IN THE SUPREME COURT, STATE OF WYOMING

CHRISTOPHER ROBERT HICKS, Appellant (Defendant), v. THE STATE OF WYOMING, Appellee (Plaintiff).	S-24-0323

REPLY BRIEF OF APPELLANT

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I. Appellee, without a cross-appeal or petition for writ of review, seeks to relitigate res judicata before this Court after the District Court decided not to apply it below and reached the merits of Mr. Hicks's claims. *Brief of Appellee*, at 3, 18–24.

II. Appellee contends, for the first time in these proceedings, that because Mr. Hicks's motion to correct illegal sentences is a declaratory judgment and the Attorney General was not served a copy of the motion below, this Court should not decide on the constitutionality of the relevant statutes. *Brief of Appellee*, at 3, 25–30.

ARGUMENT

I. THIS COURT SHOULD EXERCISE ITS DISCRETION AND BAR THE STATE'S PROCEDURAL ARGUMENTS

A. While This Court May Affirm a Decision "On Any Legal Ground Appearing in the Record," the State is Not Relieved from Assigning Error to a Decision Below

The State attempts to relitigate res judicata after the District Court decided not to bar Mr. Hicks's claims under the doctrine. It also seeks to raise an issue that does not appear in the record below—that Mr. Hicks's motion to correct is a declaratory judgment action.

First, Mr. Hicks did not address res judicata on appeal because he assigns no error to the District Court's decision not to apply res judicata. *See Order Denying Defense Motion to Correct Illegal Sentences*, 4, ¶ 7, n. 4, TR. at 1204–11. ("However, because Mr. Hicks now relies upon law and arguments unavailable to him at the time of his original sentencing and subsequent appeal, this court will address his Motion."). Next, the District Court was never asked to consider whether Mr. Hicks's motion should be treated as a declaratory judgment action. Without filing a cross-appeal or petition for writ of review on the District Court's decision not to bar Mr. Hicks's claims under res judicata, the State attempts to relitigate it. *See Brief of Appellee*, at 18–25. The State also argues for the first time that Mr. Hicks's motion to correct is a declaratory judgment action and so the constitutionality of the statutes authorizing Mr. Hicks's LWOP sentences should not be considered. *See id.*, at 26–30. The State argues this is because the Attorney General (AG) was not served a copy of the motion to correct below.

The State argues "this Court may affirm the decision 'on *any* legal ground appearing in the record,'" *Id.* at 18 (quoting *Lacey v. State*, 2003 WY 148, ¶ 10, 79 P.3d 493, 495 (Wyo. 2003) (emphasis in original)), instead of filing a cross-appeal or petition for writ of review on the District Court's procedural decisions. While the State argued Rule 35 was improper to bring Mr. Hicks's claims below, it never asserted that Mr. Hicks was bringing a declaratory judgment action. *See State's Response to Defense Motion to Correct Illegal Sentences*, at 7, ¶¶ 37–40, TR. at 1185–94.

i. This Court Should Bar the State's Res Judicata Arguments

At this moment, only ten criminal cases in Wyoming have noted "this Court may affirm the decision on any legal ground appearing in the record." The concept is most often mentioned in civil cases, especially within the context of motions for summary judgment or findings of facts by a district court. *See e.g., Williams v. Matheny*, 2017 WY 85, ¶ 9, 398 P.3d 521, 524 (Wyo. 2017); *Sikora v. City of Rawlins*, 2017 WY 55, ¶ 13, 394 P.3d 472, 476 (Wyo. 2017); *Schmidt v. Killmer*, 2009 WY 23, ¶ 9, 201 P.3d 1121, 1125 (Wyo. 2009); *Coffinberry v. Board of County Com'rs of County of Hot Springs*, 2008 WY 110, ¶ 3, 192 P.3d 978, 980 (Wyo. 2008); *see also Bender v. Uinta Couty Assessor*, 14 P.3d 906, 909 (Wyo. 2000) (in context of petition filed under W.R.A.P. 12.09(b)); *Heilig v. Wyoming Game and Fish Com'n*, 2003 WY 27, ¶ 8, 64 P.3d 734, 737 (Wyo. 2003) (as it relates to jurisdictional questions in declaratory action). Notably in eight of these ten criminal cases, the applicable standard of review was abuse of discretion. *See Lacey*,

