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Denver, CO 80203</td><td rowspan="3">DATE FILED: February 11, 2014 1:03 PM
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<tr><td>Court of Appeals Case No. 11CA1932
Denver District Court
Honorable Anne M. Mansfield, Judge
Case No. 04CR3018</td></tr>
<tr><td>PETITIONER:
ALEJANDRO ESTRADA-HUERTA

v.

RESPONDENT:
PEOPLE OF THE STATE OF COLORADO</td></tr>
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Opinion by JUDGE DUNN
Webb and Bernard, JJ.,
concurring

Announced December 12, 2013

UNPUBLISHED OPINION</td></tr>
<tr><td colspan="2">PETITION FOR WRIT OF CERTIORARI</td></tr>
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CERTIFICATE OF COMPLIANCE

I hereby certify that this amended petition complies with all requirements of C.A.R. 32 and 53, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

The brief complies with C.A.R. 53(a).

It contains 3,112 words.

I acknowledge that my petition may be stricken if it fails to comply with any of the requirements of C.A.R. 32 and 53.

/s/_____

Stacie Nelson Colling

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ADVISORY LISTING OF THE ISSUE

Whether the Court of Appeals erred in affirming the district court's order denying Mr. Estrada-Huerta's Crim. P. 35(c) motion challenging, on cruel and unusual punishment grounds, the constitutionality of sentences he received for acts he was convicted of committing when he was a juvenile. Specifically, whether a sentence of forty years to life, which has an earliest possible parole eligibility date when Mr. Estrada-Huerta will be fifty-eight years old, allows him the "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" mandated by the United States Supreme Court in *Graham v. Florida,* 560 U.S. 48 (2010).

BASIS OF JURISDICTION

The Court of Appeals issued its opinion in this case on December 12, 2013, *People v. Estrada-Huerta*, 2011CA1932, affirming the district court's denial of Mr. Estrada-Huerta's Crim. P. 35(c) motion. Pursuant to C.A.R. 53, a copy of the opinion is attached to this petition. Neither party filed a petition for rehearing in the Court of Appeals, and the deadline for filing a petition of rehearing has passed. This petition for a writ of certiorari is timely because it is filed within forty-two days of the issuance of the opinion of the Court of Appeals. C.A.R. 52(b)(3). The Court of Appeals has decided a question of substance in a way probably not in

accord with applicable decisions of the Supreme Court. *See* C.A.R. 49(a)(2). This Court has jurisdiction pursuant to Colorado Constitution article VI, section 2, C.R.S. §§ 13-4-108 and 16-12-101, and C.A.R. 52.

STATEMENT OF THE CASE

Mr. Estrada-Huerta's conviction and sentence arose from crimes that occurred when he was seventeen years old (vol. I, p. 11-13). He was prosecuted as an adult, and after a jury trial, he was convicted of second degree kidnapping and two counts of sexual assault (vol. I, p. 137-38). He was sentenced to twenty-four years for the kidnapping count and indeterminate terms of sixteen years to life for each of the sexual assault counts (vol. I, p. 137-38). The sentences for sexual assault were ordered to run concurrent to one another, but consecutive to the kidnapping sentence, resulting in a prison sentence of forty years to life (vol. I, p. 137-38).

On direct appeal, the Court of Appeals affirmed Mr. Estrada-Huerta's conviction and sentence. *People v. Estrada-Huerta,* 2006CA1814 (April 10, 2008) (not published pursuant to C.A.R. 35(f)). Mr. Estrada-Huerta subsequently filed a Crim. P. 35(c) motion, arguing in pertinent part that his sentence is unconstitutional in violation of *Graham v. Florida*, 560 U.S. 48 (2010) (vol. I, p. 201-216). The district court denied Mr. Estrada-Huerta's *Graham* claim, finding

that Mr. Estrada-Huerta will be eligible for parole after 40 years and thus his sentence does not violate *Graham* (vol. I, p. 217-222).

The Court of Appeals affirmed the trial court's denial of Mr. Estrada-Huerta's motion, finding that Mr. Estrada-Huerta will be eligible for parole within his expected lifetime and thus that his sentence does not violate *Graham*.

REASONS FOR GRANTING THE WRIT

Special and important reasons exist for issuing a writ of certiorari pursuant to C.A.R. 49(a). The lower courts need guidance as to the meaning of a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" as mandated by the United States Supreme Court in *Graham v. Florida*, 560 U.S. 48 (2010) for juvenile offenders. Inasmuch as the Court of Appeals affirmed a sentence that will not afford Mr. Estrada-Huerta a "meaningful opportunity for release," it has deprived him of his constitutional right to be free from cruel and unusual punishment. Therefore, the interests of justice mandate review of his sentence.

