegal. *Leyva v. People*, 184 P.3 48 (Colo. 2008); *People v. Bassford,* 343 P.3d 1003 (Colo. App. 2014). The sentence is therefore subject to correction and the judgment of conviction is subject to amendment, making the judgment of conviction not final or fully valid. *Leyva, supra.* A court has a duty to set aside a void sentence at any time. *People v. Emig*, 492 P.2d 368 (Colo. 1972). An illegal sentence is a sentence not in *full* compliance with sentencing statutes. *Delgado v. People,* 105 P.3d 634 (Colo. 2005); *People v. White*, 179 P.3d 58 (Colo. App. 2007).

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

Significantly, the court and the state agree that the mittimus is faulty but refuse to correct the issue. As alleged in CF 1573: The charges in the indictment related to counts 5 through 8 show two counts of C.R.S. § 18-6-403(a) and two counts of C.R.S. § 18-6-403(b). However, the sentencing mittimus shows four counts of C.R.S. § 18-6-403(a). These errors affect time computation, classification and program eligibility. Likewise, the jury was not provided instructions for C.R.S. § 18-6-403(b). As such, all counts 5-8 should be vacated.

In its order, the lower court noted - "The Court has reviewed the Complaint, Jury Instructions, and Jury Verdict forms and agrees with the People's Response that this appears to be an error in the mittimus of Counts Seven and Eight which were tried pursuant to C.R.S. § 18-6-403(3)(b). Counts Five and Six were correct as stated under C.R.S. § 18-6-403(3)(a)." CF 1641.

This error was alleged in the 35(a) and 35(c) proceedings but was summarily denied without cause. Then, later once it was alleged after the fact, the lower court ruled that correcting this notion rests in the jurisdiction of this Court. Therefore, Vreeland asks this court to remedy the erroneous mittimus and vacate counts 5 through 8 as they are illegal sentences.

PRECISE RELIEF SOUGHT

In light of the evidence presented and the numerous issues raised regarding the proceedings at the lower court, it is both appropriate and necessary to reverse the

judgment below, remand for further proceedings, and vacate all convictions, including but not limited to the sentences in counts five through eight, correct count 9, or provide any other remedy this Court deems appropriate.

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APPENDIX I — PEOPLE'S ANSWER BRIEF OF THE UNITED STATES COURT OF APPEALS, STATE OF COLORADO, FILED MAY 15, 2025

COURT OF APPEALS
STATE OF COLORADO

Douglas County District Court
Honorable Patricia Herron, Judge
Case No. 2004CR706

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellee,

v.

DELMART EDWARD VREELAND,

Defendant-Appellant,

PHILIP J. WEISER,
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Filed May 15, 2025

Appendix I

PEOPLE'S ANSWER BRIEF

[TABLES INTENTIONALLY OMITTED]

INTRODUCTION

A jury convicted Defendant, Delmart Vreeland, of inducing child prostitution, soliciting child prostitution, sexually exploiting children, sexual assault, contributing to the delinquency of a minor, and distributing a controlled substance. CF, p 1291. In the aggregate, he received an indeterminate prison sentence of at least 336 years. *See id.*

In this case, Defendant raises a wide array of post-conviction claims. And part of one claim prevails: two sentences should run consecutively, rather than concurrently. But the remaining claims are unavailing.

STATEMENT OF THE FACTS AND CASE

Defendant used alcohol and cocaine to induce two teenage boys to pose for pictures in their underwear. PCF III, p 803.[1] After separately photographing each boy, Defendant sexually assaulted them. *Id.*

After a multi-day trial, the jury convicted Defendant as discussed above. CF, p 1291. A division of this Court affirmed the judgment of conviction. *See id.*

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1. The three-volume digitized paper file will be referred to as "PCF," followed by a Roman numeral reflecting the volume.

In early 2017, Defendant first sought post-conviction relief under Crim. P. 35(c). *See id.* The post-conviction court denied relief. *See id.*

Defendant appealed. *See* CF, p 626. Although he initially represented himself, Defendant eventually hired counsel: Lawyer T. *See id.* But another lawyer—Lawyer G—replaced Lawyer T before the reply brief was filed. *See id.* A division of this Court ultimately affirmed the post-conviction court's order. *See* CF, p 1291.

Mere months after the mandate issued in Defendant's first post-conviction proceedings, Defendant again sought post-conviction relief, raising thirty-four substantive claims.[2] *See* CF, pp 1291–92; OB at 9–14. Relief was again denied, and Defendant now appeals. *See* CF, p 1311.

SUMMARY OF THE ARGUMENT

Defendant asserted thirty-four substantive claims in the post-conviction court, which he raises here in five parts. Parts I–IV of the Opening Brief challenge the thirty-three claims that arise under Crim. P. 35(c), while Part V challenges Defendant's Crim. P. 35(a) claim.

Part I of the Opening Brief argues that the venue statute deprived the trial court of jurisdiction. But the

2. Defendant also raised a thirty-fifth claim asserting cumulative error. *See* OB at 14. This is not an independent substantive claim, however, but an application of the harmlessness standard of reversal. *See Howard-Walker v. People*, 2019 CO 69, ¶¶ 25–26. So, absent error, Claim 35 warrants no further discussion here.

statute is not jurisdictional, and Defendant missed his window to challenge venue in any event.

Parts II–III of the Opening Brief present all but one of Defendant's remaining Crim. P. 35(c) claims. Two of the claims fail to show that the charging document was deficient. And the remaining twenty-nine claims are barred by Crim. P. 35(c)(3); they each could have been brought previously, and Defendant does not satisfy any of the exceptions listed in the rule.

Part IV of the Opening Brief presents Defendant's final Crim. P. 35(c) claim: ineffective assistance of a lawyer who represented Defendant for part of his first post-conviction appeal. But because Defendant retained private counsel, Colorado law does not recognize a right to challenge counsel's performance under *Strickland*. And in any event, Defendant inadequately alleges prejudice under *Strickland*.

Finally, Part V presents Defendant's Crim. P. 35(a) claim, which argues (1) that one sentence should run consecutively to Defendant's other sentences, rather than concurrently, and (2) the sentencing court abused its discretion. The first subclaim entitles Defendant to narrow relief: two sentences must run consecutively, rather than concurrently. The second subclaim, however, flounders outright because Defendant's abuse-of-discretion challenge is time-barred.

In the end, Claims I–IV of the Opening Brief do not show that Defendant is entitled to an evidentiary hearing,

much less relief. And Claim V warrants a single change to the mittimus. So, beyond that simple change, this Court should affirm the post-conviction court's order denying relief.

ARGUMENT

I. Parts I–IV of the Opening Brief, which present claims that arise under Crim. P. 35(c), do not warrant relief.

A. Preservation and Standard of Review

Except as discussed on page 24 below, the People do not challenge preservation. Because the post-conviction court denied relief without a hearing, review is de novo. *People v. Joslin*, 2018 COA 24, ¶ 5.

B. Parts I–IV of the Opening Brief present claims cognizable under Crim. P. 35(c), rather than Crim. P. 35(a).

As relevant here, Crim. P. 35(a) allows defendants to collaterally challenge sentences in two circumstances. First, a defendant may challenge sentences that are "inconsistent with the terms specified by statutes." *People v. Green*, 36 P.3d 125, 126 (Colo. App. 2001). Second, a defendant may challenge sentences imposed without "essential procedural rights or statutory considerations…." *People v. Bowerman*, 258 P.3d 314, 316 (Colo. App. 2010) (quoting 15 Robert J. Dieter and Nancy J. Lichtenstein, Colorado Practice Series, Criminal Practice and Procedure § 21.10 n.10 (2d ed. 2004)).

Otherwise, defendants generally must pursue post-conviction relief under Crim. P. 35(c). *See People v. Tennyson*, 2023 COA 2, ¶ 12 ("Crim. P. 35(c) permits defendants to challenge their convictions and sentences on multiple other grounds," including constitutional grounds), *cert. granted*, 23SC168, 2023 WL 5944725 (Colo. Sept. 11, 2023).

Crim. P. 35(a) and Crim. P. 35(c) are mutually exclusive avenues to relief. *See People v. Collier*, 151 P.3d 668, 672 (Colo. App. 2006) (noting that there is "no longer any overlap between Crim. P. 35(a) and 35(c)"). And a claim's substance, rather than its styling, governs which path a defendant must take. *See id.* at 670.

Here, Defendant's post-conviction motion raised thirty-four substantive claims, each of which was denied. *See* OB at 9–14. Parts I–IV of the Opening Brief re-assert thirty-three of these claims. *Cf.* OB at 10, 46–48. And as will be discussed below, all thirty-three of these claims arise under Crim. P. 35(c).

First, only Crim. P. 35(c) permits challenges to convictions. *Compare* Crim. P. 35(a) ("The court may correct a *sentence* that was not authorized by law or that was imposed without jurisdiction at any time…." (emphasis added)), *with* Crim. P. 35(c)(3) (permitting a defendant to file a post-conviction motion "claiming either a right to be released or to have a *judgment of conviction* set aside…" (emphasis added)). And twenty-six of Defendant's claims ultimately attack Defendant's judgment of conviction:

- **Claim 5:** The evidence supporting Count 9 of the charging document was insufficient;

- **Claim 6:** The evidence supporting Counts 6–8 of the charging document was insufficient;

- **Claim 7:** The trial court failed to instruct the jury on consent;

- **Claim 8:** The trial court failed to instruct the jury on "reasonable belief";

- **Claim 9:** The trial court wrongly allowed a lay witness to provide expert testimony;

- **Claim 11:** The trial court violated Defendant's right to present a complete defense;

- **Claim 12:** The trial court unfairly limited testimony from defense witnesses;

- **Claim 13:** Defendant was forced to represent himself at trial because of allegations of misconduct that were based on surreptitious recordings of Defendant and his lawyer;

- **Claim 14:** The trial court failed to instruct the jury on Defendant's alibi defense and "Crim. P. 16 Part II(d) as to bill of particulars";

- **Claim 15:** The trial court violated CRE 404(b);

- **Claim 16:** The trial court again violated CRE 404(b);

- **Claim 17:** The trial court made multiple incorrect evidentiary rulings;

- **Claim 18:** Defendant was entitled to a mistrial based on prosecutorial misconduct;

- **Claim 19:** The trial court admitted unduly prejudicial evidence;

- **Claim 20:** The prosecution relied on recordings subject to attorney-client privilege;

- **Claim 21:** The prosecution committed *Brady* violations;

- **Claim 22:** A witness improperly testified about witnesses' credibility;

- **Claim 23:** A police officer tampered with evidence used to convict Defendant;

- **Claim 24:** Defects in the charging document deprived the trial court of jurisdiction;

- **Claim 25:** Defects in the charging document deprived the trial court of jurisdiction;

- **Claim 27:** Defendant was convicted of a "nonsensical" crime, which violated due process;

- **Claim 28:** The prosecution and court committed misconduct;

- **Claim 29:** The prosecution relied on evidence at trial that was seized in violation of the Fourth Amendment;

- **Claim 30:** A police officer tampered with a witness and violated a sequestration order;

- **Claim 31:** A trial exhibit had improper chain of custody; and

- **Claim 32:** Because the crime did not take place in Douglas County, the trial court lacked jurisdiction over Defendant's case.