2003 WY 148, ¶¶ 7, 10, 79 P.3d at 495; *Blair v. State*, 2022 WY 121, ¶¶ 17, 22, 517 P.3d 597, 601–602 (Wyo. 2022); *Martinez v. State* 2018 WY 147, ¶ 29, 432 P.3d 493, 500 (Wyo. 2018); *Leach v. State*, 2013 WY 139, ¶ 19, 312 P.3d 795, 799 (Wyo. 2013); *Meyers v. State*, 2007 WY 118, ¶ 11, 164 P.3d 544, 547 (Wyo. 2007); *Deloge v. State*, 2005 WY 152, ¶¶ 16–17, 123 P.3d 573, 578–79 (Wyo. 2005).

The two criminal cases in Wyoming that have cited this concept when a de novo standard of review applied pertained to one issue—statutory interpretation of the Interstate Agreement on Detainers (IAD) (Wyo. Stat. Ann. § 7–15–101). *See Turner v. State*, 2015 WY 29, ¶ 14, 343 P.3d 801, 805 (Wyo. 2015); *Short v. State*, 2009 WY 52, ¶¶ 8–9, 205 P.3d 195, 198 (Wyo. 2009). In *Turner* and *Short*, this Court affirmed the district courts' decisions, but in conducting its own statutory interpretations, for reasons different than relied upon by the district courts. *Turner*, 2009 WY 52, ¶¶ 1, 11, 24, 205 P.3d at 803, 805, 807; *Short*, 2009 WY 52, ¶¶ 1, 13–14, 205 P.3d at 196, 199–200.

Here, unlike in *Turner* and *Short*, the issue of res judicata was not assigned error, and the State asks this Court to consider it anyway as "any legal ground appearing in the record." It appears in the record because res judicata was well briefed by the parties below and fully considered by the District Court. Further, the issue of whether Mr. Hicks's motion to correct was a declaratory judgment action was never analyzed.

In addition, this case is distinguishable from *Lacey*. First, the applicable standard of review was abuse of discretion. *Lacey*, 2003 WY 148, ¶ 7, 79 P.3d at 495. Next, the

district court's ruling that there was "no showing [ ] pursuant to Rule 35(a) of the Wyoming Rules of Criminal Procedure to justify or require a modification of the Defendant's sentences," was conclusory. *See id.*, ¶ 6, at 494. No reasoning was given for the district court's decision; nevertheless, this Court gave due deference and found "any legal ground appearing in the record," to affirm. *See id.*, ¶¶ 10–14. This Court affirmed by thinking of and applying something the district court did not—res judicata. *See id.*

In this case, the District Court was asked to specifically consider res judicata and did so. It reasoned that because Mr. Hicks, much like Nicodemus, relied upon case law and arguments that did not exist at the time of his appeal the Court would consider his claims. *See Order Denying*, 4, ¶ 7, n. 4, TR. at 1204–12. Although res judicata is subject to de novo review, that does not relieve the State of assigning error to the issue.

ii. This Court Should Bar the State's Declaratory Judgment Action Arguments Because They Do Not Appear in the Record Below

This Court should also bar the State's argument that Mr. Hicks's motion to correct is a declaratory judgment action. Below, the State baldly argued that Rule 35 was not proper to bring Mr. Hicks's claims. *See State's Response*, at 7, ¶¶ 37–40, TR. at 1185–94. The District Court did not address this argument in its order, reaching the merits of the claims. This argument below was bare, and the record does not include that the motion was a declaratory judgment action. *See Lacey*, 2003 WY 148, ¶ 10, 79 P.3d at 495.

B. This Court Lacks Jurisdiction to Consider the State's Procedural Arguments

Here, the State did not file a cross-appeal or petition for writ of review on the District Court's decision to not bar Mr. Hicks's claims under res judicata. *See* W.R.A.P. 2.01(a)(2) (2024) ("If a timely notice of appeal if filed by a party, any other party may file a notice of appeal within the time prescribed by Rule 2.01(a) or withing 15 days of the date on which the first notice of appeal was filed."); W.R.A.P. 13 (outlining process for petitions for writ of review).[1] In addition, the District Court was never asked to consider whether Mr. Hicks's motion to correct was a declaratory judgment action.