ARGUMENT

The Court of Appeals Erred in Affirming the District Court's Order Denying Mr. Estrada-Huerta's Crim. P. 35(c) Motion Challenging Sentences he Received as a Juvenile Offender. A Sentence of Forty Years to Life, Which Has an Earliest Possible Parole Eligibility Date at a Time When Mr. Estrada-Huerta Will be Fifty-Eight Years Old, Does Not Allow Him the "Meaningful

Opportunity to Obtain Release Based on Demonstrated Maturity and Rehabilitation" Mandated by the United States Supreme Court in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010).

Mr. Estrada-Huerta's sentence of forty years to life, for a non-homicide offense, is a virtual life sentence that is cruel and unusual, and therefore unconstitutional and prohibited by the Eighth Amendment to the United States Constitution. U.S. Const. Amend. VIII, XIV; Colo. Const., article II § 20; *Graham v. Florida*, 560 U.S. 48 (2010). The district court and the Court of Appeals both erred in holding that Mr. Estrada-Huerta's sentence is not an unconstitutional de facto life sentence without the possibility of parole.

In *Graham,* the Supreme Court held that a sentence of life without parole as applied to a juvenile for a non-homicide offense is unconstitutional. *Graham*, 560 U.S. at 82. The Court's analysis emphasized that such a severe and irrevocable punishment is not appropriate for a juvenile offender. *Id.* at 69-70. The Court explained that because the personalities of adolescents are still developing, they are "capable of change" and "their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." *Id*. at 68 (citing *Roper v. Simmons*, 543 U.S. 551, 557 (2005)). The Court explained that while "[t]hose who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives,"

nonetheless, the Eighth Amendment forbids States from "making the judgment at the outset that those offenders never will be fit to reenter society." *Id*. at 75. Thus, "[w]hat the State must do…is give defendants like Graham some meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation." *Id.* The Court further noted that a, "juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential." *Id.* at 79.

The U.S. Supreme Court subsequently underscored *Graham*'s ruling that children deserve different treatment than adults under the criminal law in *Miller v. Alabama.* 132 S.Ct. 2455 (2012). In *Miller*, the Court reiterated *Graham's* reasoning that children are more susceptible to outside influences, such as their parents and peers, and that as such they are less culpable in the commission of a crime. *Id.* at 2467. The *Miller* Court further restated that youth is "a time of immaturity, irresponsibility, 'impetuousness[,] and recklessness'" but that these qualities of childhood "are all 'transient.'" *Id*. (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1994)). A mandatory sentence of life without parole "forswears altogether the rehabilitative ideal" and "reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change." *Id*. at 2465 (quoting *Graham*, 560 U.S. at 74).

Graham's prohibition on mandatory sentences of life without parole for juveniles who commit non-homicide offenses extends to those sentences that result in the functional equivalent of life without parole. The Colorado Court of Appeals has acknowledged this, and has stated repeatedly that a child sentenced for a non-homicide offense must be eligible for parole within his or her lifetime. *People v. Rainer*, -- P.3d – (Colo. App. 2010CA2414, April 11, 2013) (petition for cert pending), ¶ 38 ("we conclude that Rainer's aggregate sentence does not offer him, as a juvenile nonhomicide offender, a 'meaningful opportunity to obtain release' before the end of his expected life span, and thus, constitutes the functional equivalent of a life sentence without parole and is unconstitutional under *Graham* and its reasoning"); *People v. Lehmkuhl,* -- P.3d – (Colo. App. 2013CA98, June 20, 2013) (petition for cert pending), ¶ 13 (finding that "the record indicates that Lehmkuhl will become eligible for parole in 2050, when he is 67 years old" and that "under section 13-25-103, C.R.S. 2012, Lehmkuhl's life expectancy is 78.2 years" and that "using these figures, Lehmkuhl would have a meaningful opportunity for release during his natural lifetime because his life expectancy exceeds, by 11.2 years, his date of parole eligibility"); *People v. Lucero*, -- P.3d – (Colo. App. 2011CA2030, April 11, 2013) (petition for cert pending) ¶ 12-13 (finding that "defendant will be eligible for parole when he is fifty-seven years

old" and "defendant concedes that the life expectancy for persons born in 1989, the year of his birth, is seventy-five years" and "[t]hus, he becomes eligible for parole well within his natural lifetime"). Indeed, the Court of Appeals so acknowledged in the opinion giving rise to Mr. Estrada-Huerta's petition for certiorari. *People v. Estrada-Huerta* (Colo. App. 2011CA1932, Dec. 12, 2013), p. 3 ("[i]f a juvenile offender will not become eligible for parole within his expected lifetime, his sentence violates *Graham*") (not published pursuant to C.A.R. 35(f)).

