

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO v. JAMES EAGAN HOLMES, Defendant	Case No. 12CR1522 Division: 201
ORDER REGARDING DEFENDANT'S MOTION TO RECONSIDER COURT'S RULINGS THAT CERTAIN MOTIONS FILED BY THE DEFENSE ARE FRIVOLOUS (D-208)	

Motion D-208 is a motion to reconsider related to Orders D-143, D-144, D-145, D-146, and D-147, which denied Motions D-143, D-144, D-145, D-146, and D-147. Significantly, the defendant does not ask the Court to reconsider the denial of those motions. Instead, he asks the Court to retract its characterization of those motions as "frivolous." The defendant does not cite any authority in support of the relief requested, and the Court is aware of none.

Since assigned to this case, the Court has been consistent in "calling it as it sees it." While the Orders the defendant challenges were blunt, they were accurate and fair. There is no authority that permits a defendant in a death penalty case to file motions that are directly contradicted by legal precedent. The Court

understands that the defendant may seek to extend, modify, or reverse existing law. But his motions sought to do none of that. Nowhere in his motions did the defendant state that his intent was to extend, modify, or reverse existing law. Nor did the defendant present a good faith, legitimate basis to ask the Court to do so. Instead, his motions urged the Court to disregard binding case law directly on point. For instance, the defendant asked the Court to grant the very relief already denied by the Colorado Supreme Court on more than one occasion in death penalty cases. In one particular case, the Colorado Supreme Court recognized that it had previously rejected an identical argument and characterized the defendant's position as "completely meritless." *See Dunlap v. People* ("*Dunlap III*"), 173 P.3d 1054, 1089 (Colo. 2007). This Court simply echoed the Supreme Court's characterization.

Notably, the defendant did not even cite *Dunlap III* in Motions D-143 and D-147. Since *Dunlap III* directly undercuts both motions, at a minimum, the defense should have acknowledged the holding in that case. The defendant mentioned *Dunlap III* in Motion D-146 in passing, but did not address, much less discuss, its holding, and then speculated why the Colorado Supreme Court did not mention the United States Supreme Court cases on which he relied. Finally, in Motions D-144 and D-145, the defendant attempted to convince the Court that the Colorado Supreme Court's conclusions in *People v. Dunlap* ("*Dunlap I*"), 975

P.2d 723 (Colo. 1999) and *People v. Dunlap* (“*Dunlap II*”), 36 P.3d 778 (Colo. 2001), were erroneous. Those two motions asked the Court to declare that the Colorado Supreme Court’s decisions in *Dunlap I* and *Dunlap II* rendered the death penalty statutory scheme unconstitutional. As the defense is well aware, this Court has no authority to do so.

Contrary to the defendant’s contention, the Court did not misapprehend counsel’s role. There is no authority that requires counsel, as part of their ethical or constitutional duties, to advance arguments that have been considered and rejected by the state’s highest court or by the nation’s highest court. There is also no “heightened duty and obligation to assert all legal claims,” Motion at p. 2, without regard to their merit under the law. An attorney’s obligation to preserve issues for appellate review, even in a death penalty case, does not require the submission of such claims either.¹ The guidelines discussed by the defendant, *id.* at pp. 3-7, do not alter this conclusion.

The defendant alleges that the Court “wrongly denigrate[d]” counsel. *Id.* at p. 12. No citation to any of the Orders follows this untenable claim. The Court called the defendant’s motions “frivolous” for all the reasons stated in Orders D-143, D-144, D-145, D-146, and D-147. The Court stands by these Orders.

¹ The defendant did not state in any of the motions that he was attempting to preserve an issue for appellate review purposes.

For all the foregoing reasons, Motion D-208 is denied without a hearing as lacking merit. When the defendant has a good faith, legitimate basis for doing so, he must be afforded every opportunity to attempt to extend, modify, or reverse existing law, as well as to preserve issues for appellate review. However, if the defendant's understanding of the law and counsel's ethical duties were correct, there would be no limit whatsoever on the claims that a defendant could raise in a death penalty case, regardless of how meritless they may be under well-established authorities.

Dated this 11th day of April of 2014.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2014, a true and correct copy of the **Order regarding Defendant's motion to reconsider Court's rulings that certain motions filed by the Defense are frivolous (D-208)** was served upon the following parties of record:

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