ADVANCE SHEET HEADNOTE
November 4, 2024

2024 CO 70

No. 22SC816, *People v. Segura*—Crim. P. 35—Postconviction Remedies—Ineffective Assistance of Trial Counsel—Procedures for Filing and Resolving Crim. P. 35(c) Motions—Crim. P. 35(c)(3)(IV)-(V)—Statutory Right to Postconviction Counsel—*Silva v. People*, 156 P.3d 1164 (Colo. 2007) —§ 21-1-104, C.R.S. (2024).

The supreme court holds that when, as here, a defendant files a pro se Crim. P. 35(c) motion that contains a request for counsel, the trial court has two, and only two, choices. First, it may conclude, based on its review of the motion, the record, and the file, that none of the claims has arguable merit, in which case it must deny the motion in its entirety without further action by entering written findings of fact and conclusions of law. Second, it may conclude, based on its review of the motion, the record, and the file, that at least one claim has arguable merit, in which case it must grant the request for postconviction counsel and forward a complete copy of the motion to the prosecution and the Office of the Public Defender ("OPD"). The OPD must then determine which claims (if any) lack arguable merit and should be abandoned, which arguably meritorious claims (if any) should be

supplemented, and which new claims (if any) have arguable merit and should be added.

Thus, upon its initial review of a postconviction motion like the one filed by the defendant in this case, the court must either deny the motion and thus all of the claims, or not deny the motion and thus none of the claims—there is no betwixt and between option. And if the court denies none of the claims, it may not restrict the scope of postconviction counsel's representation.

Because the division here was spot-on in ruling that the trial court violated Crim. P. 35(c)(3)(IV)–(V), and because the prosecution does not challenge the division's conclusion that the error was not harmless, we affirm. The supreme court thus remands the case with instructions to return it to the trial court for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 70

Supreme Court Case No. 22SC816
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA1785

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Francine Erica Segura.

Judgment Affirmed
en banc
November 4, 2024

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JUSTICE SAMOUR delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 When a rule "is as clear as a glass slipper and fits without strain, courts should not approve an interpretation that requires a shoehorn." *Demko v. United States*, 216 F.3d 1049, 1053 (Fed. Cir. 2000) (making the comment with respect to the interpretation of a statute). Instead, in such a situation, our task is simply to apply the rule—i.e., "merely to put [the glass slipper] on the foot where it belongs." *Lexington Ins. Co. v. Precision Drilling Co.*, 830 F.3d 1219, 1220 (10th Cir. 2016) (stating this in the context of statutory interpretation).

¶2 Rule 35 of the Colorado Rules of Criminal Procedure provides postconviction remedies a defendant may seek.[1] As relevant here, section (c)(3) of the rule allows a defendant to "file a motion . . . to vacate, set aside, or correct the sentence" based "on one or more of the grounds enumerated in section (c)(2)." Crim. P. 35(c)(3). One of the grounds listed in section (c)(2) is the ineffective assistance of trial counsel. Crim. P. 35(c)(2).

¶3 Paragraphs (I) through (IX) of section (c)(3) then delineate the procedures that must be followed in filing and resolving Crim. P. 35(c) motions. The procedures in paragraphs (IV) and (V) are at the hub of this opinion.

[1] There is also a statute that addresses postconviction remedies. *See* § 18-1-410, C.R.S. (2024). In this case, however, we are concerned only with Crim. P. 35.

¶4 Under paragraph (IV), if the court concludes that the motion, the record, and the file show that the defendant is not entitled to relief, it must deny the motion without forwarding a copy to the prosecution and the Office of the Public Defender ("OPD"). Crim. P. 35(c)(3)(IV). But if the court does not so conclude, then paragraph (V) requires the court to forward a copy of the motion to the prosecution and, if the motion requests the appointment of counsel, then also to the OPD. Crim. P. 35(c)(3)(V). The OPD must then file a response within forty-nine days indicating whether it has a conflict of interest and, if not, whether it intends to enter its appearance and whether it needs more time to investigate the defendant's claims. *Id.* If the OPD enters its appearance, it must include in its response any additional claims that have arguable merit. *Id.* After the motion (as supplemented by the OPD) has been fully briefed, an evidentiary hearing must be held unless the court finds it appropriate to dispose of the motion without a hearing. *Id.*