See CF, pp 620–95.

Therefore, Claims 5–9, 11–25, and 27–32 are cognizable only under Crim. P. 35(c). *See* Crim. P. 35(c)(3).

Second, Crim. P. 35(c) is the proper vehicle to "challenge convictions or sentences as unconstitutional." *Collier*, 151 P.3d at 670. And beyond those already discussed, an additional five of Defendant's claims raise constitutional challenges:

- **Claim 1:** Defendant's sentence is constitutionally disproportionate;

- **Claim 2:** Insufficient evidence supported the trial court's habitual-criminal findings;

- **Claim 3:** Permitting the prosecution to amend the habitual-criminal charges without granting Defendant a continuance was unconstitutional and violated Crim. P. 7(e);

- **Claim 26:** The trial court violated double jeopardy by entering multiple convictions for the same offense; and

- **Claim 33:** Defendant received ineffective assistance in his first post-conviction appeal.

See CF, pp 620–95.

Therefore, like Claims 5–9, 11–25, and 27–32, Claims 1–3, 26, and 33 are also cognizable only under Crim. P. 35(c). *See* Crim. P. 35(c)(3).

Third, Crim. P. 35(a) only considers allegations that a sentence violates the "statutory scheme outlined by the legislature…." *People v. Rockwell*, 125 P.3d 410, 414 (Colo. 2005). And **Claim 4** does not relate to the statutory scheme. Rather the claim alleges that the trial court permitted hearsay at the habitual-criminal proceedings. *See* CF, pp 636–37. So, this claim is not cognizable under Crim. P. 35(a), leaving Crim. P. 35(c) as Defendant's only avenue to relief.

Fourth and finally, the only remaining claim—**Claim 34**—also falls within Crim. P. 35(c)'s ambit. Claim 34 alleges that the trial court wrongly designated Defendant a "sexually violent predator" ("SVP"). To fall within the

reach of Crim. P. 35(a), then, the SVP designation must involve Defendant's sentence. *See* CF, pp 694–95. It does not. *See Allen v. People*, 2013 CO 44, ¶ 7 ("Unlike a criminal sentence, the SVP designation is not punishment. Instead, the SVP designation's stated purpose is to protect the community. Thus, a trial court's decision to designate an offender as an SVP is legally and practically distinct from its sentencing function." (quotations and citations omitted)). So, Defendant's challenge must arise under Crim. P. 35(c), rather than Crim. P. 35(a). *See People v. Baker*, 2017 COA 102, ¶ 26, *rev'd on other grounds*, 2019 CO 97M, ¶ 26; *see also People v. Tuffo*, 209 P.3d 1226, 1229 (Colo. App. 2009) (evaluating an SVP challenge under the framework of Crim. P. 35(c)).

* * *

To sum up, the thirty-three claims presented in Parts I–IV of the Opening Brief—that is, everything but Claim 10—arise under Crim. P. 35(c). So, to warrant relief, these claims must satisfy the rule's requirements. They do not.

C. Because the claims presented in Parts I–IV of the Opening Brief do not satisfy Crim. P. 35(c), they do not warrant a hearing, much less relief.

"[T]o warrant a hearing on a Crim. P. 35(c) motion, a defendant must allege facts that, if true, entitle the defendant to postconviction relief." *Joslin*, ¶ 4. Otherwise, a court may summarily deny relief. *Id.* A court also may summarily deny any claim that the record refutes. *Id.*

Here, as will be discussed below, each of the claims raised in Parts I–IV of the Opening Brief do not warrant relief under Crim. P. 35(c). So, the post-conviction court correctly denied these thirty-four claims.[3]

1. Part I of the Opening Brief, which alleges a violation of Colorado's venue statute, does not entitle Defendant to relief.

Colorado's venue statute—section 18-1-202(1), C.R.S. (2024)—limits the counties in which a criminal defendant can be tried. If venue is improper, the case must be transferred. *People v. Shackley*, 248 P.3d 1204, 1205 (Colo. 2011).

Here, Part I of the Opening Brief argues that Defendant's convictions should be reversed because the trial court violated the venue statute. *See* OB at 23–27. But Defendant is not entitled to relief, both because Crim. P. 35(c) bars the claim and because Defendant's allegations, even if true, do not warrant relief.

a. Crim. P. 35(c) procedurally bars Defendant's venue-statute claim.

Crim. P. 35(c)(3)(VII) bars claims that could have been presented in an earlier appellate or post-conviction proceeding. But the rule does not apply to jurisdictional challenges. *See* Crim. P. 35(c)(3)(VII)(d).

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3. To the extent that this brief takes a different tack than the post-conviction court, this Court may affirm the denial of relief on any basis supported by the record. *See People v. Taylor*, 2018 COA 175, ¶ 8.

Here, Defendant could have challenged the venue of his trial on direct appeal. *See, e.g.*, *People v. Perez*, 129 P.3d 1090, 1094 (Colo. App. 2005) (rejecting on direct appeal a venue challenge to the defendant's conviction). Indeed, before trial, Defendant sought to dismiss his case because the charged actions took place outside Douglas County. *Compare* CF, p 1102–03 (moving to dismiss for lack of jurisdiction in February 2006), *with* OB at 8 (discussing that Defendant was convicted in December 2006). And yet, he did not raise the issue on direct appeal. *See* PCF III, pp 802–27. So, Crim. P. 35(c)(3)(VII) bars relief.

Defendant seeks to excuse his default by giving his claim a jurisdictional valence. *See* OB at 22–23, 25. But venue is not a jurisdictional matter in Colorado. *See People v. Reed*, 132 P.3d 347, 350 (Colo. 2006) (discussing that the enactment of section 18-1-202(11) "plac[ed] Colorado among a small minority of jurisdictions treating venue solely as a procedural prerequisite to prosecution"); *see also People v. Joseph*, 920 P.2d 850, 852 (Colo. App. 1995) ("[C]riminal jurisdiction over felony offenses committed in Colorado extends to all the district courts of Colorado."). And because no other exception to Crim. P. 35(c)(3)(VII) applies, Defendant's claim necessarily fails.

b. Alternatively, Defendant's venue-statute claim fails to state facts that warrant relief, even if true.

"[T]he constitutional and statutory provisions governing venue are solely for the benefit of the defendant and may be waived." *People v. Joseph*, 920 P.2d 850, 852

(Colo. App. 1995). Accordingly, absent good cause, a defendant waives any venue challenge raised more than twenty-one[4] days after arraignment. *See* § 18-1-202(11), C.R.S. (2024).

Here, Defendant alleges that he challenged venue before trial. *See* OB at 23. This is correct; he did so on February 9, 2006. *See* CF, p 1102–03. But Defendant was arraigned months earlier, on July 6, 2025. *See* PCF II, pp 309, 785. So, Defendant waived any venue challenge.

Because Defendant's venue challenge is both procedurally barred and facially fails, it warrants neither a hearing nor relief. *See Joslin*, ¶ 4. Therefore, Part I of the Opening Brief is unavailing.

2. Those claims presented in Parts II and III of the Opening Brief warrant neither a hearing nor relief under Crim. P. 35(c).

Aside from the ineffective-assistance claim presented in Part IV, Defendant raises his remaining Crim. P. 35(c) claims in Parts II and III of the Opening Brief. But two of the thirty-one claims fail on their merits, while the remaining twenty-nine claims are procedurally barred. Therefore, neither Part II nor Part III of the Opening Brief show that further post-conviction proceedings are warranted.

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4. When Defendant was arraigned in 2004, he only had twenty days to challenge venue. *See People v. Perez*, 129 P.3d 1090, 1094 (Colo. App. 2005). But the distinction is neither here nor there in this case.

a. The record refutes Defendant's claim that the charging document in this case was fatally insufficient.

To invoke a trial court's criminal jurisdiction, a charging document must (1) allow the defendant to adequately defend himself, and (2) protect the defendant from double jeopardy. *People v. Sims*, 2019 COA 66, ¶¶ 15–16. Otherwise, the defendant's case cannot proceed. *See id.* at ¶ 15.

Generally, a charging document passes muster if it describes the essential elements of each count using statutory language. *Id.* at ¶ 16. "However, it is not necessary to allege every element that must be proved at trial." *People v. Palmer*, 87 P.3d 137, 139 (Colo. App. 2003). Nor must the charging document present facts beyond those necessary to prepare an adequate defense. *People ex rel. A.B.-B.*, 215 P.3d 1205, 1210 (Colo. App. 2009). Rather, if a charge can be readily understood, failing to use specific statutory language does not strip the trial court of jurisdiction. *See People v. Russell*, 36 P.3d 92, 96 (Colo. App. 2001).

Here, Part III of the Opening Brief discusses Defendant's post-conviction Claims 24 and 25. But these two claims quickly divide into four:[5] (1) the charging

5. Defendant also raises a fifth challenge: failing to allege the "manner of the alleged incidents." *See* OB at 40. But without more, this phrase does not specify what additional facts should have been alleged, much less explain why those allegations were necessary to prepare an adequate defense. For this reason, Defendant's

document failed to allege when each crime occurred; (2) the charging document failed to allege where each crime occurred; (3) Counts 1–4 failed to allege required mental state for each crime; and (4) Counts 7 and 8 do not specify the victim of the crime. *See* OB at 40–41. But even taking Defendant's allegations as true, none threaten the trial court's jurisdiction.

First, unless the time of commission is an express element of the offense, a charging document need not allege such information. *See People In Interest of A.C.E-D.*, 2018 COA 157, ¶¶ 57–61 (concluding that amending the date of an offense did not substantially alter the charging document because the amendment did not "add an essential element to the crime or prejudice [the juvenile's] defense"). And Defendant does not allege that any offense charged had a necessary temporal component. Also, the charging document provided a date range for each offense. *See* CF, pp 916–18. So, without more, merely challenging the "time" specified for each offense is inadequate. *See* OB at 40; *cf.* CF, pp 674.