In each of the cases cited above, including Mr. Estrada-Huerta's, in concluding that a person will or will not be eligible for parole in his lifetime, the Courts and parties have referred to life expectancy tables to determine a petitioner's expected duration of life. The *Lehmkuhl* and *Estrada-Huerta* courts calculated life expectancy using the Colorado statutory table found in 13-25-103, C.R.S. 2013. *Lehmkuhl*, 2013CA98 at ¶ 13 ("as the district court found, under section 13-25-103, C.R.S. 2012, Lehmkuhl's life expectancy is 78.2 years" and "we perceive no error in the district court's use of section 13-25-103's mortality table"); *Estrada-Huerta*, 2011CA1932 at p. 4 (citing § 13-25-103, C.R.S. 2013 for the statement that "defendant's life expectancy is 78.1 years"). The *Rainer* court calculated Mr. Rainer's life expectancy using tables from the Centers for Disease Control. *Rainer*, 2013CA51 at ¶ 67 ("the record shows that [Rainer] has a life

expectancy of only between 63.8 years and 72 years, based on Center for Disease Control life expectancy tables"). Finally, the *Lucero* court referred to a number stipulated by the parties, that apparently derived from petitioner's reference in his opening brief to the "World Bank Website, Life Expectancy Data." *Lucero*, 2011CA2030 at ¶ 13 ("defendant concedes that the life expectancy for persons born in 1989, the year of his birth, is seventy-five years"); Petitioner's Opening Brief at p. 17. In each case, the court relied upon a life expectancy calculation to determine whether or not the petitioner will be afforded a "meaningful opportunity for release" within his lifetime. If the petitioner's parole eligibility date is prior to the expected end of his life, the courts have determined that his sentence does in fact comply with *Graham*.

First, the life expectancy data sets relied upon by the courts are intended only to predict the life expectancy of people in the general population. As such, they do not accurately or reliably predict the life expectancy of a person in prison. Calculating life expectancy is a complicated process, and there is no CDC or statutory table for the life expectancy of prisoners like there is for the general population. However, research indicates that a person who spends his entire adult life in prison will probably die earlier than a person who has spent his entire adult life in the general population. *See* Nelson Colling, S. & Cummings, A., *There is*

No Meaningful Opportunity in Meaningless Data: Why it is Unconstitutional to Use Life Expectancy Tables in Post-Graham Cases (Jan. 23, 2014) available at http://cjdc.org/wp/wp-content/uploads/2014/01/Life-Expectancy-Article_Colling-and-Cummings1.pdf.[1] This is due in large part to the "accelerated aging" experienced by prisoners once they reach a certain age. *Id*. at p. 25.

Second, the courts' reliance on life expectancy predictions is misplaced, misguided, and in no way actually ensures that a child will have a "meaningful opportunity for release." The truth is that no one – not defense attorneys, district attorneys, judges, or even the CDC – knows when a person is going to die. Life expectancy and mortality research document trends and statistical averages. Therefore, even if a person is, statistically speaking, expected to live to age 75, it is just as likely that he will die before age 75 as it is that he will die after age 75. When *Graham* mandated a "meaningful opportunity for release," it is safe to say that the Court meant that *every single juvenile convicted of a non-homicide offense will have a reasonable opportunity for release.* It is difficult to believe that the Court intended only to ensure that *most* juveniles would be given that opportunity. However, when courts rely on statistical analyses of life expectancy, that is exactly

[1] Mr. Estrada-Huerta acknowledges that this article has not been subject to peer review. However, as there is a significant lack of research in this area, and as this article incorporates recent research on death rates in Colorado prisons, he respectfully offers it for the Court's consideration.

what they do. The only thing they ensure is that most juveniles will probably not die before being afforded a parole hearing.