The State's attempt to relitigate res judicata and to litigate for the first time that Mr. Hicks brought a declaratory judgment action without assigning error to the District Court's decision should be barred as this Court should find it lacks jurisdiction to consider either. *See* W.R.A.P. 1.03(a) ("The timely filing of a notice of appeal, which complies with Rule 2.07(a), is jurisdictional.").

Although the State has limited options to appeal in criminal cases once a jury has been impaneled, *see Crozier v. State*, 882 P.2d 1230, 1236 (Wyo. 1994) (citing Wyo. Stat. Ann. §§ 7-12-102 to -104 (1987)), when a jury has not yet been impaneled, the State

[1] The District Court's order was entered on 12/5/24; thus, W.R.A.P. 2.01(a)(2) (2024) was applicable at the time the State was on notice of the adverse res judicata ruling. Subsection (a)(2) was removed, and the current version became effective on 3/1/25.

enjoys broader access to appeal, including the appeal of pretrial motion decisions made by the district court. *See e.g., State v. Holohan*, 2012 WY 23, ¶ 7, 270 P.3d 693, 696 (Wyo. 2012) (granting petition for writ of review on district court's pretrial ruling), *overruled in part on other grounds by Allgier v. State*, 2015 WY 137, ¶ 14, 358 P.3d 1271, 1276 (Wyo. 2015). Further, at post-conviction, the State can and does appeal district court decisions. *See e.g.*, *State v. Berger*, 600 P.2d 708 (Wyo. 1979).

Here, the District Court decided not to apply res judicata to Mr. Hicks's claims and reached the merits of the claims. *See Order Denying*, 4, ¶ 7, n. 4–9, R. at 1204–12. Neither Mr. Hicks nor the State appealed that decision. Further, this is not a situation where the State made arguments to support the District Court's judgment on the procedural issues below; the State argues contrary to the res judicata judgment and asserts the declaratory judgment arguments for the first time before this Court. *See GOB, LLC v. Rainbow Canyon, Inc.*, 2008 WY 157, ¶ 10, 197 P.3d 1269, 1271 (Wyo. 2008) ("The distinction between arguing in brief and cross-appealing generally is that a cross-appeal is required to win a change in the judgment, while arguments to support the judgment can be made without a cross-appeal.") (internal quotation omitted).

II. EVEN IF THIS COURT CONCLUDES IT HAS JURISDICTION TO CONSIDER THE STATE'S RES JUDICATA ARGUMENTS, THE DISTRICT COURT DID NOT ERR IN REACHING THE MERITS OF MR. HICKS'S CLAIMS

A. The District Court Properly Decided Not to Bar Mr. Hicks's Claims Under Res Judicata Because He Relies on Previously Unavailable Law and Arguments

i. The Subject Matter Available at Mr. Hicks's 2006 Sentencings, Direct Appeal, and Time for Motion for Sentence Reduction Differs

Since "Mr. Hicks now relies upon law and argument unavailable to him at the time of his original sentencing and subsequent appeal," the District Court addressed the merits of his claims. *See Order Denying*, 4, ¶ 7, n. 4, R. at 1204–12. Thus, "there is not identity in subject matter in this motion as compared to earlier processes available to Mr. Hicks because the subject matter he now raises was not in existence at the time of his original sentencing, direct appeal, or time for a motion to reduce sentence." *Defense Motion to Correct Illegal Sentences*, 11–15, TR. at 1173 (Confidential File); *see also Cruzen v. State*, 2023 WY 5, ¶ 13, 523 P.3d 301, 304 (Wyo. 2023).

In *Kurtenbach*, in his first motion to correct, Kurtenbach argued his sentence was illegal because he was not receiving credit for his Wyoming sentence while serving sentences in North and South Dakota. *Kurtenbach v. State*, 2013 WY 80, ¶ 7, 304 P.3d 939, 941 (Wyo. 2013). In his second motion to correct, he raised the same issue, adding multiple arguments based on the Constitution and made several credit-for-time contentions that his Wyoming sentence was illegal. *Id.*, ¶ 5, at 940. "Granted, the previous motion was much shorter and did not lay out the myriad of constitutional issues he now raises, but the essence of the first motion and the remedy sought is identical to the motion that is the basis of this appeal." *Id.*, ¶ 7, at 941.

