

**Colorado Supreme Court
Cases Announced September 13, 1999**

OPINIONS

No. 97SA211

ORIGINAL PROCEEDING IN DISCIPLINE
IN THE MATTER OF GARY STEVEN COHEN,
EN BANC
PER CURIAM
JUSTICE BENDER does not participate.

Attorney-Respondent.
ATTORNEY SUSPENDED

No. 99SA74

ORIGINAL PROCEEDING IN DISCIPLINE
IN THE MATTER OF DAVID ROBERT DEMARAY,
EN BANC
PER CURIAM
JUSTICE SCOTT does not participate.

Attorney-Respondent.
ATTORNEY SUSPENDED

No. 98SA377

MUNICIPAL SUBDISTRICT, NORTHERN
COLORADO WATER CONSERVANCY DISTRICT,
v.
CHEVRON SHALE OIL COMPANY,
and

Objector-Appellant,
Applicant-Appellee,

ORLYN G. BELL, Division Engineer, Water Division 5, Appellee pursuant to C.A.R. 1(e).
Appeal from the District Court, Water Division No. 5
Honorable Thomas W. Ossola, Judge

EN BANC

JUDGMENT AFFIRMED

CHIEF JUSTICE MULLARKEY delivered the Opinion of the Court.
JUSTICE HOBBS does not participate.

No. 97SC609

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER; THOMAS M. MAURO, SHARON R. BAILEY, LYNN D. COLEMAN, AARON M. GRAY, J.P. HEMMING, CAROLE R. McCOTTER, and MARCIA M. JOHNSON, in their official capacities as members of the Board of Education; and SHARON EASTLUND, Petitioners/Cross-Respondents,

v.

CORDIA BOOTH, JAMES STAMPER, EUGENE COPELAND, and BILL KING, on behalf of the proposed Thurgood Marshall Charter Middle School, Respondents/Cross-Petitioners, and

THE COLORADO STATE BOARD OF EDUCATION, Respondent.

Certiorari to the Colorado Court of Appeals

EN BANC

JUDGMENT AFFIRMED IN PART, REVERSED IN PART, AND CASE REMANDED WITH DIRECTIONS

CHIEF JUSTICE MULLARKEY delivered the Opinion of the Court.

No. 98SA208

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF PARK COUNTY SPORTSMEN’S RANCH LLP, IN PARK COUNTY, PARK COUNTY SPORTSMEN’S RANCH LLP, Appellant,

v.

FRIDA BARGAS AS TRUSTEE OF THE FRIEDA WAHL TRUST, RUTH BARTLE, JIM CAMPBELL, INDIAN MOUNTAIN CORP., JAMES T. BENES, JAMES T. BENES, JR. AND CASSANDRA L. BENES TRUST, TARRYALL LAND AND CATTLE LLC, CENTENNIAL WATER AND SANITATION DISTRICT, BOB BURCH, CENTRAL COLORADO CATTLEMEN’S ASSOCIATION, CITY AND COUNTY OF DENVER, CITY OF ENGLEWOOD, CITY OF THORNTON, H.D. AND MARY CATHERINE COLEMAN, JAMES E. COPANOS, COUNTY OF PARK, UPPER SOUTH PLATTE WATER CONSERVANCY DISTRICT, KIM MAGNESS AND GARY MAGNESS AS PERSONAL REPRESENTATIVES OF THE ESTATE OF BOB MAGNESS, DARRELL JOHNS, JOHN JOHNS, DAVID JOHNS, JOSEPH G. AND JOYCE C. MINKE, PARK COUNTY WATER PRESERVATION COALITION, CAROL HACK, LARRY DIRKS, CYNTHIA AND WILBUR VAN WAGENEN, ELKHORN RANCH HOMEOWNER’S ASSOCIATION, COLORADO WILDLIFE COMMISSION AND DIVISION OF WILDLIFE, UNION PACIFIC RESOURCES COMPANY, and THE UNITED STATES OF AMERICA, Appellees,

and

STATE ENGINEER HAROLD D. SIMPSON, and DIVISION ENGINEER RICHARD L. STENZEL, Appellees pursuant to C.A.R. 1(e).

Appeal from the District Court, Water Division No. 1
Honorable Jonathan W. Hays, Judge

EN BANC

JUDGMENT AFFIRMED IN PART

AND REVERSED IN PART

JUSTICE KOURLIS delivered the Opinion of the Court.