It is similarly difficult to believe that the Court intended for a child to be sentenced based on his gender, race, or socio-economic status, but that is exactly what will happen if the courts continue to rely upon life expectancy research, as life expectancy varies based on these factors. The U.S. Supreme Court charged state courts with ensuring that children sentenced to prison will have a meaningful opportunity for release, and Colorado cannot shirk that responsibility by relying on life expectancy approximations.

Third, it is unreasonable to interpret *Graham*'s dictate as mandating that a child be released from prison very shortly before he will probably die. The *Graham* court emphasized that, "[a] young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual." *Graham* at 79. The *Graham* court clearly contemplated that juveniles would have a chance to demonstrate rehabilitation and be released to rejoin society, not just to die in it. A simple calculation of when a person will probably die, and a determination that he will be eligible for parole even a day prior to that expected death date, is an insult to *Graham*'s intent and reasoning.

In addition, it is highly unlikely that anyone, particularly a person serving an indeterminate sentence for a sexual offense, will be released after his first parole hearing. Therefore, to use Mr. Estrada-Huerta's parole eligibility date as the date upon which he will no longer be imprisoned, and thus the date upon which he will be afforded a meaningful opportunity for release, is contrary to the directive of *Graham*. Removing the discretion from the sentencing judge as to when Mr. Estrada-Huerta should be eligible for parole, and ultimately whether he will spend the rest of his life in prison, and instead giving that discretion solely to the parole board, does not satisfy the mandates of *Graham.* The parole process is fundamentally different than the judicial process. There is no "no constitutional or inherent right . . . to be conditionally released before the expiration of a valid sentence.'" *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 7 (1979). Judicial review of a parole board's decision is limited to whether the board considered the statutory factors. The board's actual decision is beyond judicial review. *In re Question Concerning State Judicial Review of Parole Denial Certified by U. S. Court of Appeals for Tenth Circuit,* 610 P.2d 1340, 1341 (Colo. 1980) (en banc); *White v. People*, 866 P.2d 1371, 1374 (Colo. 1994) (en banc). The decision of the Board to grant or deny parole is clearly discretionary since parole is a privilege, and no prisoner is entitled to it as a matter of right. *Silva v. People*, 407 P.2d 38

(Colo. 1965) (en banc). It is only when the Board has failed to exercise its statutory duties that the courts of Colorado have the power to review the Board's actions. *In re Question Concerning State Judicial Review of Parole Denial Certified by U. S. Court of Appeals for Tenth Circuit,* 610 P.2d at 1341. Substituting the judgment of the parole board for the discretion of the court does not provide the constitutional safeguards required by *Graham.*

Mr. Estrada-Huerta urges this Court to accept review of his case in order to provide guidance as to what is actually a meaningful opportunity for release pursuant to *Graham*.

Mr. Estrada-Huerta was not provided an opportunity, in the form of representation by counsel or a hearing, to present this argument to the trial court or to the Court of Appeals. He was denied counsel, and then the courts simply relied upon the life expectancy calculations in C.R.S. § 13-25-103. Even if the Court were to determine that this statutory life expectancy table is appropriate to rely upon in determining whether a child will have a meaningful opportunity for release, that statute explicitly, by its plain language, creates only a *rebuttable presumption* of a person's life expectancy, and Mr. Estrada-Huerta was given no opportunity to rebut that presumption. 13-25-102, C.R.S. 2013 ("the table set out

in section 12-25-103 shall be received as evidence, together with other evidence as to health, constitution, habits, and occupation of such person of such expectancy").

Had the district court afforded Mr. Estrada-Huerta a hearing, or had the Court of Appeals remanded his case for a hearing, he could have presented information relevant to his personal life expectancy (for example, by taking into account his health, occupation in prison, and status as a prisoner), information about the unlikelihood of parole being granted at the first eligibility date, and data regarding how unlikely it is that sex offenders sentenced to indeterminate terms are to be released at their parole eligibility date. Mr. Estrada-Huerta not only could have established that his life expectancy is probably much lower than that established by either the Centers for Disease Control or Title 13, he also could have shown that the parole system would not have given him a reasonable opportunity to be released within any of the estimates of his life expectancy.

Because the sentence imposed upon him will not provide him with any meaningful opportunity to obtain release within his lifetime based upon demonstrated maturity and rehabilitation, Mr. Estrada-Huerta was sentenced to die in prison. As such, his sentence violates the United States Constitutional guarantee against cruel and unusual punishment, and is forbidden by the Supreme Court in *Graham* and *Miller*.

