No. 26-5993

ORIGINAL

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IN THE

SUPREME COURT OF THE UNITED STATES

KEVIN A. LARSON— PETITIONER

vs.

SHANE STUCKER, et,al,.ATTORNEY GENERAL of the STATE of COLORADO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO THE

United States Court of Appeals for the 10th Circuit

PRO-SE PETITION FOR WRIT OF CERTIORARI

KEVIN A. LARSON #175884

Limon Correctional facility, 6c 1-9

State Hwy 71 south

Limon CO, 80826

QUESTION(S) PRESENTED

I. Did *Alleyne v. United States, 570, U.S. 99 (2013),* abrogate *Vensor v. People, 151, P. 3d. 1274 (Colo. 2007)*, under the supremacy clause "law of the Land" in March 3, 2016, prior to Mr. Larson's rejection of a signed plea agreement? Or was it considered a "Novel" case law?

II. Is Colorado Revised Statue § 18-1.3-401(6) unconstitutional, making Vensor v. People, 151, P. 3d. 1274 (S.Ct. Colo, 2007), the same, after this courts decision in Alleyne v. United States, 570, U.S. 99 (2013)

III. Whether assistance of plea counsel was deficient in failing to identify a three year old dispositive case and advise client as to the same to object to prosecution's attempt to introduce evidence at sentencing extraordinary aggravating circumstances.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[X] ~~All parties do not appear in the caption of the case on the cover page.~~ A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

KEVIN A LARSON - PETITIONER
SHANE STUCKER, Warden of Fremont Correctional Facility. - RESPONDENT
PHIL WISER, The Attorney General of the State of Colorado. - RESPONDENT

RELATED CASES

People v. Larson, No. 17CA0774, (Colo. Ct. App. Aug 30, 2018).

People v. Larson, No. 17CA0774 (Colo. Ct. App. Feb 14, 2019).

People v. Larson, No. 22CA1105 (Colo. Ct. App. Oct 19, 2023).

People v. Larson, No. 22CA1105 (Colo. Ct. App. Nov 23, 2023).

People v. Larson, No. 23C921 (Colo. S. Ct. App. May 13, 2024).

Larson v. Stucker, No. 1; 24-CV-0179, SKC, (U.S.D.C. Colo. May 14, 2025).

Larson v. Stucker, No. 25-1233 (10th Cir. Ct. App. March 30, 2026).

Larson v. Stucker, No. 25-1233 (10th Cir. Ct. App. June 8, 2026)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix, A, to the petition and is

[X] reported at Larson v. Stucker, 25-1233 (10th Cir. Ct App. March30, 2026. or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix, C, to the petition and is

[X] reported at Larson v. Stucker, No. 1:24-01979-SKC,(D. Colo. May 14, 2025); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix, D, to the petition and is

[X] reported at, People v. Larson, No.22CA1105 (Colo. Ct. App,)Oct19,2023); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals for the Tenth Circuit denied a Certificate of Appeal was, March 30, 2026. Case#25-1233

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 8th, 2026, and a copy of the order denying rehearing appears at Appendix, B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____(date) on_____(date) in Application No.____A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from state courts:

The date on which the highest state court decided my case was._____. A copy of that decision appears at Appendix,_____

[ ] A timely petition for rehearing was thereafter denied on the following date, _____ and a copy of the order denying rehearing appears at Appendix,_____

[ ] A petition for a writ of certiorari was denied _____ a copy of that decision appears at _____

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth, Sixth, and Fourteenth Amendment to the Constitution of the United States,

And Article II sections 16 and 25 of the Constitution of the State of Colorado.

Colo. Crim. P.35(C), Post-Conviction Relief.

C.R.S. §18-1.3-401 (6), ("The sentencing court may impose a sentence...greater than the presumptive range," if it finds extraordinary aggravating circumstances. "Does not mandate a restricted or increased sentencing range based on judicial fact-finding," but gives the sentencing judge "full discretion to sentence within a widened range").

C.R.S. §18-3-405.4 (3), (internet sexual exploitation of a child).

C.R.S. §18-1.3-401 (1) (a) (v) (a). (Class 4 felonies are subject to a presumptive range of two to six years in prison.

C.R.S. §18-1.3-401(6), The court shall impose a definite sentence which is within the presumptive range unless (1)it concludes extraordinary mitigating or aggravating circumstances are present, are based on evidence on the record of the sentencing hearing and the presentence report, if the court finds extraordinary mitigating or aggravating circumstances, it may impose a sentence which is less er or greater than the presumptive range.

