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ADVANCE SHEET HEADNOTE
May 26, 2026

2026 CO 33

No. 24SC774, *People v. Abdul-Rahman*—Statutory Interpretation—Administrative Exhaustion of Remedies—Parole Revocation Appeals.

The supreme court holds that a parolee seeking review of the Colorado State Board of Parole's decision to revoke parole must exhaust administrative remedies before petitioning a court for postconviction relief under Crim. P. 35(c). The supreme court concludes that the statutes governing parole revocation appeals, specifically section 17-2-103, C.R.S. (2025), and section 17-2-201, C.R.S. (2025), unambiguously require an administrative appeal before seeking judicial review.

Because Abdul-Rahman failed to seek an administrative appeal, the postconviction court lacked jurisdiction to review his Crim. P. 35(c) petition. Accordingly, the supreme court vacates the judgment of the court of appeals and remands the case with instructions to return it to the postconviction court for dismissal based on lack of jurisdiction.

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

2026 CO 33

Supreme Court Case No. 24SC774
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 23CA486

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Shams Abdul-Rahman.

Judgment Vacated
en banc
May 26, 2026

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CHIEF JUSTICE MÁRQUEZ delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE SAMOUR**, and **JUSTICE BLANCO** joined.
JUSTICE GABRIEL dissented.
JUSTICE BERKENKOTTER did not participate.

CHIEF JUSTICE MÁRQUEZ delivered the Opinion of the Court.

¶1 The Colorado State Board of Parole ("Board") determined that defendant Shams Abdul-Rahman violated the conditions of his parole and revoked it. Instead of appealing the revocation decision to the Board's appellate body, Abdul-Rahman petitioned the Boulder County District Court for postconviction relief pursuant to Crim. P. 35(c). The postconviction court summarily denied Abdul-Rahman's petition on the merits. Abdul-Rahman appealed. In a published opinion, a division of the court of appeals concluded that the parole revocation statutory scheme did not require administrative exhaustion and affirmed the postconviction court's order. We granted the People's petition for a writ of certiorari to consider whether a parolee must exhaust their administrative remedies by appealing first to the Board's appellate body before seeking judicial review.[1]

¶2 We hold that a parolee seeking review of the Board's initial revocation decision must exhaust their administrative remedies before petitioning a court for postconviction relief under Crim. P. 35(c). We conclude that the plain language of the statutes governing parole revocation appeals, specifically section 17-2-103,

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[1] We granted certiorari to review the following issue:

> Whether administrative exhaustion is required before a revoked parolee may seek judicial review of their parole revocation under Crim. P. 35(c).

C.R.S. (2025), and section 17-2-201, C.R.S. (2025), unambiguously requires an administrative appeal to precede judicial review. We further conclude that requiring parolees to use the administrative appeal process that the General Assembly provided falls squarely within Colorado's longstanding administrative exhaustion doctrine and furthers the policy interests animating this doctrine.

¶3 Because Abdul-Rahman failed to seek an administrative appeal, the postconviction court lacked jurisdiction to review his Crim. P. 35(c) petition. Accordingly, we vacate the judgment of the court of appeals and remand the case with instructions to return it to the postconviction court for dismissal based on lack of jurisdiction.

I. Facts and Procedural History

¶4 Abdul-Rahman was convicted of sexual assault. The trial court imposed an indeterminate sentence pursuant to the Colorado Sex Offender Lifetime Supervision Act. *See* §§ 18-1.3-1001 to -1012, C.R.S. (2025). After serving time in prison, Abdul-Rahman was paroled. While on parole, his parole officer served him with a parole revocation complaint and summons alleging that he violated his parole conditions and ordering him to appear before the Board. Following a revocation hearing, the Board revoked Abdul-Rahman's parole.

¶5 Abdul-Rahman later petitioned the Boulder County District Court for postconviction relief pursuant to Crim. P. 35(c)(2)(VII), contending that the

revocation was unlawful. The People filed a written response but did not raise any arguments related to Abdul-Rahman's failure to appeal to the Board's appellate body. The postconviction court denied the petition on the merits without an evidentiary hearing.

¶6 Abdul-Rahman appealed. In response, the People argued for the first time that the court of appeals lacked subject matter jurisdiction because Abdul-Rahman was statutorily required to pursue an administrative appeal before seeking judicial review but had failed to do so. *People v. Abdul-Rahman*, 2024 COA 118, ¶ 10, 563 P.3d 682, 685. In a divided opinion, the division disagreed. *Id.* at ¶ 24, 563 P.3d at 687.