CONCLUSION

WHEREFORE, Mr. Estrada-Huerta respectfully requests the Court to review the decision of the Court of Appeals and grant certiorari in this case to resolve this important issue of law, and to grant such other relief the Court deems equitable and just.

Respectfully Submitted,

s/ Stacie Nelson Colling

Stacie Nelson Colling, Reg. No. 38301
Attorney for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of February 2014, I have served a true and correct copy of the foregoing **Petition for Certiorari** via Integrated Colorado Courts E-filing System (ICCES).

s/ Stacie Nelson Colling

_____

APPENDIX

11CA1932 Peo v. Estrada-Huerta 12-12-2013

COLORADO COURT OF APPEALS

Court of Appeals No. 11CA1932
City and County of Denver District Court No. 04CR3018
Honorable Anne M. Mansfield, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Alejandro Estrada-Huerta,

Defendant-Appellant.

ORDER AFFIRMED

Division IV
Opinion by JUDGE DUNN
Webb and Bernard, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)
Announced December 12, 2013

John W. Suthers, Attorney General, Katherine A. Hansen, Senior Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Alejandro Estrada-Huerta, Pro Se

Defendant, Alejandro Estrada-Huerta, appeals the district court's order denying his Crim. P. 35(c) motion for postconviction relief. We affirm.

I. Background

A jury found defendant guilty of second degree kidnapping and two counts of sexual assault. Defendant was seventeen years old when he committed the offenses. He received a prison sentence of twenty-four years for the kidnapping count and indeterminate terms of sixteen years to life for the sexual assault counts. Because the sentences for the sexual offenses were concurrent to one another, but consecutive to defendant's sentence for kidnapping, defendant received an aggregate prison term of forty years to life.

On direct appeal, a division of this court affirmed defendant's conviction and sentence. *See People v. Estrada-Huerta*, (Colo. App. No. 06CA1814, Apr. 10, 2008) (not published pursuant to C.A.R. 35(f)) (*Estrada-Huerta I*).

Defendant then filed a Crim. P. 35(c) motion, in which he argued that his sentence is unconstitutional because it (1) violates the holding of *Graham v. Florida*, 560 U.S. 48 (2010); (2) violates

equal protection; and (3) is disproportionate. He also argued that his trial counsel was ineffective.

In a detailed order, the district court found that the sentence imposed did not violate *Graham* because defendant will be eligible for parole after serving forty years. The court further found that defendant's sentence did not violate his right to equal protection or the requirements of proportionality. And the court found that defendant failed to articulate any facts, evidence, or argument in support of his ineffective assistance of counsel claims. Accordingly, the district court denied the motion without a hearing.

II. Standard of Review

We review the summary denial of a defendant's Crim. P. 35(c) motion de novo. *See People v. Gardner*, 250 P.3d 1262, 1266 (Colo. App. 2010); *see also Lopez v. People*, 113 P.3d 713, 720 (Colo. 2005) ("[R]eview of constitutional challenges to sentencing determinations is de novo.").

III. Constitutionality of Sentence

For the same reasons set forth in his postconviction motion, defendant contends that his sentence is unconstitutional. Thus, he

argues, the district court erroneously denied his motion. We disagree.

A. *Graham v. Florida*

Defendant argues that his sentence is unconstitutional because, in his view, his aggregate forty years to life sentence violates the principles set forth in *Graham v. Florida*. We conclude that defendant's sentence does not violate the holding of *Graham*.

The Eighth Amendment of the United States Constitution prohibits cruel and unusual punishment and "guarantees individuals the right not to be subjected to excessive sanctions." *Roper v. Simmons*, 543 U.S. 551, 560 (2005). In *Graham,* the United States Supreme Court held that the Eighth Amendment categorically prohibits a sentence of life without the possibility of parole for juveniles convicted of nonhomicide crimes, and that a state must give a juvenile offender convicted of such a crime "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 560 U.S. at 75.

If a juvenile offender will not become eligible for parole within his expected lifetime, his sentence violates *Graham*. *See, e.g.*,

People v. Rainer, 2013 COA 51, ¶¶ 66-79. But if a juvenile offender is eligible for parole within his expected lifetime, his sentence does not violate *Graham*. *See People v. Lehmkuhl*, 2013 COA 98, ¶¶ 7-20; *People v. Lucero*, 2013 COA 53, ¶¶ 12-18.