C.R.S. §18-1.3-1003 (5) (a) (xii), definition, sex offense internet sexual exploitation of a child.

C.R.S. §18-1.3-1003 (4), A person convicted of or pleads guilty to a sex offense.

C.R.S. §18-1.3-1004 (1) (a), (a person convicted of a sex offense must be sentenced "to the custody of the department of corrections for an indeterminate term of at least the minimum of the presumptive range, and a maximum of natural life").

18. U.S.C. §924 (c) (1) (A) (ii), Appendix (A), ¶10. (a provision that increased

"the floor of a sentencing range.")

STATEMENT OF THE CASE

Mr. Larson was arrested on May 22, 2014 on several counts of sexual assault on a child and sexual exploitation of a child. Mr. Larson plead not guilty and a trial in the case began on October 19, 2015. On the second day of trial, still in *voir dire*, the parties informed the district court that a plea agreement had been reached. See CF,pp. 185-195.

The plea agreement specified that Mr. Larson was to enter an *Alford* plea of guilty to Count 5 of internet sexual exploitation of a child (F4). CF, pp. 187,189. The plea agreement specified that the possible penalties for the Class 4 felony included a presumptive Department of Corrections sentencing range with a low of 2-6 years and a high of indeterminate, along with lifetime mandatory parole. CF, p 187.¶ 14; 188.¶ 15. The Plea Agreement specified that Mr. Larson had waived factual basis (CF,p. 188, ¶23), but included no waiver allowing the district court to make factual findings.

On October 20, 2015 Mr. Larson, during jury *voir dire*, signed a plea agreement, which was offered by the prosecution and the court accepted. This plea agreement was marked as *"exhibit B"* (the Tenth Circuit Court of Appeals in its denial of a COA, acknowledges that it read it), titled petition to pled guilty. On page 8(a) of this document, states, "for an offense which is <u>not</u> a crime of violence, (as highlighted by darker print) the maximum sentence is the maximum in the presumptive range for the class of felony for which I am pleading. 2 years for a class 4 felony, internet sexual exploitation of a child, *C.R.S. 18-3-405.4(1) (F4).* In the transcripts of this trial *TR 10/20/15 p.30-31*, the

court states "for your offense, which is **not a crime of violence**, the minimum is two years in D.O.C. to an indeterminate life sentence, and that is **exactly** what the sentence will be, if you are sentenced to D.O.C., two to life or three to life or 4 to life, do you understand that sir?" Mr. Larson responds, "yes your honor." *TR 10/20/15 p30-31.* The court goes on to explain that Mr. Larson could also receive probation and/or community corrections. *TR 10/20/15.*

"Mr. Larson relied on his understanding of the plea agreement in settling this matter and vacating the remainder of the trial, which was already underway at the time of the plea.

In a hearing the same day (October 20,2015), the district court accepted Mr. Larson's plea of guilty to Count 5 as an *Alford* plea (*North Carolina v. Alford, 400 .. 25, 91 S.Ct. 160. 27 L.Ed. 2d 162, 1970 U.S.)* and acknowledged the People's dismissal of all remaining charges. CF, p. 199. Despite having committed to the Plea Agreement expressly specifying the low range for sentencing at 2-6 years, on November 16, 2015, the prosecution nevertheless filed a Notice of Intent to Introduce Evidence of Extraordinary Aggravating Circumstances seeking to elevate the low range of the sentence from no more than 6 years to no more than 12 years. CF,pp. 213-215.

The prosecution agreed to the terms in the plea agreement, and signed the documents. No objection was made by the prosecutor during the courts advisement, the parties made an agreement and executed it. Mr. Larson relied on it to his detriment.

Mr. Larson's plea counsel objected to the prosecution's Notice of Intent to Introduce Evidence of Extraordinary Aggravating Circumstances. CF, pp. 217-218. However, plea counsel's objection expressly declined to rebut or otherwise address any of the case law or legal authority raised in the prosecution's notice. CF, p. 218 ¶ 6. On January 21, 2016, the district court issued a minute order stating its intent to allow the parties to present argument on the issue as part of the scheduled sentencing hearing on February 3, 2016. CF, p, 222.

