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ADVANCE SHEET HEADNOTE
June 14, 2021

2021 CO 53

No. 20SA422, *People v. Rainey*—General Sentencing Statutes—Sex Offender Lifetime Supervision Act ("SOLSA")—Sex Offender Intensive Supervision Probation ("SOISP")—Consecutive Prison-Probation Sentences in a Multi-Count Case—Prison Sentence for a Non-Sex Offense Followed by an SOISP Sentence for an Offense that Does Not Qualify as a Sex Offense but that Nevertheless Falls Within SOLSA's Scope and Requires Participation in SOISP.

In *Allman v. People*, the supreme court decided that a district court lacks authority under the general sentencing statutes to sentence a defendant to prison for one offense and to probation for another in a multi-count case. 2019 CO 78, ¶ 28, 451 P.3d 826, 833. But in *People v. Manaois*, one of the two lead companion cases announced today, the supreme court concludes that *Allman*'s prison-probation sentencing prohibition is inapplicable in certain instances. *People v. Manaois*, 2021 CO 49, ¶ 5, __ P.3d __. Specifically, *Manaois* teaches that the rule of *Allman* doesn't apply in multi-count cases where a defendant receives: (1) a prison sentence for a non-sex offense; and (2) a consecutive probation sentence for a "sex offense" pursuant to the Sex Offender Lifetime Supervision Act ("SOLSA"),

requiring participation in Sex Offender Intensive Supervision Probation ("SOISP").

Following in the footsteps of *People v. Keen*, 2021 CO 50, __ P.3d __, the second lead companion case announced today, the supreme court holds that *Allman* does not prohibit courts from sentencing a defendant in a multi-count case to prison for a non-sex offense followed by SOISP for another offense—regardless of whether the latter is a *sex offense* requiring an indeterminate sentence or a *sex-related offense* (i.e., an offense that does not qualify as a "sex offense" but that nevertheless falls within SOLSA's scope and involves participation in SOISP) requiring a determinate sentence. So long as the probation sentence in that scenario falls within the confines of SOLSA (as does every SOISP sentence), *Allman*'s sentencing restriction is inapplicable.

In this case, the defendant received a prison sentence for a non-sex offense and a consecutive determinate sentence to SOISP for a sex-related offense. The supreme court concludes that *Allman*'s sentencing prohibition does not apply and that the consecutive prison-SOISP sentences imposed were legal.

Because the district court agreed with the defendant's postconviction contention that *Allman* rendered his sentences illegal and necessitated a resentencing hearing, it erred. Therefore, the supreme court makes absolute the

rule to show cause it issued in response to the People's C.A.R. 21 petition. The case is remanded for further proceedings consistent with this opinion.

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

2021 CO 53

Supreme Court Case No. 20SA422
Original Proceeding Pursuant to C.A.R. 21
District Court, City and County of Denver, Case No. 11CR5249
Honorable Edward D. Bronfin, Judge

In Re

Plaintiff:

The People of the State of Colorado,

v.

Defendant:

Jaylen Rainey.

Rule Made Absolute
en banc
June 14, 2021

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JUSTICE SAMOUR delivered the Opinion of the Court.
CHIEF JUSTICE BOATRIGHT dissents, and **JUSTICE HART** joins in the dissent.

¶1 Just last term, we decided in *Allman v. People* that a district court lacks authority under our general sentencing statutes to sentence a defendant to prison for one offense and to probation for another in a multi-count case. 2019 CO 78, ¶ 28, 451 P.3d 826, 833. But in *People v. Manaois*, one of the two lead companion cases we announce today, we conclude that *Allman*'s prison-probation sentencing prohibition, while alive and well, is inapplicable in certain instances. *People v. Manaois*, 2021 CO 49, ¶ 5, __ P.3d __. Specifically, *Manaois* teaches that the rule of *Allman* doesn't apply in multi-count cases where a defendant receives: (1) a prison sentence for a non-sex offense; and (2) a consecutive probation sentence for a "sex offense" pursuant to the Sex Offender Lifetime Supervision Act ("SOLSA"), requiring participation in Sex Offender Intensive Supervision Probation ("SOISP"). *Id.* The question we confront in this original proceeding is whether *Manaois*'s ruling extends to a case where the defendant receives a prison sentence for a non-sex offense and a consecutive probation sentence for an offense that does *not* qualify as a "sex offense" but that *nevertheless falls within SOLSA's scope and requires participation in SOISP*.[1] For the reasons we articulate in detail in the second

[1] SOLSA encompasses any "sex offense," as that term is defined in section 18-1.3-1003(5), C.R.S. (2020). In one of the final drafts of SOLSA, however, the legislature removed from the definition of "sex offense" some sex-related offenses to insulate them from mandatory indeterminate sentencing. Yet, critically, the legislature kept such offenses within SOLSA's ambit by adding explicit references

lead companion case we announce today, *People v. Keen*, 2021 CO 50, __ P.3d __, which we summarize here, we answer yes.

