ADVANCE SHEET HEADNOTE
May 27, 2025

2025 CO 31

No. 23SC168, *Tennyson v. People*—Restitution—§ 18-1.3-603, C.R.S. (2024)—Postconviction Proceedings—Illegal Manner—Illegal Sentence—Crim. P. 35(a)—Crim. P. 32—*People v. Weeks*, 2021 CO 75, 498 P.3d 142—*Sanoff v. People*, 187 P.3d 576 (Colo. 2008)—*People v. Baker*, 2019 CO 97M, 452 P.3d 759—*Meza v. People*, 2018 CO 23, 415 P.3d 303.

The supreme court concludes that a post-sentencing order issued pursuant to section 18-1.3-603(1)(b), C.R.S. (2024), setting the amount of restitution owed, is not part of the sentence or of the judgment of conviction. Accordingly, the court concludes that a Crim. P. 35(a) claim challenging the timeliness of such an order is an illegal manner claim subject to the time limitation in Crim. P. 35(b), not an illegal sentence claim that may be brought at any time.

At sentencing in this case, the district court entered a subsection (1)(b) order finding restitution liability and deferring the determination of the amount of restitution until after sentencing. But the district court thereafter failed to determine the amount of restitution before the subsection (1)(b) deadline expired. Some years later, the defendant brought a Crim. P. 35(a) claim challenging the

timeliness of the post-sentencing restitution order. The supreme court concludes that because the defendant failed to bring his Crim. P. 35(a) claim within the time limitation in Crim. P. 35(b), the claim is time-barred. And because a division of the court of appeals reached the same result using the same rationale, its judgment is affirmed.

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

2025 CO 31

Supreme Court Case No. 23SC168
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA646

Petitioner:

Audrey Lee Tennyson,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed
en banc
May 27, 2025

Attorneys for Petitioner:
Megan A. Ring, Public Defender
Lisa Weisz, Deputy Public Defender
Denver, Colorado

Attorneys for Respondent:
Philip J. Weiser, Attorney General
Frank R. Lawson, Assistant Attorney General
Denver, Colorado

Attorneys for Amicus Curiae Office of the Alternate Defense Counsel:
Gibson, Dunn & Crutcher LLP
John Partridge
Al Kelly
Nicholas Venable

Denver, Colorado

Amicus Curiae Tnias D. Pike, pro se
Buena Vista, Colorado

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

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 Under Colorado law, with one rare exception, every sentence in a criminal case must include consideration of restitution.[1] *See* § 18-1.3-603(1), C.R.S. (2024); Crim. P. 32(b)(3)(I). Specifically, our legislature has mandated that every sentence must include at least one of four statutorily enumerated restitution orders: (1) an order requiring payment of an amount of restitution; (2) an order obligating the defendant to pay restitution but indicating that the amount of restitution will be determined within ninety-one days or, upon an express finding of good cause, within a longer timeframe set by the trial court; (3) an order, in addition to or in place of an order requiring payment of an amount of restitution, directing the defendant to pay restitution covering the actual costs of future treatment for any victim; or (4) an order stating that no restitution payment is required because no victim suffered a pecuniary loss. § 18-1.3-603(1)(a)–(d).

¶2 We now reaffirm that a sentence that fails to include at least one of these four restitution orders violates section 18-1.3-603(1) ("subsection (1)") and is a

[1] The one exception, which has no relevance here, is a sentence imposed following a "conviction for a state traffic misdemeanor offense issued by a municipal or county court in which the prosecuting attorney is acting as a special deputy district attorney pursuant to an agreement with the district attorney's office." § 18-1.3-603(1), C.R.S. (2024). For the sake of convenience, we omit any mention of this anomalous exception when discussing Colorado law on restitution in this opinion.

sentence not authorized by law that may be corrected at any time. *See* Crim. P. 35(a) ("The court may correct a sentence that was not authorized by law or that was imposed without jurisdiction at any time . . . ."). Because an order entered during a sentencing hearing[2] simply deferring until a later date the matter of restitution in its entirety (i.e., deferring both whether the defendant is liable to pay restitution, and if so, the amount of restitution due) is not one of the orders listed in subsection (1), a sentence that addresses restitution through such an order is a sentence that is not authorized by law.

¶3 This case presents a more nuanced issue, however. Pursuant to section 18-1.3-603(1)(b) ("subsection (1)(b)"), the district court imposed a sentence that implicitly obligated the defendant, Audrey Lee Tennyson, to pay restitution and postponed the determination of the amount of restitution until a later date. The court, though, subsequently failed to set the amount of restitution within the applicable deadline in subsection (1)(b)—ninety days or, upon a timely and express finding of good cause, any longer timeframe set by the court (the "subsection (1)(b) deadline").[3] Ten years later, Tennyson brought a Crim. P. 35(a)

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[2] We refer to a "sentencing hearing" or "sentencing" when describing a hearing during which the sentence is imposed and the judgment of conviction enters.

[3] The legislature amended subsection (1)(b) in 2012 to change ninety days to ninety-one days. Ch. 208, sec. 112, § 18-1.3-603(1)(b), 2012 Colo. Sess. Laws 822, 866–67.

claim arguing that he received an illegal sentence that may be corrected at any time and that the only way to correct it was by vacating the restitution order and entering in its place an order specifying that no restitution was due. The question for us is whether Tennyson's Crim. P. 35(a) claim is an "illegal sentence claim" challenging the legality of his sentence or an "illegal manner claim" challenging the legality of the manner in which his sentence was imposed.

¶4 The answer is consequential. If the district court's failure to comply with the subsection (1)(b) deadline rendered Tennyson's sentence illegal, the court could correct it at any time. But if the court's violation of the subsection (1)(b) deadline meant that Tennyson's sentence was imposed in an illegal manner, the court could only correct it within 120 days after his sentence was imposed. *See* Crim. P. 35(a)–(b).[4] To resolve the question, we must review both our Crim. P. 35(a) jurisprudence and our restitution jurisprudence.

¶5 First, Crim. P. 35(a). In *People v. Baker*, 2019 CO 97M, ¶ 1, 452 P.3d 759, 760, we were called upon to decide whether a claim seeking more presentence confinement credit ("PSCC") than originally granted was a claim that the prison sentence imposed was "not authorized by law" and was thus illegal under Crim.

[4] Rule 35 was amended after Tennyson was sentenced in 2008. Where, as here, no direct appeal is filed, the deadline to bring an illegal manner claim is now 126 days (instead of 120 days) after the sentence is imposed. This difference is immaterial in this appeal.

P. 35(a). We held that it could not be an illegal sentence claim because "PSCC is not a component of a sentence." *Baker*, ¶ 1, 452 P.3d at 760. We acknowledged, however, that a claim challenging the trial court's calculation of PSCC could be brought pursuant to Crim. P. 35(a) as an illegal manner claim. *Baker*, ¶ 20, 452 P.3d at 763.

¶6 Second, restitution. In *Sanoff v. People*, 187 P.3d 576, 579 (Colo. 2008), we held that a restitution order issued at sentencing pursuant to subsection (1)(b) that merely required the defendant to pay restitution and indicated that the amount due would be determined later sufficed to satisfy the restitution component of the sentence. We reasoned that, "by express legislative action, a subsequent determination of the amount of restitution . . . , as distinguished from an order simply finding [the defendant] liable to pay restitution, has been severed from the meaning of the term 'sentence,' as contemplated by Crim. P. 32, and therefore from [the] judgment of conviction." *Sanoff*, 187 P.3d at 578.

¶7 Guided by *Sanoff*, we conclude that the order setting the amount of restitution owed by Tennyson is not part of his sentence or of his judgment of conviction. And guided by *Baker*, we conclude that Tennyson's Crim. P. 35(a) claim challenging the timeliness of the order setting the amount of restitution is an illegal manner claim, not an illegal sentence claim. As such, he was required to bring it within 120 days after his sentence was imposed. Because he did not, his

Crim. P. 35(a) claim is time-barred. And because the court of appeals reached the same conclusion, we affirm its judgment.