In the interim, based on plea counsel's advice that, despite the unambiguous minimum sentence terms in the plea agreement, the prosecution may have the ability to introduce evidence of extraordinary aggravating circumstances at sentencing, which would double the sentencing minimum, Mr. Larson sought to withdraw from the plea and the matter was set for trial, CF, p. 244, CF, p.254. Subsequently, Mr. Larson filed a Motion Requesting Appointment of New Counsel, or a hearing to determine if Mr. Larson needs new counsel. CF, p. 257. In his Motion, Mr. Larson asserted that his appointed counsel had misadvised him in numerous matters pertaining to the signed plea agreement from which the district court granted his withdrawal. CF. p. 257. On May 25, 2016, the district court held a hearing at which the Court granted the Motion to appoint new counsel and assigned Alternate Defense Counsel, to represent Mr. Larson. CF, p. 261 (minute order); CF, pp. 1177-1192 (hearing transcript).

The trial proceeded from January 17-20. CF, p. 635. On January 20, 2017, the jury reached a verdict of guilty on all counts. *Id.* On March 17, 2017, the district court sentenced Mr. Larson to 36 year to life with discretionary parole

CF. p. 686.

Mr. Larson has shown in his post-conviction motions that counsel knew about specific performance of a plea, by the emails that were sent to himself and the District Attorney. Counsel's failure to object to the state's breach of agreement caused prejudice by depriving Mr. Larson of the benefit of the plea bargain, *Scott v.Fannon,299 N.W. 2.d, 515, 523 (Iowa 2011).* Mr. Larson has raised the issue of Specific Performance in his appeal to the Colorado Court of Appeals, in his Habeas Corpus proceedings, and in his motion for a certificate of appeal in the Tenth Circuit Court of Appeals, to which all of them chose to ignore, by not responding to, this issue.

Mr. Larson filed a timely *pro se* Petition for Post-conviction Relief Pursuant to Crim. P. 35(c) on January 13, 2020. CF, pp. 853-936. On May 20, 2022, the district court issued its order denying Mr. Larson's petition for Post-conviction Relief. CF, pp. 1966-1993.

Among other issues, the district court rejected Mr. Larson's argument that his plea counsel provided ineffective assistance to Mr. Larson's prejudice by failing to recognize or advise Mr. Larson that the prosecution's attempts to introduce evidence of extraordinary aggravating circumstances at sentencing was unconstitutional. The Colorado Court of Appeals affirmed the district court's denial of Mr. Larson's Motion, finding that despite the existence of a three-year old U.S. Supreme Court case, (*Alleyne v U.S., 570 U.S. 99 (2013)* dispositive of the issue, Mr. Larson's counsel was not deficient in failing to cite it to the district court or advise Mr. Larson as to its existence and positive impact

on his case. Rather, the Colorado Court of Appeal affirmed the district court, finding that, despite being three years old at the time, the *Alleyne* argument was a "novel Claim." Opinion at ¶ 27.

With the Colorado Court of Appeals stating "the parties appear to agree that *Alleyne* abrogated *Vensor,* (*Vensor v. People, 151 P.3d 1274 Colo.2007),* we need not address whether the parties are correct in this respect because at the relevant time, no court had held that *Vensor* was no longer good law. *Alleyne* did not reverse the Colorado Supreme Court's decision in *Vensor* (nor did the Supreme Court cite *Vensor* at all.). The Colorado Supreme Court did not overrule *Vensor* and no division of the Colorado Court of Appeals had, prior to Larson's withdrawal of his plea, recognized the abrogation of *Vensor.* Thus, the argument that *Vensor* had been abrogated by Alleyne was a *"novel"* claim". Opinion at ¶27.

Mr. Larson, then motioned for a Writ of Certiorari with the Colorado Supreme Court, which they denied.

Mr. Larson proceeded to file his Habeas Corpus with the United States District court of Colorado, where he raised three issues including, Ineffective Assistance of Counsel for failing to identify a three year old dispositive case or advise Mr. Larson as to the same to object to prosecution's attempt to introduce evidence at sentencing of extraordinary aggravating circumstances. And to request specific performance of signed plea agreement. The United States District Court of Colorado denied the Habeas Corpus on May 14, 2025. Upholding the decision of the Colorado Court of Appeals.

