

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: 202
<p style="text-align: center;">ORDER REGARDING DEFENDANT’S MOTION TO DECLARE RULE 32.1(D)(2) AND C.R.S. § 18-1.3-1201(3)(B)(II) UNCONSTITUTIONAL (D-229)</p>	

In Motion D-229, the defendant challenges the constitutionality of Crim. P. 32.1(d)(2) and section 18-1.3-1201(3)(b)(II), C.R.S. (2013). Motion at p. 1. These provisions govern the admissibility of victim impact evidence at a capital sentencing hearing. The motion is denied without a hearing as untimely, successive, and meritless. It is untimely because the deadline to file capital motions expired last year. It is successive because it relies solely on motions previously reviewed and denied by the Court. *Id.* at p. 4 (referring to Motions P-83, D-166, D-167, D-168, and D-168a). And it is meritless because the Court has already found that the arguments on which the motion relies have no merit. *See* Orders P-83, D-166, D-167, D-168, and D-168a.

The defendant recycles old assertions the Court has rejected as devoid of merit and presents them as new by merely placing them under the rubric of a constitutional attack. This is not sufficient to meet his heavy burden of proof.

As the Court has repeatedly explained throughout these proceedings, “parties challenging statutes on constitutional grounds ordinarily must prove the statute’s unconstitutionality ‘beyond a reasonable doubt.’” *See City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 440 (Colo. 2000) (citations omitted). “To declare an act of the legislature unconstitutional is always a delicate duty, and one which courts do not feel authorized to perform, unless the conflict between the law and the constitution is clear and unmistakable.” *Id.* (quoting *People v. Goddard*, 8 Colo. 432, 437, 7 P. 301, 304 (Colo. 1885)). Courts must presume that the state legislature comports with constitutional standards when enacting a statute. *People v. Harper*, 111 P.3d 482, 484 (Colo. App. 2004) (citing *People v. Black*, 915 P.2d 1257, 1261 (Colo. 1996)). Thus, statutes are presumed to be constitutional and are interpreted accordingly. *People v. Martinez*, 970 P.2d 469, 472 (Colo. 1998) (citations omitted); *People v. DeWitt*, 275 P.3d 728, 731 (Colo. App. 2011). Unless the moving party satisfies the heavy burden of establishing a statute’s invalidity beyond a reasonable doubt, the Court lacks authority to declare a statute unconstitutional. *City of Greenwood Vill.*, 3 P.3d at 440.

Because the defendant has not even come close to meeting his heavy burden of showing beyond a reasonable doubt that Crim. P. 32.1(d)(2) and section 18-1.3-1201(3)(b)(II) are unconstitutional, his motion is denied without a hearing. The motion warrants no further discussion.

Dated this 5th day of September of 2014.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2014, a true and correct copy of the **Order Regarding Defendant's Motion to Declare Rule 32.1(D)(2) and C.R.S. § 18-1.3-1201(3)(B)(II) Unconstitutional (D-229)** was served upon the following parties of record:

Karen Pearson
Christina Taylor
Rich Orman
Jacob Edson
Lisa Teesch-Maguire
George Brauchler
Arapahoe County District Attorney's Office
6450 S. Revere Parkway
Centennial, CO 80111-6492
(via e-mail)

Sherilyn Koslosky
Rhonda Crandall
Daniel King
Tamara Brady
Kristen Nelson
Colorado State Public Defender's Office
1290 S. Broadway, Suite 900
Denver, CO 80203
(via e-mail)


