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| District Court, Adams County, Colorado Court Address: 1100 Judicial Center DriveBrighton, CO 80601 | DATE FILED: June 1, 2017 11:09 A FILING ID: 2BF170133CC34 CASE NUMBER: 2016CR3773 COURT USE ONLY  |
| THE PEOPLE OF THE STATE OF COLORADO,Plaintiff v.SATURNINO PADILLA,Defendant |
| Douglas K. Wilson, Colorado State Public Defender Hillary Aizenman, No. 42351Deputy Public DefenderBrighton Regional Public Defenders4710 East Bromley Lane, Brighton, CO 80601Phone: (303) 659‐4274 Fax: (303) 659‐6935E‐mail: brighton.defenders@state.co.us | Case No. 16CR3773Division: G |
| **MOTION TO SUPPRESS UNCONSTITUTIONALLY OBTAINED CONVICTIONS** |

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Saturnino Padilla, by and through counsel, hereby moves to suppress the use of any conviction from Adams County cases 06M4888 and 04M3645 in this prosecution because the convictions were obtained without counsel, in violation of the United States and Colorado Constitutions. The use of those convictions in this prosecution would, therefore, violate his rights to Due Process because he would be subjected to enhanced punishment due to unconstitutionally obtained convictions.

U.S. Const. amends. V, XIV; Colo. Const. Art. II, §§ 16, 25.

# Mr. Padilla’s Pro Se Convictions Were Obtained in Violation of the United States and Colorado Constitutions

* + 1. Mr. Padilla is charged with Assault in the Third Degree, as a crime of domestic violence. This offense is normally a misdemeanor. It can, however, result in felony punishment when the State proves that the defendant has three or more prior convictions in which the underlying factual basis included an act of domestic violence. That is what the State is seeking to do in this prosecution under C.R.S. § 18‐6‐801(7).
		2. Two of the predicate offenses in the prosecution’s complaint are Adams County cases 06M4888 and 04M3645. Mr. Padilla was not represented by counsel in either case.
		3. In addition to pleading guilty without counsel, Mr. Padilla pled guilty in each case at his first and only court appearance (other than jail advisement in 06M4888).
		4. In 06M4888, Mr. Padilla pled guilty to an added count of attempted Third Degree Assault on November 9, 2006. This was a mere five days after the date of offense.
		5. In 04M3645, Mr. Padilla pled guilty to an original count of Harassment on November 2, 2004.
		6. Defense counsel has not received any copy of a formal plea agreement in either case through discovery. Through defense counsel’s own investigation, there is no Rule 11 for case number 04M3645. (The Rule 11 for case 06M4888 is attached as Exhibit A).
		7. There is no transcript of the plea colloquy in either case. (Exhibit B). Therefore, there is no record of what rights the court advised Mr. Padilla of at his court appearance.
		8. Furthermore, and more importantly, the procedure governing plea negotiations at the time was unconstitutional.
		9. Prior to its amendment in 2013, C.R.S § 16‐7‐301(4) required the prosecuting attorney to meet with criminal defendants in misdemeanor cases and advise the defendant of any plea offer before the defendant was allowed to apply for court‐appointed counsel:

“the prosecuting attorney is obligated to tell the defendant any offer that can be made based on the facts as known by the prosecuting attorney at that time . . . The prosecuting attorney shall advise the defendant that the defendant has the right to retain counsel or seek appointment of counsel. The application of counsel and the payment of the application fee shall be deferred until after the prosecuting attorney has spoken with the defendant as provided in this subsection.”

C.R.S. § 16‐7‐301(4) (2002).

* + 1. This practice was overruled (albeit in dicta) in *Rothgery v. Gillespie County, Tex.*, 554 U.S. 191 (2008). There, the Supreme Court held that the Sixth Amendment right to counsel attaches at a defendant’s initial appearance before a judicial officer, at which he is told of the “formal accusation against him and restrictions are imposed on his liberty,” regardless of whether the prosecuting attorney is involved. *Id.* at 194. The Supreme Court specifically

noted that Colorado and the other six states that denied appointed counsel at this stage were in the distinct minority. *Id.* at 205.

* + 1. Subsequently, the Colorado Legislature amended C.R.S. § 16‐7‐301 in 2013 by repealing section 16‐7‐301(4). Section 16‐7‐207 now requires that the judge must inform the defendant at his first appearance that he has a right to counsel, and an indigent person “may make application for a court‐appointed attorney” without having first consulted with the prosecuting attorney regarding misdemeanors.
		2. The prior convictions in 06M4888 and 04M3645 were obtained without counsel, under an unconstitutional statute that denied defendants appointed counsel until after they consulted with the prosecuting attorney. In both of these convictions, Mr. Padilla pled guilty at his first court appearance, after having been presumably advised by the court that he must consult with the prosecuting attorney before being afforded court‐appointed counsel. Furthermore, there is no transcript of either of these plea colloquies which would demonstrate that Mr. Padilla was adequately advised of his constitutional rights to counsel or to a trial on all issues of guilt, such that Mr. Padilla made a valid waiver of his right to counsel or jury trial.
		3. Both of these convictions, therefore, violated Mr. Padilla’s constitutional rights to effective assistance of counsel and due process. U.S. Const. amends. V, XIV; Colo. Const. Art. II, §§ 16, 25.