Here, the essence of the issues available for consideration at earlier proceedings for Mr. Hicks—his sentencings, direct appeal, and the year after the affirmance of his appeal

where he would have been able to file a motion for sentence reduction—were not the same as they are now. Issues available for earlier proceedings would have been *Roper*-based arguments that focused only on prohibiting the death penalty for juveniles. *See generally Roper v. Simmons*, 543 U.S. 551 (2005). They did not include *Miller*-based arguments focused on prohibiting mandatory LWOP sentences for juveniles. *See generally Miller v. Alabama*, 567 U.S. 560 (2012). Further, the science relied upon even in *Miller* (i.e., the science used in *Roper*) has evolved to include not just juveniles, but now late adolescents, such as Mr. Hicks. *See generally Defense Motion to Correct Illegal Sentences*, TR. at 1173 (Confidential File). The arguments and remedy available at or for earlier proceedings were more limited (and irrelevant as Mr. Hicks was not subjected to the death penalty) as opposed to the arguments and the remedy now available to him.

ii. Mr. Hicks's 2020 Motion for Sentence Reduction Was Time-Barred and Not Considered on the Merits

Mr. Hicks did not file two 2020 Rule 35 motions. Mr. Hicks wrote a letter to the District Court filed on 10/23/20. *Letter Requesting Modification or Reduction of Sentence from Christopher Hicks*, TR. at 1116–1118. Thereafter, he filed a motion to reduce sentence on 10/29/20. *Motion for Sentence Reduction Pursuant to Rule 35(b), W.R.Cr.P.*, TR. at 1119–42. He did not file two Rule 35 motions. Further, neither the letter nor the motion was a motion to correct. The District Court treated these filings as one motion for sentence reduction, finding it time barred. *Order Dismissing Motion to Reduce Sentence*, TR. at 1160. The District Court never considered the insubstantial arguments on the merits.

Thus, not only was Mr. Hicks unable to have his current constitutional claims considered at his sentencings, on appeal, and during the one-year time for a properly filed motion for sentence reduction, but his claims were also never considered in his 2020 motion for sentence reduction because it was time barred. Therefore, Mr. Hicks is not using this motion to correct "to revisit issues already considered and decided." *Brown v. State*, 894 P.2d 597, 598 (Wyo. 1995) ("A W.R.Cr.P. 35(a) motion to correct illegal sentence may not be used to revisit issues already considered and decided.").[2]

iii. Res Judicata Does Not Hinge on an Amorphous "Earlier Time," But Rather on an "Earlier Proceeding"

The State appears to insinuate that Mr. Hicks should have brought his current motion to correct his illegal sentences at an earlier time. *See Brief of Appellee*, at 21 ("Hicks has already raised his current claim, and could have raised additional arguments, in his direct appeal or at any other time in the last nineteen years."). Res judicata is not based on an amorphous concept that arguments should have been brought at an earlier time. This is what this Court has stated repeatedly regarding res judicata: "Under the doctrine of res judicata, it is a longstanding rule that issues which could have been raised in an earlier

[2] Once the District Court found it lacked jurisdiction to consider the motion, an appeal to this Court would have been futile as this Court would have then lacked jurisdiction too. *See Gomez v. State*, 2013 WY 134, ¶ 9, 311 P.3d 621, 624 (Wyo. 2013).

proceeding are foreclosed from subsequent consideration." *Peterson v. State*, 2023 WY 103, ¶ 6, 537 P.3d 749, 750 (Wyo. 2023). (internal quotations omitted).