No. 97SC792

PUBLIC SERVICE COMPANY
OF COLORADO,

v.

WALLIS AND COMPANIES,

Petitioner/Cross-Respondent,

Respondent/Cross-Petitioner.

Certiorari to the Colorado Court of Appeals

EN BANC

JUDGMENT REVERSED
AND CASE REMANDED

JUSTICE BENDER delivered the Opinion of the Court.

No. 98SC244

BRYON CRUZ; CRUZ ENTERPRISES, a Colorado General Partnership; and DOROTHY F.
CRUZ,

Petitioners,

v.

JIM BENINE, HAROLD NELSON, MARY NELSON, and EMPIRE ENTERPRISES
UNLIMITED,

Respondents.

Certiorari to the Colorado Court of Appeals

EN BANC

JUDGMENT AFFIRMED IN PART, REVERSED
IN PART, AND CASE REMANDED

JUSTICE RICE delivered the Opinion of the Court.

No. 99SA100

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellant,

v.

In the Interest of J.L.M.,
and concerning

Juvenile-Appellee,

N.H.,

Respondent-Appellee.

Interlocutory Appeal from the District Court, Adams County
Honorable Thomas R. Ensor, Judge

EN BANC

ORDER REVERSED
AND CASE REMANDED

JUSTICE RICE delivered the Opinion of the Court.

PETITIONS FOR REHEARING

No. 98SC92
THE PEOPLE OF THE STATE OF COLORADO, Petitioner,
v.
BRENT D. ULLERY, Respondent.
Petition for Rehearing DENIED. EN BANC.

No. 98SC109
THE PEOPLE OF THE STATE OF COLORADO, Petitioner,
v.
DAVID ANTHONY WILLIAMS, Respondent.
Opinion modified, and as modified, Petition for Rehearing DENIED. EN BANC. CHIEF
JUSTICE MULLARKEY, JUSTICE MARTINEZ, and JUSTICE BENDER would grant the
petition.

PETITIONS FOR WRIT OF CERTIORARI

No. 99SC121
Court of Appeals No. 96CA1685 (11/19/98)
DAVID STEVENS, Petitioner,
v.
THE PEOPLE OF THE STATE OF COLORADO, Respondent.
Petition for Writ of Certiorari GRANTED. EN BANC.
SUMMARY OF ISSUE:
Whether the court of appeals erred in conducting its Confrontation Clause analysis.
JUSTICE BENDER would grant as to the following issue:
Whether the court of appeals misinterpreted the test set forth in People v. Newton, 966 P.2d 563
(Colo. 1998), and, therefore, erroneously concluded that a co-defendant's statements were
admissible under CRE 804(b)(3).
DENIED AS TO ALL OTHER ISSUES.

No. 99SC227
Court of Appeals No. 97CA1860 (2/4/99)
JOHN DRAKE, Petitioner,
v.
THE PEOPLE OF THE STATE OF COLORADO, Respondent.
Petition for Writ of Certiorari DENIED. EN BANC.

No. 99SC239
Court of Appeals No. 97CA0826 (12/24/98)
LIBERTY MUTUAL INSURANCE COMPANY, Petitioner,
v.
HAROLD MCKELVY, Respondent.
Petition for Writ of Certiorari DENIED. EN BANC.
JUSTICE KOURLIS would grant as to the following issue:
Whether a plaintiff who asserts a claim for bad faith breach of a workers' compensation insurance contract can also assert a claim for intentional infliction of emotional distress or outrageous conduct based on the alleged bad faith conduct, or is that plaintiff limited to the bad faith claim and the emotional distress damages recoverable thereunder.

No. 99SC471
Court of Appeals No. 98CA0710 (4/22/99)
RICHARD PATTON, Petitioner,
v.
THE PEOPLE OF THE STATE OF COLORADO, Respondent.
Petition for Writ of Certiorari DENIED. EN BANC.

No. 99SC494
Court of Appeals No. 96CA0426 (5/13/99)
JOSEPH VIGIL, Petitioner,
v.
THE PEOPLE OF THE STATE OF COLORADO, Respondent.
Petition for Writ of Certiorari DENIED. EN BANC.