I. Facts and Procedural History

¶8 In the summer of 2007, Tennyson committed a series of robberies. He was subsequently charged with fifty counts in this case. The prosecution and Tennyson eventually reached a global disposition: He pleaded guilty to two counts of aggravated robbery, and in exchange, the prosecution agreed to a sentencing range on each count of ten to thirty-two years in the Department of Corrections ("DOC"), which he would serve concurrently with each other and with the sentences in three other felony cases in which he was facing complaints to revoke his probation.

¶9 Tennyson stipulated in the plea agreement that there was restitution and that he was liable for it. Specifically, the plea agreement obligated him to pay restitution "to all victims in all pending counts and cases governed by this plea agreement, including all counts to be dismissed." Further, the plea agreement stated that the prosecution would "act in good faith to provide correct information establishing *the amount of restitution within [ninety] days of sentencing*." (Emphasis added.) Following Tennyson's guilty pleas at the providency hearing, the court scheduled all four cases for sentencing.

¶10 During the sentencing hearing, the prosecutor argued for prison sentences within the agreed-upon sentencing ranges, specifically asked for restitution, and then requested that restitution be "[r]eserve[d] for [ninety] days." Consistent with the plea agreement, the court imposed prison sentences of twenty-six years on each of the two aggravated robbery counts, to run concurrently with each other and with the shorter prison sentences imposed in the three probation-revocation cases. The court then gave the prosecution "[ninety] days to determine," not whether there would be restitution, but rather "*what restitution is due and owing*." (Emphasis added.) It further granted Tennyson "[thirty] days to challenge if [he] believe[d] *the figure* [was] in error."[5] (Emphasis added.) Like the division, we infer from the record—particularly from the terms of the plea agreement and the exchange between the court and the prosecution at the sentencing hearing—that the court found Tennyson liable for restitution but deferred until after sentencing the determination of the amount of restitution.

¶11 Eighty-six days after the sentencing hearing, the prosecution timely submitted a proposed restitution order setting forth the requested amount of

[5] The prosecution doesn't raise the issue of waiver with respect to any claim related to the subsection (1)(b) deadline. Accordingly, we do not reach it. We "decide cases on the grounds raised and considered in the [intermediate appellate court] and included in the question on which we granted certiorari." *Bragdon v. Abbott*, 524 U.S. 624, 638 (1998).

restitution ($12,306.18). Tennyson lodged no objection, and the district court granted the proposed order 136 days after sentencing. Despite approving the proposed restitution amount, the court gave Tennyson ten additional days to file an objection. Although Tennyson did not file an objection within that timeframe, the prosecution filed an amended proposed order on the tenth day. The amended proposed order simply corrected an arithmetic error in the calculation of the amount of restitution due: $12,684.96 instead of $12,306.18.[6] The court signed the amended proposed order 155 days after sentencing but again gave Tennyson ten days to object to it. Tennyson did not file a timely objection this time either.

¶12 Tennyson did not appeal his sentence or judgment of conviction. He did, however, file numerous postconviction claims and appeals challenging the rulings on some of those claims. None of those claims or appeals are relevant to our analysis, so we omit any discussion of them.

¶13 In 2015, approximately seven years after his sentencing hearing, Tennyson wrote a letter to the district court contending that the restitution order had not been served on him and objecting to the restitution amount. The court denied this objection as untimely.

[6] The original proposed order and the amended proposed order included the same restitution amount as to each individual victim; the amended proposed order simply corrected a miscalculation of the sum total of those amounts.

¶14 About three years later (some ten years after his sentence was imposed), Tennyson brought additional postconviction claims, including the Crim. P. 35(a) claim before us. As relevant here, he argued that his sentence was illegal because there was no evidence that the prosecution needed additional time after sentencing to calculate the amount of restitution ultimately requested. The district court disagreed, explaining that it was customary to afford the prosecution ninety days after sentencing to calculate the amount of restitution sought because the prosecution rarely has that information at the time of sentencing.

¶15 Tennyson appealed. While his case was pending on appeal, we announced our decision in *People v. Weeks*, 2021 CO 75, ¶¶ 45–47, 498 P.3d 142, 157, where, as relevant here, we (1) held that when a trial court enters a subsection (1)(b) order finding restitution liability at sentencing, it loses authority to require restitution if it fails to set the amount due within the subsection (1)(b) deadline; and (2) concluded that vacatur of the restitution order was the appropriate remedy for the trial court's failure to determine the amount of restitution within the subsection (1)(b) deadline.

¶16 Relying on *Weeks*, Tennyson argued at the court of appeals that his sentence was illegal because the district court had lacked authority to enter the order setting the amount of restitution after the subsection (1)(b) deadline expired. And, according to Tennyson, the remedy required by *Weeks* to correct his sentence was

vacatur of the restitution order and entry of an order indicating he owed no restitution.

¶17 In a published opinion, a unanimous division of the court of appeals disagreed and affirmed the district court's orders denying Tennyson's postconviction claims. *People v. Tennyson,* 2023 COA 2, ¶ 2, 528 P.3d 185, 187–88. As pertinent here, the division concluded that: (1) under this court's case law, when a trial court enters a subsection (1)(b) order, the "liability" component is distinct and separate from the "amount" component; and (2) *Weeks* simply set forth the *procedural manner* in which the restitution amount must be determined after sentencing under subsection (1)(b). *Id.* at ¶ 17, 528 P.3d at 189. Because the division discerned that the amount of restitution was not part of Tennyson's sentence, it ruled that his challenge to the timeliness of the post-sentencing order setting the amount of restitution was an illegal manner claim, not an illegal sentence claim. *Id.* And since Tennyson failed to bring his claim within 120 days after his sentence was imposed, the division determined that the claim was time-barred. *Id.* at ¶ 38, 528 P.3d at 192.

¶18 Tennyson thereafter sought our review, and we granted his petition. We agreed to consider the single issue he raised: "Whether a postconviction challenge to the timeliness of a restitution order is cognizable as an illegal sentence claim under Crim. P. 35(a)." Given what occurred here, we understand the issue to refer

to a Crim. P. 35(a) challenge to the timeliness of a post-sentencing determination of the amount of restitution following a sentencing hearing during which the court finds restitution liability.[7]

II. Analysis

¶19 Before analyzing the issue raised by Tennyson, we set forth the standard of review. We then consider the case law applying Crim. P. 35(a) and differentiating between illegal sentence claims and illegal manner claims. With these precedents in mind, we turn to Colorado law governing restitution in criminal cases—focusing specifically on subsection (1)(b) restitution orders. We end by applying the principles of law discussed to determine whether the district court's untimely determination of the amount of restitution rendered Tennyson's sentence illegal. We rule that it did not and therefore conclude that the Crim. P. 35(a) claim brought by Tennyson was an illegal manner claim that should have been brought within 120 days after sentencing.

A. Standard of Review

¶20 Subject to constitutional limitations, "it is the prerogative of the legislature to . . . prescribe sentences." *Sanoff*, 187 P.3d at 577. Our General Assembly has

[7] When we refer to restitution "liability," we mean a general obligation to pay restitution without a determination yet of the amount of restitution. And when we refer to the "amount of restitution" or the "restitution amount," we mean the final amount of restitution.

long required that every criminal sentence reflect consideration of restitution. *Id.* Restitution orders in criminal prosecutions in this jurisdiction are governed by statute and rule. *See* § 18-1.3-603; Crim. P. 32(b)(1) ("When imposing sentence, the court shall consider restitution as required by section 18-1.3-603(1), C.R.S."); Crim. P. 32(b)(3)(I) (indicating that "[a] judgment of conviction" must include "an order or finding regarding restitution as required by section 18-1.3-603, C.R.S.").

¶21 Questions of statutory interpretation are questions of law, which we review de novo. *Weeks*, ¶ 24, 498 P.3d at 151. In construing a statute, our goal is to give effect to the legislature's intent. *Id.* at ¶ 25, 498 P.3d at 151. The first step in this endeavor is to give the statute's "words and phrases their plain and ordinary meaning." *Id.* (quoting *McCulley v. People*, 2020 CO 40, ¶ 10, 463 P.3d 254, 257). We "presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992)). Consequently, if a statute is unambiguous, we apply it as written without resorting to tools of statutory construction. *Baker*, ¶ 13, 452 P.3d at 762.