This Court has repeatedly focused on whether the relevant issue was or could have been determined at an earlier proceeding, such as on a direct appeal or in a previously available proceeding, i.e., motion for a new trial or a motion for sentence reduction. *See Best v. State*, 2022 WY 25, ¶ 7, 503 P.3d 641, 643 (Wyo. 2022) ("Mr. Best could have raised his arguments concerning the validity of his conviction and sentence on direct appeal or in his motion for a new trial. He did not."); *Kurtenbach*, 2013 WY 80, ¶ 7, 304 P.3d at 939 (second motion to correct illegal sentence barred because defendant previously filed a motion to correct an illegal sentence); *Winstead v. State*, 2011 WY 137, ¶ 12, 261 P.3d 743, 746 (Wyo. 2011) ("We…have held that res judicata applies when a defendant could have raised an issue in an earlier appeal or motion for sentence reduction and failed to do so."), *overruled in part on other grounds by Sweets v. State*, 2013 WY 98, ¶ 2 n.1, 307 P.3d 860, 863 n. 1 (Wyo. 2013); *Gould v. State*, 2006 WY 157, ¶ 16, 151 P.3d 261, 266 (Wyo. 2006) (defendant could have brought challenge in appeal and motion to reduce sentence).

Unlike the scenarios in those cases, Mr. Hicks could not have brought his current motion in an earlier proceeding. The facts and circumstances, including the law and arguments now available to Mr. Hicks, were not available to Mr. Hicks at the time of his

sentencings or direct appeal, nor at a time when his motion for sentence reduction could have been timely filed. *See* Section I.B.iv., *infra*; *see also* Wyo. R. Cr. P. 35(b).

iv. The Law and Arguments Now Available to Mr. Hicks Did Not Exist at the Time of Earlier Proceedings

Should this Court find that res judicata does apply, it may find since the law and arguments now available to Mr. Hicks were unavailable at an earlier proceeding, good cause exists, and the merits of the claims should be considered. The District Court reached the merits; as the final arbiter of state constitutional law, this Court should too.

In *Kurtenbach*, the defendant argued good cause existed such that the Court should hear his credit-for-time claim even though he raised it in his first motion to correct. *See* Section II.B.i., *supra* (for relevant facts). Kurtenbach claimed that good cause existed for not bringing his claims in his first motion "because his sentence in South Dakota had not been completed at that time, so he was unable to show that his Wyoming sentence was going to be served consecutively." *Kurtenbach*, 2013 WY 80, ¶ 8, 304 P.3d at 941. He also asserted "that the federal sentence he received, which was also ordered to be served concurrently with his Wyoming sentence, was not imposed until after he filed the first motion." *Id.* This Court held that Kurtenbach was still making the same arguments and seeking the same remedy and, thus, good cause did not exist. *Id.*

Here, Mr. Hicks is not making the same arguments that were available to him at earlier proceedings. Available to Mr. Hicks at the time of his 2006 sentences and the time limit for his motion for sentence reduction was *Roper*, which only focused on the

prohibition of the death penalty for juveniles, not LWOP sentences for juveniles, which came later in *Miller*. *See Gould*, 2006 WY 157, ¶ 20 n. 7, 151 P.3d at 267 n. 7 ("We note, however, the United States Supreme Court decisions relied upon by the appellants were not published until several years after we affirmed Mr. Kolb's convictions.").[3]

Further, as Mr. Hicks successfully argued before the District Court on the issue of res judicata, our understanding of the neurodevelopment of the late adolescent brain and the psychological development of them was not well known or established, even at the time of *Miller*. Further, Mr. Hicks's remedy at either his 2006 sentencings or within the time permitted for a motion for sentence reduction would have been relief from a death sentence, not a mandatory LWOP sentence. So, unlike Kurtenbach, Mr. Hicks's arguments and sought remedy differ from those he would have been able to, respectively, rely upon and seek at the time of his direct appeal and at the time for a motion for sentence reduction.[4] This corresponds with the nature of anti-punishment

[3] Mr. Hicks distinguished his case from a host of other cases decided by this Court at the District Court below on the issue of "good cause." *See Defense Motion to Correct Illegal Sentences*, at 15–16, R. at 1173 (Confidential File).