¶5 In this case, the defendant, Francine Erica Segura, filed a pro se Crim. P. 35(c) motion raising multiple ineffective assistance of trial counsel claims and requesting the appointment of postconviction counsel. But the trial court followed neither of the paths outlined in paragraphs (IV) and (V). Instead, it took a middle-of-the-road approach: It denied all but one claim and then forwarded a copy of the motion to the prosecution and the OPD with instructions limiting the OPD's

appointment to the lone surviving claim. Because the OPD had a conflict of interest, an attorney from the Office of Alternate Defense Counsel ("OADC") was appointed as postconviction counsel.[2] That attorney filed a supplement to the pro se motion with respect to the one claim within the limited scope of her representation. Following an evidentiary hearing on that claim, the court denied Segura's request for postconviction relief. A division of the court of appeals reversed the trial court's order in part, and we granted the prosecution's petition for writ of certiorari.[3]

¶6 The prosecution now asks us to read a hybrid path into Crim. P. 35(c)(3)(IV)–(V)—one which allows trial courts to (1) deny some (but not all) of the claims raised in a pro se motion requesting counsel without first forwarding a copy of it to the prosecution and the OPD, and then (2) appoint the OPD solely on any remaining claims. We decline to do so because the plain language of Crim.

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[2] We infer that the references to the OPD in Crim. P. 35(c)(3)(IV)–(V) include the OADC when the OPD has a conflict of interest. *See* § 21-2-101(1), C.R.S. (2024) ("[T]he alternate defense counsel shall provide legal representation in circumstances in which the state public defender has a conflict of interest in providing legal representation."). For brevity's sake, when we discuss Crim. P. 35(c)(3) in general terms in this opinion, we simply refer to the OPD.

[3] The prosecution raised, and we agreed to review, the following issue:

1. Whether a postconviction court violates Crim. P. 35(c)(3)(IV) and (V) by summarily denying some of the claims raised in a pro se motion and limiting the scope of appointed counsel's representation to claims that survive summary denial.

P. 35(c)(3)(IV)–(V) does not support such an interpretation. Much like Cinderella's stepsisters couldn't wedge their feet into the glass slipper, the prosecution can't force this fit into Crim. P. 35(c)(3)(IV)–(V), no matter how hard it wiggles.

¶7 We hold that when, as here, a defendant files a pro se Crim. P. 35(c) motion that contains a request for counsel, the trial court has two, and only two, choices. First, it may conclude, based on its review of the motion, the record, and the file, that *none of the claims* has arguable merit, in which case it must deny the motion *in its entirety* without further action by entering written findings of fact and conclusions of law. Second, it may conclude, based on its review of the motion, the record, and the file, that *at least one claim* has arguable merit, in which case it must grant the request for postconviction counsel and forward *a complete copy* of the motion to the prosecution and the OPD. The OPD must then determine which claims (if any) lack arguable merit and should be abandoned, which arguably meritorious claims (if any) should be supplemented, and which new claims (if any) have arguable merit and should be added.

¶8 Thus, upon its initial review of a postconviction motion like the one filed by Segura in this case, the court must either deny the motion and thus all of the claims, or not deny the motion and thus none of the claims—there is no betwixt and between option. And if the court denies none of the claims, it may not restrict the scope of postconviction counsel's representation.

¶9 Because the division was spot-on in ruling that the trial court violated Crim. P. 35(c)(3)(IV)–(V), and because the prosecution does not challenge the division's conclusion that the error was not harmless, we affirm. We remand the case with instructions to return it to the trial court for further proceedings consistent with this opinion.

I. Facts and Procedural History

¶10 Segura and two others carried out an armed home invasion robbery. The prosecution later charged her with multiple crimes. Following a jury trial, she was convicted of two counts of second degree kidnapping and one count of aggravated robbery. The court then sentenced her to 111 years in prison.