¶22 The same principles that apply to statutory interpretation apply when we construe our rules of criminal procedure, which we have plenary authority to promulgate and interpret. *Id.* at ¶ 14, 452 P.3d at 762. Just as with questions of statutory interpretation, questions of rule interpretation are legal in nature and

subject to de novo review. *Hunsaker v. People*, 2021 CO 83, ¶ 16, 500 P.3d 1110, 1114 (relying on *People v. Bueno*, 2018 CO 4, ¶ 18, 409 P.3d 320, 325).

¶23 We also review de novo the legality of a sentence. *Veith v. People*, 2017 CO 19, ¶ 12, 390 P.3d 403, 406. Thus, the denial of a Crim. P. 35(a) claim asserting that a sentence was either not authorized by statute or imposed without jurisdiction presents a question of law subject to de novo review.

B. Crim. P. 35(a)—Illegal Sentence Claims vs. Illegal Manner Claims

¶24 Crim. P. 35(a) allows a defendant in a criminal case to file a postconviction claim (1) to "correct a sentence that was not authorized by law or that was imposed without jurisdiction" or (2) to "correct a sentence imposed in an illegal manner." The former is an illegal sentence claim; the latter is an illegal manner claim. We explore in some depth each type of claim.

¶25 We have made clear that an illegal sentence includes a sentence that is not authorized by law because it fails to comply *in full* with statutory requirements. *Delgado v. People*, 105 P.3d 634, 636 (Colo. 2005); *see also People v. Collier*, 151 P.3d 668, 670 (Colo. App. 2006) (observing that a sentence is illegal if "it is inconsistent with the statutory scheme outlined by the legislature"). For example, in *Chae v. People*, 780 P.2d 481, 484 (Colo. 1989), we held that a suspended term of incarceration in the DOC constituted an illegal sentence because, although the imposition of the DOC sentence itself was legal, its suspension was not. Later, in

Craig v. People, 986 P.2d 951, 960 (Colo. 1999), we decided that "any plea agreement purporting to eliminate, waive, modify or direct the trial court's application of parole in a way not available under the sentencing law would call for an illegal sentence of the sort rejected in *Chae*." Thus, it is a fundamental tenet in this state that, "as long as any aspect of a sentence is inconsistent with statutory requirements, the complete sentence is illegal." *Delgado*, 105 P.3d at 637.

¶26 A claim that a sentence is not authorized by law can encompass a wide range of situations, including, for example: when a court orders sentences to run concurrently, even though a statute requires them to run consecutively, *People v. White*, 179 P.3d 58, 60 (Colo. App. 2007); when a court orders mandatory parole in contravention of a statute requiring discretionary parole, *Hunsaker*, ¶ 19, 500 P.3d at 1114; or when a court imposes a prison sentence longer than the maximum term permitted by the governing statute, *id.* Depending on the nature of the illegality involved, some sentences that are not authorized by law "can be corrected through resentencing and imposition of a legal sentence while other illegal sentences require that the judgment of conviction be vacated." *Id.* (quoting *Delgado*, 105 P.3d at 637).

¶27 A sentence imposed without jurisdiction is also an illegal sentence. "A court's 'jurisdiction' concerns its 'power to entertain and to render a judgment on a particular claim.'" *People in Int. of J.W. v. C.O.*, 2017 CO 105, ¶ 21, 406 P.3d 853,

858 (quoting *In re Estate of Ongaro*, 998 P.2d 1097, 1103 (Colo. 2000)). Jurisdiction consists of two elements: subject matter jurisdiction, which refers to a "court's authority to deal with the *class* of cases," *People v. Sprinkle*, 2021 CO 60, ¶ 15, 489 P.3d 1242, 1245 (quoting *C.O.*, ¶ 24, 406 P.3d at 858); and personal jurisdiction, which refers to a court's power over the parties, *C.O.*, ¶ 22, 406 P.3d at 858.

¶28 The Colorado Constitution confers general subject matter jurisdiction on district courts, so unless otherwise provided, they have jurisdiction to hear all criminal cases. Colo. Const. art. VI, § 9(1). While the General Assembly may limit a court's subject matter jurisdiction, "such limitations must be explicit." *Wood v. People*, 255 P.3d 1136, 1140 (Colo. 2011).

¶29 Illegal sentences should not be confused with sentences imposed in an illegal manner. Crim. P. 35(a). A sentence is imposed in an illegal manner "when the trial court ignores essential procedural rights or statutory considerations in forming the sentence." 15 Robert J. Dieter, *Colorado Practice Series: Criminal Practice and Procedure* § 21.10 n.10 (2d ed. 2004); *see also People v. Bowerman*, 258 P.3d 314, 316–17 (Colo. App. 2010) (relying on this definition); *People v. Knoeppchen*, 2019 COA 34, ¶ 9, 459 P.3d 679, 682 (same), *overruled in part on other grounds by Weeks*, ¶¶ 9, 47 n.16, 498 P.3d at 149, 157 n.16. Sentences imposed in an illegal manner include, but are not limited to, those where the court fails to adhere to statutory procedural requirements, such as by depriving the defendant of the

complete range of presentencing sex-offender testing mandated by the legislature, *see Collier*, 151 P.3d at 673, or where the manner of imposing the sentence results in the denial of procedural due process, *see People v. Sisson*, 179 P.3d 193, 196 (Colo. App. 2007).

¶30 We recognize, as has a division of the court of appeals, that an illegal sentence could fairly be viewed as encompassing procedural infirmities. *People v. Wenzinger*, 155 P.3d 415, 418 (Colo. App. 2006). But doing so risks blurring the distinction between, on the one hand, sentences that are void because they have been imposed either in excess of the court's statutory authority or without jurisdiction, and, on the other, sentences that are voidable because they have been imposed in an illegal manner. *See id.* And this distinction is important, among other reasons, because an illegal manner claim is subject to a time limitation, but an illegal sentence claim is not.

¶31 Crim. P. 35(a) specifically states that, although an illegal sentence may be corrected "at any time," a sentence imposed in an illegal manner may be corrected only "within the time provided . . . for the reduction of sentence" pursuant to Crim. P. 35(b). A trial court may reduce a sentence under Crim. P. 35(b) if an appropriate motion is filed within 126 days (120 days during the relevant timeframe here) after (1) the imposition of the sentence, (2) receipt of the remittitur following either (a) an affirmance of the sentence or judgment of conviction or (b) dismissal of the

appeal, or (3) entry of an appellate court's order or judgment denying review or having the effect of upholding the sentence or the judgment of conviction. A trial court may also reduce a sentence at any time pursuant to a limited remand ordered by an appellate court during the pendency of a direct appeal. *Id.*

¶32 The timeliness of Tennyson's Crim. P. 35(a) claim hinges on whether it is an illegal sentence claim or an illegal manner claim. If it's the former, it's timely, as he could have brought it at any time; if it's the latter, it's not, as he didn't bring it within 120 days after the imposition of his sentence. Although ascertaining whether a claim is an illegal sentence claim or an illegal manner claim isn't always easy, our case law provides some guidance. A recent case in particular, *Baker*, is instructive here.

¶33 In *Baker*, we were asked to determine whether a Crim. P. 35(a) claim seeking additional PSCC against a DOC sentence was a claim that the sentence was "not authorized by law" and was thus illegal. ¶ 1, 452 P.3d at 760. We held that the claim could not be an illegal sentence claim because "PSCC is not a component of a sentence." *Id.* Relying on the statute defining the credit criminal defendants are entitled to receive as a result of presentence confinement, *see* § 18-1.3-405, C.R.S. (2024), we explained that PSCC "is time served before a sentence is imposed," is "calculated independently from the sentence," and "is later credited against" the sentence. *Baker*, ¶¶ 1, 16, 452 P.3d at 760, 762. Accordingly, we concluded that the

defendant's remedy was to file a Crim. P. 36 motion to correct the clerical error in the PSCC reflected on his mittimus. *Baker*, ¶ 21, 452 P.3d at 763.

