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2024 CO 76

No. 23SC328, *Ward v. People*—Cruel and Unusual Punishment in General—Proportionality—Proportionality review—Habitual offenders and career criminals—In General; Retroactive or Prospective Operation—Post-Conviction Relief—Sentence and Punishment—Reconsideration and Modification of Sentence—Time for motion or application—Time for proceedings.

The supreme court holds that *Wells-Yates v. People*, 2019 CO 90M, 454 P.3d 191, didn't announce new substantive rules of constitutional law. Although some of *Wells-Yates's* holdings announced new rules, those rules are procedural. Accordingly, none of *Wells-Yates's* holdings apply retroactively to cases, like the defendant's, on collateral review. And because the defendant has failed to establish justifiable excuse or excusable neglect for his untimely collateral attack, the supreme court concludes that his motion is statutorily time-barred. The supreme court therefore affirms the judgment of the court of appeals.

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

2024 CO 76

Supreme Court Case No. 23SC328
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA1921

Petitioner:

David L. Ward,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed

en banc

December 16, 2024

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

JUSTICE HOOD delivered the Opinion of the Court.

¶1 David L. Ward asks this court to apply the holdings we announced in *Wells-Yates v. People*, 2019 CO 90M, 454 P.3d 191, which altered proportionality review for habitual criminal sentences, retroactively to his case. Consistent with the companion case we announce today, *McDonald v. People*, 2024 CO 75, ¶¶ 1, 34, __ P.3d __, we hold that *Wells-Yates* didn't announce new substantive rules of constitutional law, and so *Wells-Yates*'s holdings don't apply retroactively to cases, like Ward's, on collateral review.

I. Facts and Procedural History

¶2 In 1993, a jury convicted Ward of robbery (a class 4 felony), aggravated robbery (a class 3 felony), and three habitual criminal counts. The habitual criminal counts were based on two prior felony convictions: (1) a 1987 conviction for offering violence to a correctional officer in Missouri and (2) a 1981 conviction for second degree burglary in Colorado. The trial court sentenced Ward to life imprisonment.

¶3 Ward appealed, and the division affirmed his convictions for robbery and aggravated robbery but remanded the case to the trial court to consider whether Ward had demonstrated justifiable excuse or excusable neglect for his untimely challenge to the prior convictions upon which his habitual criminal convictions were predicated. *People v. Ward*, No. 93CA268 (Oct. 6, 1994). On remand, the trial

court found no justifiable excuse or excusable neglect and affirmed Ward's habitual criminal counts. Ward appealed that decision, and the division again affirmed Ward's convictions and sentence. *People v. Ward*, No. 97CA366 (Oct. 22, 1998). Ward's convictions became final in 1999.

¶4 In 2020, Ward filed a pro se motion requesting a proportionality review of his sentence under *Wells-Yates*. The postconviction court concluded Ward's claims were time-barred under section 16-5-402, C.R.S. (2024). On appeal, the division concluded that "*Wells-Yates* didn't create a new substantive constitutional rule that applies retroactively . . . [; it] changed only the process for conducting an extended proportionality review." *People v. Ward*, No. 20CA1921, ¶¶ 13-14 (Mar. 30, 2023). Accordingly, it concluded that Ward's collateral attack was untimely. *Id.* at ¶ 15.

¶5 We then granted Ward's petition for certiorari review.¹

II. Analysis

¶6 We discussed habitual criminal sentencing, Eighth Amendment proportionality review, and the retroactive application of judicially created rules in today's companion case, *McDonald*, ¶¶ 7-32. So, we don't repeat that discussion here. Instead, we simply apply our conclusion in *McDonald*—that *Wells-Yates*'s

¹ We granted certiorari to review the following issue:

1. Whether *Wells-Yates v. People*, 2019 CO 90M, 454 P.3d 191, announced a new, substantive rule of constitutional law that applies retroactively.

holdings don't apply retroactively to cases on collateral review – to Ward's case to determine whether Ward's collateral attack is time-barred.²

¶7 Section 16-5-402 provides that defendants convicted of any felony other than a class 1 felony must bring a collateral attack of their convictions within three years of being convicted unless they can show that their failure to do so “was the result of circumstances amounting to justifiable excuse or excusable neglect.” § 16-5-402(2)(d).

¶8 Ward hasn't established justifiable excuse or excusable neglect for failing to collaterally attack his prior convictions within three years of being convicted. And Ward can't rely on *Wells-Yates's* holdings to justify an untimely collateral attack because that opinion doesn't apply retroactively. See *McDonald*, ¶¶ 1, 34.

¶9 Therefore, we conclude that Ward's collateral attack is untimely.

III. Conclusion

¶10 We affirm the judgment of the court of appeals.

² Because Ward didn't raise at trial or on appeal his due process argument or his argument that the Colorado Constitution provides broader protection than its federal counterpart, those issues aren't properly before us on certiorari review, and we don't address them. See *Martinez v. People*, 244 P.3d 135, 140 (Colo. 2010) (vacating the portion of an opinion that reached the merits of an unpreserved constitutional claim because, “[t]o preserve a Colorado Constitutional argument for appeal, . . . a defendant must make an objection sufficiently specific to call the attention of the trial court to the potential Colorado Constitutional error”).