¶7 The division majority concluded that the relevant parole revocation statutory scheme makes an administrative appeal discretionary. *Id.* Specifically, it looked at section 17-2-103(2)(b), which states that a parolee "may appeal [a parole revocation decision] to two members of the [B]oard." *Abdul-Rahman*, ¶¶ 25–30, 563 P.3d at 687–88 (quoting § 17-2-103(2)(b)). The division majority concluded that the use of "may" indicates a choice between seeking administrative review and seeking judicial review. *Id.* at ¶ 30, 563 P.3d at 688. Though the State Administrative Procedure Act ("APA") requires administrative exhaustion as a general rule, § 24-4-105(14)(c), C.R.S. (2025), the division majority reasoned that section 17-2-201(4)(b) refers to judicial review of "any revocation of parole" and

expressly exempts parole revocation hearings from the APA's hearing requirements. *Abdul-Rahman*, ¶¶ 28, 31, 563 P.3d at 688 (quoting § 17-2-201(4)(b)). It further reasoned that this exemption included the APA's general exhaustion requirement. *Id.* The division majority did not believe that an exhaustion requirement was necessary to fulfill the legislative intent regarding parole, nor was it persuaded that the policy purposes underlying administrative exhaustion counterbalanced the statutory language. *Id.* at ¶¶ 29, 33, 563 P.3d at 688–89. Thus, it concluded that the appeal was properly before it. *Id.* at ¶ 34, 563 P.3d at 689. After considering the merits, the division majority affirmed the postconviction court's denial of Abdul-Rahman's Crim. P. 35(c) petition without an evidentiary hearing. *Id.* at ¶¶ 35, 44, 563 P.3d at 689–90.

¶8 Judge Sullivan dissented. In his view, administrative exhaustion is mandatory under the governing statutory framework and our case law. *Id.* at ¶ 45, 563 P.3d at 690 (Sullivan, J., dissenting). Specifically, Judge Sullivan interpreted the phrase "may appeal" in section 17-2-103(2)(b) to reflect the parolee's choice between appealing or not appealing the revocation decision. *Id.* at ¶ 48, 563 P.3d at 691. He further asserted that if the General Assembly had intended to depart from the "default rule" that parties must exhaust administrative remedies, it would have expressly said so. *Id.* at ¶¶ 46, 53, 56, 563 P.3d at 690, 692–93. Judge Sullivan also stated that allowing parolees to "leapfrog" the administrative

appeals process frustrates the goals of the administrative exhaustion doctrine. *Id.* at ¶¶ 57–59, 563 P.3d at 693. He concluded that because Abdul-Rahman failed to seek an administrative appeal, the postconviction court lacked subject matter jurisdiction over his case and its decision should be vacated. *Id.* at ¶ 60, 563 P.3d at 693.

¶9 We granted the People's petition for certiorari review.

II. Analysis

¶10 As a preliminary matter, we note that the People did not challenge the postconviction court's jurisdiction when Abdul-Rahman's Crim. P. 35(c) petition was before it, and a party is "generally precluded from raising an issue on appeal if he failed to object." *Herr v. People*, 198 P.3d 108, 111 (Colo. 2008). However, "[b]ecause we must always satisfy ourselves that we have jurisdiction to hear an appeal, we may raise jurisdictional defects sua sponte, regardless of whether the parties have raised the issue." *People v. S.X.G.*, 2012 CO 5, ¶ 9, 269 P.3d 735, 737. Thus, because it implicates the postconviction court's jurisdiction to review Abdul-Rahman's Crim. P. 35(c) petition, we may consider whether the statutory scheme governing parole revocation required Abdul-Rahman to first appeal to the Board's appellate body before seeking judicial review.

¶11 We first discuss the well-established doctrine of administrative exhaustion. We then turn to the parole revocation statutory scheme. After reciting our

standard of review and rules of statutory construction, we examine the relevant statutes at issue here, sections 17-2-103 and 17-2-201. We conclude that the administrative exhaustion of remedies in the parole revocation context is a jurisdictional prerequisite to judicial review.