¶34 Of particular interest here, we explained that, to the extent the error was not a clerical one subject to correction under Crim. P. 36, the defendant certainly could have challenged the trial court's PSCC calculation by bringing a Crim. P. 35(a) claim "that the sentencing process deviated from the statutory requirements, such that the sentence was imposed 'in an illegal manner.'" *Baker*, ¶ 20, 452 P.3d at 763. Consequently, we concluded that the defendant could have brought a claim arguing that *his sentence* was imposed in an illegal manner and was thus in need of correction, even though PSCC is *not a component of a sentence*. *Id.* The defendant had not brought such a claim simply because more than 126 days had passed since the imposition of his sentence, rendering any illegal manner claim untimely. *Id.*

¶35 Mindful of the differences between illegal sentence claims and illegal manner claims, we shift our attention now to Colorado law governing restitution in criminal cases. In light of the circumstances of this case, we keep our focus on subsection (1)(b) orders.

C. Colorado Law Governing Restitution in Criminal Cases

¶36 A judgment of conviction in Colorado includes the sentence imposed. *See* Crim. P. 32(b)(3)(I). Consequently, we have determined that a judgment of conviction is not final and appealable until the defendant has been acquitted, the

charges have been dismissed in their entirety, or the defendant has been convicted *and sentenced*. *Sanoff*, 187 P.3d at 577. The sentence aspect of a final judgment of conviction is the centerpiece of our analysis in this case.

¶37 Before making significant amendments to the restitution statutory scheme twenty-five years ago, our General Assembly had required that the amount of restitution be fixed by the court in every case at the time of sentencing. *Id.* (citing § 16-11-102(4), C.R.S. (1989)). Accordingly, we had held that an order requiring restitution, including the amount the defendant was obligated to pay, was a component of the sentence and, by extension, of the judgment of conviction. *Id.* (citing *People v. Johnson*, 780 P.2d 504, 508 (Colo. 1989)).

¶38 In 2000, however, the legislature substantially revised the restitution statutory framework. *Id.* at 578 (citing Ch. 232, sec. 1, §§ 16-18.5-101 to -110, 2000 Colo. Sess. Laws 1030, 1030–41). In the process, it enacted an integrated system for the imposition and collection of restitution. *See Meza v. People*, 2018 CO 23, ¶ 9, 415 P.3d 303, 306.

¶39 Under the current statutory regime, every sentence must include at least one of the four specifically enumerated restitution orders. § 18-1.3-603(1); *Meza*, ¶ 10, 415 P.3d at 307. A sentence must now contain: (1) an order pursuant to section 18-1.3-603(1)(a) ("subsection (1)(a)") requiring payment of an amount of restitution; (2) an order pursuant to subsection (1)(b) obligating the defendant to

pay restitution but indicating that the amount of restitution shall be determined within the subsection (1)(b) deadline; (3) an order pursuant to section 18-1.3-603(1)(c) ("subsection (1)(c)"), in addition to or in place of an order of an amount of restitution, directing the defendant to pay restitution covering the actual costs of specific future treatment for any victim; and/or (4) an order pursuant to section 18-1.3-603(1)(d) ("subsection (1)(d)") stating that no payment of restitution is required because no victim suffered a pecuniary loss. *See also* Crim. P. 32(b)(3)(I) (indicating that a judgment of conviction must include "an order or finding regarding restitution as required by section 18-1.3-603, C.R.S.").[8] A restitution order that is not authorized by subsection (1) fails to satisfy the restitution component of a sentence and of the judgment of conviction. *Sanoff*, 187 P.3d 579. Correspondingly, a sentence that fails to include at least one of the four enumerated restitution orders in subsection (1) is a sentence not authorized by law (i.e., an illegal sentence) that may be corrected at any time.

¶40 As pertinent here, while every sentence must continue to include consideration of restitution, trial courts have been relieved of their obligation to set the amount of restitution at the time of sentencing in some cases. *Sanoff*,

[8] The quoted language related to restitution was added to Crim. P. 32(b)(3)(I) in 2015 (after Tennyson's sentence was imposed in 2008). But the legislature's amendments in section 18-1.3-603 became effective in 2000, before Tennyson's sentencing hearing.

187 P.3d at 578. Excluding a subsection (1)(d) order, which requires no restitution at all, two of the remaining three enumerated orders allow a trial court to find restitution liability at sentencing and to postpone the determination of the restitution amount until after sentencing: an order governed by subsection (1)(b) and an order governed by subsection (1)(c). *See Meza*, ¶¶ 14–15, 415 P.3d at 308. Only subsection (1)(a) orders require that the amount of restitution be determined before entry of the judgment of conviction. Thus, when a trial court determines the amount of restitution (and thereby also necessarily finds restitution liability) before or during sentencing, it enters a subsection (1)(a) order.

¶41 Here, however, the court entered a restitution order pursuant to subsection (1)(b). That subsection allows a trial court, at or before sentencing, "to merely order that the defendant be obligated to pay restitution and postpone a determination of the specific amount of restitution." *Sanoff*, 187 P.3d at 578. Hence, under subsection (1)(b), a defendant's judgment of conviction becomes final and appealable when the court enters an order making the defendant liable to pay restitution, even though the amount of restitution hasn't been (and won't be) determined until sometime after the sentencing hearing. *Id.* at 578–79.

¶42 It follows that subsection (1)(b) "clearly distinguishes" between "an order assigning liability for restitution from a determination of the amount of restitution for which the defendant is liable." *Id.* at 578. We acknowledged as much in *Sanoff*,

explaining that the statutory amendments enacted in 2000 "undermine[d] the continuing validity of our earlier conclusion that the amount of restitution must be part of a judgment of conviction." *Id.* By specifying in subsection (1)(b) that the judgment of conviction "need only include a determination whether the defendant is obligated to pay restitution, without designation of the amount, the General Assembly has made clear its intent that the amount of the defendant's liability no longer be a required component of a final judgment of conviction" in some cases. *Id.*

¶43 Accordingly, in the context of subsection (1)(b) orders, the amount of restitution "has been severed from the meaning of the term 'sentence,' as contemplated by Crim. P. 32, and therefore from [the] judgment of conviction." *Id.* Because under subsection (1)(b) the amount of restitution "is no longer part of the defendant's judgment of conviction, as contemplated by Crim. P. 32," neither a proceeding to determine, nor an order assessing, the amount of restitution directly affects the judgment of conviction. *Id.* at 578–79. For that reason, after issuing a subsection (1)(b) order at sentencing finding restitution liability, a trial court may thereafter set the amount of restitution even if an appeal of the judgment of conviction is already pending. *Id.* Of course, in that scenario, the post-sentencing order determining the amount of restitution is still appealable—as a separate, final judgment. *Id.*; *see also Meza*, ¶ 13, 415 P.3d at 308 (indicating that subsection (1)(b)

"necessarily contemplates the possibility of a second proceeding within ninety-one days, or longer for good cause, that would result in a second, final, appealable order").

¶44 This stands in stark contrast to a subsection (1)(a) order. The legislature has not expressed an intent to sever the amount of restitution from the sentence in such an order. This makes logical sense: A subsection (1)(a) order is an order that both finds restitution liability and requires payment of an amount of restitution. Consequently, the amount of restitution in a subsection (1)(a) order is a component of the sentence that "finalizes" and renders appealable "the judgment of conviction in question." *Meza*, ¶ 15, 415 P.3d at 308. For this reason, any Crim. P. 35(a) challenge to the restitution amount in the context of a subsection (1)(a) order is an illegal sentence claim, not an illegal manner claim. *See Baker*, ¶ 1, 452 P.3d at 760. To the extent the division failed to account for this subtle but important distinction, it erred.[9]

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[9] In at least one part of its opinion, the division correctly confined its holding as follows:

> "[I]n circumstances where the district court ordered at . . . sentencing that the defendant was liable to pay restitution and then later determined the restitution amount under [subsection (1)(b)], a defendant's postconviction challenge to the restitution amount is cognizable as a challenge to the *manner* in which the sentence was imposed under Rule 35(a)."