Second, Defendant alleges that the charging document inadequately alleged the "place" where each offense occurred. *See* OB at 40. But a charging document generally must allege only an offense's essential elements. *See Sims*,

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"manner" allegation is too threadbare to warrant relief. *See People ex rel. A.B.-B.*, 215 P.3d 1205, 1210 (Colo. App. 2009); *see also People v. Sanders*, 2023 CO 62, ¶ 16 (discussing that appellate courts do not "assume the mantle when an appellant fails to offer supporting argument or authority for their claims." (quotations and citations omitted)).

¶¶ 15–16. And the county in which a crime occurred does not "constitute an element of any offense…." *See* § 18-1-202(11), C.R.S. (2024). Further, even if such information were required, the charging document in this case alleges that the charged offenses were "committed, or triable, in the county of Douglas." *See* CF, p 916. So, this claim is likewise unmeritorious.

Third, Defendant argues that, without specifying the proper mental state, Counts 1–4 in the charging document are defective. *See* OB at 41; *cf.* CF, pp 675. Not so.

Counts 1 and 2, which allege inducing child prostitution, and Counts 3 and 4, which allege soliciting child prostitution, all follow the relevant statutory language. *Compare* CF, p 916, *with* § 18-7-402(1)(a), C.R.S. (2024) *and* § 18-7-405.5(1), C.R.S. (2024). Such mirroring generally suffices to grant jurisdiction. *See Sims*, ¶¶15–16.

True, none of the challenged counts use the word "knowingly," which is the mental state that the prosecution sought to prove at trial.[6] *See* CF, pp 1037–38. But all four

6. The mental state necessary for soliciting child prostitution is before the Colorado Supreme Court because divisions of this Court disagree. *Compare People v. Randolph*, 2023 COA 7, ¶ 31, *cert. granted in part,* 23SC167, 2023 WL 6319388 (Colo. Sept. 25, 2023), *with People v. Ross*, 2019 COA 79, ¶ 8, *aff'd on other grounds,* 2021 CO 9. But this dispute is beside the point here. The charging document's sufficiency turns on the defense's ability to prepare for the charges that the prosecution sought to *prove to the jury*, not whether the jury was properly instructed. And the court here gave "knowingly" as the mental state for Counts 1–4.

counts allege that Defendant acted "feloniously." *See* CF, p 916. And "[t]he word 'feloniously' in [a charging document] is equivalent to 'knowingly.…'" *People v. Trujillo*, 731 P.2d 649, 651 (Colo. 1986). So, the charging document adequately allowed Defendant to defend against Claims 1–4. *See Russell*, 36 P.3d at 96 ("If it expresses the charge in language from which the nature of the charged offense can be readily understood, [a charging document] that does not conform to the exact wording of the statute is nevertheless substantively sufficient.").

Fourth, the Opening Brief challenges the lack of a specified victim in Counts 7 and 8. *See* OB at 40–41; *cf.* CF, pp 674–75. This Court need not address the challenge because Defendant raises it for the first time on appeal. *See* CF, pp 674–75; *DePineda v. Price*, 915 P.2d 1278, 1280 (Colo. 1996).

In any event, the allegation facially lacks merit. Counts 7 and 8 each charge sexual exploitation of children – sell or publish. *See* CF, p 917. Besides being a child, the victim's identity is irrelevant to this crime. *Cf.* § 18-6-403(3)(b), C.R.S. (2024). And the statute cited by Counts 7 and 8 defines "sexually exploitative material," which Counts 7 and 8 allege Defendant made, as images that "depict[] a child…." *See* § 18-6-403(2)(j), C.R.S. (2024). So, by alleging that Defendant had made "sexually exploitative material," the charging document necessary informed the defense that the victims were children. Therefore, Counts

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See CF, pp 1037–38. Because Defendant does not allege that these instructions are incorrect, "knowingly" is the relevant mental state for Defendant's challenge to the charging document.

7 and 8 did not need to further specify the victims. *See People v. Hunter*, 666 P.2d 570, 573 (Colo. 1983) ("Better practice dictates that the name of the victim be alleged in the [charging document]. However, the identity of the victim for the crimes charged in counts 2 through 4 is not an essential element of the offenses. Therefore, the defect is immaterial.").

Regardless, the charging document allowed Defendant to prepare a defense to Counts 7 and 8. The two preceding counts—Counts 5 and 6—each named the victim that Defendant was accused of "caus[ing], induc[ing], entic[ing], or permit[ting]" to make "sexually exploitative material." *See* CF, p 917. A reasonable person would understand that the next two counts—Counts 7 and 8—which charged the creation of said "sexually exploitative material," would involve the same two victims. Because the charging document allowed Defendant to defend against Counts 7 and 8, the trial court had jurisdiction over these claims. *See Sims*, ¶¶15–16.

To sum up, Defendant's jurisdictional challenges are unavailing. Therefore, the post-conviction court rightly denied the two post-conviction claims based on these challenges. *See Joslin*, ¶ 4

b. The remaining claims in Parts II and III of the Opening Brief are procedurally barred.

"Crim. P. 35 proceedings are intended to prevent injustices after conviction and sentencing, not to provide

perpetual review." *People v. McDowell*, 219 P.3d 332, 335 (Colo. App. 2009). For this reason, Crim. P. 35(c) generally forbids claims that could have been raised in a prior appellate or post-conviction proceeding. *See* Crim. P. 35(c)(3)(VII).

Here, beyond the two claims discussed above, Parts II and III of the Opening Brief raise twenty-nine claims for relief. Fortunately, they do not require seriatim review because all twenty-nine claims are barred by Crim. P. 35(c)(3)(VII). And because Defendant does not excuse this default, the remainder of Parts II and III is unavailing.

i. The remaining twenty-nine claims fall afoul of Crim. P. 35(c)(3)(VII) because each could have been raised in a prior appeal or post-conviction proceeding.

While post-conviction proceedings exist to remedy significant violations of a defendant's rights, Crim. P. 35(c) nevertheless "recognizes that there must be some finality in the reviewing process." *See People v. Hubbard*, 519 P.2d 945, 947 (Colo. 1974) (discussing the former version of Crim. P. 35(c)). The "piecemeal presentation of issues" thwarts this goal. *See id.* at 947–48.

Here, Parts II and III of the Opening Brief invoke the following twenty-nine claims that he presented to the post-conviction court:

- **Claim 1:** Defendant's sentence is constitutionally disproportionate;

- **Claim 2:** Insufficient evidence supported the trial court's habitual-criminal findings;

- **Claim 3:** Permitting the prosecution to amend the habitual-criminal charges without granting Defendant a continuance was unconstitutional and violated Crim. P. 7(e);

- **Claim 4:** The trial court permitted hearsay at the habitual-criminal proceedings;

- **Claim 5:** The evidence supporting Count 9 was insufficient;

- **Claim 6:** The evidence supporting Counts 6–8 was insufficient;

- **Claim 7:** The trial court failed to instruct the jury on the defense of consent;

- **Claim 8:** The trial court failed to instruct the jury on the defense of "reasonable belief";

- **Claim 9:** The trial court wrongly allowed a lay witness to provide expert testimony;

- **Claim 11:** The trial court violated Defendant's right to present a complete defense;

- **Claim 12:** The trial court unfairly limited testimony from defense witnesses;

- **Claim 13:** Defendant was forced to represent himself at trial because of allegations of misconduct that were based on surreptitious recordings of Defendant and his lawyer;

- **Claim 14:** The trial court failed to instruct the jury on Defendant's alibi defense and "Crim. P. 16 Part II(d) as to bill of particulars";

- **Claim 15:** The trial court violated CRE 404(b);

- **Claim 16:** The trial court again violated CRE 404(b);

- **Claim 17:** The trial court made multiple incorrect evidentiary rulings;

- **Claim 18:** Defendant was entitled to a mistrial based on prosecutorial misconduct;

- **Claim 19:** The trial court admitted unduly prejudicial evidence;

- **Claim 20:** The prosecution relied on recordings subject to attorney-client privilege;

- **Claim 21:** The prosecution committed *Brady* violations;

- **Claim 22:** A witness improperly testified about witnesses' credibility;

- **Claim 23:** A police officer tampered with evidence used to convict Defendant;

- **Claim 26:** The trial court violated double jeopardy by entering multiple convictions for the same offense;

- **Claim 27:** Defendant was convicted of a "nonsensical" crime, which violated due process;

- **Claim 28:** The prosecution and court committed misconduct;

- **Claim 29:** The prosecution relied on evidence at trial that was seized in violation of the Fourth Amendment;

- **Claim 30:** A police officer tampered with a witness and violated a sequestration order;

- **Claim 31:** A trial exhibit had improper chain of custody; and

- **Claim 34:** The trial court wrongly designated Defendant a "sexually violent predator."

See OB at 9–14, 30–43.

Each of these claims could have been raised either on direct appeal or in Defendant's first set of post-conviction proceedings. Therefore, absent a valid justification, these claims were rightly denied without a hearing. *See* Crim. P. 35(c)(3)(VII).

ii. Because Defendant has not justified his failure to raise the remaining claims in prior proceedings, Crim. P. 35(c)(3)(VII) bars relief.

Crim. P. 35(c)(3)(VII) lists only five ways that a defendant can excuse an otherwise piecemeal litigation strategy:

a. The events underlying the claim occurred after the defendant's prior appeal or postconviction proceeding;

b. Even exercising due diligence, the defendant could not have previously discovered the evidence underlying the claim;

c. The claim relies on a new constitutional rule that "should be applied retroactively to cases on collateral review";

d. The claim alleges the lack of subject-matter jurisdiction; or

e. An "objective factor, external to the defense and not attributable to the defendant, made raising the claim impracticable."

Here, the remaining claims in Parts II and III of the Opening Brief remain viable only of they fit into one of Crim. P. 35(c)(3)(VII)'s five exceptions. None do.

(a) Defendant cannot allege for the first time on appeal that counsel was ineffective in the post-conviction proceeding underlying this case.

Issues not raised before the post-conviction court will not be considered on appeal. *DePineda*, 915 P.2d at 1280. "This rule applies to both constitutional and nonconstitutional arguments presented for the first time in an appeal of a ruling on a Crim. P. 35(c) motion." *People v. Huggins*, 2019 COA 116, ¶ 18.