No. 98SC579
Court of Appeals No. 96CA2008 (7/9/98)
GERALD J. KARG and WILLIAM KARG, Petitioners,
v.
ALLEN MITCHEK and ROBERT GRAVES, doing business as MITCHEK AND GRAVES, a partnership, Respondents,
and
GERALD J. KARG; ALBERT E. KARG; VICTOR W. KARG; KARG AND KARG, a Colorado partnership; KARG-DERMER, a Colorado partnership; and KARG LAND AND CATTLE COMPANY, INC., a Colorado corporation, Petitioners,
v.
ALLEN MITCHEK, Respondent.
Petitions for Writ of Certiorari DENIED. EN BANC.
JUSTICE HOBBS does not participate.

No. 99SC268

Court of Appeals No. 97CA1474 (2/4/99)

AD TWO, INC., d/b/a THE COFFEE BEANERY; AIRPORT CONCESSIONS, INC.;
AIRPORT SERVICES, INC., d/b/a QUIZNO'S AND PEABERRY COFFEE; GRD&D, INC.,
d/b/a BOYER'S GOURMET COFFEES; LAURA DEVARONA, d/b/a VARONA IMPORTS
(COLORADO COLORS); DICK & JANE PIZZA, INC., d/b/a DOMINO'S PIZZA; FIRST
CLASS BAGGAGE CO., f/k/a GOLDEN EEL IMPORT CO. OF COLORADO; KELLEN
INDUSTRIES, INC., d/b/a ROCKY MOUNTAIN CHOCOLATE FACTORY AND THE
STUDIO; MISSION YOGURT, INC., d/b/a PENGUIN'S HARVEST EXPRESS; TRUGOY,
INC., d/b/a TCBY YOGURT; SUSAN VALE, INC.; and LAUREN K. WAHLSTROM, d/b/a
THE COLORADO COLLECTION, Petitioners,

v.

THE CITY AND COUNTY OF DENVER, BY AND THROUGH THE MANAGER OF
AVIATION; and THE MANAGER OF AVIATION, CITY AND COUNTY OF DENVER,
Respondents.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUES:

Whether the court of appeals erred when it affirmed the trial court's ruling and held that the contract language in section 5.07 of the agreements between the City & County of Denver (City) and its concessionaires at Denver International Airport were not ambiguous.

Whether the court of appeals erred when it held that section 5.07 of the subject agreements required concessionaires to provide the City with revenue statements prepared in the course of an audit conducted by an independent certified public accountant.

No. 99SC353

Court of Appeals No. 97CA1123 (12/24/98)

DOROTHY LYNN CAMPBELL, surviving spouse of her deceased husband, David Campbell, individually, and KATIE CAMPBELL and SARA CAMPBELL, the minor children of David Campbell, by and through their mother and next best friend DOROTHY LYNN CAMPBELL, Petitioners,

v.

BURT TOYOTA-DIAHATSU, INC., a Colorado corporation, d/b/a Burt Toyota and Burt, Inc., Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 99SC355

Boulder County District Court No. 98CV812 (4/7/99)

SUSAN SHELDON, Petitioner,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Respondent.

Petition for Writ of Certiorari GRANTED, and the judgment of the Colorado Court of Appeals is vacated. The case is remanded to the Colorado Court of Appeals for reconsideration in light of Adams v. Farmers Insurance Group, No. 98SC42 (Colo. June 28, 1999). EN BANC.

No. 98SC822

Court of Appeals No. 97CA1157 (9/17/98)

AVIS RENT A CAR SYSTEMS, INC., a Delaware corporation, and
GARY HARDESTY, Petitioners/Cross-Respondents,

v.

ITT SPECIALTY RISK SERVICES, a Delaware corporation, Respondent/Cross-Petitioner.

Petition and Cross-Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE RICE would grant as to the following issues:

Whether the court of appeals so far departed from the accepted usual course of judicial proceedings as to call for the exercise of the supreme court's power of supervision by creating a unique and separate class of insured who has greater rights than that of a named insured under the Colorado Automobile Accident Reparations Act, but none of the obligations of that named insured.

Whether the court of appeals decided a question of substance in a way probably not in accord with applicable decisions of the supreme court, specifically Jorgensen v. St. Paul Ins. Co., 158 Colo. 466, 408 P.2d 66 (1965) and Marez v. Dairyland Ins. Co., 630 P.2d 286 (Colo. 1981), by not placing the insured and his workers' compensation carrier in the same shoes as the named insured under the policy, with no greater rights or obligations than that named insured.