¶11 Segura appealed, but a division of the court of appeals affirmed her conviction and sentence, and our court thereafter denied her petition for certiorari. After the mandate issued, Segura timely filed a Crim. P. 35(b) motion asking the trial court to reconsider her sentence. The trial court did so and reduced her sentence to seventy-three years.

¶12 From prison, Segura later filed a pro se Crim. P. 35(c) postconviction motion. She advanced various claims of ineffective assistance of trial counsel and requested the appointment of postconviction counsel. In a separate pleading, Segura reiterated her request for the appointment of postconviction counsel.

¶13 Upon its initial review of Segura's Crim. P. 35(c) motion, the trial court denied ten of her eleven claims. The sole surviving claim dealt with trial counsel's alleged ineffective assistance in plea negotiations. As to that claim, the court granted Segura's request for postconviction counsel. Consequently, it forwarded a copy of the motion to both the prosecution and the OPD. But the court was clear: The OPD was "appointed" only on the remaining claim.

¶14 Because the OPD had a conflict of interest, an attorney with the OADC entered her appearance on Segura's behalf with respect to the single claim on which the court appointed counsel. Thereafter, consistent with the court's restriction on the scope of her representation, postconviction counsel submitted a supplemental Crim. P. 35(c) motion focusing exclusively on the ineffective assistance claim grounded in the parties' plea negotiations. The supplemental motion contended that: (1) trial counsel had failed to convey to Segura the plea offers and the deadlines to accept them; and (2) to the extent that trial counsel had shared all pertinent information about the plea offers, Segura did not understand the penalties she was facing or the full benefit of those offers.

¶15 After the supplemental motion was fully briefed, the court held an evidentiary hearing limited in scope to the ineffective assistance claim related to plea negotiations. At the end of the hearing, the court took the matter under advisement. In a subsequent written order, the court denied Segura's request for

postconviction relief, concluding that her trial counsel had not been ineffective in discussing the plea offers with her or in explaining the possible penalties with respect to the charges brought against her.[4]

¶16 Segura appealed, arguing, as relevant here, that the trial court erred by limiting postconviction counsel's representation and denying most of the claims without a hearing. The division affirmed in part and reversed in part. *People v. Segura*, No. 20CA1785, ¶ 1 (Sept. 15, 2022). It affirmed the portion of the trial court's order denying Segura's claim that her trial counsel had been ineffective in handling plea negotiations. *Id.* at ¶ 40. But it reversed the remainder of the order, concluding that the trial court had violated Crim. P. 35(c)(3)(IV)–(V) and improperly restricted postconviction counsel's representation. *Id.* at ¶¶ 16, 40. Thereafter, the prosecution sought our intervention, and we accepted its petition for writ of certiorari.

¶17 Before turning our attention to the certiorari issue, we address the prosecution's preservation contention and articulate the standard that guides our review.

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[4] The court also found that trial counsel had not been ineffective in failing to communicate to Segura any plea offer sufficiently in advance of the offer's expiration deadline. Although Segura raised this specific claim for the first time at the hearing, we do not address its untimeliness here because it doesn't affect our analysis.

II. Preservation and Standard of Review

¶18 The prosecution maintains that the issue we confront was forfeited by Segura and is thus subject to plain error review. According to the prosecution, Segura failed to preserve the issue because she didn't object to the trial court's restriction on the scope of postconviction counsel's representation. We note that the prosecution took a run at convincing the division of the same contention. It didn't succeed. And it doesn't succeed here either, albeit for a different reason.

¶19 The division ruled that Segura's request for the appointment of postconviction counsel sufficed to preserve her assertion that the trial court erred in sidelining counsel's representation on all but one claim. *Segura*, ¶ 22. Thus, the division rejected the prosecution's forfeiture claim. Accordingly, it reviewed de novo the trial court's reading of paragraphs (IV) and (V) and, having found error, it employed the harmless error standard of reversal. *Id.* at ¶¶ 22–23.