Tennyson, ¶ 2, 528 P.3d at 187. But the division also more broadly implied that the amount of restitution is never a component of a defendant's sentence. *Id.* ("[T]he

D. Application

¶45 Tennyson's judgment of conviction became final and appealable at the sentencing hearing, where the district court implicitly found him generally liable for restitution without yet determining the amount of restitution owed. The court's post-sentencing determination of the restitution amount, while appealable as a separate judgment, was not part of Tennyson's sentence. Accordingly, Tennyson's Crim. P. 35(a) claim, which challenges the timeliness of the determination of the amount of restitution, is an illegal manner claim, not an illegal sentence claim.[10] Much like a challenge related to PSCC, Tennyson's challenge is to the sentencing process followed, not to the legality of his sentence. And because Tennyson didn't file a direct appeal from his judgment of conviction, he was

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amount of restitution is not a part of a defendant's sentence."). In fairness, our opinion in *Sanoff* contained similarly imprecise language. 187 P.3d at 578 ("In fact, . . . the General Assembly has made clear its intent that the amount of the defendant's liability no longer be a required component of a final judgment of conviction."). We corrected course in *Meza*, however, where we stated that, in the context of a subsection (1)(a) order, the amount of restitution *is* a component of a defendant's sentence and judgment of conviction. ¶ 16, 415 P.3d at 308–09.

[10] We recognize that, among the examples of illegal sentence claims we offered in *Hunsaker*, we included "claims that the restitution imposed . . . was in the wrong *amount*." ¶ 19, 500 P.3d at 1114 (emphasis added). But restitution was not at issue there, and we didn't specify which of the four statutorily enumerated orders we were referencing. As we explained above, a Crim. P. 35(a) claim challenging the amount of restitution in a subsection (1)(a) order is, indeed, an illegal sentence claim.

required to bring his illegal manner claim within 120 days after the imposition of his sentence. He failed to do so, and therefore, his claim is time-barred.

¶46 We are not persuaded otherwise by Tennyson's arguments. We address each in turn.

¶47 Tennyson contends that *Sanoff* is distinguishable. As a refresher, we held in that case that because the trial court entered a subsection (1)(b) order finding restitution liability at sentencing, the judgment of conviction became final and appealable, even though the court deferred setting the restitution amount until a later date. *Sanoff*, 187 P.3d at 576, 578–79. Tennyson asks us to cabin our holding in *Sanoff* to the finality of a judgment of conviction under Crim. P. 32(b)(3)(I) for purposes of filing an appeal. And because neither the finality nor the appealability of his judgment of conviction is an issue before us, he questions the relevance of our conclusion in *Sanoff* regarding the severance of the restitution amount from a defendant's sentence and judgment of conviction in some cases. We see no legal or logical basis to read *Sanoff* so narrowly.

¶48 Our holding in *Sanoff* was premised on the *legislature's decision*, as reflected in the statutory revisions enacted in 2000, to distinguish in some circumstances an order holding a defendant liable for restitution from an order setting the amount of restitution. 187 P.3d at 578. We inferred from that decision that the legislature intended for "the amount" of restitution to "no longer be a required component"

of the sentence or of the final judgment of conviction in some cases. *Id.* Had we believed that this legislative intent was limited to determining when a judgment of conviction becomes final and appealable, we would have said so. Of course, there was no basis for us to say so because nothing in section 18-1.3-603 reflects that the legislature had such a limitation in mind.

¶49 Our reference to Crim. P. 32 in *Sanoff*—"by express legislative action, . . . the amount of restitution . . . has been severed from . . . 'sentence,' as contemplated by Crim. P. 32"—provides no refuge for Tennyson. *Sanoff*, 187 P.3d at 578. We relied on Crim. P. 32 there because the rule describes a defendant's "sentence" as including consideration of restitution pursuant to subsection (1). Crim. P. 32(b)(1); *see also Sanoff*, 187 P.3d at 577. Crim. P. 32 though, is just as relevant here—one of the questions we answer today is whether, in the context of a subsection (1)(b) order, the amount of restitution is part of a defendant's "sentence," as that term is defined in Crim. P. 32. Nothing about our reference to Crim. P. 32 in *Sanoff* supports Tennyson's position that our opinion in that case is inapposite.

¶50 In any event, when a trial court enters a subsection (1)(b) order, it makes little sense to say, on the one hand, that the amount of restitution *is* severed from the defendant's sentence for purposes of determining when the judgment of conviction becomes final and appealable, while on the other, that the amount of restitution is *not* severed from the defendant's sentence for purposes of

determining whether a Crim. P. 35(a) claim is an illegal sentence claim or an illegal manner claim. As we see it, when dealing with subsection (1)(b) orders, the amount of restitution is either part of the sentence or is severed from it—both for purposes of a direct appeal from the judgment of conviction and for purposes of a Crim. P. 35(a) claim in a postconviction proceeding. *Sanoff* answers the question for both purposes: Under subsection (1)(b), the amount of restitution is severed from the sentence—always. Full stop.

¶51 Tennyson insists, however, that his is an illegal sentence claim because we said in *Weeks* that a trial court lacks the "authority" to order restitution after the statutory deadline in subsection (1)(b) has lapsed. In this regard, Tennyson reminds us that Crim. P. 35(a) allows courts to correct a sentence "not authorized by law." But we just explained that one of *Sanoff*'s teachings is that the amount of restitution when a trial court enters a subsection (1)(b) order is *not* part of the sentence. So, a Crim. P. 35(a) challenge to that amount is necessarily not a claim that *the sentence* imposed was not authorized by law.

¶52 Importantly, nowhere in *Weeks* did we imply, let alone expressly state, that we were overruling *Sanoff*. To the contrary, *Weeks* reaffirmed some of the lessons from *Sanoff* on which we rely today. *Weeks*, ¶¶ 30 n.9, 36 n.11, 498 P.3d at 153 n.9, 154 n.11.

¶53 Still, Tennyson maintains that, under *Weeks*, the district court lacked jurisdiction to enter the amount of restitution after the subsection (1)(b) deadline expired, and therefore, his challenge is best understood as an illegal sentence claim. True, an illegal sentence under Crim. P. 35(a) includes one "imposed without jurisdiction." But we never said in *Weeks* that a trial court loses jurisdiction to order restitution when it fails to determine the amount of restitution before the subsection (1)(b) deadline expires. In fact, we didn't use the word "jurisdiction" a single time in that opinion.

¶54 When we said in *Weeks* that a trial court lacks "authority" to order restitution after the subsection (1)(b) deadline expires, we didn't mean that it is divested of subject matter jurisdiction to act. Rather, we simply meant that it cannot do something that exceeds what section 18-1.3-603 permits—that is, it cannot take action without the statutory power to do so in an area of the law like sentencing, which lies within the legislature's sole prerogative.[11] This was consistent with what we'd repeatedly said before.

¶55 For example, in *Sanoff*, we observed that the trial court had reserved the determination of the restitution amount "[a]s *authorized* by the applicable statutory

[11] Although we were not asked to decide in *Weeks* which of the four statutorily enumerated restitution orders, if any, the trial court had entered at sentencing, it is clear from our opinion and the division's opinion that a subsection (1)(b) order was implicated. *See Snow v. People*, 2025 CO 32, ¶ 28, __ P.3d __.

provision" (i.e., subsection (1)(b)). 187 P.3d at 577 (emphasis added). Further, in *Meza*, we said that the trial court lacked "power" to increase the amount of restitution previously set because, absent "a statutorily authorized order" reserving the amount of restitution, the judgment of conviction made that amount final and appealable. ¶ 2, 415 P.3d at 305; *see also id.* at ¶ 15, 415 P.3d at 308 (stating that the trial court's "power" to order additional restitution existed, if at all, "only as a result of specific statutory authorization," and explaining that, "[i]n the absence of" a subsection (1)(b) or a subsection (1)(c) order, "the statute does not purport to empower the sentencing court to set an amount of restitution following entry of the judgment of conviction in question"); *People v. Belibi*, 2018 CO 24, ¶¶ 2, 9–11, 415 P.3d 301, 302–03 (using similar language).

¶56 According to Tennyson, however, separate and apart from our decision in *Weeks*, the subsection (1)(b) deadline is jurisdictional. For the reasons articulated in *Babcock v. People*, 2025 CO 26, ¶¶ 22–26, __ P.3d __, one of the four companion cases we announce today, we disagree and conclude that this deadline is not jurisdictional.