¶2 Following in *Keen*'s footsteps, we draw guidance from *Manaois* and SOLSA's legislative history and hold that *Allman* does not prohibit courts from sentencing a defendant in a multi-count case to prison for a non-sex offense followed by SOISP for another offense—regardless of whether the latter is a *sex offense* requiring an indeterminate sentence or a *sex-related offense* requiring a determinate sentence. *Id.* at ¶¶ 22–31. So long as the probation sentence in that scenario falls within the confines of SOLSA (as does every SOISP sentence), *Allman*'s sentencing restriction is inapplicable. *Id.* at ¶ 2.

¶3 In this case, the defendant, Jaylen Rainey, received a prison sentence for a non-sex offense and a consecutive determinate sentence to SOISP for a sex-related offense. We conclude that *Allman*'s sentencing prohibition does not apply and that the consecutive prison-SOISP sentences imposed on Rainey were legal.

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to them in other provisions, including those addressing the treatment and level of supervision required on probation and parole. Though these offenses are technically non-sex offenses (as they're not included in the definition of "sex offense"), we call them "sex-related offenses" in this opinion because they come under SOLSA's umbrella; when we use the term "non-sex offenses," we mean offenses that are completely outside SOLSA's purview.

¶4 Because the district court agreed with Rainey's postconviction contention that *Allman* rendered his sentences illegal and necessitated a resentencing hearing, it erred. Therefore, we make absolute the rule to show cause we issued in response to the People's C.A.R. 21 petition invoking our original jurisdiction. We remand for further proceedings consistent with this opinion.

I. Facts and Procedural History

¶5 Rainey forced his girlfriend's twelve-year-old daughter to perform oral sex on him in the living room of the child's home. The People charged him with sexual assault on a child ("SAOC"), a class 4 felony sex offense governed by SOLSA that requires an indeterminate sentence. But they offered him a plea bargain he ultimately accepted. Pursuant to the parties' agreement, Rainey pled guilty to child abuse (a class 4 felony non-sex-offense) and attempted SAOC (a class 5 felony sex-related offense governed by SOLSA that does not require an indeterminate sentence). The district court accepted Rainey's guilty pleas and sentenced him, in accordance with the parties' agreement, to six years in prison for child abuse to be followed by ten years of SOISP for attempted SAOC.

¶6 Rainey discharged his prison sentence and then commenced his SOISP sentence. But he subsequently filed a motion pursuant to Crim. P. 35(a) challenging the legality of his sentences based on our decision in *Allman*. He argued that the district court had lacked authority to impose consecutive prison-

probation sentences in a single case. The People opposed Rainey's challenge, but to no avail. After carefully considering the parties' arguments, the district court sided with Rainey and declared his consecutive prison-probation sentences illegal under *Allman*.

¶7 As part of its ruling, the district court considered *People v. Ehlebracht*, 2020 COA 132, 480 P.3d 727, a case involving the legality of consecutive prison-SOISP sentences. A division of the court of appeals concluded there that because the probationary sentence implicated "was imposed under SOLSA, a unique sentencing scheme emphasizing sex offender specific objectives, *Allman* [didn't] apply." *Id.* at ¶ 2, 480 P.3d at 730. But the district court here determined that *Ehlebracht* was inapposite because that case dealt with a prison sentence for a non-sex offense and a consecutive sentence to *indeterminate* SOISP for a *sex offense*. By contrast, Rainey had received a prison sentence for a non-sex offense and a consecutive sentence to *determinate* SOISP for a *sex-related offense*. Viewing *Ehlebracht* as carving out a narrow exception—one limited to cases including an *indeterminate* SOISP sentence for a *sex offense*—the district court held that *Allman* controlled.

¶8 In light of its ruling, the district court instructed counsel to schedule a resentencing hearing. They did so. Before the resentencing hearing, however, the People timely sought our intervention pursuant to C.A.R. 21. For the reasons we

set forth next, we chose to exercise our original jurisdiction and issued a rule to show cause.

II. Original Jurisdiction

¶9 Whether to exercise our original jurisdiction under C.A.R. 21 is a matter wholly within our discretion. C.A.R. 21(a)(1). In exercising that discretion, however, we recognize that C.A.R. 21 is narrow in scope—it provides "an extraordinary remedy that is limited in both purpose and availability." *People v. Lucy*, 2020 CO 68, ¶ 11, 467 P.3d 332, 335 (quoting *People v. Rosas*, 2020 CO 22, ¶ 19, 459 P.3d 540, 545). Thus, in the past, we have exercised our original jurisdiction in limited circumstances, such as "when an appellate remedy would be inadequate, when a party may otherwise suffer irreparable harm, or when a petition raises issues of significant public importance that we have not yet considered." *Id.* (quoting *Rosas*, ¶ 19, 459 P.3d at 545).