Here, Defendant does not attempt to individually justify the piecemeal presentation of nine claims:

- **Claim 15:** The trial court violated CRE 404(b);
- **Claim 16:** The trial court again violated CRE 404(b);
- **Claim 17:** The trial court made multiple incorrect evidentiary rulings;
- **Claim 18:** Defendant was entitled to a mistrial based on prosecutorial misconduct;
- **Claim 26:** The trial court violated double jeopardy by entering multiple convictions for the same offense;
- **Claim 27:** Defendant was convicted of a "nonsensical" crime, which violated due process;

- **Claim 28:** The prosecution and court committed misconduct;

- **Claim 30:** A police officer tampered with a witness and violated a sequestration order; and

- **Claim 34:** The trial court wrongly designated Defendant a "sexually violent predator."

See OB at 19, 31–32, 40–42.

But Defendant does blanketly allege ineffective assistance against Lawyer G, who represented Defendant both at the end of his first post-conviction appeal and in the post-conviction proceeding underlying this appeal. *See* OB at 33–38; CF, p 620. Understandably, Lawyer G did not challenge his own performance. *See* CF, pp 620–95; *see also People v. Kelling*, 151 P.3d 650, 657 (Colo. App. 2006) (discussing that post-conviction counsel "could not be expected to litigate his own ineffectiveness."). So, Defendant must first challenge Lawyer G's conduct in the post-conviction court, rather than collaterally raise the issue here. *See People v. Cali*, 2020 CO 20, ¶ 13 ("We address Cali's claim of ineffective assistance of appellate counsel, which he raises for the first time in this court, and we conclude that that claim is not properly before us.").

(b) Defendant does not have a constitutional right to flout C.A.R. 28(g).

Due process requires that defendants receive notice and a fair chance for defendants to present their case.

See People v. Oglethorpe, 87 P.3d 129, 133 (Colo. App. 2003). This standard is flexible, however. *Ortega v. Indus. Claim Appeals Office of State*, 207 P.3d 895, 899 (Colo. App. 2009). If defendants have the "basic opportunity for a hearing and judicial review," procedural rules do not violate due process. *Id.*; *see United Gas Pub. Serv. Co. v. State of Texas*, 303 U.S. 123, 140 (1938) ("The state is entitled to determine the procedure of its courts, so long as it provides the requisite due process."); *Doleac ex rel. Doleac v. Michalson*, 264 F.3d 470, 492 (5th Cir. 2001) ("[N]o one has a vested right in any given mode of procedure." (quoting *Crane v. Hahlo*, 258 U.S. 142, 147 (1922))).

Further, "[e]nforcing page limits and other restrictions on litigants is rather ordinary practice." *Watts v. Thompson*, 116 F.3d 220, 224 (7th Cir. 1997). For this reason, "[f]ederal courts have routinely dismissed due process challenges based on page limits." *May v. Shinseki*, 544 Fed. Appx. 1002, 1005 (Fed. Cir. 2013); *see, e.g.*, *Watts*, 116 F.3d at 224 (rejecting a due-process challenge to page limitations); *Campbell v. Kincheloe*, 829 F.2d 1453, 1467 n.8 (9th Cir. 1987) (same), Similarly, Colorado courts repeatedly uphold limits on how parties present their case. *See, e.g.*, *In re Marriage of Pawelec*, 2024 COA 107, ¶¶ 29–39 (rejecting a due process challenge to a court "set[ting] a time limit on a hearing from the outset and monitor[ing] the parties' use of their time during the hearing"); *Woodford Mfg. Co. v. A.O.Q., Inc.*, 772 P.2d 652, 654 (Colo. App. 1988) (rejecting a due process challenge to a rule requiring a corporation to be represented by an attorney, even if the corporation would struggle to afford the attorney's fees); *People In Interest of F.L.G.*, 563

P.2d 379, 381 (Colo. App. 1977) (rejecting a due process challenge to a court denying oral argument on a summary-judgment motion).

Here, Defendant argues that Crim. P. 35(c)(3)(VII) violates his right to due process because page limits in prior appeals forced Defendant to "cut claims and abandon arguments." *See* OB at 29–30; *see also* C.A.R. 28(g). But requiring Defendant to make tactical judgments to further judicial efficiency did not strip him of the right to be heard. *See Simpkins-Bey v. Henderson*, 932 F.2d 975, at *1 (10th Cir. 1991) (table) (concluding that the appellant's decision to use his permitted words solely on the statement of facts was "his choice, and the exercise of that choice does not result in a denial of due process"). So, Defendant has no right to file overlength briefs, much less a constitutional right to litigate post-conviction claims in a piecemeal fashion.

(c) Colo. R. Crim. P. 35(c)(3)(VII) applies, even if a court has not "fully and finally" adjudicated the claim; indeed, that is the provision's purpose.

Historically, Crim. P. 35(c) barred only claims that had already been raised in a prior proceeding. *People v. Taylor*, 2018 COA 175, ¶ 16. And appellate courts would review any claim that a prior appeal had not "fully and finally resolved." *See People v. Diaz*, 985 P.2d 83, 85 (Colo. App. 1999).

In 2004, the Colorado Supreme Court upended this practice by adopting Crim. P. 35(c)(3)(VII). *See Taylor*, ¶ 17. Under this new rule, Crim. P. 35(c) bars more than claims that *had been raised* earlier; absent one of five exceptions, Crim. P. 35(c) now bars claims that *could have been raised* earlier. *See Taylor*, ¶¶ 17–18. And the cases containing the prior rule were now defunct. *See Taylor*, ¶¶ 13–21 (rejecting pre-2004 case law that permitted piecemeal post-conviction litigation because Crim. P. 35(c)(3)(VII) did not codify this case law).

Here, Defendant seeks review of two otherwise-barred claims—**Claims 14 and 19**—by arguing that he can litigate claims until they are "fully and finally" resolved. *See* OB at 31–33. And Defendant is correct in part—he did have that right in days gone by. But no longer. *See* Crim. P. 35(c)(3)(VII); *Taylor*, ¶¶ 13–21.

Defendant filed his first post-conviction motion more than a decade after Crim. P. 35(c)(3)(VII) went into effect. So, when Defendant filed his motion, he was on notice Crim. P. 35(c) permitted only one bite at the post-conviction apple. His requested second bite is therefore improper. *See Taylor*, ¶ 19 (enforcing the plain language of Crim. P. 35(c)(3)(VII) because the defendant was "on notice that he needed to include all of his postconviction claims in [his first] Crim. P. 35(c) motion").

Defendant cannot use pre-2004 cases to "read into the rule exceptions that it does not contain." *See id.* at ¶ 24. So, these antiquated cases cannot resurrect Claims 14 and 19. *Cf. id.* at ¶ 17 (noting that Crim. P. 35(c)(3)(VII)'s language was mandatory).

(d) Defendant's remaining claims insufficiently allege newly discovered evidence or a valid "objective factor."

Crim. P. 35(c)(3)(VII)(b) exempts from its ambit claims that are "based on evidence that could not have been discovered previously through the exercise of due diligence." Such evidence must be "material to the issues involved, and not merely cumulative or impeaching…." *People v. Scheidt*, 528 P.2d 232, 233 (Colo. 1974).

Likewise, Crim. P. 35(c)(3)(VII)(e) permits defendants to raise claims that an "objective factor" made prior litigation impractical. This factor must be external to, as well as not attributable to, the defense. Crim. P. 35(c)(3)(VII)(e).

Merely incanting these words, however, does not suffice. Rather, a defendant must articulate specific facts that, if true, would show that the exception applies. *See People v. Chavez-Torres*, 2016 COA 169M, ¶ 12 (discussing in the context of Crim. P. 35(c)'s timeliness bar that the defendant cannot avail himself of a statutory exception unless he "allege[s] facts that, if true, would establish justifiable excuse or excusable neglect"), *aff'd,* 2019 CO 59, ¶ 12.

Here, Defendant attempts to save the remaining claims in Parts II and III of the Opening Brief by alleging either newly discovered evidence or an "objective factor" not attributable to the defense. But Defendant's justifications are far too vague to satisfy Crim. P. 35(c)(3)(VII)(b) or (e).

While Defendant says that twelve claims are based on newly discovered evidence, he does not explain what the supposedly new evidence is, much less how it prevented Defendant from asserting his claim in a prior proceeding:

- **Claims 1–4** should not have been denied because "new evidence was obtained";

- **Claims 5–9** warrant review because "there was a plethora of new evidence alleged and provided to the court" that had been "uncovered since 2017" and was "pertinent to the sufficiency of the evidence claim";

- **Claims 22 and 23** were improperly denied because Defendant had uncovered "new evidence" that was "detailed in his successive habeas"; and

- **Claim 29** was "supported by new evidence as later discovered in his successive rule 35(c) motion at CF 1999."

OB at 30, 32. Such threadbare allegations do not satisfy Crim. P. 35(3)(c)(VII)(b). *See Chavez-Torres*, ¶ 12.

By at least naming some of the referent "newly discovered evidence," **Claim 21** fares better than the twelve claims discussed above. *See* OB at 40. But only just.

First, "newly discovered evidence" supposedly shows that the prosecution "violated the rules of sequestration and withheld *Brady* material." *Id.* But as before, Defendant

does not explain what this evidence is, much less how it was not discoverable earlier. So, Defendant's allegations do not suffice.

Second, Defendant argues that one of the victim's mothers would have provided "impeachment evidence." *Id.* But Defendant does not flesh out what the witness would have said, nor how the testimony would have shown prosecutorial misconduct. So, this allegation is insufficient to save Defendant's claim.

Third, Defendant alleges one of the witnesses had "lied about the suicide of his grandfather." *Id.* But Nothing, however, suggests that the witness lying was material to the misconduct alleged in Claim 21. *Cf.* OB at 12. And Defendant does not explain why he was unable to discover this evidence before now. So, this final argument fails to satisfy Crim. P. 35(3)(c)(VII)(b). *See Chavez-Torres*, ¶ 12.

Similarly, **Claim 31** alleges that, "after the fact," Defendant discovered that a camera had "left the chain of custody" and was "tampered with." OB at 41–42. But these allegations are conclusions, and Defendant does not explain what evidence underlies them. Nor does Defendant explain when he discovered this evidence; "after the fact" could refer to any time post-trial. So, Defendant has not shown reliance on "evidence that could not have been discovered previously through the exercise of due diligence." *See* Crim. P. 35(c)(3)(VII)(b). And Crim. P. 35(c)(3)(VII) bars this claim. *See Chavez-Torres*, ¶ 12.

Finally, Defendant's remaining four claims are self-refuting.

Claims 11 and 12 supposedly rely on a recording of a witness that is "now in evidence" and is "extremely exculpatory" because it shows that "no sexual contact occurred in the home." OB at 31 (emphasis omitted). But by Defendant's own account, this evidence is not new; the defense sought to impeach the witness with the recording at trial. *See id.* So, Defendant's argument defeats itself.