¶20 Because the prosecution chose not to ask us to review the division's determination vis-à-vis preservation, that issue is not properly before us. *See Berge v. Berge*, 536 P.2d 1135, 1136 (Colo. 1975) (declining to consider an issue not raised in the petition for writ of certiorari); *Jagged Peak Energy Inc. v. Okla. Police*

Pension & Ret. Sys., 2022 CO 54, ¶ 63, 523 P.3d 438, 453 (same). Therefore, we assume without deciding that Segura properly preserved the issue for review.[5]

¶21 We review the lower courts' construction of paragraphs (IV) and (V) de novo. *Hunsaker v. People*, 2021 CO 83, ¶ 16, 500 P.3d 1110, 1114 (stating that our court enjoys "plenary authority to promulgate and interpret the rules of criminal procedure," and that we review de novo the construction of those rules, using the same canons available for the interpretation of statutes (quoting *People v. Bueno,* 2018 CO 4, ¶ 18, 409 P.3d 320, 325)). As we do with a statute, we first read the language of a rule "consistent with its plain and ordinary meaning, and, if it is unambiguous, we apply the rule as written." *People v. Steen*, 2014 CO 9, ¶ 10, 318 P.3d 487, 490. To determine whether a lower court's error in interpreting Crim. P. 35(c) warrants reversal, we inquire whether the error was harmless. *People v. Davis*, 2012 COA 14, ¶ 13, 272 P.3d 1167, 1170 (applying the harmless error

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[5] We recognize that in *People v. Tallent*, 2021 CO 68, ¶ 11, 495 P.3d 944, 948, we said that "an appellate court has an independent, affirmative duty to determine whether a claim is preserved and what standard of review should apply, regardless of the positions taken by the parties." But context matters. In *Tallent*, we had to determine whether we were bound by the parties' agreement and the division's assumption that an issue was preserved. We refused to have our hands tied by the parties or the division. Here, by contrast, there is no agreement on whether Segura preserved her claim, and the division explicitly rejected the prosecution's contention that she failed to do so. Yet, the prosecution elected not to include the preservation issue in its petition for writ of certiorari. Having made its bed, the prosecution must lie in it.

standard of reversal to the district court's failure to comply with the procedural requirements of Crim. P. 35(c)(3)(V)).

III. Analysis

¶22 As its title suggests, Crim. P. 35 provides "[p]ostconviction [r]emedies" a defendant may seek in a criminal case. Section (a) addresses requests to correct illegal sentences; section (b) deals with motions for the reduction of sentences; and section (c), the section pertinent here, discusses "[o]ther [r]emedies." Section (c)(3) states that a defendant who has been aggrieved and is asserting "either a right to be released or to have a judgment of conviction set aside on one or more of the grounds enumerated in section (c)(2) . . . may file a motion . . . to vacate, set aside, or correct the sentence." The parties agree, as do we, that Segura's argument that she's entitled to have her judgment of conviction set aside is grounded in claims that come within the purview of section (c)(2).

¶23 Where the parties part ways is in the interpretation of the procedures that govern the filing and resolution of pro se Crim. P. 35(c) motions containing a request for postconviction counsel. Paragraphs (I) through (IX) of section (c)(3) set forth those procedures, which include the following:

> (IV) The court shall promptly review all motions that substantially comply with Form 4, Petition for Postconviction Relief Pursuant to Crim. P. 35(c). . . . If the motion and the files and record of the case show to the satisfaction of the court that the defendant is not entitled to relief, the court shall enter written findings of fact and conclusions of law in denying the motion. . . .