¶57 Nor does the remedy we granted in *Weeks* support Tennyson's assertion that he brought an illegal sentence claim. In *Weeks*, we vacated the restitution order because we determined that by the time the trial court set the amount of restitution

(after expiration of the subsection (1)(b) deadline), it no longer had the authority to do so. *Weeks*, ¶¶ 45, 47, 498 P.3d at 157.

¶58 But the fact that we resorted to vacatur as a remedy in *Weeks* doesn't transform Tennyson's claim into an illegal sentence claim. To begin, *Weeks* didn't involve a postconviction proceeding pursuant to Crim. P. 35(a); rather, it came to us on direct appeal from the judgment of the restitution amount. *Weeks*, ¶¶ 15–18, 498 P.3d at 150. Therefore, the remedy we granted there has no bearing on Tennyson's Crim. P. 35(a) claim.

¶59 Moreover, in *Weeks*, we could conceive of no appropriate remedy, other than vacatur or reversal of restitution, when, on direct appeal, a court determines that, at sentencing, the trial court entered a subsection (1)(b) order finding restitution liability and then failed to timely determine the amount of restitution after sentencing. Simply remanding a case with instructions for the trial court to either re-issue the untimely order setting the restitution amount or issue a subsection (1)(a) order to accomplish the same thing would leave the deadline in subsection (1)(b) toothless. Not surprisingly, even before *Weeks*, we'd sanctioned the automatic vacatur or reversal of post-sentencing orders determining the restitution amount without statutory authority. *See Belibi*, ¶ 2, 415 P.3d at 302 (affirming the judgment of a division of the court of appeals vacating the trial court's post-sentencing order, which had increased the amount of restitution set

at sentencing, even though neither a subsection (1)(b) order nor a subsection (1)(c) order had entered at sentencing to reserve the determination of the amount of restitution, and remanding for reinstatement of the restitution order issued at sentencing, which was authorized by subsection (1)(a)); *Meza*, ¶ 2, 415 P.3d at 305 (reversing the judgment of the trial court increasing the amount of restitution set at sentencing, even though neither a subsection (1)(b) order nor a subsection (1)(c) order had entered at sentencing to reserve the determination of the amount of restitution, and remanding with instructions to reinstate the initial restitution order, which was authorized by subsection (1)(a)).[12]

¶60 Lastly, Tennyson asserts that treating a claim like his as an illegal manner claim could yield draconian results because a trial court that enters a subsection (1)(b) order might determine the amount of restitution more than 126 days (or, as relevant here, more than 120 days) after sentencing, which would deprive some defendants of any recourse under Crim. P. 35(a). But the only time this concern is present is in the rare event that there is no direct appeal from the judgment of conviction or sentence. *See* Crim. P. 35(b). Since Tennyson did not

[12] Had Tennyson timely filed his Crim. P. 35(a) illegal manner claim, he would have been entitled to vacatur of the post-sentencing order setting the restitution amount, and that, in turn, would have required the district court to amend his mittimus to reflect that no restitution was required. *See* § 18-1.3-603(1)(d); *Weeks*, ¶ 10, 498 P.3d at 149.

appeal his judgment of conviction or sentence, he had only 120 days after sentencing to bring his illegal manner claim.

¶61 Regardless, Tennyson's argument is somewhat of a red herring. Because the determination of the restitution amount in a subsection (1)(b) scenario is its own final judgment, a defendant is always entitled to timely file a direct appeal from *that* judgment, no matter how long the trial court may have taken to determine the amount of restitution. Tennyson could have filed such an appeal from the judgment related to the restitution amount; he did not. Instead, he waited approximately ten years after his sentence (and over nine years after the post-sentencing order setting the restitution amount) to bring his Crim. P. 35(a) claim. That was too late.

III. Conclusion

¶62 For the foregoing reasons, we conclude that Tennyson's Crim. P. 35(a) claim challenging the timeliness of the district court's post-sentencing determination of the restitution amount pursuant to subsection (1)(b) is an illegal manner claim, not an illegal sentence claim. Because he did not appeal his judgment of conviction or sentence, Tennyson was required to bring his claim within 120 days after his sentence was imposed. He failed to do so, and therefore, his claim is time-barred. The division reached the same conclusion, so we affirm its judgment.

JUSTICE GABRIEL dissented.

JUSTICE GABRIEL, dissenting.

¶63 Just over three years ago, we unanimously concluded in *People v. Weeks*, 2021 CO 75, ¶¶ 1–10, 498 P.3d 142, 147–49, that prosecutors had routinely violated the restitution statute's deadlines by reflexively reserving restitution and having trial courts determine restitution beyond the statute's ninety-one-day deadline. Today, in a series of cases, a majority of this court dramatically undercuts (if not effectively overrules) that decision by ensuring that in many, if not most, cases, criminal defendants affected by the foregoing statutory violations will have no remedy and that courts and prosecutors will bear no consequences for their statutory violations, thereby rendering the deadlines in the restitution statute meaningless in many cases.

¶64 Here, relying on our opinion in *Sanoff v. People*, 187 P.3d 576 (Colo. 2008), the majority concludes that the amount of restitution imposed on a defendant is not part of the defendant's sentence and, therefore, any challenge to the amount of restitution is a Crim. P. 35(a) illegal manner claim, with its short deadline for filing, rather than a Crim. P. 35(a) illegal sentence claim, which may be filed at any time. Maj. op. ¶¶ 7, 19, 45, 62.

¶65 In my view, this determination is contrary to well-settled law, it is internally inconsistent, and it will close the courthouse door to many, if not most, defendants aggrieved by violations of the restitution statute.

¶66 Accordingly, I respectfully dissent.

I. Factual Background

¶67 The material facts are not disputed.

¶68 Audrey Lee Tennyson pleaded guilty to two counts of aggravated robbery, and at the sentencing hearing, which occurred on June 3, 2008, the trial court sentenced him to concurrent twenty six year prison terms. At that hearing, the prosecution requested that restitution be reserved for ninety days, and the trial court ruled that the prosecution would have ninety days to determine what restitution is due and owing. The prosecution did not assert at sentencing that the restitution information was unavailable to it at that time.

¶69 Thereafter, on August 28, 2008 (eighty-six days after sentencing), the prosecution submitted a proposed restitution order. The court signed this order on October 17, 2008 (136 days after sentencing), and on November 5, 2008, the court signed an amended restitution order correcting a clerical error. At no time did the court make a finding of good cause to extend the statutory deadline for determining restitution.

¶70 Tennyson did not file a direct appeal, but approximately ten years later, he filed a Crim. P. 35(a) motion asserting, among other things, that the restitution award should be vacated for violation of the requirements of the restitution statute, section 18-1.3-603, C.R.S. (2024). The postconviction court ultimately

denied that motion, and the division below affirmed, concluding that (1) the prosecution's request for restitution at sentencing was sufficient to constitute a motion for an order that Tennyson was liable for restitution and (2) the trial court's order granting the prosecution ninety days to determine the restitution that was due and owing was not a reservation of restitution in its entirety but rather was a finding that Tennyson was liable for restitution and that only the determination of the amount of restitution was reserved. *People v. Tennyson*, 2023 COA 2, ¶¶ 36–37, 528 P.3d 185, 192. The division did not address Tennyson's contention that the trial court had failed to determine restitution by the statutory deadline, concluding that this contention was time-barred because it did not qualify as an illegal sentence claim under Crim. P. 35(a). *Id.* at ¶¶ 33, 38, 528 P.3d at 191–92. In support of this conclusion, the division reasoned, "Because the amount of restitution is not a component of a defendant's sentence, any procedural deficiency in determining the amount cannot implicate the legality of the restitution component of the defendant's sentence." *Id.* at ¶ 33, 528 P.3d at 191.

¶71 We then granted Tennyson's petition for a writ of certiorari.

II. Analysis

¶72 I begin by setting forth the applicable legal principles underlying our decision in this case. I then explain why I believe that Tennyson's postconviction motion raised a timely illegal sentence claim and that *Weeks* is dispositive here.