Here, the record reflects that defendant will be eligible for parole within his expected lifetime. The trial court sentenced defendant to forty years to life on April 21, 2006, and granted him 649 days of presentence confinement credit. Even without considering the possibility that defendant will receive sentence credits while he is in prison, defendant will be eligible for parole in approximately 2044. Because defendant was born in 1986, he will thus be eligible for parole when he is fifty-eight years old, which is within his life expectancy. *See* § 13-25-103, C.R.S. 2013 (defendant's life expectancy is 78.1 years); *see also Lehmkuhl*, ¶ 14 (approving use of section 13-25-103 to determine a juvenile offender's life expectancy for purposes of evaluating whether his sentence violates *Graham*). Accordingly, we conclude that defendant's sentence does not violate *Graham*. *See Lehmkuhl*, ¶¶ 7-20; *Lucero*, ¶¶ 12-18.

B. Equal Protection

Defendant argues that his sentence violates equal protection because "[j]uveniles serving a life sentence for first degree murder after 2006 are eligible for parole after 40 years but . . . a juvenile convicted of a non-homicide [offense] serving a life sentence by aggregation of sentence has no guarantee of possibility of parole."

The district court properly denied this claim because:

- As explained in Part III.A, *supra*, defendant is not serving a life sentence, but rather is eligible for parole within his expected lifetime;
- Defendant was convicted of and sentenced for nonhomicide crimes, which were affirmed on direct appeal, and "[p]ersons who commit different crimes are not similarly situated" for purposes of equal protection, *People v. Strean*, 74 P.3d 387, 395 (Colo. App. 2002).

C. Proportionality

Defendant further argues that his "sentence of death in prison is grossly disproportionate to [his] actual culpability."

As an initial matter, defendant did not receive a "sentence of

death in prison"; thus, the premise of his contention is factually incorrect. *See* Part III.A, *supra*.

Further, in denying defendant's proportionality claim, the district court articulated adequate factual findings justifying the sentence imposed. Specifically, the court found that defendant, along with three other individuals, abducted a 15-year-old girl from a gas station. Defendant and the other individuals then sexually assaulted the victim by forcing her head into their laps to perform oral sex and penetrating her vaginally numerous times. Given the heinousness of defendant's offenses, the court found that the sentence imposed was appropriate and proportional.

We defer to these factual findings, and agree that defendant's sentence is not grossly disproportionate to his crimes. *See People v. Anaya*, 894 P.2d 28, 32 (Colo. App. 1994) (a trial court's factual findings in a proportionality review are entitled to deference on appeal, while its determination whether a sentence is constitutionally proportionate is a question of law subject to de novo review); *see also People v. Thomeczek*, 284 P.3d 110, 118 (Colo. App. 2011) ("[Because the defendant's crime] is a 'grave or serious'

offense, . . . and because the sentence imposed . . . fell within the presumptive range established by the legislature, our abbreviated [proportionality] review leads us to conclude that the sentence is not grossly disproportionate and must be upheld."); *People v. Dash*, 104 P.3d 286, 293 (Colo. App. 2004) ("[S]ex offenses are considered particularly heinous crimes.").

IV. Ineffective Assistance of Counsel

Finally, defendant contends that the district court erred in denying his ineffective assistance of counsel claims. Again, we disagree.

In his postconviction motion, defendant alleged the following:

> Ineffective Assistance of Counsel.
> 1. No DNA!
> 2. No physical evidence.
> 3. 2 acquided [sic] trials, and defense counsel lead the defendant into the 3rd. No discussion of plea bargain.
> 4. Mistrial. District attorney forge[d] evidence and with held [sic] evidence at the 3rd trial.
> 5. Never discussed Discovery with the defendant.
> 6. joint trial 4-defendants, one bonded and left, ran, mistrial. 3 remaining defendants were convicted without evidence.

The district court properly denied defendant's ineffective assistance of counsel claims without holding an evidentiary hearing because defendant's allegations were "conclusory, vague, [and] lacking in detail." *See People v. Osorio*, 170 P.3d 796, 799 (Colo. App. 2007) ("To establish a claim of ineffective assistance of counsel, a defendant must show that (1) counsel's performance was outside the wide range of professionally competent assistance; and (2) the defendant was prejudiced by counsel's errors."). Although defendant provides slightly more detail on appeal, his claims are still conclusory. Further, we do not consider allegations raised for the first time on appeal. *See People v. Boyd*, 23 P.3d 1242, 1247 (Colo. App. 2001).

The order is affirmed.

JUDGE WEBB and JUDGE BERNARD concur.