> (V) If the court does not deny the motion under (IV) above, the court shall cause a complete copy of said motion to be served on the prosecuting attorney if one has not yet been served by counsel for the defendant. If the defendant has requested counsel be appointed in the motion, the court shall cause a complete copy of said motion to be served on the Public Defender. Within 49 days, the Public Defender shall respond as to whether the Public Defender's Office intends to enter on behalf of the defendant pursuant to § 21-1-104(1)(b), 6 C.R.S. In such response, the Public Defender shall identify whether any conflict exists, request any additional time needed to investigate, and add any claims the Public Defender finds to have arguable merit. Upon receipt of the response of the Public Defender, or immediately if no counsel was requested by the defendant or if the defendant already has counsel, the court shall direct the prosecution to respond to the defendant's claims or request additional time to respond within 35 days and the defendant to reply to the prosecution's response within 21 days. The prosecution has no duty to respond until so directed by the court. Thereafter, the court shall grant a prompt hearing on the motion unless, based on the pleadings, the court finds that it is appropriate to enter a ruling containing written findings of fact and conclusions of law. At the hearing, the court shall take whatever evidence is necessary for the disposition of the motion.

Crim. P. 35(c)(3).

¶24 The prosecution contends that, upon initial review of a pro se Crim. P. 35(c) motion requesting postconviction counsel, a trial court has the authority under paragraph (IV) to deny any claim that lacks arguable merit and to then proceed under paragraph (V) with respect to any claim that is arguably meritorious. But the plain and ordinary meaning of the rule's language saps the prosecution's argument.

¶25 Paragraph (IV) addresses situations in which review of the motion, the record, and the file satisfies the trial court that the defendant is not entitled to any

relief—i.e., that none of the claims advanced has arguable merit.[6] It directs the trial court to deny such a motion without further action through written findings of fact and conclusions of law. Paragraph (V), in turn, applies "[i]f the court does not deny the motion under (IV)." Crim. P. 35(c)(3)(V). In other words, paragraph (V) is triggered if paragraph (IV) is inapplicable because the court concludes that at least one claim in the defendant's motion has arguable merit. And under paragraph (V), if the motion contains a request for counsel, "the court shall cause a *complete* copy of said motion to be served on the [OPD]." *Id.* (emphasis added).

¶26 Thus, upon its initial review of a Crim. P. 35(c) motion containing a request for postconviction counsel, the court must either deny the motion and thus all of the claims, or not deny the motion and thus none of the claims—there is no halfway option. And if the court denies all of the claims, it must enter written findings of fact and conclusions of law without taking further action. But if the court denies none of the claims, it must grant the request for postconviction counsel and forward a complete copy of the motion to the prosecution and the

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[6] In conducting this initial review, the trial court should consider, among other things, whether the motion: is timely; fails to state adequate factual or legal grounds for relief; states legal grounds for relief that lack merit; states factual grounds that, even if true, don't entitle the defendant to relief; and states factual allegations that, if true, entitle the defendant to relief, but the files and records of the case satisfy the court that those allegations are untrue. Crim. P. 35(c)(3)(IV).

OPD. The OPD must then decide which claims (if any) lack arguable merit and should be abandoned, which arguably meritorious claims (if any) should be supplemented, and which new claims (if any) have arguable merit and should be added.[7] The parties must thereafter brief any arguably meritorious claims, including those supplemented and added.[8]

¶27 Perhaps recognizing that the plain and ordinary meaning of the rule's language (adopting an all-or-nothing approach) is not its friend, the prosecution asks us to focus on "the rule's overall scheme." According to the prosecution, the rule is silent on the scope of a trial court's authority with respect to motions that include both arguably meritorious claims and claims lacking arguable merit. Contrary to the prosecution's position, however, there is no gap in the rule for us to bridge. Any hybrid motion containing both arguably meritorious claims and claims that lack arguable merit is a motion a court may not deny under paragraph

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[7] Paragraph (V) requires the OPD to indicate whether it needs additional time to investigate. We infer from this language that the OPD may supplement any arguably meritorious claims advanced by the defendant.

[8] The division read Crim. P. 35(c)(3)(IV)–(V) as requiring an evidentiary hearing whenever a trial court concludes during its initial review of a pro se motion that at least one claim has merit and that a request for postconviction counsel should thus be granted. *See Segura*, ¶¶ 11–12, 16. This is incorrect. Even if, upon an initial review, the court declines to deny such a motion outright, it may subsequently resolve the motion without a hearing after any arguably meritorious claims pursued by postconviction counsel have been fully briefed. *See* Crim. P. 35(c)(3)(V).