Claim 13 turns on recordings that were supposedly "withheld and destroyed—as alleged in lower court motions." OB at 31. But again, Defendant knew during trial-court proceedings that the recordings were destroyed. And the contents cannot have provided Defendant any insight, as they were "withheld [from him] and destroyed." So, Defendant insufficiently alleged newly discovered evidence.

While unnecessary to consider because Claim 13 fails on its merits, Defendant also fails to show that the "objective factor" exception applies. Defendant suggests that the inability to depose "state actors" and the losing of "key evidence" serve as "objective factor[s]" under Crim. P. 35(c)(3)(VII)(e). *See* OB at 28. But as to the former allegation, Defendant does not explain why the lack of depositions made raising Claim 13 impractical before now. *See* Crim. P. 35(c)(3)(VII)(e). And as to the latter allegation, Defendant appears to simply echo the newly-discovered-evidence claim made below in Claim 20. So, Defendant does not show that Crim. P. 35(c)(3)(VII)(e) applies here.

Finally **Claim 20** alleges that he uncovered recordings of conversations with his lawyer that were surreptitiously

made. OB at 32. But in the next breath, Defendant states that "by the court's own admission … [Defendant] and the state have conversations recorded between [Defendant] and his attorney." *Id.* So, by Defendant's own admission, he knew during the trial proceedings about the recordings. Such evidence is not "new."

* * *

In the end, despite presenting a blizzard of post-conviction claims, nothing in Parts II and III of the Opening Brief supports that further proceedings are warranted. Therefore, like Part I, Parts II and III of the Opening Brief are unavailing.

3. Part IV of the Opening Brief does not show that Lawyer T was constitutionally ineffective.

The right to counsel implies a right to counsel's effective assistance. *Strickland v. Washington*, 466 U.S. 668, 685–86 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). Defense counsel violates this right by prejudicing their client through deficient performance. *See Strickland*, 466 U.S. at 687, 691.

Reviewing courts give a lawyer's strategic decisions a wide berth. *See id.* at 688–90. So, counsel performs deficiently only if the challenged conduct is "so patently unreasonable" that no competent attorney would have done the same under the circumstances. *Miller v. United States*, 77 F.4th 1, 6 (1st Cir. 2023) (quotations and citations omitted).

A defendant also must show prejudice. *Strickland*, 466 U.S. at 693. This standard requires more than showing "some conceivable effect" on the proceeding's outcome. *Id.* Rather, the likelihood that the conduct changed the proceeding's result must cause the reviewing court to lose confidence in that result. *See id.* at 694.

Here, Part IV of the Opening Brief raises post-conviction **Claim 33**: that Lawyer T, who represented Defendant in his first post-conviction appeal, was constitutionally ineffective. *See* OB at 43–46. But the claim fails for two independent reasons. First, because Lawyer T was privately retained, Defendant cannot challenge his performance. Second, even if Defendant did have a right to Lawyer T's aid, Defendant's allegations do not satisfy *Strickland*.

a. Challenges to the adequacy of privately retained post-conviction counsel fail as a matter of law.

Even if indigent, defendants have no constitutional right to post-conviction counsel. *Duran v. Price*, 868 P.2d 375, 379 (Colo. 1994). Colorado, however, recognizes a "limited statutory right" to post-conviction counsel, if counsel is appointed by the post-conviction court. *See People v. Hickey*, 914 P.2d 377, 378 (Colo. App. 1995).

If the right to post-conviction counsel attaches, a defendant can challenge that counsel's performance under *Strickland*. *See Silva v. People*, 156 P.3d 1164, 1168–69 (Colo. 2007). But the inverse also holds true: absent a right

to post-conviction counsel, a defendant cannot challenge that counsel's performance. *See Coleman v. Thompson*, 501 U.S. 722, 752 (1991), *holding modified by Martinez v. Ryan*, 566 U.S. 1 (2012).

Here, Defendant alleges that he "retained" Lawyer T because the post-conviction court refused to appoint counsel. OB at 45. If true, Defendant did not have a right to Lawyer T's assistance. *See Hickey*, 914 P.2d at 378.

Absent some right to Lawyer T's assistance, Defendant has no right to Lawyer T's effective assistance. *See Coleman*, 501 U.S. at 752. Therefore, Defendant cannot challenge Lawyer T's performance under *Strickland*.[7] *See People v. Romero*, 2015 COA 7, ¶¶ 12–15 (rejecting an ineffective-assistance claim against counsel when the "right to representation had not yet attached").

b. Alternatively, even if Defendant can seek relief under *Strickland*, he does not show prejudice.

Strickland governs challenges to appellate counsel's performance. *People v. Long*, 126 P.3d 284, 286 (Colo. App. 2005). If counsel perfects an appeal but fails to file a merits brief, a defendant must show a "reasonable probability that, but for his counsel's unreasonable failure to file a merits brief, he would have prevailed on his appeal." *Smith v. Robbins*, 528 U.S. 259, 285 (2000).

7. This is not to say that Defendant cannot pursue a civil malpractice claim.

Here, the Opening Brief alleges the following series of events:

- Lawyer T represented Defendant when he appealed the first order denying post-conviction relief—that is, the order entered years before the one at issue here;

- A week before the Opening Brief was due, Defendant learned that Lawyer T could not complete the opening brief;

- Defendant was forced to prepare the opening brief himself;

- Despite promising to use the reply brief to "cure any defects," Lawyer T told Defendant the night before the brief was due that it would not be completed;

- This Court admonished Lawyer T and removed him as counsel; and

- A division of this Court ultimately affirmed the order denying post-conviction relief.

OB at 8, 45.

Irrespective of Lawyer T's conduct, Defendant does not show prejudice. *Cf. Strickland*, 466 U.S. at 697 ("If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.").

Even if Defendant is correct that Lawyer T failed to investigate and file an opening brief, Defendant's pro se brief still triggered appellate review. So, a reasonable probability must exist that Lawyer T's brief would have succeeded where Defendant's pro se brief failed. *See Smith*, 528 U.S. at 285.

Defendant says nothing about what additional claims Lawyer T would have raised, much less why these claims had a reasonable probability of success. Absent such allegations, Defendant cannot show prejudice. *See People v. Trujillo*, 169 P.3d 235, 239 (Colo. App. 2007) (finding appellate counsel's error harmless because the defense "would not have prevailed on the additional issues").

Similarly, Defendant was not prejudiced by Lawyer T's failure to file a reply brief. Defendant's post-conviction motion admits that a different lawyer—Lawyer R—replied on Defendant's behalf. *See* CF, p 627. So, Defendant must show that Lawyer T's brief would have had a reasonable probability of prevailing, while Lawyer R's brief did not. Again, Defendant does not do so.

Defendant tries to show prejudice by arguing that Lawyer T failed to file a petition for rehearing. *See* OB at 45. Defendant says nothing else about this petition, however. So, this argument is too threadbare to move the needle.

"[A]ny deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution." *Strickland*, 466 U.S.

at 692. And even if Defendant's allegations were true, Lawyer T's conduct did not prejudice Defendant's case. So, like Parts I–III, Part IV of the Opening Brief does not entitle Defendant to relief.

* * *

In the end, none of the claims raised in Parts I–IV of the Opening Brief warrant relief. Because Defendant raises no other Crim. P. 35(c) claims, this Court should affirm the post-conviction court's denial of relief under Crim. P. 35(c).

II. Part V of the Opening Brief, which presents Defendant's claim arising under Crim. P. 35(a), entitles Defendant to run two sentences consecutively, rather than concurrently. But this is the extent of the relief to which he is entitled.

A. Preservation and Standard of Review

Claims arising under Crim. P. 35(a) receive de novo review. *People v. Yeadon*, 2018 COA 104, ¶ 45, *aff'd and remanded,* 2020 CO 38. Preservation is irrelevant. *See Fransua v. People*, 2019 CO 96, ¶ 13.

B. Part V of the Opening Brief seeks relief cognizable under Crim. P. 35(a).

Crim. P. 35(a) provides relief from sentences that are impermissible under the sentencing statutes. *See Collier*, 151 P.3d at 672. The rule also provides relief

from sentences that the trial court imposed in an illegal manner—that is, without "essential procedural rights or statutory considerations…." *Bowerman*, 258 P.3d at 316 (quoting Dieter and Lichtenstein, supra, at § 21.10 n.10).

Here, Part V of the Opening Brief raises Defendant's final claim—**Claim 10**—which contains two subparts. Each arises under Crim. P. 35(a).

First, Defendant alleges that the concurrent nature of one sentence violates section 18-1.3-1004(5)(a), C.R.S. (2024). CF, p 47. In other words, Defendant alleges that his sentence is not authorized by the statutory sentencing scheme. This falls squarely under Crim. P. 35(a). *See Collier*, 151 P.3d at 672.

Second, Defendant alleges that the trial court "did not exercise judicial discretion" when the court considered whether to impose concurrent or consecutive sentences. CF, p 47. In other words, while the challenged sentences technically were legal, the sentencing court failed to follow the proper procedure. This, too, is a claim under Crim. P. 35(a). *See Bowerman*, 258 P.3d at 316 (quoting Dieter and Lichtenstein, *supra*, at § 21.10 n.10).

C. The sentences on Claims 8 and 9 should run consecutively.

"When a defendant is convicted of multiple offenses, the sentencing court has the discretion to impose either concurrent or consecutive sentences." *Juhl v. People*, 172 P.3d 896, 899 (Colo. 2007). However, section 18-1.3-1004(5)

(a), C.R.S. (2024), requires courts to impose consecutive sentences for all crimes "arising out of the same incident" as a sex crime.

Our supreme court as read "arising out of the same incident" as equivalent to "arising from the same criminal episode." *Marquez v. People*, 2013 CO 58, ¶ 15 (analyzing the phrase as used in a similar sentencing statute). And deciding if an offense arises from the "same criminal episode" requires a "close examination of the underlying facts on which the several offenses are based." *People v. Miranda*, 754 P.2d 377, 380 (Colo. 1988). Broadly, however, the term refers to acts that occur simultaneously, in a close sequence, in the same place, in a closely related place, or as part of a "schematic whole." *See Marquez*, ¶ 17.

