

Summaries of Published Opinions

September 9, 2019

2019 CO 74. No. 18SA215. Luskin Daughters 1996 Trust v. Young. *Water Law— Personal Jurisdiction—Attorney Fees.*

The Luskin Daughters 1996 Trust (Trust) appealed from the water court’s order dismissing its complaint for declaratory and injunctive relief, as well as for damages. The water court concluded that in the absence of an application

for the determination of a water right, the Trust’s claim of interference by the Youngs with its unadjudicated appropriative rights to springs that arise on the Youngs’ land could not proceed before the water court. It therefore granted the Youngs’ motion to dismiss pursuant to CRCP 12(b)(1), (2), or (5).

The Supreme Court held that because the water court could not provide the Trust’s requested relief without the Trust’s first having

adjudicated its water rights in accordance with CRS § 37-92-302, the water court properly dismissed the Trust’s complaint. It also held that because the Youngs successfully defended the dismissal of this tort action on appeal, they are statutorily entitled to their reasonable appellate attorney fees. The judgment was affirmed and the case was remanded to the water court for a determination of the amount of those fees.

2019 CO 75. No. 17SC614. Brooks v. People. *Habitual Offender—Prior Convictions—Plea Advisement.*

In this case, the Supreme Court considered whether defendant’s prior guilty plea to theft from a person was constitutionally obtained, such that it could be used later to adjudicate him a habitual offender. The Court held that defendant’s prior guilty plea to theft from a person was constitutionally valid because defendant understood the charge to which he pleaded guilty. Because defendant was convicted of a relatively simple offense, had prior, relevant experience with the criminal justice system, and was represented by competent counsel who certified that defendant was advised of all the critical elements of theft from a person, the prior guilty plea can be used to adjudicate defendant a habitual offender. The Court of Appeals’ opinion was vacated and the judgment was affirmed on different grounds.

2019 CO 76. No. 17SC284. Alliance for a Safe and Independent Woodmen Hills v. Campaign Integrity Watchdog, LLC. *Campaign Finance—Statutes of Limitations—Attorney Fees.*

In this case, the Supreme Court considered two questions regarding the meaning of Colo. Const. art. XXVIII, § 9(2)(a). First, the Court construed the term “violation,” as that term is used in § 9(2)(a), to determine whether the “violation” that triggers § 9(2)(a)’s one-year statute of limitations for private campaign finance enforcement actions can extend beyond the dates adjudicated and penalized in the decision being enforced. Second, the Court considered whether the attorney fees provision in § 9(2)(a) is self-executing or whether it must be read together with CRS § 13-17-102(6) to limit attorney fee awards against a pro se party.



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With regard to the first question, the Court concluded that the term “violation,” as used in § 9(2)(a), refers to the violation as adjudicated and penalized in the decision being enforced. Accordingly, the Court concluded that the Court of Appeals erred in perceiving a possible continuing violation under § 9(2)(a). Therefore, the enforcement action in this case was barred by the one-year statute of limitations.

With regard to the second question, the Court concluded that § 9(2)(a)'s language stating that “[t]he prevailing party in a private enforcement action shall be entitled to reasonable attorneys fees and costs” is self-executing and that CRS § 13-17-102(6) cannot be construed to limit or nullify § 9(2)(a)'s unconditional award of attorney fees to the prevailing party. Accordingly, the Court reversed the Court of Appeals' contrary determination and concluded that petitioners, as the prevailing parties in this case, are entitled

to an award of the reasonable attorney fees that they incurred in the district and appellate courts in this case. The judgment was reversed and the case was remanded for further proceedings consistent with this opinion.

September 23, 2019

2019 CO 77. No. 17SC339. *Al Turki v. People.*

By operation of law, the Court of Appeals' decision was affirmed by an equally divided court. *See* C.A.R. 35(b).

2019 CO 78. No. 17SC659. *Allman v. People. Identity Theft—Continuing Offense—Forgery—Concurrent Sentences—Multiple Counts.*

In this case, the Supreme Court first concluded that the crime of identity theft is not a continuing offense. As a result, the trial court did not abuse its discretion in sentencing Allman

separately on the eight counts of identity theft. The Court next concluded that none of Allman's convictions for identity theft or forgery were based on identical evidence, so the trial court did not abuse its discretion in sentencing him to consecutive sentences on those counts. Finally, the Court held that when a court sentences a defendant for multiple offenses in the same case, it may not impose imprisonment for certain offenses and probation for others.

Accordingly, the Court of Appeals' judgment was affirmed in part and reversed in part, and the case was remanded with instructions to return the case to the trial court for resentencing.