Whether the court of appeals rendered a decision in conflict with the decision of another division of the same court, specifically Marez v. Dairyland Ins. Co., 42 Colo. App. 536, 601 P.2d 653 (1979), i.e., which held that a third party beneficiary is entitled to no greater rights or insurance benefits than those of a named insured.

Whether Colorado public policy allows a Colorado PIP carrier to reduce its liability for PIP coverage by the amounts paid by an out of state workers' compensation carrier where that carrier, unlike the Colorado PIP carrier, is entitled to reimbursement of amounts paid from any liability settlement the injured insured may recover.

Whether Colorado PIP carrier can avoid providing mandatory coverage by claiming an offset against its limits for any benefits received from an out of state workers' compensation carrier, even when the out of state carrier may recover these amounts back from the insured.

No. 99SC214

Court of Appeals No. 97CA1613 (11/13/98)

AMERICAN HARDWARE MUTUAL INSURANCE COMPANY, Petitioner,

v.

COLONIAL INSURANCE COMPANY OF CALIFORNIA, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

JAMES P. ROGERS, ESTATE OF CHARLES R. BROPHY, DESMOND D. BROPHY, DONALD R. BROPHY, DOUGLAS K. BROPHY, JAMES P. BROPHY III, ESTATE OF JAMES P. BROPHY, JOSEPH PAUL BROPHY, JOSEPH PAUL BROPHY, JR., MARTIN D. BROPHY, THOMAS E. BROPHY, TODD R. BROPHY, CONRAD OIL & GAS, LTD., MARGUERITE CONRAD, HARRIS LETT, OTTO E. LUEKING, JR., and KITZMILLER GRAZING ASSOCIATION, INC.,
Petitioners/Cross-Respondents,
v.

WESTERMAN FARM COMPANY, THE ESTATE OF H. G. WESTERMAN, CARL A. WESTERMAN, LOYLE P. MILLER, JOE GRAY, JG-KANSAS NO. 2 VENTURE, DR. RALPH M. CONNELL, CONNELL FAMILY LIVING TRUST, THOMAS J. JEFFREY, MEREDITH MALLORY, JR., THE TRAVIS FAMILY TRUST B, ROSEWOOD RESOURCES, INC., J-W OPERATING COMPANY, AMERICAN EXPLORATION COMPANY, AMERICAN PRODUCTION PARTNERSHIP V LTD., FMP OPERATING CO., L.P., FREEPORT MCMORAN INC., MESA OPERATING L.P., MESA PETROLEUM COMPANY, MTS LIMITED PARTNERSHIP, NINIAN OIL COMPANY, SAMEBAN OIL CORPORATION, and TEJAY OPERATING COMPANY,
Respondents/Cross-Petitioners.
Petition and Cross-Petitions for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUES:

Whether the court of appeals contradicted this court's decision in Garman v. Conoco, 886 P.2d 652 (Colo. 1994) in reversing a jury's verdict that the natural gas which the defendant-lessees sold at the interconnect with the interstate pipeline was not in a marketable condition at the well, and that gathering, compression and dehydration were necessary to transform such gas into a marketable product.

Whether the court of appeals contradicted this court's decision in Garman v. Conoco, 886 P.2d 652 (Colo. 1994), in holding as a matter of law that the post-production costs which the defendant-lessees incurred to convert raw gas into a condition which meets interstate pipeline specifications were not incurred to transform the raw gas into a marketable product.

Whether the court of appeals contradicted this court's decision in Garman v. Conoco, 886 P.2d 652 (Colo. 1994), in holding that raw gas produced at the surface and sold to a gathering company at the well was in a marketable condition at the well, prior to being gathered, compressed and dehydrated to meet the specifications of the interstate pipelines which delivered the gas to the market in which it was sold.

Whether the court of appeals erred in concluding that the language of the royalty clauses in the leases was silent on how royalties are to be calculated and paid, and thus err in applying Garman v. Conoco, 886 P.2d 652 (Colo. 1994), to reverse the district court's judgment.

DENIED AS TO ALL OTHER ISSUES.

No. 98SC869

Court of Appeals No. 97CA0265 (10/29/98)

BOARD OF COUNTY COMMISSIONERS, County of Eagle, State of Colorado, acting as the
Eagle County Board of Equalization, Petitioner,

v.