[4] Furthermore, Mr. Hicks's case is substantially different from the *Leonard* and *Hamill* cases briefed by the State. Unlike in *Leonard*, Mr. Hicks did not have "every opportunity" to present his claims in an earlier proceeding because no case controlled the question

jurisprudence as such claims inevitably emerge over time guided by the "evolving standards of decency." *See Trop v. Dulles*, 356 U.S. 86 (1958). In considering the merits of Mr. Hicks's claims, this Court would be in good company—alongside the District Court and itself in *Nicodemus*. *See Order Denying*, 4, ¶ 7, n. 4, TR. at 1204–11; *see also Nicodemus v. State*, 2017 WY 34, ¶ 15, 392 P.3d 408, 412 (Wyo. 2017).

III. EVEN IF THIS COURT CONCLUDES IT HAS JURISDICTION TO CONSIDER THE STATE'S DECLARATORY JUDGMENT ACTION ARGUMENT, IT FAILS AND THE STATE IS NOT PREJUDICED

A. This is Not a Declaratory Judgment Action and Mr. Hicks's Rule 35 Motion Properly Challenges the Constitutionality of the Relevant Statutes

First, basic statutory interpretation supports Mr. Hicks's motion to correct is not a declaratory judgment action. A plain language reading of the Uniform Declaratory Judgments Act (UDJA) instructs that it only governs just that—declaratory judgment actions. *See Bear Cloud v. State*, 2013 WY 18, ¶ 30, 294 P.3d 36, 43 (Wyo. 2013) *(Bear*

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now before this Court. *See Brief of* Appellee, at 22; *see also Leonard v. State*, 2014 WY 128, ¶ 9–10, 335 P.3d 1079, 1080, 1082 (Wyo. 2014). Next, unlike in *Hamill*, Mr. Hicks has fully explained why he did not raise his claim earlier. The relevant law and arguments were not in existence for Mr. Hicks to bring his claims at earlier proceedings. *See Hamill v. State*, 948 P.2d 1356, 1359 (Wyo. 1997).

Cloud II) (for the well-known principles of statutory interpretation). This is supported by a full reading of the UDJA and its provisions. *See* Wyo. Stats. §§ Ann. 1-37-101—115.[5]

In addition, Wyoming cases suggest declaratory judgment actions should be limited in nature. "Wyoming has long held that a declaratory judgment action should only be maintained where it would serve a useful purpose." *Heilig*, 2003 WY 27, ¶ 10, 64 P.3d at 738 (quoting *Morris v. Farmers Insurance Exchange*, 771 P.2d 1206, 1212 (Wyo. 1989)) (internal quotation marks omitted). In *Heilig*, the petitioner filed a declaratory judgment action asserting that a hunting regulation he was accused of violating in a parallel criminal prosecution, which was on appeal, was null and void. *Heilig*, 2003 WY 27, ¶ 1, 64 P.3d at 735. Both the criminal appeal and the declaratory judgment complaint presented the same legal issues. *See id.*, ¶¶ 1, 10, at 735, 739.

This Court discussed the implications of considering a declaratory judgment when another similar proceeding is pending. *See id.*, ¶ 10, at 739 (reviewing the *Morris* Court's analysis of such implications in the context of insurance claims). The implications of allowing a declaratory action to proceed alongside a criminal appeal include the likely frustration of judicial economy, inappropriately creating estoppel issues, and permitting

[5] Statutory interpretation and whether the appropriate rule was applied below is subject to de novo review. *Bear Cloud II*, 2013 WY 18, ¶ 13, 294 P.3d at 4; *Gee v. State*, 2014 WY 9, ¶ 7, 317 P.3d 581, 583 (Wyo. 2014).

one party to have an undue advantage over another. *See id.*, ¶¶ 10–11, at 739. The *Heilig* case demonstrates that even when a party asserts a statute is unconstitutional a declaratory judgment action is not mandated. *Cf. Brief of Appellee*, at 25 (asserting Mr. Hicks "did not comply with the notice requirements for challenging a statute as unconstitutional"). As the State noted in its brief, the UDJA allows people to obtain a declaration as to the constitutionality of a statute, but it does not require that all such challenges be brought under it. *See id.*, at 26 (quoting Wyo. Stat. Ann. § 1-37-101). In *Heilig*, this Court preferred that the criminal appeal resolve the constitutionality question, not an action brought under the UDJA. *Id.*, ¶ 13, at 793.[6]