(IV). Instead, such a motion is governed by paragraph (V), which addresses motions that contain at least one claim with arguable merit.

¶28 The prosecution insists, though, that it is illogical for a trial court to lose the authority to deny a claim lacking arguable merit under paragraph (IV) simply because the motion also includes a claim that has arguable merit. Be that as it may, our role here is to interpret and apply the rule as written, not to consider whether logic warrants a revision.

¶29 In any event, we disagree that our view of the rule's scheme is illogical. If a trial court concludes that a request for postconviction counsel in a Crim. P. 35(c) motion must be granted because the motion contains at least one claim with arguable merit, why is it illogical to forward the entire motion to the OPD for its review of all the claims? The OPD can then take a closer look at the motion and determine which claims (if any) to abandon, supplement, and add. In this regard, we're mindful that defense counsel typically has access to more information than the court in a criminal case. Of course, whether this is the ideal approach is debatable—reasonable minds may differ on the optimal procedure—but it is certainly not illogical.

¶30 We are equally unmoved by the prosecution's argument that our interpretation of paragraphs (IV) and (V) will lead to inefficiency and waste of judicial resources because it will require a trial court to proceed "with *all* the claims

raised in a pro se motion even if it finds . . . that only *one* claim has arguable merit." Again, this argument goes to the wisdom of the rule, so this is the wrong forum in which to raise it. At any rate, the time it takes a trial court to conduct its initial review of a relevant motion may actually be *reduced* under the interpretation we embrace here. Take this case for example. Once the trial court concluded that Segura's motion set forth at least one claim with arguable merit, there was no need to review the remaining claims.

¶31 True, it's possible that after postconviction counsel's review, there may be more claims to litigate, which would likely increase the time it takes to resolve the motion. But those will all necessarily be claims that postconviction counsel represents have arguable merit. Should we sacrifice such claims in a criminal case based on concerns over judicial economy and limited resources? We think not.

¶32 Lastly, the prosecution seeks refuge in the limited nature of the statutory right to postconviction counsel. It urges us to declare that its proposed approach is consistent with the principle in Colorado jurisprudence that the statutory right to postconviction counsel is limited. But the prosecution's effort flounders because the limited nature of the statutory right to postconviction counsel is in lockstep with the plain and ordinary meaning of the language of paragraphs (IV) and (V).

¶33 The statutory right to postconviction counsel is "tenuously premised on an interpretation of the statutes creating and governing the [OPD] and requiring that

office to prosecute post-conviction remedies which have arguable merit." *Silva v. People*, 156 P.3d 1164, 1168 (Colo. 2007) (quoting with approval *People v. Hickey*, 914 P.2d 377, 378 (Colo. App. 1995)).[9] In *Silva*, we noted that section 21-1-104(1)(b), C.R.S. (2024), requires the OPD to "[p]rosecute any appeals or *other remedies* . . . after conviction that the [OPD] considers to be in the interest of justice." *Silva*, 156 P.3d at 1168 (first alteration in original) (emphasis added). Continuing, we said that decades earlier a division of the court of appeals had read the "other remedies" statutory language as including arguably meritorious Crim. P. 35(c) motions. *Id.* (referring to the division's decision in *People v. Duran*, 757 P.2d 1096, 1097 (Colo. App. 1988)). We adopted the same reading because we inferred that it had been ratified by our General Assembly. *Silva*, 156 P.3d at 1168.

¶34 Thus, as the prosecution points out, our court in *Silva* didn't interpret "other remedies" in section 21-1-104(1)(b) as encompassing all Crim. P. 35(c) motions. *Id.* Rather, we recognized that the statutory right to postconviction counsel extends only to Crim. P. 35(c) motions that are *arguably meritorious*. *Id.* More specifically, we determined that a defendant has no right to the appointment of postconviction counsel in conjunction with a Crim. P. 35(c) motion if (1) the trial court concludes that the motion is "wholly unfounded," or (2) the OPD concludes that the Crim.