Appellate courts are loath to limit a trial court's sentencing discretion. *See People v. Wieghard*, 743 P.2d 977, 979 (Colo. App. 1987) ("Our supreme court has noted that express restrictions on discretionary sentencing are quite limited and that, in general, courts are free to impose concurrent or consecutive sentences as the situation warrants."). For this reason, appellate courts construe ambiguous evidence in the sentencing court's favor. *See Juhl*, 172 P.3d at 900 (discussing in the identical-evidence context that the "mere possibility that identical evidence may support two convictions" does not strip the sentencing court of its discretion; rather, the evidence must support "no other reasonable inference than that the convictions were based on identical evidence").

Here, Defendant argues that the sentence for Count 9—sexually assaulting one of the victims ("NM")—must

run consecutively to all other sentences. *See* OB at 47. Defendant is correct as to Count 8, but the sentencing court retained its discretion as to the other counts.

As an initial matter, the fragmentary nature of the transcripts severely hampers the inquiry here. Nevertheless, the record sheds some light on the evidence provided to the jury and how the charges related to that evidence.

In closing argument, the prosecutor explained to the jury that the charges in the case corresponded to the following events:

- Counts 1, 2, 5, and 6: Using money to induce NM and the other victim into prostituting themselves by modeling for explicit photographs;

- Counts 3 and 4: Asking NM and the other victim to prostitute themselves;

- Counts 7 and 8: "arranging for" or "actually making" sexual images of NM and the other victim;

- Count 9: sexually assaulting NM by forcing him to perform fellatio;

- Count 10: Distributing cocaine to NM and the other victim;

- Counts 11–12: contributing to the delinquency of NM and the other victim by giving them alcohol;

- Count 14:[8] sexually assaulting the other victim.

See CF, pp 816–26.

Read in the light most favorable to preserving the sentencing court's discretion, *see Juhl*, 172 P.3d at 900, the record permits the inference that the counts align with the alleged facts as follows:

- Defendant and his roommate invited NM and another victim to their house;

- Defendant gave the victims alcohol (**Counts 11–12**);

- Defendant gave the victims cocaine (**Count 10**);

- Defendant offered the victims $60,000 to pose in their underwear for photographs **(Counts 1–6)**;

- The other victim agreed and went to a bedroom with Defendant;

- Over the course of almost two hours, Defendant photographed the other victim both in his underwear and nude **(Count 7)**;

- Motivated by the promise of a drum set, Defendant and the other victim performed multiple sexual acts, and Defendant took photographs throughout **(Count 14)**;

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8. The jury acquitted Defendant of Count 13: theft. *See* CF, p 1068.

- After the two returned downstairs, NM went upstairs to sleep in a guest bedroom;

- Later that night, NM awoke to find Defendant sitting at the foot of the bed;

- Defendant asked if NM wanted to "do the same thing" as the other victim;

- Defendant promised NM a large sum of money for a video of NM posing in his underwear;

- Defendant then "took pictures of [NM] performing sex acts" (**Count** 8);

- Defendant also asked NM to photograph and/or record him simulating fellatio; and

- When NM did so, Defendant forced NM to perform the act (**Count 9**).

See PCF I, pp 2–3, 167–68; CF, pp 1662–1717; *see also* CF, pp 916–18.

Based on this timeline, it appears that Counts 8 and 9 occurred during the same incident; the crimes occurred in the same room, and it appears that Defendant tricked NM into the sexual assault as part of the photography session. *See Marquez*, ¶ 17. For this reason, section 18-1.3-1004(5)(a), C.R.S. (2024), demands consecutive sentencing.

The same is not true of the other sentences, however. Counts 1–6 and 10–12 arose as part of an initial drug-fueled flurry of illegal conduct. Then Defendant went with the other victim into a bedroom without NM for around two hours. The conduct underlying Counts 7 and 14 occurred during this time. Afterwards, NM went to sleep in a different room that was on a different floor of the house. And the conduct underlying Counts 8 and 9 occurred only after Defendant woke NM up from his sleep.

Based on this timeline, the conduct underlying Counts 1–7, 10–12, and 14 were temporally and physically distinct from the conduct underlying Count 9. And NM sleeping before the sexual assault charged in Count 9 undermines it being a "schematic whole" with the other counts. So, Counts 1–7, 10–12, and 14 did not "aris[e] from the same incident" as Count 9. *See Marquez*, ¶ 17. So, the sentencing court maintained its jurisdiction. *See* § 18-1.3-1004(5)(a), C.R.S. (2024).

Defendant is entitled to remand to correct the mittimus regarding Counts 8 and 9. But the remainder of his claim lacks merit.

D. Defendant can no longer challenge the sentencing court's exercise of discretion.

Crim. P. 35(a) allows defendants to challenge sentences "imposed in an illegal manner." Such an error occurs when a sentence is possible under the sentencing statutes, but the court "ignore[d] essential procedural rights or statutory considerations" when imposing the specific

sentence at issue. *See Bowerman*, 258 P.3d at 316 (Colo. App. 2010) (quoting Dieter and Lichtenstein, *supra*, at § 21.10 n.10).

A defendant has 126 days to raise an illegal-manner claim. *See* Crim. P. 35(a), (b). Otherwise, relief is barred. *Collier*, 151 P.3d at 673.

Here, Defendant alleges that the sentencing court failed to "exercise [its] judicial discretion." *See* OB at 47. But this challenges the manner of sentencing rather than its legality—Defendant does not argue that the trial court *must* have imposed different sentences; he argues only that the trial court *could have* imposed different sentences, had the court properly exercised its discretion. So, Defendant raises an illegal-manner claim. *See People v. Bottenfield*, 159 P.3d 643, 646 (Colo. App. 2006) (distinguishing "sentences imposed in an illegal manner" from "sentences that are per se illegal").

Defendant was sentenced on October 22, 2008. CF, p 928. But he did not raise this claim here until 2021—well over a decade later. *See* CF, pp 1291–92. So, Crim. P. 35(a) bars relief. *Collier*, 151 P.3d at 673.

* * *

To sum up, Part V of the Opening Brief prevails in part: Claims 8 and 9 must run consecutively. But no other relief is warranted.

Appendix I

CONCLUSION

The People respectfully ask this Court to remand the case so the mittimus can reflect that the sentences for Counts 8 and 9 run consecutively.[9] In all other aspects, however, the People ask this Court to affirm the order denying post-conviction relief in this case.

DATED: May 15, 2025

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9. This correction does not change Defendant's aggregate sentence, however. Counts 1–6 and 10 control Defendant's aggregate fixed-term sentence. *See* CF, pp 964–67. And Count 9's sentence may remain concurrent to all these counts.

APPENDIX J — APPELLANT'S REPLY BRIEF OF THE COLORADO COURT OF APPEALS, FILED JUNE 4, 2025

COLORADO COURT OF APPEALS
2 East 14th Ave
Denver, CO 80203

Douglas County District Court, Colorado
2004CR706
FILING ID: E5FF1E4C7A4D8
CASE NUMBER: 2022CA1704

THE PEOPLE OF THE STATE OF COLORADO,

Appellee,

v.

DELMART EDWARD VREELAND,

Appellant.

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Filed June 4, 2025

Appendix J

APPELLANT'S REPLY BRIEF

[TABLES OMITTED INTENTIONALLY]

SUMMARY OF ARGUMENT

Vreeland argues that the lower court erred in its summary denial and finding that many of his claims were either successive or time-barred. First, the trial court did not have jurisdiction over the trial as the State never proved jurisdiction or proper venue. Moreover, Vreeland alleged new facts and evidence that required an evidentiary hearing. Colorado jurisprudence does not foreclose him from raising these issues, as they have never been heard on the merits. Moreover, the lower court erred in denying him relief for ineffective assistance of counsel and for failing to correct a sentence the lower court admits is an illegal sentence.

REPLY ARGUMENT

The government presents an Answer Brief that blends issues together in a manner that presents a thematic response to all issues raised, likely in an attempt to remain within the word limit – evidenced by the fact that they improperly implore the Court to sift through the record themselves to ascertain any argument as to why relief should not be granted. Mr. Vreeland finds it prudent to assert that this Court should hold Appellee to the same stringent briefing standards that Appellant is held to. As such, if Appellee did not directly raise an argument, then said argument is waived.

Moreover, while the Government correctly recognizes the lower court's sentencing error, it fails to acknowledge the additional grounds on which Vreeland qualifies for relief. See AB at 58. The lower court lacked jurisdiction and venue by statute. See C.R.S. 18-1-202(1); Colo. Const. art. II § 16. When Vreeland raised this issue, the court improperly deferred its decision until after additional proceedings. See CF 1102. Additionally, the lower court erroneously dismissed claims as time-barred and/or successive. Furthermore, its summary denial of several claims was incorrect. Vreeland's first post-conviction counsel, Tondre, provided ineffective assistance, and the lower court failed to grant the relief to which Vreeland was entitled under *Strickland v. Washington*.

Appellant Vreeland respectfully submits this reply brief in response to the State's Answer Brief, which seeks to uphold the post-conviction court's summary denial of relief. The State's arguments mischaracterize the jurisdictional nature of venue, improperly dismiss newly alleged evidence requiring an evidentiary hearing, and incorrectly assert that Vreeland's claims are procedurally barred under Crim. P. 35(c). Furthermore, the State's position disregards the trial court's admitted sentencing error and the fundamental right to effective assistance of counsel.

I. APPELLEE'S ASSERTION THAT CLAIMS 1-4 ARE NOT COGNIZABLE UNDER RULE 35(A) IS MISAPPREHENDED.

Under Colorado Rule of Criminal Procedure 35(a), a defendant may challenge a sentence that is not authorized

by law at any time. *People v. Collier*, 151 P.3d 668 (Colo. App. 2006).

In this case, Vreeland challenges the legality of the sentence on the grounds that the habitual offender determination was made by a judge rather than a jury, which included hearsay. This challenge directly implicates the statutory scheme governing habitual offender adjudications and the authority of the sentencing court. Therefore, the Defendant's claim is properly cognizable under Crim. P. 35(a).

Vreeland's argument that the habitual offender determination must be made by a jury is supported by and grounded in established Colorado and United States Supreme Court law. This principle is rooted in the prior conviction notion established by the United States Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Erlinger v. United States*, 602 U.S. 821, 144 S. Ct. 1840 (2024)[1]. Under *Apprendi* and *Erlinger*, any fact that increases the penalty for a crime must be submitted to a jury and proved beyond a reasonable doubt, except for the fact of a prior conviction. *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Erlinger v. United States*, 602 U.S. 821, 144 S. Ct. 1840 (2024).