The U.S. District Court of Colorado concluded the Colorado Court of Appeals decision was not contrary to or an unreasonable application of any controlling federal law. It found *Alleyne* "readily distinguishable" because while *Alleyne* addressed a statutory mandatory minimum sentence, Mr. Larson's case involves "Colorado's unique indeterminate sentencing scheme for felony sex offenses" and "the applicable range of the lower term of years," for a sentence that would still "require an upper ceiling of Mr. Larson's natural life". R, at. It therefore concluded that although "the rule that Mr. Larson argues for may be a logical extension of *Alleyne*.... The law applicable to his claim was not clearly established." R. at 434-35. Considering *Alleyne* a "*novel*" claim.

Mr. Larson then proceeded to the Tenth Circuit Court of Appeals seeking a Certificate of Appeal, where he raised the same issue that he is raising here, previously raised in his Habeas Corpus. The Tenth Circuit Court of Appeals denied his request for a Certificate of Appeal on March 30, 2026. A request for a rehearing was denied on June 8, 2026, and a Mandate was issued on June 14, 2026.

REASONS FOR GRANTING THE PETITION

Under United States Supreme Court Rule 10, a petitioner can bring a petition for a Writ of Certiorari for the following compelling reasons.

Mr. Larson is presenting this request to the Court under 10 (C), "A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this court".

It is of the utmost importance that these issues being presented, are settled by the Supreme Court of the United States, due to the fact that if the issues being raised, are not settled by the United States Supreme Court, Colorado will continue using case law and statues that are Archaic, and that this court has determined unconstitutional, under the Constitution of the United States.

This case involves whether assistance of plea counsel was deficient in failing to identify a three year old dispositive case (*Alleyne v. United States, 570 U.S. 99, 133 S.Ct. 186 L. Ed. 2d. 314, 2013 U.S.* which mandates that the *Apprendi-Blakely,* rule apply not just to increases in the maximum sentencing range, but increases in the minimum sentencing rage as well), and advise Mr. Larson as to the same and to object to prosecution's attempt to introduce evidence at sentencing of extraordinary aggravating circumstances and to request specific performance of the signed plea

A court's ruling on s *Crim.P 35(C)* motion asserting ineffective assistance of counsel presents a mixed issue of fact and law, *Strickland v. Washington, 466 U.S. 668, 698 (1984).* The Colorado Court of appeals defers to the district court's findings of fact if they have record support but review *de novo* the ultimate legal conclusions.

The Sixth Amendment of the United States Constitution and article II, section 16 of the Colorado Constitution guarantee an accused the right to effective assistance of counsel. This constitutional guarantee serves to ensure the accused a level of assistance calculated to produce a fair and just result in a criminal prosecution. *See, Strickland, 46 U.S. at 697; United States v Cronic, 466 U.S. 648,655-56 (1984); Cuyler v. Sullivan, 466 U.S. 335, 343 (1980); Grideon v. Wainwright, 372 U.S. 355, 344-45 (1963).*

This right extends to every critical stage of a criminal proceeding. "Stages of criminal proceedings have been held to be critical where there exist more than a minimal risk that the absence of the defendant's counsel might impair the defendant's right to a fair trial". *Gilbert v. California, 388 U.S. 263, 267 (1967.*

Plea negotiations are considered a critical stage of criminal proceedings. *Lafler v. Cooper, 566 U.S. 156, 162 (2012) Missouri v. Frye, 566 U.S. 134, 144 (2012).* Thus a criminal defendant is entitled to competent and effective representation during plea negotiations. *Lafler, 566 U.S. at 162; Frye, 566 U.S. at 144.*

"Due process requires that when a plea rest with any significant degree or

promise or an agreement by the prosecutor, so that it can be said to be part of an inducement or consideration, such a promise must be fulfilled. *U.S.C.A Constitution Amendment 5.*

In *Strickland,* the United States Supreme Court outlined the standards for evaluating a claim that a criminal conviction was obtained in violation of an accused's right to effective assistance of counsel. The court held that any such claim must satisfy two components; first, defense counsel's performance must have been constitutionally deficient: and second, the deficient performance must have prejudice the defense of the case. *Id at 687.*

For the deficient performance of counsel component, a defendant must prove that counsel's representation "fell below and objective standard of reasonableness." *Strickland, 466 U.S. at 688.* In performing the reasonableness inquiry, a court must "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id at 689.*

The defendant has a burden to demonstrate prejudice. *Id. At 693.* While the prejudice component requires that the defendant must establish more that the mere possibility that counsel's errors affected the outcome of the proceeding, it does not require the defendant to prove that counsel's errors "more likely than not altered the outcome in the case." *Id. At 689.*