A. The Exhaustion of Administrative Remedies Doctrine

¶12 "The doctrine of administrative exhaustion requires a party to pursue available statutory administrative remedies before obtaining judicial review of a claim." *Thomas v. Fed. Deposit Ins. Corp.*, 255 P.3d 1073, 1077 (Colo. 2011). Until a party exhausts available statutory administrative remedies, the matter is still within the jurisdiction of the administrative authority, which is part of the executive branch. *Horrell v. Dep't of Admin.*, 861 P.2d 1194, 1197 (Colo. 1993). In other words, the administrative exhaustion doctrine rests on the principle that the separation of powers prevents the judiciary from interfering with a function that the General Assembly delegated to the executive branch. *See Crow v. Penrose-St. Francis Healthcare Sys.*, 169 P.3d 158, 164 (Colo. 2007); *State Pers. Bd. v. Dist. Ct.*, 637 P.2d 333, 335 (Colo. 1981). Accordingly, in cases where the statutory scheme makes clear that the doctrine applies, we have recognized for almost a century in Colorado that exhaustion is a jurisdictional prerequisite to judicial review. *See, e.g.*, *Thomas*, 255 P.3d at 1077; *State v. Golden's Concrete Co.*, 962 P.2d 919, 923 (Colo.

1998); *Gramiger v. Crowley*, 660 P.2d 1279, 1281 (Colo. 1983); *Heron v. City of Denv.*, 283 P.2d 647, 650 (Colo. 1955); *People v. Dist. Ct.*, 287 P. 849, 851–53 (Colo. 1930).

¶13 Exhaustion also serves important policy interests. *Golden's Concrete Co.*, 962 P.2d at 923. Specifically, exhaustion preserves the authority of administrative agencies, enabling them to utilize their subject matter expertise, correct their own errors, and develop an adequate factual record for judicial review. *Thomas*, 255 P.3d at 1077. Additionally, "the requirement of exhaustion conserves judicial resources by [e]nsuring that courts intervene only if the administrative process fails to provide adequate remedies." *City & Cnty. of Denv. v. United Air Lines, Inc.*, 8 P.3d 1206, 1213 (Colo. 2000).

¶14 In limited circumstances, a court may entertain a party's claim when the party has not satisfied the exhaustion requirement. *Thomas*, 255 P.3d at 1077. Specifically, a court may determine that exhaustion is not required when "available administrative remedies are ill-suited for providing the relief sought," *Horrell*, 861 P.2d at 1197; the "matters in controversy consist of questions of law rather than issues committed to administrative discretion and expertise," *id.*; or "it is 'clear beyond a reasonable doubt' that pursuit of relief from the agency would be 'futile,'" *Thomas*, 255 P.3d at 1077 (quoting *United Air Lines, Inc.*, 8 P.3d at 1213). But "[i]f complete, adequate, and speedy administrative remedies are available, a

party must pursue these remedies before filing suit in district court." *United Air Lines, Inc.*, 8 P.3d at 1212.

¶15 With this context in mind, we turn to the issue of whether the parole revocation statutory scheme requires administrative exhaustion.

B. The Parole Revocation Statutory Scheme

¶16 We begin with our standard of review and principles of statutory construction. We next explain the parole revocation process and examine the language of the statutes at issue here, section 17-2-103 and section 17-2-201. We conclude that the statutory language unambiguously requires an administrative appeal of the Board's initial parole revocation decision as a jurisdictional prerequisite to judicial review.

1. Standard of Review and Principles of Statutory Construction

¶17 Statutory construction presents a question of law that we review de novo. *Mostellar v. City of Colo. Springs*, 2026 CO 22, ¶ 17, 587 P.3d 168, 172.

¶18 In construing a statute, our primary purpose is to give effect to the legislature's intent, which we discern by first looking to the language of the statute. *Thomas*, 255 P.3d at 1077. We give words and phrases their plain and ordinary meanings. *Mostellar*, ¶ 17, 587 P.3d at 172. Additionally, we must construe the legislative scheme as a whole, "giving consistent, harmonious, and sensible effect to all of its parts." *McCoy v. People*, 2019 CO 44, ¶ 38, 442 P.3d 379, 389. We must

also "avoid constructions that would render any words or phrases superfluous or lead to illogical or absurd results." *Id.*

¶19 If the language in the provision is unambiguous, then we apply it as written and need not use other tools of statutory construction. *Mostellar*, ¶ 18, 587 P.3d at 172.

2. The Parole Revocation Process

¶20 The General Assembly created the Board within the Department of Corrections in Colorado's executive branch. *See* § 17-2-201(1)(a); § 24-1-128.5(3), C.R.S. (2025). Among its other statutory powers, "the [B]oard has exclusive power to conduct all proceedings involving an application for revocation of parole." § 17-2-201(7).