Here, the record is plain and clear that claims 1-4, present grounds for relief. Vreeland's claim that the habitual offender determination must be made by a

1. *Brown v. Stat*e, No. 5D2024-3233, 2025 Fla. App. LEXIS 4131 (Dist. Ct. App. May 30, 2025) (noting the scope of *Erlinger*).

jury is well-established under United States Supreme Court's precedent in *Apprendi* and *Erlinger*. CF 757; 1142. Accordingly, Vreeland's arguments under Claims 1-4 are cognizable under Crim. P. 35(a), as the sentence is unlawful and inconsistent with notions of due process. And there is no doubt that the judge made the finding and expressly denied Mr. Vreeland's attempt to assert his *Apprendi* rights.

II. THE COURT LACKED JURISDICTION AND VENUE TO TRY THE CASE AND SENTENCE VREELAND, AS DOUGLAS COUNTY WAS THE IMPROPER VENUE AND LACKED JURISDICTION.

Standard of review.

This court reviews a trial court's summary denial for relief pursuant to Rule 35(c) postconviction motion *de novo*. See *People v. Luong*, 378 P.3d 843 (Colo. 2016).

All claims were raised and preserved in the pleadings on CF 693; and denied on CF 1308.

Facts and Arguments.

Interestingly, the State entirely ignores *Slattery*. This is an admission. *Slattery* holds that the physical location of the crime is outcome determinative to the issue precisely presented herein. See *People v. Slattery*, 20CA823, June 15, 2023, at *14-15.

The State contends that the venue statute is not jurisdictional and asserts that Vreeland forfeited his right to challenge venue. However, this argument disregards C.R.S. § 18-1-202 as the court must establish jurisdiction before proceeding to trial. The distinction between jurisdiction and venue is inapposite. Here, there was no evidence that the alleged offenses occurred in Douglas County, rendering the trial court's jurisdiction improper. See *People v. Slattery*, 20CA823, June 15, 2023, at *14-15 (holding a mere failure by the defendant to disprove he was not in a location was insufficient to prove he was in that location).

Likewise, the state alleges that Vreeland could have raised this issue on direct appeal. Again, this is an attempt to conveniently subvert the merits of this claim. Vreeland could not have raised this issue on direct appeal because the records of the motion filed in the lower court were hidden from Mr. Vreeland for nearly two decades – through no fault of Vreeland. So, to say that Vreeland could have raised this issue on direct appeal without reference to the record is unavailing.

During trial, Vreeland moved to have the court establish jurisdiction, but the court improperly deferred its ruling on the issue until after trial. CF 1102. This was procedural error, as jurisdictional questions must be resolved prior to trial, not retroactively. See Colo. Crim. P. 35(c)(3)(VII)(d) (permitting jurisdictional challenges at any time); *People v. Torkelson*, 22 P.3d 560 (Colo. App. 2000). The lower court's failure to properly determine venue before proceeding constitutes reversible error.

Additionally, the State bears the burden of proving venue yet failed to do so. See *People v. Reed*, 132 P.3d 347, 350-51 (Colo. 2006).

Douglas County was an improper venue because the government was unable to demonstrate the events of the case transpired in Douglas County, and consequently, the trial court lacked jurisdiction to try the case. CF 1102. Colo. Crim. P. 35(c)(3)(VII)(d) explicitly permits challenges to a trial court's lack of subject matter jurisdiction at any stage of proceedings, reinforcing those jurisdictional defects—such as those present in this case—are not subject to procedural bars.

The State bore the burden of proving jurisdiction, and the lower court's failure to properly establish venue before trial constitutes clear error. The State's argument is unavailing and under *Slattery*, Vreeland is entitled to immediate relief.

III. THE CHARGING DOCUMENT WAS INSUFFICIENT AS A MATTER OF LAW.

The charging document was insufficient on its own to establish jurisdiction to render a conviction. An information is technically sufficient and invokes the jurisdiction of the court if one can understand by reading it -

(I) That it is presented by the person authorized by law to prosecute the offense;

(II) That the defendant is identified therein . . . ;

(III) ***That the offense was committed within the jurisdiction of the court*** . . .

(IV) That the offense charged is set forth with such degree of certainty that the court may pronounce judgment upon a conviction.

Colo. Crim. P. 7(b)(2) (emphasis added); see also *People v. Melillo*, 25 P.3d 769 (Colo. 2001); *People v. Torrez*, 2013 COA 37, ¶ 21.

Accordingly, the lower court's failure to resolve this issue prior to trial was improper and Appellee's assertion on page 21 of their Answer brief that these claims do not threaten jurisdiction is wholly inaccurate.

The State continues by arguing that Vreeland's claims are barred under Crim. P. 35(c), asserting that the use of "feloniously" in the charging documents is equivalent to "knowingly." See AB at 23-24. However, the government's reliance on this interpretation is misplaced. *People v. Trujillo* has only been referenced in a handful of decisions because its holding is narrow. *People v. Trujillo,* 731 P.2d 649, 652 (Colo. 1986). The portion of the cited case that the Appellee omits clearly states that "feloniously" in the charging documents was sufficient to put a defendant on notice of the mens rea only when the defendant pleads guilty following a providency hearing (i.e., a plea advisory hearing).

This case is distinguishable because Vreeland did not plead guilty. Without a providency hearing, as described and defined above, establishing the necessary mens rea, "feloniously" cannot, as a matter of law, be equated to "knowingly" in this instance. The government's interpretation would improperly impute an intent requirement that was never factually established or adjudicated. Consequently, the procedural bars the State attempts to impose under Crim. P. 35(c) should not apply, as Vreeland's claims involve newly discovered evidence, jurisdictional defects, and ineffective assistance of counsel, all of which warrant substantive review.

IV. SUMMARY DENIAL WAS IMPROPER AND AN EVIDENTIARY HEARING WAS REQUIRED TO CONSIDER NEWLY ALLEGED FACTS

Standard of review.

This Court reviews a trial court's decision to deny a postconviction motion as successive *de novo*. See, e.g., *People v. Muniz*, 667 P.2d 1377, 1380-1381 (Colo. 1983).

All claims and issues raised herein were raised with particularity on CF 620-783 and denied on CF1291-1311.

Facts and Arguments.

Vreeland contends that all issues that were denied as successive or time-barred was erroneously denied and the record and the pleadings necessitate a full review of the merits for each claim.

Firstly, a foundational issue underpinning this appeal is the consistent denial of Vreeland's due process. Throughout direct appeal and subsequent post-conviction proceedings, Mr. Vreeland has been repeatedly forced to curtail or abandon arguments due to denial of access to courts, court records and ineffective assistance of counsel. This has effectively barred him from fully presenting his case and preserving his claims, thereby denying him the opportunity to receive a meritorious ruling.

Secondly, a significant number of the dismissed claims (specifically claims 1-12, 14-18, 21 (in part), 23-29 and 35) are either directly cognizable under Rule 35(a) – which addresses unauthorized sentences – or are predicated on newly discovered evidence. The lower court failed to adequately explain why these claims did not squarely fit within the purview of Rule 35(a) or why the alleged new evidence was insufficient to warrant a review. Interestingly, the State and the lower court argue that Vreeland did not present new evidence. But that is not what the statute calls for. *People v. Thompson*, 2020 COA 117, 485 P.3d 566 (where the mechanism is that newly discovered evidence is a gateway so long as the evidence was discovered after trial, or in this case, after the initial pleading. To wit – when examined in conjunction with the rest of the statute, Vreeland asserts that the statute only calls for an allegation of newly discovered evidence.). The statute calls for an allegation of new evidence, and assuming the lower court follows codified procedure, then a hearing shall be held to present and argue that new evidence.

For instance, new evidence related to the habitual offender sentence (claims 1-4) indicates it is unauthorized by law, as detailed above. Similarly, claims 5-10, addressing the sufficiency of evidence, allege a mountain of new evidence uncovered since 2017, rendering the summary denial of these claims without a hearing a clear error. Claims 11 and 12 highlights newly available evidence that was improperly withheld at trial. CF 647-649. Moreover, new evidence is unequivocally alleged in claim 13, concerning withheld and destroyed tapes, and claims 20, 22, 23, and 29, which surfaced through Mr. Vreeland's own investigation. CF 1999.

Furthermore, several claims involve fundamental constitutional violations that demand judicial scrutiny. Claim 14 asserts a denial of Mr. Vreeland's right to present an alibi defense, a matter that has not been fully and finally litigated. This also supports the facts and assertions in claim 32. Claims 15 through 18 concern the erroneous admission of inflammatory Rule 404 evidence, allowing the jury to hear facts not in evidence, and a violation of Mr. Vreeland's right against self-incrimination. Claim 20 exposes a disturbing breach of attorney-client confidentiality, with the court's own admission that conversations between Mr. Vreeland and his counsel were recorded and are now part of the record. Finally, claim 28 details several instances of prosecutorial misconduct, supported by evidence that, on its face, establishes a prima facie case.

Established jurisprudence, particularly *People v. Diaz*, 985 P.2d 83 (Colo. App. 1999), affirms that Vreeland

is entitled to judicial review of a Rule 35(c) motion as long as the claim is legally cognizable and has not been fully and finally resolved. The fact that constitutional claims were not raised prior to sentencing or on direct appeal does not, in itself, preclude their review in a Rule 35(c) motion.

Here, all claims are supported by evidence obtained either from the Record on Appeal in his first post-conviction appeal or through Vreeland's independent investigation. Crucially, some of these records were previously unavailable, and portions remain inaccessible. Vreeland has been consistently denied a merit-based decision on these claims and has been wrongfully deprived of the opportunity to develop the record through an evidentiary hearing, a right underscored by *People v. Rodriguez*. For these reasons, Vreeland respectfully requests that this Court overturn the lower court's dismissals and order a full review of the merits of these claims.

The state ignores all of this and asks this court to make an adjudication in their favor without addressing the merits of Vreeland's arguments.

Contrary to the State's assertion, Vreeland presented new facts and evidence that merited an evidentiary hearing. Colorado jurisprudence does not foreclose him from presenting these claims, as they have never been adjudicated on the merits. Colo. Crim. P. 35(c)(3)(VI)(a) provides an exception to procedural bars where new evidence that could not have been previously discovered through due diligence is introduced. The post-conviction court erred in summarily dismissing these claims without

affording Vreeland the opportunity to substantiate them through testimony and documentary evidence.

Several of Vreeland's claims were dismissed as time-barred[2] or successive, rather than being evaluated on their substance, and were never fully considered by the court. The claims that were addressed were summarily dismissed without an evidentiary hearing, despite alleging facts not contained in the existing record. When pleadings allege facts outside the record, an evidentiary hearing is required to evaluate their legitimacy, because if true, they entitle Vreeland to relief. See *People v. Nozolino*, 2023 COA 39, ¶ 29, 533 P.3d 966, 970.