# Mr. Padilla Has Met His Burden of Making a *Prima Facie* Showing that the Pleas Were Unconstitutionally Obtained

* + 1. A defendant who attacks the constitutionality of a prior conviction must only make a *prima facie* showing that the plea was unconstitutionally obtained. *Lacy v. People*, 775 P.2d 1, 6‐7 (Colo. 1989) (referencing proof of prior convictions for the purpose of habitual criminal proceedings).
		2. A *prima facie* showing, in this context, means “evidence that when considered in a light most favorable to the defendant, will permit the court to conclude that the conviction failed to meet relevant constitutional standards.” *Id.*
		3. Once a *prima facie* showing is made, the conviction is not admissible unless the prosecution establishes by a preponderance of the evidence that the conviction was obtained in accordance with the defendant’s constitutional rights. *Id.*
		4. Mr. Padilla has a made a *prima facie* showing in this case. The record reflects that he was not represented by counsel and that counsel was, in fact, denied at the time Mr. Padilla pled guilty because Mr. Padilla was required to confer with the prosecuting attorney under an unconstitutional statute.

Furthermore, there is no evidence that Mr. Padilla was informed by the court of all the rights he was waiving by pleading guilty.

# Using this Conviction Would Violate Mr. Padilla’s Right to Due Process

1. “A prior conviction obtained in a constitutionally invalid manner cannot be used against an accused in a subsequent criminal proceeding to support guilt or to increase punishment.” *Lacey*, 775 P.2d at 4 (*citing Loper v. Beto*, 405 U.S. 473, 481 (1972)); *see also People v. Padilla*, 907 P.2d 601, 605 (Colo. 1995).
2. Additionally, when the establishment of a prior conviction results in automatic sentence enhancement, “defendants are entitled to heightened procedural safeguards against infringement of their due process rights through the use of potentially invalid prior convictions.” *Padilla*, 907 P.2d at 607.
3. A guilty plea is invalid if it is obtained without counsel and if the record does not plainly establish a knowing, intelligent, and voluntary waiver of counsel. *People v. Harrington*, 500 P.2d 360 (Colo. 1972).
4. The right to collaterally attack a prior conviction as invalid based on the right to counsel arises from *Gideon v. Wainright*, 372 U.S. 335 (1963), which required that indigent defendants be appointed counsel in state‐court proceedings. *Curtis v. United States,* 511 U.S. 485, 493‐94 (1994).
5. A prior criminal conviction that does not comport with the *Gideon* standards is constitutionally infirm and cannot be used for sentence enhancement purposes. *Curtis*, 511 U.S. at 495.
6. “Presuming waiver of counsel from a silent record is impermissible. To permit a conviction obtained in violation of *Gideon v. Wainwright* to be used against a person either to support guilt or enhance punishment for another offense is to erode the principle of that case.” *Burgett v. Texas*, 389 U.S. 109, 114‐15 (1967).
7. Even when incarceration was not a possible consequence in the prior proceeding, a prior conviction may not be used to enhance the sentence of a subsequent offense unless there is evidence the defendant was informed of his right to counsel and knowingly, intelligently, and voluntarily waived that right. *People v. Hampton*, 619 P.2d 48, 52‐53 (Colo. 1980).
8. If a defendant has made a *prima facie* showing that a prior conviction is invalid, it may not be used in a later proceeding unless the prosecution establishes the conviction was constitutionally obtained. *People v. Roybal*, 618 P.2d 1121, 1126‐27 (Colo. 1980).

**WHEREFORE**, this Court should issue an order precluding the use of the unconstitutionally obtained prior convictions in Adams County cases 06M4888 and 04M3645 for purposes of enhancing the penalty in this case under the provisions in C.R.S. § 18‐6‐801(7) and 18‐3‐204(1)(a).

Respectfully submitted,

DOUGLAS K. WILSON

COLORADO STATE PUBLIC DEFENDER

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Dated: June 1, 2017

# Certificate of Service

I hereby certify that on this 1st day of June, 2017, a true and correct copy of the foregoing MOTION was served via ICCES on all parties who appear of record and have entered their appearances herein according to ICCES. /s/ Hillary Aizenman