VAIL ASSOCIATES, INC.; and the BOARD OF ASSESSMENT APPEALS, Respondents.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUE:

Whether possessory interests are taxable property and properly includable on county tax rolls and the exemption based upon 39-3-136(2), 11 C.R.S. (1998), is unconstitutional, and the court of appeals erred in affirming the State Board of Assessment Appeals. Mesa Verde Company v. Montezuma County Board of Equalization, 898 P.2d 1 (Colo. 1995).

No. 99SC126

Court of Appeals No. 97CA1642 (12/24/98)

ALLEN S. BLACK, in his capacity as Eagle County Assessor; the Board of County
Commissioners of Eagle County, Colorado; NANCY D. ANDERS, in her capacity as Grand
County Assessor; the Board of County Commissioners of Grand County, Colorado; JUDY
PETTIT, in her capacity as Jefferson County Assessor; ROBERT N. CRUZAN, in his capacity
as Montezuma County Assessor; the Board of County Commissioners of Montezuma County,
Colorado; TOM ISSAC, in his capacity as Pitkin County Assessor; the Board of County
Commissioners of Pitkin County, Colorado; AMY J. WILLIAMS, in her capacity as Routt
County Assessor; the Board of County Commissioners of Routt County, Colorado; DENISE
STEISKAL, in her capacity as Summit County Assessor; and the Board of County
Commissioners of Summit County, Colorado, Petitioners,

v.

COLORADO STATE BOARD OF EQUALIZATION, Respondent.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUE:

Whether possessory interests are taxable property and properly includable on county tax rolls and the exemption based upon 39-3-136(2), 11 C.R.S. (1998), is unconstitutional, and the court of appeals erred in affirming the State Board of Assessment Appeals. Mesa Verde Company v. Montezuma County Board of Equalization, 898 P.2d 1 (Colo. 1995).

No. 99SC265

Court of Appeals No. 97CA1090 (11/27/98)

WOODROW W. WATSON, Petitioner,

v.

THE VOUGA RESERVOIR ASSOCIATION,
a Colorado nonprofit corporation, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 99SC243

Court of Appeals No. 97CA1625 (12/10/98)

G. TODD MCCORMICK; MAURA C. MCCORMICK; PAUL HOSHIKO; JEAN HOSHIKO;
SYLVA KUNZMAN; GLEN P. ROUSE; PEG M. WYKES and RITCHEY LAND & CATTLE
CO., INC., a Colorado corporation, Petitioners,

v.

UNION PACIFIC RESOURCES COMPANY, a Delaware corporation; SNYDER OIL
CORPORATION, a Delaware corporation; AMOCO PRODUCTION COMPANY, a Delaware
corporation; ELK EXPLORATION, INC., a California corporation; L. ALICE COLLISTER;
DAMSON INVESTMENT GROUP, INC., a Delaware corporation; FARMERS
INDEPENDENT DITCH COMPANY, a Colorado not-for-profit corporation; BETTY WISE
GUIDA, HS RESOURCES, INC., a Delaware corporation; B. BRIAN NEARY; SOCO
WATTENBERG CORPORATION, a Delaware corporation; UNION PACIFIC LAND
RESOURCES COMPANY, a Nebraska corporation; MICHAEL YOUEL; and all unknown
persons who claim an interest in the subject matter of this action, Respondents.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUE:

Whether, in a case of admitted first impression, the court of appeals erred in determining that (i) the term “minerals” used in a general deed reservation is unambiguous as a matter of law, thereby excluding any extrinsic evidence of the parties’ intent; and (ii) “minerals” includes, as a matter of law, all oil, gas and valuable subsurface substances.

DENIED AS TO ALL OTHER ISSUES.

No. 99SC302

Court of Appeals No. 97CA2119 (3/4/99)

E-470 PUBLIC HIGHWAY AUTHORITY, Petitioner,

v.

THE 455 COMPANY, a Colorado General Partnership, Respondent.

Petition for Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUES:

Whether, in the absence of any showing that any funds from the Authority’s E-470 Highway Expansion Fee were used to pay for the 96th Avenue and 104th Avenue interchanges, the court of appeals erred by prohibiting the E-470 Public Highway Authority from presenting evidence of special benefits from the two interchanges on grounds that 455 Company may have to “pay twice” for the interchanges by imposition of the Highway Expansion Fee.

Whether 455 Company received a windfall by the court of appeals decision that the existence of the Highway Expansion Fee prohibits the E-470 Public Highway Authority from presenting evidence of over \$597,000.00 in special benefits to 455 Company’s remainder as a result of E-470’s construction of the 96th and 104th Avenue interchanges.