[9] The statutes creating and governing the OPD are §§ 21-1-103 and 21-1-104, C.R.S. (2024).

P. 35(c) motion lacks arguable merit. *Id.*; *see also* § 21-1-104(2) ("In no case, however, shall the state public defender be required to prosecute any appeal or other remedy unless the state public defender is satisfied first that there is arguable merit to the proceeding."); *People v. Breaman*, 939 P.2d 1348, 1351 (Colo. 1997) ("A court-appointed public defender does not have a duty to prosecute a claim for post-conviction relief after determining that there is no arguable merit to the defendant's claim."); Colo. RPC 3.1 ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous . . . ."). In other words, the court and the OPD both "must find that a defendant's Crim. P. 35(c) motion has arguable merit before the statutory right to postconviction counsel is triggered." *Silva*, 156 P.3d at 1168.

¶35 These limitations, however, are entirely consistent with our construction of paragraphs (IV) and (V). If the trial court finds that a pro se Crim. P. 35(c) motion is wholly unfounded (i.e., that all of the claims in the motion lack arguable merit), it must deny the relief requested without further action by issuing written findings of fact and conclusions of law. Crim. P. 35(c)(3)(IV). But if the trial court finds that a pro se Crim. P. 35(c) motion is not wholly unfounded (i.e., that at least one claim in the motion has arguable merit), it must appoint the OPD and forward a complete copy of the motion to that office and the prosecution. Crim.

P. 35(c)(3)(V). The OPD must then determine which claims (if any) lack arguable merit and should be abandoned, which arguably meritorious claims (if any) should be supplemented, and which new claims (if any) have arguable merit and should be added.[10]

¶36 In short, nothing about the limited nature of the statutory right to postconviction counsel dissuades us from our interpretation of paragraphs (IV) and (V). Where, as here, the language of a rule of criminal procedure is unambiguous, we are duty bound to effectuate its plain and ordinary meaning. *Steen*, ¶ 10, 318 P.3d at 490.

¶37 This is not to say that the clock has struck midnight on any alternative procedures for handling pro se Crim. P. 35(c) motions. We reiterate that we pass no judgment on the sagacity of paragraphs (IV) and (V). Our job today is simply to interpret and apply those paragraphs as they are currently written. That's just what we've done.

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[10] We realize that under our analysis, the OPD could be appointed as postconviction counsel on a claim that the OPD later concludes lacks arguable merit and should be abandoned. But this is inevitable under any system. The OPD's appointment is necessary at the front end to allow it to review any motions that the trial court has determined are not wholly unfounded. The same result would obtain under the prosecution's approach: The OPD could be appointed to pursue a claim that the trial court finds has arguable merit, but the OPD might subsequently conclude that the claim lacks arguable merit after all and should be abandoned.

IV. Conclusion

¶38 For the foregoing reasons, we conclude that the division correctly determined that the trial court violated the procedures set out in Crim. P. 35(c)(3)(IV)–(V).[11] And because the prosecution does not challenge the division's determination that this error was not harmless, we affirm.

¶39 We thus remand the matter to the division with instructions to return it to the trial court for further proceedings consistent with this opinion. When the trial court receives the case again, it need not deal with the ineffective assistance claim related to the parties' plea negotiations, as that claim has been fully adjudicated. But the trial court must permit postconviction counsel to review the ten remaining ineffective assistance claims. Postconviction counsel must then determine which claims (if any) lack merit and should be abandoned, which arguably meritorious claims (if any) should be supplemented, and which new claims (if any) have arguable merit and should be added. If counsel decides to move forward with any claims, they must be briefed, and once fully briefed, the court must decide whether to hold a hearing before resolving them.

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[11] To the extent that *People v. Terry*, 2019 COA 9, 488 P.3d 459, and other decisions from the court of appeals are inconsistent with this opinion, they are hereby overruled.