The prejudice component requires the defendant to show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of

the proceeding would have been different." *Id. At 694.* A reasonable probability is "a probability sufficient to undermine confidence in the outcome" of the proceeding. *Strickland, 466 U.S. at 694).*

Stricklands two prong test typically applies to ineffective assistance of counsel claims. But *Cronic v. Washington, 466 U.S. 648 (1984),* held that test unnecessary when "circumstances exist that are likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified". *466 U.S. at 658 104, S.Ct.2039, 80 L. Ed 2d 657. Florida v. Nixon, 543 U.S. 175, 190, 125, S.Ct. 551, 160 L. Ed. 2d.665, (2004).*

The Supreme Court has specifically held that the sixth amendments constitutional protections articulated in *Blakely/Apprendi* against unauthorized fact finding apply with equal force. "Even where the law is unsettled, counsel must raise a material objection or argument if there is relevant authority strongly suggesting that it is warranted" (quoting *Morris v. united States, 97 F. 3d. 818, 82 (4th Cir. 2019).* This constitutional guarantee serves to ensure the accused a level of assistance calculated to produce fair and just results in criminal prosecution see, *United States v. Chronic 466, U.S. 648, 655-656 (1984) Cuyler v. Sullivan, 466 U.S.353, 343 (1981); Gideon v. Wainwright, 372,U.S. 355-340-45 (1963),* "failure to correctly advise a defendant about his sentencing exposure deprives the defendant a reasonable opportunity to make a reasonably informed decision whether to accept or reject an offer constitutes deficient performance under *Strickland.* Counsel's ineffectiveness led to an offers rejection. "and where the prejudice alleged is having to stand trial, a defendant

must show that for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction, sentence or both under the offers terms would have been less severe than under the actual judgment imposed." *Lafler v Cooper 566,166, pp 162-170, 182, L.Ed at 406-411, S. Ct. (2012).* In Mr. Larson's case he had already accepted and signed the plea agreement offered by the prosecution, and the court had already accepted it.

In his ineffective assistance of counsel claim, Mr. Larson argued that his counsel was ineffective for failing to advise him that, if he proceeded to sentencing on his *Alford* plea, he could have challenged the application of an aggravated sentencing range to the lower term of his indeterminate sentence as violating the requirements of *Apprendi v. New Jersey, 530 U.S. 466 (2000)* and *Blakely v Washington, 542 U.S. 296 (2004,* which generally prohibit the use of non-jury-determined facts at sentencing to increase a sentencing range. The Colorado Court of Appeals rejected this argument finding that it was precluded by the Colorado Supreme Court's ruling in *Vensor v. People, 151 P.3d 1274 (Colo. 2007),* which provides that a sentencing court "may impose a sentence...greater that the presumptive range," if it finds extraordinary aggravating circumstances. *Colo. Rev. Statue. § 18-1.3-401(6), see Lopez v People, 113 P. 3d 713, 719-20 (Colo. 2005) (stating "section 18-1.3-401(6)* does not mandate a restricted or increased sentencing range based on judicial fact-finding," but gives the sentencing judge "full discretion to sentence within a widened range"). *Lopez,* also held that enhanced sentencing "may rely on at least one of four

kinds of facts; (1) facts found by a jury beyond a reasonable doubt; (2) facts admitted by the defendant; (3) facts found by a judge after the defendant stipulates to judicial fact-finding for sentencing purposes; (4) facts regarding prior convictions.." *113 P. 3d at 716.* Mr. Larson did not admit to the crimes, nor did he waive his rights to have the judge fact-find, nor did he have any prior felony convictions.

The United States District Court of Colorado held in their decision, that "Mr. Larson's reliance on *Allene* is misplaced.....the then-existing, and still-existing, Colorado Supreme Court precedent in *Vensor* and *Isom,(Isom v.People, 407 P.3d 559, 562-63 Colo.2017),* (*Isom* concerned an habitual sex offender, which Larson was not accused of being this was his first and only offense), contradict the very argument he insist should have been made by counsel, see *Vensor, 151, P.3d at 1280* (holding that "the lower term of the sex offender's indeterminate sentence, whether or not it is beyond the presumptive range for the offender's particular class of felony, cannot constitutionally entitle him to a jury's determination of sentencing factors"). Nor does the holding of *Alleyne* stretch far enough to require a different result." *U.S.D.C p. 25, 7-14.*

It has now been almost eleven years since the U.S. Supreme Court's decision in *Alleyne*, but as of yet, even though *Alleyne* is being used in the lower courts, and in the U.S. Supreme Court in numerous cases such as *Erlinger v. United States, 602, United States v. Haymond, 588, U.S. 634, Hurst v florida, 577 U.S. 92, Blakely v. Washington, 542. U.S. 296 (2004),* have all upheld the right to due process, that each and every element of a crime must be proved to a jury beyond

a reasonable doubt and neither the floor of the sentence nor the maximum be increased. The same rights that Mr. Larson has claimed, the rights that his plea counsel should have protected and moved to enforce.