¶10 The People assert that this is an appropriate case for exercise of our original jurisdiction both because they have no other adequate remedy and because their petition raises issues of significant public importance that we have never considered and that are likely to recur. We agree on both scores.

¶11 First, were we to deny the People's petition, Rainey's sentences would be altered. Instead of prison-probation sentences, he'd serve two prison sentences or two probation sentences. Of course, the People could appeal after the resentencing

hearing. But resolution of that appeal might take years. And, by then, we may not be able to reinstate Rainey's original sentences.

¶12 Second, the People's petition presents a novel question of significant public importance: Does the prison-probation sentencing restriction in *Allman* apply where a defendant receives a prison sentence for a non-sex offense and a consecutive determinate SOISP sentence for a sex-related offense? And the question will undoubtedly come up again—in point of fact, today we resolve the same question in *Keen* and one other case.[2] Under these circumstances, waiting to act would foster uncertainty and do a disservice to our district courts and the court of appeals, not to mention Coloradans in general.

¶13 Because we agree with the People that exercise of our original jurisdiction is warranted, we proceed to decide whether the sentences imposed on Rainey were illegal. We stray from that path briefly now, though, to set forth the controlling standard of review.

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[2] *See People v. Coleman*, 2021 CO 52, __ P.3d __. We also contemporaneously announce *People v. Lowe*, 2021 CO 51, __ P.3d __, which raises essentially the same question we address in *Manaois*.

III. Standard of Review

¶14 Whether a district court has the authority to impose a particular sentence is a question of statutory interpretation. *Allman*, ¶ 29, 451 P.3d at 833. We review questions of statutory interpretation de novo. *Id.*

IV. Analysis

¶15 The question we are called upon to answer is whether *Allman*'s prison-probation sentencing prohibition extends to multi-count cases involving a prison sentence for a non-sex offense and a consecutive SOISP sentence for a sex-related offense. We answer in the negative.

¶16 For the reasons we discuss in detail in *Keen*, our decision in *Manaois* and SOLSA's legislative history compel us to hold that *Allman* doesn't prohibit courts from sentencing a defendant in a multi-count case to prison for a non-sex offense followed by SOISP for another offense. *Keen*, ¶¶ 22–31. For our purposes, it matters not whether the SOISP sentence imposed in that scenario is for a sex offense (and thus indeterminate) or for a sex-related offense (and thus determinate). *Id.* at ¶ 19.[3]

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[3] In *Keen*, the crime of violence statute, section 18-1.3-406, C.R.S. (2020), offered an independent basis to uphold the challenged sentences. *Keen*, ¶¶ 36–39. Inasmuch as Rainey did not plead guilty to a crime of violence, section 18-1.3-406 is immaterial to our analysis here. Hence, we do not rely on our discussion in *Keen* related to the crime of violence statute.

¶17 Therefore, we conclude that *Allman*'s sentencing prohibition does not apply in this case and that the district court was authorized to impose a prison sentence for a non-sex offense followed by a determinate SOISP sentence for a sex-related offense. Because the district court determined otherwise, it erred.

V. Conclusion

¶18 Applying our holding in *Keen*, we conclude that *Allman*'s prison-probation sentencing prohibition, while continuing to be good law, does not apply in this case. It follows that Rainey's sentences were not rendered illegal by *Allman*. We therefore make the rule absolute and remand for further proceedings consistent with this opinion.[4]

CHIEF JUSTICE BOATRIGHT dissents, and **JUSTICE HART** joins in the dissent.

[4] Given this resolution, we do not address the parties' contentions regarding the proper remedy to correct illegal sentences under the circumstances present here.

CHIEF JUSTICE BOATRIGHT, dissenting.

¶19 As I explain in greater depth in my dissents to *People v. Manaois*, 2021 CO 49, __ P.3d __ (Boatright, C.J., dissenting), and *People v. Keen*, 2021 CO 50, __ P.3d __ (Boatright, C.J., dissenting), I would follow *Allman v. People*, 2019 CO 78, 451 P.3d 826, in this case and hold that, when a court sentences a defendant for multiple offenses in the same case, it may not impose imprisonment for some offenses and Sex Offender Intensive Supervised Probation ("SOISP") for others. Accordingly, I respectfully dissent.

¶20 Here, the defendant, Rainey, pled guilty to child abuse and attempted sexual assault on a child. The terms of the plea agreement, which the trial court imposed, recommended six years in prison on the child abuse charge, followed by a ten-year period of SOISP on the attempted sex assault on a child charge. The trial court correctly determined, therefore, that Rainey pled guilty under the terms of a plea agreement that recommended an illegal "prison-plus-SOISP" sentence. I would further direct the trial court to vacate Rainey's guilty plea as invalid on those grounds. Hence, I would discharge the rule to show cause.

I am authorized to state that JUSTICE HART joins in this dissent.