DENIED AS TO ALL OTHER ISSUES.

No. 99SC303

Court of Appeals No. 97CA1912 (4/4/99)
E-470 PUBLIC HIGHWAY AUTHORITY,

Petitioner,

v.

TOWER 88 COMPANY, a Colorado General Partnership,
Petition for Certiorari GRANTED. EN BANC.

Respondent.

SUMMARY OF ISSUES:

Whether, in the absence of any showing that any funds from the Authority’s E-470 Highway Expansion Fee were used to pay for the 96th Avenue interchange, the court of appeals erred by prohibiting the E-470 Public Highway Authority from presenting evidence of special benefits from the interchange on grounds that Tower 88 may have to “pay twice” for the interchange by imposition of the Highway Expansion Fee.

Whether Tower 88 received a windfall by the court of appeals decision that the existence of the Highway Expansion Fee prohibits the E-470 Public Highway Authority from presenting evidence of over \$597,000.00 in special benefits to Tower 88’s remainder as a result of E-470’s construction of the 96th Avenue interchange.

DENIED AS TO ALL OTHER ISSUES.

No. 99SC213

Court of Appeals No. 97CA1977 (2/4/99)

THE TOWN OF EAGLE, COLORADO, a Colorado statutory town; ROXIE DEANE, in her capacity as Mayor of the Town of Eagle; and RICK DUNFORD, JEAN JOHNSON, BILL HEICHER, PAUL GREGG, TOM EHRENBERG, and BRUCE HASBROUCK, in their capacities as members of the Board of Trustees of the Town of Eagle,

Petitioners,

v.

PAUL SCHEIBE and JUDY SCHEIBE, d/b/a BEST WESTERN EAGLE LODGE; and EAGLE ECONOMY LODGING, L.L.C., d/b/a HOLIDAY INN EXPRESS,
Petition for Writ of Certiorari GRANTED. EN BANC.

Respondents.

SUMMARY OF ISSUE:

Whether the court of appeals erred in holding that, in accordance with this court’s decision in Board of Trustees of the Town of Minturn v. Foster Lumber Co., 190 Colo. 479, 548 P.2d 1276 (1976), Eagle’s Tax is not a valid “occupation tax” under section 31-15-501(1)(c), C.R.S., because it fluctuates each month based upon the number of room “sales.”

DENIED AS TO ALL OTHER ISSUES.

No. 99SC259

Court of Appeals No. 97CA1169 (3/11/99)
CASEY LEE SALAZAR,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,
Petition for Writ of Certiorari DENIED. EN BANC.

Respondent.

No. 99SC223
Court of Appeals No. 97CA1777 (1/21/99)
RICHARD S. BENZ,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,
Petition for Writ of Certiorari GRANTED. EN BANC.

Respondent.

SUMMARY OF ISSUE:

Whether the trial court has jurisdiction to re-sentence an offender rejected after acceptance from a community corrections program before the administrative review process mandated by C.R.S. §§ 17-27-103(7) and 17-27-102(1) has occurred, and may the trial court disregard the elements of administrative review required by the statute.
DENIED AS TO ALL OTHER ISSUES.

No. 99SC438
Court of Appeals No. 97CA1081 (3/18/99)
THE PEOPLE OF THE STATE OF COLORADO,

Petitioner,

v.

ROBERT R. ROGERS,
Petition for Writ of Certiorari GRANTED. EN BANC.

Respondent.

SUMMARY OF ISSUE:

Whether the court of appeals correctly determined that the record in this case failed to establish that Rogers received an “administrative review process” before his community corrections sentence was revoked, where this decision is in direct conflict with People v. Benz, No. 97CA1777 (Colo. App. Jan. 21, 1999) (not selected for publication).
DENIED AS TO ALL OTHER ISSUES.

No. 99SC225
Court of Appeals No. 97CA1404 (1/7/99)
THE PEOPLE OF THE STATE OF COLORADO,

Petitioner/Cross-Respondent,

v.

THOMAS L. BANKS,
Petition for Writ of Certiorari GRANTED as to issue one.
Cross-Petition for Writ of Certiorari DENIED. EN BANC.

Respondent/Cross-Petitioner.