Finally, I explain why I believe the majority's reliance on *Sanoff* is incorrect and leads to absurd results.

A. Applicable Legal Principles

¶73 Crim. P. 35(a) provides, "The court may correct a sentence that was not authorized by law or that was imposed without jurisdiction at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence."

¶74 Crim. P. 35(b), in turn, provides, as pertinent here, that a court may reduce a defendant's sentence provided that a motion for a sentence reduction is filed within 126 days after the sentence is imposed or after the entry of any order or judgment of an appellate court "denying review or having the effect of upholding a judgment of conviction or sentence."

¶75 Accordingly, a defendant may file a motion to correct an illegal sentence claim at any time but must file a motion to correct a sentence imposed in an illegal manner within 126 days after sentence is imposed (if, as here, the defendant does not file an appeal) or within 126 days after an appellate court's judgment denying review or upholding the judgment of conviction (if the defendant files an appeal).

¶76 A sentence is not authorized by law and is thus illegal when, among other things, it is inconsistent with the statutory scheme outlined by the legislature and when any of the sentence's components fail to comply with the applicable

sentencing statutes. *People v. Baker*, 2019 CO 97M, ¶ 19, 452 P.3d 759, 762; *People v. Rockwell*, 125 P.3d 410, 414 (Colo. 2005); *see also Delgado v. People*, 105 P.3d 634, 637 (Colo. 2005) ("[I]t long has been clear that a sentence is illegal unless all the components of a sentence fully comply with the sentencing statutes."). We have said that illegal sentence claims can encompass a wide range of factual circumstances, including allegations that the court imposed a prison term longer than that permitted by the applicable statute and, as pertinent here, "claims that the restitution imposed was either not permitted or was in the wrong amount." *Hunsaker v. People*, 2021 CO 83, ¶ 19, 500 P.3d 1110, 1114.

¶77 A sentence is imposed in an illegal manner, in contrast, when, among other things, "the trial court ignores essential procedural rights or statutory considerations in forming the sentence." *People v. Bowerman*, 258 P.3d 314, 316 (Colo. App. 2010) (quoting 15 Robert J. Dieter & Nancy J. Lichtenstein, *Colorado Practice Series, Criminal Practice & Procedure* § 21.10 n.10 (2d ed. 2004)).

¶78 Our restitution statute, section 18-1.3-603, provides, in pertinent part:

> (1) Every order of conviction of a felony . . . shall include consideration of restitution. Each such order shall include one or more of the following:
>
> (a) An order of a specific amount of restitution be paid by the defendant;
>
> (b) An order that the defendant is obligated to pay restitution, but that *the specific amount of restitution shall be determined within the ninety-one days immediately following the order of conviction, unless good cause is*

> *shown for extending the time period by which the restitution amount shall be determined*;
>
> (c) An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of any victim of the crime; or
>
> (d) Contain a specific finding that no victim of the crime suffered a pecuniary loss and therefore no order for the payment of restitution is being entered.
>
> (2)(a) The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims. Further, *the prosecuting attorney shall present this information to the court prior to the order of conviction or within ninety-one days, if it is not available prior to the order of conviction. The court may extend this date if it finds that there are extenuating circumstances affecting the prosecuting attorney's ability to determine restitution*.

(Emphases added.) (At the time of Tennyson's conviction, the statutory deadlines were ninety days, *see* § 18-1.3-603(1)(b), (2), C.R.S. (2008), rather than the current ninety-one days, but that distinction is immaterial here.)

¶79 We recently construed these provisions in *Weeks*, ¶¶ 29–40, 498 P.3d at 152–55. There, we first concluded that section 18-1.3-603(2) controls "the timeframe within which the prosecution must submit the proposed amount of restitution." *Id.* at ¶ 31, 498 P.3d at 153. We said that under that subsection, the prosecution must file the proposed amount of restitution before the judgment of conviction enters, or, if the information is not then available, within ninety-one days of the judgment of conviction. *Id.* We further noted that the court may extend

this deadline only if it finds "extenuating circumstances affecting the prosecution's ability to determine the proposed amount of restitution." *Id.*

¶80 We next concluded, based on the statute's plain language, that the ninety-one-day deadline set forth in section 18-1.3-603(1)(b) refers to the court's deadline to determine the amount of restitution to be imposed, and we observed that the court may extend this deadline only for good cause shown. *Weeks*, ¶ 39, 498 P.3d at 154–55.

¶81 Finally, we concluded that any findings of extenuating circumstances to extend the prosecution's deadline for submitting restitution information and of good cause to extend the court's deadline to determine the amount of restitution had to be made expressly and before the deadline expired. *Id.* at ¶ 40, 498 P.3d at 155.

¶82 In so concluding, we recognized that our interpretation of the statute had the potential to lead to undesirable results, as, for example, allowing a criminal defendant to avoid the obligation to pay restitution because the trial court did not comply with the statutory deadline. *Id.* at ¶ 41, 498 P.3d at 155. We, however, affirmed our "unwavering confidence" in trial courts to comply with the statutory deadline. *Id.*

¶83 Applying those principles to the case there before us, where the trial court had determined the amount of restitution long after the statutory deadline and

without a timely finding of good cause, we concluded that by the time the trial court had ordered Weeks to pay restitution, it lacked the authority to do so. *Id.* at ¶ 45, 498 P.3d at 157. We therefore affirmed the court of appeals division's judgment vacating the restitution award in that case. *Id.* at ¶ 47, 498 P.3d at 157.

¶84 Having thus set out the governing legal principles, I turn to the issues now before us.

B. Illegal Sentence Claim and *Weeks*

¶85 It appears undisputed that the trial court in this case set the amount of restitution beyond the statutory deadline and that it made no finding of good cause to extend that deadline. The question becomes whether Tennyson's Crim. P. 35(a) motion should be construed as an illegal sentence claim, in which case it was timely, or an illegal manner claim, in which case it was not. I would conclude that Tennyson's claim was an illegal sentence claim.

¶86 As noted above, our restitution statute, section 18-1.3-603(1), requires sentencing courts to consider "restitution," and it mandates that sentencing courts order (1) a specific amount of restitution; (2) that the defendant is obligated to pay restitution but that the amount will be determined within ninety-one days following the order of conviction (unless good cause is shown); (3) that the defendant pay restitution covering the actual costs of specific future treatment of

a crime victim; or (4) that no victim suffered a pecuniary loss and thus no order for the payment of restitution would enter.

¶87 Unlike the majority, Maj. op. ¶¶ 7, 42–43, 45, 50, I perceive nothing in this provision that makes liability for restitution part of a defendant's sentence but that excludes the amount of restitution from that sentence. Indeed, as noted above, if the restitution information is known at the time of sentencing, then the sentencing court is required to enter a specific amount of restitution at that time. In that scenario, the amount of the restitution is indisputably part of the defendant's sentence, and I perceive no rational basis to treat the amount of restitution differently merely because it happens to be set at a later time. In my view, the statute makes plain that the amount of restitution is part of the sentence and judgment of conviction.

¶88 Case law from the appellate courts in this state is in accord. Thus, it has long been settled that restitution is part of a defendant's sentence. *See, e.g.*, *People v. Perez*, 2017 COA 52M, ¶ 5, 413 P.3d 266, 269; *People v. Brooks*, 250 P.3d 771, 772 (Colo. App. 2010).

¶89 Accordingly, I would conclude that the amount of restitution is a component of a defendant's sentence. And because this component of Tennyson's sentence was entered in violation of the restitution statute, our above-described case law mandates the conclusion that Tennyson's sentence was illegal. *See Baker*,

¶ 19, 452 P.3d at 762; *Rockwell*, 125 P.3d at 414; *Delgado*, 105 P.3d at 637. Indeed, we recently said as much in *Hunsaker*, ¶ 19, 500 P.3d at 1114, when we cited as an example of an illegal sentence a sentence in which restitution was imposed when it was not permitted to be imposed.

¶90 For these reasons, I would conclude that Tennyson timely asserted an illegal sentence claim, and I would further conclude, consistent with our determination in *Weeks*, ¶¶ 45, 47, 498 P.3d at 157, that Tennyson's sentence was illegal and that the restitution award against him should therefore be vacated.