The United States Supreme Court in *Haymond v. United States*, a case that does involve a sex offender, deemed a mandatory minimum unconstitutional, because it violated defendant's right to trial by jury under the 5th and 6th Amendments by increasing the "legally prescribed range of allowable sentences". As in Mr. Larson's case, in *Haymond,* the court stressed that Alleyne arose in a different procedural posture, attempting to dodge the demands of the 5th and 6th Amendments by the simple expedient of relabeling a criminal prosecution. "Any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt or admitted by the defendant, and this traditional restraint on the judicial power cannot be evaded by simply calling the process of finding new facts and imposing a new punishment a judicial "sentencing enhancement" because the relevant inquiry is one nor of form but of effect Which considers whether the required judicial fact finding exposes the defendant to a greater punishment then that authorized by the jury's guilty verdict". *(As per Justice Gorsuch). (Haymond, 139 U.S. 2369 2019).*

Despite all the case law, to date no court has yet mentioned that *Vensor* is abrogated by *Alleyne,* yet a reasonable jurist if presented with this information, knowing that *Alleyne* had been decided nearly three years prior to Mr. Larson's withdrawal of his plea agreement, would find that Alleyne had "clearly been

established". A reasonable jurist would find that the lower court's ruling is an egregiously wrong precedent.

All of the post-conviction courts including the Tenth Circuit Court of Appeals came to the conclusion, that *Alleyne* is readily distinguishable from Mr. Larson's case, stating "It concerns the state of Colorado's nuanced indeterminate sentencing scheme applicable to sex offenses ant the applicable range of the lower term of years applicable to Mr. Larson's indeterminate sentence". It continues on with "*Alleyne* did not consider whether judicial fact finding could increase the presumptive sentencing range for the lower term of an indeterminate sentence based on aggravating circumstances. Because this case involves Colorado's unique indeterminate sentencing scheme for felony sex offenses it is materially distinguishable from *Alleyne".* ¶26-27 (U.S.D.C. Colo. order denying relief).

The 10Th Circuit Court of Appeals, continues by stating the "Crime is defined as a "sex offense," for which Colorado law requires imposition of an "indeterminate term" in correctional custody. *(quoting Colo. Rev. Stat. §18-1.3-1004(1)(a).* The length of the indeterminate term must be "at least the minimum of the presumptive range" set by the statue. The maximum length is 'the defendant's natural life." ¶7-8, (10th Cir. Ct App. Order).

What these Courts don't state is the fact that the lower term of an indeterminate sentence is when the offender is not only eligible for parole, but also when he is eligible for treatment classes to be able to be paroled. They also

do not state what the Colorado Supreme Court also found in *Vensor,* which is that *C.R.S. § 18-1.3-1004*, was ambiguous, which required a determination of the legislative intent of the act finding that the declaration purpose of *C.R.S. §18-1.3-1001,* made clear the intent of the legislation, which was "to provide for treatment and extended supervision, rather than to punish sex offenders with terms of incarceration longer that those of other felons of the same class".

In the opinion, the Colorado Court of Appeals and the U.S. District court of Colorado, and the Opinion of the 10th Circuit Court of Appeals, they held that the *Alleyne* argument that should have formed the basis of Mr. Larson's resistance to raising the minimum sentencing range was ***"novel"*** and thus Mr. Larson's counsel should not have been expected to raise it. CCA Opinion at ¶ 29.

The Colorado Court of Appeals confirmed that: "After *Vensor v. People, 151 P.3d 1274 (Colo.2007),* was decided, the United States Supreme Court in *Alleyne* clarified that *Apprendi* "necessarily included not only facts that increase the ceiling of a sentencing range, but also those that increase the floor" because both kinds of facts alter the prescribed range of sentences to which a defendant is exposed and do so in a manner that aggravates the punishment. *"Alleyne, 570 U.S. at 108.* Thus the court extended *Apprendi and Blakely* to the determination of facts that increase the minimum of a sentencing range to which a defendant could be exposed. Id. At 103, 108, 111-16. Opinion at ¶ 25.