SUMMARY OF ISSUE:

Whether a crime that statutorily requires sentencing under the provisions of the crimes of violence statute, § 16-11-309, C.R.S. (1998), must be treated as “any crime of violence as defined in § 16-11-309,” for purposes of “extraordinary risk” sentencing under § 18-1-105(9.7), C.R.S. (1998).
DENIED AS TO ALL OTHER ISSUES.

No. 99SC425
Court of Appeals No. 97CA1022 (3/18/99)
ROBERT C. WETTER, Petitioner,
v.
THE PEOPLE OF THE STATE OF COLORADO, Respondent.
Petition for Writ of Certiorari DENIED. EN BANC.

No. 99SC468
Court of Appeals No. 97CA2172 (4/22/99)
DEE BROWN SCOTT, Petitioner,
v.
KATHLEEN A. GEIGER, Respondent.
Petition for Writ of Certiorari DENIED. EN BANC.

No. 98SC715
Court of Appeals No. 96CA0950 (5/28/98)
MINH LUU, Petitioner,
v.
THE PEOPLE OF THE STATE OF COLORADO, Respondent.
Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE SCOTT would grant as to the following issues:
Whether a violation of a defendant’s statutory and constitutional right to be present at the time of sentencing is subject to harmless error analysis on appeal.
Whether, assuming *arguendo* that harmless error analysis applies to a defendant’s absence at sentencing, the court of appeals erroneously held that the defendant’s absence when sentence was imposed was harmless error because his presence “would be useless, or the benefit nebulous.”
Whether a defendant is entitled to relief on appeal, on either jurisdictional or speedy trial grounds, when the trial court unreasonably delays the imposition of sentence for 2 1/2 years after the sentencing hearing.
Whether the court of appeals erred in affirming a 60-year sentence when the trial judge, contrary to the express requirement of People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980), asserted no reason for selecting the sentence it imposed except for the generic assertion that the court had considered the testimony of witnesses and arguments of counsel.
Whether the court of appeals denied petitioner his full right to appeal when: (i) the court refused to consider whether the defendant’s absence at sentencing was structural error under the Colorado Constitution; and (ii) the court misinterpreted People v. Czemyrnski, 786 P.2d 1100 (Colo. 1990), to preclude the court from fully considering whether petitioner’s right to speedy sentencing was violated.
Whether the cumulative effect of denying petitioner his right to be present (at instructions, closing arguments and sentencing) violates his right to due process of law.

No. 98SC812

Court of Appeals Nos. 96CA2293 & 97CA0996 (10/1/98)

JODI LYNN HARVEY, JULIE SLACK and BRETT SLACK,

Petitioners,

v.

FARMERS INSURANCE EXCHANGE, a California corporation,

Respondent.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUES:

Whether the court of appeals erred as a matter of law in ruling that the intentional fault of a non-party tortfeasor, who owed no duty to plaintiffs, could be compared to the negligence of a defendant who owed a duty of good faith and fair dealing to the plaintiffs.

Whether the court of appeals' opinion must be reversed because it derogates an insurer's duty of good faith and fair dealing in violation of this court's prior decisions and further violates public policy.

Whether the court of appeals' opinion with respect to the jury verdict in favor of Brett Slack must be reversed because the court addressed an issue that had not been properly preserved in the trial court.

No. 99SC226

Court of Appeals No. 97CA0564 (2/4/99)

DAVID B. TAFOYA,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUES:

Whether the court of appeals erred in holding that the trial court properly admitted hearsay evidence regarding the petitioner's alleged 1975 New Mexico conviction.

Assuming *arguendo* that the hearsay evidence was properly admitted, whether the court of appeals erred in holding that no *corpus delicti* need be proved in order to sustain a habitual criminal adjudication.

DENIED AS TO ALL OTHER ISSUES.

No. 99SC270

Court of Appeals No. 97CA1999 (2/18/99)

MONTE DEAN KELLER,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUE:

Whether the court of appeals erred in holding that, before a trial court may exercise its discretion by granting a Crim. P. 35(b) motion for reduction of sentence filed after a petitioner successfully completes boot camp, a trial court first must allow the district attorney to withdraw an accepted plea agreement under which the petitioner had been serving time in the Department of Corrections.

No. 99SC307
Court of Appeals No. 97CA1800 (3/4/99)
RUSSELL MORAN,

v.

THE PEOPLE OF THE STATE OF COLORADO,
Petition for Writ of Certiorari DENIED. EN BANC.

Petitioner,
Respondent.