¶91 In reaching this conclusion, I recognize that this result may seem undesirable to some. But as we recognized in *Weeks*, ¶ 41, 498 P.3d at 155, this is a necessary byproduct of enforcing the plain language of the restitution statute, which we are obligated to do.

C. *Sanoff*

¶92 Notwithstanding the foregoing, the majority, relying on *Sanoff*, 187 P.3d at 578, concludes that when the amount of restitution is decided after the statutory deadline and without a finding of good cause to extend that deadline, then the amount is not part of the defendant's sentence. Maj. op. ¶¶ 7, 42–43, 45, 50. From this premise, the majority opines that a defendant's postconviction challenge to the untimely setting of the amount of restitution is an illegal manner claim, and not an illegal sentence claim, under Crim. P. 35(a). Maj. op. ¶¶ 7, 19, 45, 62. The

consequence of this determination is that Tennyson, who did not file a direct appeal, had, under the rule in effect at the time, Crim. P. 35(b) (2008), 120 days to challenge the setting of the amount of restitution, even though that would have required him to challenge the amount before the court even set it. Maj. op. ¶ 60. And because Tennyson did not bring his challenge within that timeframe, his postconviction claim is time-barred. *Id.* at ¶ 62. I respectfully disagree with each part of this analysis.

¶93 First, as discussed above, and contrary to the majority's principal premise, the restitution amount *is* a component of a defendant's sentence.

¶94 Second, *Sanoff*, on which the majority so heavily relies, is not to the contrary and does not conclude that a postconviction challenge to a belated determination of the amount of restitution is an illegal manner claim.

¶95 In *Sanoff*, 187 P.3d at 577, the defendant was convicted of theft, and in October 2000, the trial court entered a judgment of conviction that included a prison sentence and an order to make restitution. The court, however, reserved ruling on the specific amount of restitution, and the amount of restitution ultimately was not set until January 2003. *Id.*

¶96 In the interim, in October 2000, the defendant timely appealed her conviction and sentence. *Id.* A division of the court of appeals affirmed, and we denied certiorari. *Id.* Accordingly, the proceedings in the district court to

determine the amount of restitution occurred while the defendant's direct appeal of her conviction and sentence were pending. *Id.*

¶97 After the trial court set the amount of restitution, the defendant appealed again, this time challenging the order setting the amount of restitution. *Id.* As pertinent here, the division concluded that the trial court was not deprived of jurisdiction by the defendant's earlier filing of a notice of appeal, reasoning that the earlier notice was premature because the defendant's judgment of conviction had not become a final, appealable order until the amount of restitution had been set. *Id.*

¶98 We ultimately concluded that the defendant's first notice of appeal did not divest the trial court of jurisdiction to set the restitution amount. *Id.* at 578. In reaching this conclusion, we observed that the restitution statute allows a sentencing court to order a defendant to pay restitution while postponing the determination of the specific amount thereof. *Id.* We then observed that the statute "distinguishes an order assigning liability for restitution from a determination of the amount of restitution for which the defendant is liable," and this undermined the continuing validity of a prior precedent that had concluded that the amount of restitution must be part of the judgment of conviction. *Id.* Instead, we read the statute as reflecting the legislature's intent to clarify that the amount of the defendant's liability is no longer a required component of a final

judgment of conviction. *Id.* Thus, we concluded that a subsequent determination of the amount of restitution owed by a defendant has been severed from the meaning of the term "'sentence,' *as contemplated by Crim. P. 32*," the rule concerning criminal sentences and judgments. *Id.* (emphasis added). Accordingly, the trial court was not divested of jurisdiction to proceed to set the amount of restitution by an ongoing appeal, and the order setting the amount of restitution constituted a "separate, final judgment" that itself was an appealable order. *Id.*

¶99 For a number of reasons, I do not believe that *Sanoff* applies here.

¶100 First, *Sanoff* made clear that the language, "severed from the meaning of the term 'sentence,'" on which the majority so heavily relies, Maj. op. ¶¶ 43, 50, was limited to its context, namely, the finality of a judgment for purposes of an appeal, *Sanoff*, 187 P.3d at 578. Thus, we concluded that finality of the judgment of the defendant's conviction, including her sentence and the order finding her obligated to make restitution, was unaffected by the later judgment setting the amount of restitution, and the appeal of the first judgment did not divest the court of jurisdiction to decide the amount of restitution due and owing. *Id.*

¶101 Second, notwithstanding the above-quoted language in *Sanoff* severing the determination of the amount of restitution from the sentence *for purposes of finality of the initial judgment under Crim. P. 32*, I perceive nothing in *Sanoff* determining

that the amount of restitution is not a component of a defendant's sentence. Rather, as noted above, *Sanoff* spoke of two judgments, *id.*, and as I read that case, both judgments are part of the defendant's sentence. The fact that the amount of restitution was set later, however, did not alter the fact that the initial judgment was final for purposes of appeal.

¶102 Third, nothing in *Sanoff* addresses the question now before us, namely, whether a postconviction challenge to an untimely order setting the amount of restitution is a challenge to the legality of the sentence or simply a challenge to the manner in which the sentence was determined. *Sanoff* does not address that issue at all, and I am not persuaded that our reasoning in a wholly different factual and procedural context applies in this case.

¶103 Fourth, the majority's reading of *Sanoff* is internally inconsistent. On the one hand, the majority concludes that the order setting the amount of restitution is not part of Tennyson's sentence. Maj. op. ¶¶ 7, 42–43, 45, 50. On the other hand, the majority says that Tennyson's challenge amounts to an illegal manner claim. *Id.* at ¶¶ 7, 19, 45, 62. As noted above, however, Crim. P. 35(a) allows a court to correct "*a sentence* imposed in an illegal manner." (Emphasis added.) Accordingly, it is inconsistent to say both that the order setting the amount of restitution is not part of Tennyson's sentence and that Tennyson's challenge to that

order is a challenge to the manner in which his sentence was determined. The order is either part of his sentence or it is not.

¶104 Fifth, the majority's conclusion leads to absurd results. For example, under the majority's view, if the amount of restitution is set at the time of sentencing, then it is part of the defendant's sentence. Maj. op. ¶ 44. If, however, it is determined later, then it is not. *Id.* at ¶¶ 7, 42–43, 45, 50. The majority does not persuasively explain why the amount of restitution is part of a defendant's sentence if it is determined at the time of sentencing but not part of a defendant's sentence if it is set later, and I am aware of no authority supporting the proposition that the nature of a component of a criminal sentence changes depending on when that component is determined.

¶105 In addition, if the majority is correct that a postconviction challenge to an untimely determination of the amount of restitution is an illegal manner claim that must be brought within 126 days of sentencing (if no appeal is filed) or within 126 days after entry of an appellate judgment (if the defendant files an appeal), then in many cases—like this one—the defendant's claim will be time-barred even before the trial court determines the amount of restitution. In my view, it would be absurd to require a defendant to challenge an action that has not yet occurred. Nor is it a sufficient answer to say that the defendant simply could have filed a direct appeal. *Id.* at ¶ 61. Our criminal procedure rules allow defendants to bring

illegal sentence and illegal manner claims even when they do not appeal. Crim. P. 35(a). I perceive no basis for concluding that defendants lose that right if they do not appeal and subsequent events suggest that it would perhaps have been better had they done so.

¶106 The upshot of the majority's opinion today is that many defendants will be deprived of their day in court, and courts and prosecutors that violate the plain language of the restitution statute will face no consequences for their actions, rendering the statutory language meaningless in a large number of cases.

¶107 To me, such a result is contrary to basic principles of access to justice and of the rule of law. Accordingly, I respectfully cannot subscribe to such a result.

III. Conclusion

¶108 For these reasons, I would conclude that Tennyson brought a timely illegal sentence claim and that under *Weeks*, he was entitled to relief from the illegally imposed restitution award. As a result, I would reverse the judgment of the division below and remand this case with instructions to return the case to the trial court to vacate the illegal restitution order.

¶109 Accordingly, I respectfully dissent.