The post-conviction courts, in making their decisions seem to rely on unconstitutional claims, relying on *Vensor*, which by stating, citing *C.R.S. 18-1.3-401(6),* that states, that a sentencing court may impose a sentence greater

than the presumptive range. Which according to the provisions set forth in *Apprendi/Blakely*, and its progeny *Alleyne* makes this statue unconstitutional, "We concluded that the legislative history clearly indicates an intent not to apply section *§18-1.3-401* to crimes of violence that are sexual assaults, because a statue should not be construed in a manner that defeats the obvious legislative intent." *People v Tillery 231, P.3d. 36 (colo. app 2009).*

Alleyne explicitly over ruled *Harris v New Jersey (2002),* because *Harris* was the governing law of the land when the Colorado Supreme Court decided *Vensor* in 2010. The Colorado court was following binding U.S. Supreme Court precedent at the time. Because *Alleyne* changed the Federal Constitutional landscape by overturning decades of old rules, a claim based on its holding was structurally "***novel***" prior to any state case decided "before" 2013. Not after 2013.

At the time of Mr. Larson's signed plea agreement and before counsel advised him to withdraw it, was *Alleyne* a "*novel*" case? The answer is no.

In the context of criminal law, a legal claim is "*novel*" if its legal basis was not reasonably available to counsel at the time. *Alleyne v United States*, was decided on June 17, 2013, it established a landmark, bright-line rule under the Sixth Amendment, stating "any fact that increases a mandatory minimum sentence is and "element" of the crime and must be submitted to a jury and proven beyond a reasonable doubt".

By March 3, 2016, (date plea was withdrawn) *Alleyne* had been a binding national precedent for almost three years, and cited in over 20 cases in the U.S. Supreme Court, and no less than six dozen separate cases in the U.S District

Court for the District of Colorado and the U.S. Court of appeals for the Tenth Circuit. It was a standard fundamental rule of criminal constitutional procedure, not a "*novel*" theory.

Did *Alleyne* overrule *Vensor*? The answer is most definitely yes. Under the *Supremacy Clause* of the U.S. Constitution, a U.S. Supreme Court decision on Federal Constitutional Law, overrules any conflicting State Supreme Court decision to the extent that *Vensor,* or Colorado violent crimes sentencing statues, allowed a judge (rather than a jury) to find facts that triggered a mandatory minimum sentence, *Alleyne* abrogated that practice, rendering *Vensor,* and the presumptive penalties under *§18-1.3-401(6),* unconstitutional, as per *Blakely/Apprendi/Alleyne* rule. Violating Mr. Larson's right to due process, under the 5th Amendment of the Constitution of the United States and under Article II sections, 16 and 25 of the Constitution of the State of Colorado.

In 2015, when Larson was offered the plea, an *Alleyne* claim would not be considered *"novel"* and counsel absolutely should have known about *Blakley/Apprendi* and their progeny *Alleyne*, and specific performance, and to object to the District Attorneys introduction of extraordinary aggravating circumstances, to increase the floor of the sentence from 2 to 6 years to indeterminate, which the signed plea agreement stated, to 12 years to indeterminate.

The post-conviction courts have held that there was no prejudice to Mr. Larson from his plea counsel's failure to advise him as to his 6th Amendment rights prohibiting judicial fact-finding of aggravating factors and the failure to

proceed to sentencing, to argue in defense of these Sixth Amendment rights.

This finding was based on a District Court's ruling that "although there was confusion based on the [plea agreement's] language of 2-6 years to life, the people's request into the aggravated range was authorized even where the Defendant had not stipulated to aggravators." *CF p. 1987.* The Colorado Court of Appeals, further ruled no deficient performance because "a court can find extraordinary aggravating circumstances under *C.R.S. §18-1.3-401(6)* to sentence under *§18-1.3-1004* to a floor of twice the maximum in the presumptive range.' *Id.*

The post-conviction court's various arguments are unpersuasive. The arguments they raise stress that *Alleyne* arose in a different procedural posture, but the courts have rejected efforts to dodge the demands of the fifth and Sixth amendments, by the simple expedient of labeling a criminal prosecution *"novel"* and Colorado's unique sentencing scheme.