2019 CO 79. No. 17SC368. *Griswold v. National Federation of Independent Business. Taxpayer's Bill of Rights—Summary Judgment.*

The Supreme Court considered the constitutionality of CRS § 24-21-104, which outlines

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the funding mechanism for the Colorado Department of State (Department). Under this statute, the Department is directed to charge for its services and then use the collected funds to finance the Department's activities. The National Federation of Independent Business (NFIB) contended that the Department's charges are taxes; thus, the Taxpayer's Bill of Rights (TABOR) applies, and any adjustments to the charges after TABOR's enactment in 1992 constitute either new taxes, tax rate increases, or tax policy changes directly causing a net revenue gain, all of which require advance voter approval. NFIB asserted that because voters did not approve these adjustments, this funding scheme violates TABOR.

The Supreme Court concluded that the trial court properly granted petitioners' motion for summary judgment. Based on the record presented, there was no evidence that any

post-TABOR adjustment resulted in a new tax, tax rate increase, or tax policy change directly causing a net revenue gain. Consequently, the Court did not address whether the charges authorized by CRS § 24-21-104 are taxes subject to TABOR.

The Court of Appeals' judgment was reversed, the trial court's summary judgment was reinstated, and the case was remanded for further proceedings.

2019 CO 80. Nos. 18SC34 & 18SC35. People v. Iannicelli and People v. Brandt. Jury Tampering—First Amendment—"Juror"—"A Case."

This case required the Supreme Court to construe the terms "juror" and "case" in Colorado's jury tampering statute, CRS § 18-8-609(1), which provides that a person commits jury tampering if "with intent to influence a juror's vote, opinion, decision, or other action in a

case," he or she attempts "directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case."

The Court concluded that for purposes of the jury tampering statute, a "juror" is defined as set forth in CRS § 18-8-601(1) and therefore includes persons who have been drawn or summoned to attend as prospective jurors. The Court further concluded that the jury tampering statute's references to "a case" and "the case" make clear that for purposes of that statute, a defendant's effort to influence a juror must be directed at a specifically identifiable case.


Because the People did not charge defendants with attempting to influence a juror in a specifically identifiable case, the Court affirmed the judgment of the division below, although the Court's reasoning differed in some respects from that of the division.

2019 CO 81. No. 18SC287. In re Marriage of Boettcher. Family Law—Child Support—Incomes Outside Guidelines Range.

Colorado's child support guidelines include a schedule, codified at CRS § 14-10-115(7)(b), that sets specific presumptive payment amounts based on the number of children and the parties' combined monthly income. However, the schedule does not include an award amount for every conceivable family income level. Here, the Supreme Court considered how a district court should calculate child support obligations when the parties' combined monthly income exceeds the uppermost income specified in the schedule. The Court concluded that the plain language of the child support statute provides that the uppermost award identified explicitly in the schedule is the minimum presumptive award for families with higher incomes. Accordingly, the Court held that the district court may, within its discretion, award more than that amount so long as it supports its order with findings made pursuant to CRS § 14-10-115(2)(b).

2019 CO 82. No. 17SC29. People v. Delgado. Inconsistent Findings—Mutually Exclusive Verdicts—Plain Error—Retrial.

In this opinion, the Supreme Court considered whether the elements of robbery and



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theft from a person are inconsistent, such that a defendant cannot be convicted of both crimes. The Court further considered whether, in the case of mutually exclusive guilty verdicts, the proper remedy is a new trial.

The Court held that when an essential element of one crime negates an essential element of another crime, guilty verdicts for those two offenses are mutually exclusive, and the defendant cannot be convicted of both. Here, the jury convicted defendant of robbery and theft from a person. Robbery is the unlawful taking of an item with force, while theft from a person is the unlawful taking of an item without force. Because an element of robbery—with force—and an element of theft from a person—without force—negate one another, defendant cannot be convicted of both crimes.

The Court concluded that the obvious inconsistency between the elements of robbery and theft from a person renders the error plain. Because it is impossible to determine what the jury decided—whether the defendant acted with or without force—the Court further concluded that the proper remedy is a new trial. Thus, the Court affirmed the Court of Appeals’ decision to grant a new trial.

2019 CO 83. No. 16SC966. Carrera v. People.
Statutory Interpretation—Deferred Judgment—Restitution.

The Supreme Court considered whether CRS § 18-1.3-102(1), as it read between 2002 and 2012, prevents a trial court from extending a deferred judgment within the maximum statutory period of four years for reasons unrelated to the payment of restitution. Because the Court determined that the statute is ambiguous, the plain meaning rule is not dispositive. Instead, the Court resorted to other interpretive rules. Relying on the statutory history, the purpose behind the enactment of the statute, and the consequences of the parties’ differing constructions, the Court held that CRS § 18-1.3-102(1) does not prohibit a trial court, in the exercise of its discretion, from extending a defendant’s deferred judgment for any legitimate reason and as many times as it deems appropriate, so long as the aggregate period of the deferral does not exceed four years. The Court further held

that when a defendant has been on a deferred judgment for four years, the statute empowers the trial court, in the exercise of its discretion, to extend the deferred judgment for a period not to exceed 180 days, so long as the payment of restitution is the only condition of supervision not yet fulfilled. The Court of Appeals’ judgment was affirmed. **CL**

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