V. CRIM. P. 35(c) DOES NOT BAR VREELAND'S CLAIMS

Standard of Review.

This court reviews a trial court's summary denial for relief pursuant to Rule 35(c) postconviction motion *de novo*. See *People v. Luong*, 378 P.3d 843 (Colo. 2016).

All claims and issues raised herein were raised with particularity on CF 620-783 and denied on CF1291-1311.

Facts and Argument.

There are several statutory exceptions to Crim. P. 35(c) which the State wrongly states are inapplicable to

2. The lower court declared claim 19 time barred, but the court fails to address the jurisprudence in *Diaz* and the fact that Tondre was ineffective in a later claim.

Vreeland's case. The State argues that twenty-nine of Vreeland's claims are barred under Crim. P. 35(c) because they could have been raised previously. However, several statutory exceptions to this rule apply:

- Colo. Crim. P. 35(c)(3)(VII)(b) permits claims based on newly discovered evidence that could not have been obtained earlier through due diligence. Vreeland's claims rely on evidence that was previously unavailable, specifically recordings of phone conversations that were destroyed and concealed by the State. These recordings are now retrievable, making them newly discovered evidence.

- Colo. Crim. P. 35(c)(3)(VII)(d) allows challenges to the trial court's lack of subject matter jurisdiction, which may be raised at any time.

- Colo. Crim. P. 35(c)(3)(VII)(e) permits claims that were impracticable to raise due to external factors beyond the defendant's control. Through no fault of Vreeland, the State destroyed and concealed the recordings, preventing him from raising these claims earlier.

Significantly, claim 30 was not conclusory and was meritorious. Mr. Vreeland sufficiently argued that the rule of sequestration was violated. CF 688-692. *People v. P.R.G.*, 729 P.2d 380 (Colo. App. 1986). Likewise, claim 31 required an evidentiary hearing, as it is meritorious. It is clear from investigation after the fact that the Kodak

camera left the chain of custody, and it has been shown in Vreeland's successive 35(c) that the camera was tampered with. These allegations not only prove actual innocence, but alleged new evidence that required a hearing.

Given that Vreeland's claims fall within recognized exceptions, they should not have been denied outright. This applies to all claims, including the claim of cumulative error that shows the compounding and residual effect of the State's repeated discretions and malfeasance.

Further, the government improperly relies on *People v. Taylor* to argue that the court may rule against Vreeland based on the record—even when the State fails to raise a particular argument. *People v. Taylor,* 2018 COA 175, 446 P.3d 918. This misinterprets *Taylor*, in which the defendant was able to submit their claims for consideration, unsuppressed by a word limit. *Id.* at 920. Vreeland's claims were set aside without due consideration and those that were accepted were still summarily dismissed. Appellee should be held to the same stringent pleading standards as Appellant, and the court cannot intervene to litigate arguments on behalf of the State. The principle of adversarial fairness requires that both parties bear their respective burdens, and the Supreme Court has emphasized that courts must ensure procedural integrity—not unilaterally resolve contested issues in favor of the prosecution.

Appendix J

VI. VREELAND IS ENTITLED TO RELIEF AS HIS FIRST POSTCONVICTION COUNSEL, TONDRE, WAS INEFFECTIVE.

Standard of Review.

This court reviews a trial court's summary denial for relief pursuant to Rule 35(c) postconviction motion *de novo*. See *People v. Luong*, 378 P.3d 843 (Colo. 2016).

All claims and issues raised herein were raised with particularity on CF 694 and denied on CF 1310.

Facts and Argument.

The State asserts that Vreeland cannot challenge his post-conviction counsel's performance because he retained private counsel. However, this argument misinterprets *Strickland v. Washington*, 466 U.S. 668 (1984), which firmly establishes that all defendants—whether represented by appointed or private counsel—are entitled to effective assistance under the Sixth Amendment. The right to counsel guarantees meaningful representation, not merely the presence of an attorney.

Strickland sets forth a two-pronged test for evaluating ineffective assistance of counsel claims:

- Deficient Performance – Counsel's representation must fall below an objective standard of reasonableness, as determined by professional norms.

- Prejudice – There must be a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is defined as one sufficient to undermine confidence in the outcome.

The lower court erred in summarily dismissing Vreeland's ineffective assistance claim without properly assessing whether counsel's errors prejudiced his defense, as required under *Strickland*. *Strickland* does not require absolute certainty that the outcome would have been different—only that the errors were significant enough to call into question the fairness of the proceedings.

Additionally, *Strickland* emphasizes that claims of ineffective assistance must be reviewed in the context of the specific circumstances of the case. The lower court failed to conduct an evidentiary hearing, despite newly discovered evidence supporting this claim, further contradicting the standards set by *Strickland*.

Vreeland's post-conviction counsel's failure to properly file court documents and failure to provide timely notice to Vreeland materially impacted his ability to mount a meaningful defense. Because sentencing determinations cannot be based on procedurally inadequate findings, the denial of an evidentiary hearing deprived Vreeland of an opportunity to establish the extent of counsel's deficiencies. Accordingly, his ineffective assistance of counsel claim warrants substantive review, not procedural dismissal.

VII. THE SENTENCING ERROR MUST BE CORRECTED.

Standard of Review.

This court reviews a trial court's summary denial for relief pursuant to Rule 35(c) postconviction motion *de novo*. See *People v. Luong*, 378 P.3d 843 (Colo. 2016).

All claims and issues raised herein were raised with particularity on CF 676 [3]and denied on CF 1307.

Facts and Argument.

The State concedes that Vreeland's sentence was illegal. Colo. Crim. P. 35(a) permits courts to correct sentences that were not authorized by law or imposed without jurisdiction at any time. The trial court's admitted sentencing error demands correction, as fundamentally flawed sentencing determinations require judicial intervention. See *People v. Emig*, 492 P.2d 368 (Colo. 1972) .

Furthermore, the Colorado Department of Corrections (CDOC) controls the operative sentence—not the Attorney General. The State's position improperly suggests that the Attorney General has discretion over sentencing adjustments, when in fact, sentencing execution and

3. When remanded for resentencing, the resentencing within the presumptive range. *See People v. Isaacks*, 133 P.3d 1190, 1196 (Colo. 2006); *People v. Barber*, No. 22CA0502, 2024 Colo. App. LEXIS 2189, at *41 (App. Sep. 19, 2024)

management are functions reserved for the CDOC under Colorado law.

Additionally, the State incorrectly relies on the 2024 versions of the relevant statutes, when it is the statute as it existed at the time of conviction that governs these proceedings. Colorado courts must apply the law in effect at the time of sentencing, and subsequent statutory amendments cannot retroactively redefine the standards applicable to Vreeland's case. Post-conviction relief must be assessed using the governing legal framework at the time the sentence was imposed, and the State's reliance on amended versions of the law is improper.

Significantly, *People v. Torrez*, 2013 COA 37, ¶¶ 54-56 held:

> Divisions of this court have held that the crime of violence statute is subject to the requirements of subsection 408(3). For example, in *People v. O'Shaughnessy*, 275 P.3d 687, 697 (Colo. App. 2010), *aff'd*, 269 P.3d 1233, 2012 CO 9, the division stated that "[c]rimes of violence are 'separate' if not based on identical evidence; thus, the evidence on which the convictions were based determines whether consecutive sentences may be imposed." *Accord Cordova*, 199 P.3d at 6; *People v. Jurado*, 30 P.3d 769, 773 (Colo. App. 2001).
>
> In this context, the crime of violence statute is substantially similar to subsection 1004(5)

> (a), although we note that the crime of violence statute refers to "separate" crimes, while subsection 1004(5)(a) refers to "additional" crimes. In light of the absence of any clear language in subsection 1004(5)(a) discarding the general rule expressed in subsection 408(3), or even making any comment about it, we conclude that the difference in these two words does not affect our analysis. Thus, we are persuaded by the language in cases such as *O'Shaughnessy, Cordova*, and *Jurado*, and we apply it here to support our holding that, although subsection 1004(5)(a) mandates consecutive sentences in some circumstances, it does not act as an exception to the general rule established by subsection 408(3) that sentences for convictions based on identical evidence, such as the paired counts here, must be concurrent.
>
> Therefore, we conclude that the trial court imposed an illegal sentence when it imposed consecutive sentences for the two counts in each pair.

People v. Torrez, 2013 COA 37, ¶¶ 54-56

Directly in line with *Torrez*, Vreeland's sentence for counts 5 through 8 must all be concurrent to each other[4],

4. Vreeland maintains - The charges in the indictment related to counts 5 through 8 show two counts of C.R.S. § 18-6-403(a) and two counts of C.R.S. § 18-6-403(b). However, the sentencing mittimus shows four counts of C.R.S. § 18-6-403(a). These errors

and that bundle is consecutive with count 9. Mr. Vreeland does challenge that the related jury instructions were inadequate as a matter of law, as they did not instruct on the issue of consent and that the related charges cannot stand because the alleged victims consented, which negates an element of the crime alleged. CF 641.

Moreover, the State wrongly asserts that the error is limited to the mittimus. In reality, the mittimus correctly reflects the sentence imposed by the trial court judge—but the sentence itself was illegal and therefore must be set aside under Colo. Crim. P. 35(a). *People v. Carbajal*, No. 22CA0338, 2025 Colo. App. LEXIS 661 (Colo. App. Feb. 6, 2025). The proper remedy is not merely to correct the mittimus, but to void and correct the underlying sentence itself, ensuring compliance with applicable statutory and constitutional provisions. *People v. Carbajal*, No. 22CA0338, 2025 Colo. App. LEXIS 661 (Colo. App. Feb. 6, 2025).

PRECISE RELIEF SOUGHT

The State's arguments fail to justify the post-conviction court's summary denial of relief. Jurisdictional errors—including the failure to establish venue—newly presented evidence, and ineffective assistance of counsel all warrant substantive review. Additionally, the State must be held to the law as it existed at the time of conviction,

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affect time computation, classification and program eligibility. Likewise, the jury was not provided instructions for C.R.S. § 18-6-403(b). As such, all counts 5-8 should be vacated.

rather than citing post hoc statutory revisions to justify its position. Finally, sentencing authority rests with the Colorado Department of Corrections, not the Attorney General, and procedural technicalities must not override the necessity of correcting an admitted sentencing error.

Accordingly, it is both appropriate and necessary to reverse the judgment below, remand for further proceedings, and vacate all convictions, including but not limited to the sentences in counts five through eight, correct count 9, or provide any other remedy this Court deems appropriate.

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