The post-conviction courts have overlooked the constitutional issues of this case, by failing to apply *Strickland* to assess the ineffective assistance of counsel claim, this court, and the previous post-conviction courts adjudication was contrary to clearly established Federal and Constitutional law. In these circumstances the Tenth Circuit Court, and the United States District Court, in Mr. Larson's Habeas action, could have determined the principles necessary to grant relief. *See Panetti v Quarterman, 551 U.S. 930,948, 127 S. Ct. 2842,168 L..Ed. 2d. 662 (2007).*

The U.S District Court on ¶ 29 in its order denying Habeas relief states, "The CCA's written opinion did not specifically address the prejudice prong, after finding that counsel did not perform deficiently." But Mr. Larson can obtain relief based on the prejudice prong. This court should review this issue, as it was an issue raised, and should be addressed by this court. "A Federal Court simply reviews the specific reasons given by the lower courts and defers to those reason if that are reasonable. A state prisoner must show that the statue ruling on a claim being presented in Federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond a possibility for a fair minded disagreement. *Harrington v Richter 562, U.S. 86, 103 (2011).*

The post-conviction courts reliance on *Vensor* as conclusive of the issue to demonstrate Mr. Larson was not prejudiced by his plea counsel's failure to properly advise him and challenge the prosecution's attempt to increase the minimum range of the sentence through introduction of extraordinary aggravating circumstances at sentencing is misplaced. To the contrary, the failure of Mr. Larson's plea counsel to inform him of this issue and the fact that the plea agreement's specified minimum sentencing range would have held firm against the prosecution's attempts to alter it, prejudiced Mr. Larson in factoring heavily into his decision to agree to his plea counsels misguided advice to seek to withdraw from the plea agreement. But for this deficient performance, Mr. Larson would have accepted the plea agreement- indeed, he had already agreed to it. *See TR 4/22/2022 p.74:16-21* (Mr. Larson testifying that but for the

deficient performance of his plea counsel, he would "never withdraw the plea").

Mr. Larson has also demonstrated the *Lafler, 566 U.S.at 164* factors for showing objective corroborating evidence to support the contention that he would have accepted the plea agreement if properly and adequately represented. Under the plea agreement, the minimum mandatory range was 2 to 6 years. *CF p.187, ¶14; 188, ¶15.*

Ultimately, Mr. Larson was sentenced to a minimum of 36 years'to life, incarceration with the Dept., of Corrections *(CF, p.636),* demonstrating a large disparity between the sentence received after trial and that offered as part of the plea bargain.

"The disparity in sentencing exposure may suffice to show prejudice under the second prong of Strickland, *see United States v Herrea, 412, F.3d 517, 581n(5th cir.1992) Griffin v United States, 330, F.3d 733, 737, 737-38 (6th cir.2003) United States v Day, 969 F.2d 39 45-46 (3rd cir. 1992).*

During the plea negotiations, counsel failed to assert rights that may have altered the outcome. *See Kimmelman v. Morrison, 477, U.S. 365, 379, 106, S. Ct.2574, 91, L.Ed 2d. 305.* When a defendant shows ineffective assistance has caused the rejection of a plea leading to a more sever sentence a trial, the remedy must "neutralize the taint," of a constitutional violation. *United States v. Morison, 449 U.S. 361, 101, S. Ct. 665 2d. 564.*

Mr. Larson's counsel was ineffective as per the performance prong of *Strickland,* and was prejudiced by counsel's ineffectiveness in advising Mr. Larson to reject the plea. Mr. Larson believes that if a fair-minded jurist was to

review these issues, that he would overturn the post-conviction court's rulings.

Because Mr. Larson's counsel failed to competently advise him as to established case law directly affecting his sentencing, and failure to request specific performance, Mr. Larson's decision to withdraw his plea was based on ineffective assistance of counsel, under the 6th and 14th Amendments to the United States Constitution. And Article II Sections 16, 25 of the Constitution of Colorado.

Mr. Larson is not seeking a windfall, he simply wishes that this court vacate the Post-Conviction court's judgment, and remand for further proceedings, to re-offer the plea which was withdrawn due to ineffective assistance of counsel.

CONCLUSION

The United State district Court of Colorado, and the Tenth Circuit Court, have Wrongly applied this court's precedent in affirming the Colorado Court of Appeals denial of Mr. Larson's ineffective assistance of counsel claim.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: October, 2026.