Next, the State only cites the UDJA and cases involving declaratory judgment actions to support its argument that Mr. Hicks's motion to correct is such an action. *See Brief of Appellee*, at 26, 28 (citing *Tobin v.* Pursel, 539 P.2d 361, 365–66 (Wyo. 1975); *Conrad v. Uinta County Republican Party*, 2023 WY 46, ¶¶ 28–30, 529 P.3d 482, 493–94 (Wyo. 2023)). It asks this Court to disregard the constitutionality of the relevant statutes because the AG was not served a copy of the motion to correct below, and argues service is required to the AG every time a defendant seeks to challenge the constitutionality of a statute. *Brief of Appellee*, at 27 ("[R]egardless of how a litigant

[6] Also instructive is that a declaratory judgment action cannot serve as a substitute for an appeal. *Simon v. Teton Bd. of Realtors*, 4 P.3d 197, 203 (Wyo. 2000).

labels his constitutional challenge, it is imperative that the [AG] given notice and the opportunity to participate in the trial court.").

However, as this Court is aware, defendants challenge the constitutionality of statutes in a variety of ways, including at pretrial and post-conviction in their criminal cases without required notice to the AG. *See e.g., Hardison v. State*, 2022 WY 45, ¶¶ 3–4, 507 P.3d 36, 38 (Wyo. 2022) (raising pretrial constitutional challenge to Wyoming Controlled Substance Act); *Bear Cloud II*, 2013 WY 18, ¶¶ 9–10, 249 P.3d at 40 (on second appeal challenging constitutionality of statutes authorizing mandatory LWOP sentences for juveniles). If that challenge is lost, then that decision is appealed where the AG will represent the State and receive a copy of the brief. *See* W.R.A.P. 7.07 (requiring service of appellate brief on AG in appeals where State is a party).

Notably, the State cites no specific authority to support its contention that a defendant cannot challenge the constitutionality of statutes in a Rule 35 motion. Indeed, one of the lead cases the State continues to rely upon in its other arguments stands for the proposition that a defendant may use a motion correct illegal sentences to challenge the constitutionality of statutes. *See Nicodemus*, 2017 WY 34, ¶ 29, 392 P.3d at 415. The State warns, "If this Court allows [Mr. Hicks] to advance the claim, then the Court can grant broader relief by declaring the statutes unconstitutional as to an entire class of offenders." *Brief of Appellee*, at 29. However, this Court is used to the sky not falling when it issues rulings that may impact more than the defendant before it, particularly in

the context of the anti-punishment cases. *See e.g., Bear Cloud II*, 2013 WY 18, 249 P.3d 36; *Bear Cloud v. State*, 2014 WY 113, 334 P.3d 132 (Wyo. 2014) *(Bear Cloud III)*; *Davis v. State*, 2018 WY 40, 415 P.3d 666 (Wyo. 2018).

Finally, the State cannot demonstrate that it has been prejudiced by the AG (now appearing for the State) not receiving a copy of Mr. Hicks's motion to correct below. The State (represented by the AG) cannot demonstrate that it is prejudiced as the AG is here now arguing before this Court. *See Ririe v. Board of Trustees of School Dist. No. One,* 674 P.2d 214, 220 (Wyo. 1983) (finding no prejudice in declaratory judgment action where petitioner failed to serve AG but AG filed a brief addressing the constitutional issues raised on appeal). The AG has proper notice and every opportunity to argue that the statutes and sentences in this case are constitutional.

CONCLUSION

For the foregoing reasons, and the reasons expressed in his opening brief, Mr. Hicks respectfully requests that the District Court's dismissal of his motion to correct illegal sentences be reversed, that his sentences be found illegal, and his case be remanded back to the District Court for a *Miller*-compliant resentencing hearing.

Respectfully submitted this 4th day of April, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 4, 2025, a true and correct copy of the foregoing was served electronically via the Wyoming Supreme Court C-Track Electronic Filing System, addressed as follows:

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The undersigned also certifies that all required privacy redactions have been made and, with the exception of any required redactions, this document is an exact copy of the written document filed with the Clerk. Furthermore, this document has been scanned for viruses and is free of viruses.

Devon Petersen