¶21 The parole revocation process generally begins with a complaint for revocation charging the parolee with violating one or more conditions of parole. § 17-2-103(3), (6)(a); § 17-2-103.5(1)(a), C.R.S. (2025). Depending on the allegations, the Board may then conduct a parole revocation hearing adjudicating the charges, over which one Board member or administrative hearing officer presides. §§ 17-2-103(2)(b), -103.5(1)(c); State Bd. of Parole, 8 Colo. Code Regs. 1511-1:13.02 (2013). If the Board determines that the parolee has violated the conditions of their parole, it generally has the discretion to revoke parole, continue it in effect, or modify its conditions. § 17-2-103(11); § 17-22.5-403(8)(b), C.R.S. (2025).

¶22 Both the State and the parolee "may appeal" the Board's revocation decision to the Board's appellate body, which is comprised of two Board members who did not adjudicate the complaint. §§ 17-2-103(2)(b), -201(9)(c)–(d). Finally, there is an opportunity for judicial review pursuant to section 18-1-410(1)(h), C.R.S. (2025), and Crim. P. 35(c)(2)(VII).[2] § 17-2-201(4)(b).

¶23 With this background, we now turn to whether the parole revocation statutory scheme requires a parolee to appeal to the Board's appellate body before seeking judicial review.

3. The Parole Revocation Statutory Scheme Requires Exhaustion of Administrative Remedies

¶24 Although the parole revocation statutory scheme is complex, when viewed as a whole, it unambiguously requires administrative exhaustion. *Cf. Thomas*, 255 P.3d at 1078 ("[C]omplexity is not ambiguity."). Read harmoniously, the statutes governing parole revocation appeals, section 17-2-103 and section 17-2-201, unambiguously require an administrative appeal of the Board's revocation decision as a prerequisite to judicial review. This conclusion fits

[2] Under section 18-1-410(1)(h), persons convicted of a crime may pursue postconviction review for an alleged "unlawful revocation of parole." Crim. P. 35(c)(2)(VII), which provides for the same right, largely tracks section 18-1-410(1)(h). *See Hunsaker v. People*, 2021 CO 83, ¶¶ 18, 21, 500 P.3d 1110, 1114–15; § 18-1-410(2)(a).

soundly within and advances the purposes of our longstanding administrative exhaustion doctrine.

¶25 First, we note that section 17-2-201(7) expressly reserves for the Board "exclusive power to conduct all proceedings involving an application for revocation of parole." The phrase "all proceedings involving" parole revocation in section 17-2-201(7) includes adjudicating the parole revocation complaint, § 17-2-103(2); determining its disposition, § 17-2-103(11); and reviewing any appeal, §§ 17-2-103(2)(b), -201(9)(c)–(d). Thus, until available revocation proceedings are complete, the parole revocation application remains within the Board's exclusive jurisdiction.

¶26 Section 17-2-201(9)(c) confirms the Board's exclusive power over appeals of initial revocation decisions, prescribing the following process:

> If the parolee decides to appeal the decision to revoke his parole, such appeal shall be filed within thirty days of such decision. The parolee shall remain in custody pending the appeal. Two members of the [B]oard, excluding the one who conducted the revocation proceeding, shall review the record within fifteen working days after the filing of the appeal. They shall notify the parolee of their decision in writing within ten working days after such decision has been made.

¶27 The plain language of this provision makes clear that "[i]f the parolee decides to appeal the decision to revoke his parole," the parolee "shall" appeal to the Board's appellate body within thirty days. § 17-2-201(9)(c); *see also Walton v. People*, 2019 CO 95, ¶ 13, 451 P.3d 1212, 1216 ("'Shall' is mandatory unless there is

a clear indication otherwise."). Put differently, this provision expressly prescribes an appeal process that is solely administrative; it makes no mention of alternatively seeking judicial review. *See Turbyne v. People*, 151 P.3d 563, 567 (Colo. 2007) ("We do not add words to the statute or subtract words from it.").

¶28 Despite the plain language of these provisions, Abdul-Rahman argues that an appeal to the Board is *allowed* but not *required* before seeking judicial review. He points to section 17-2-103(2)(b) and section 17-2-201(4)(b) in support of his interpretation. He also asserts that requiring a parolee to appeal to the Board's appellate body before seeking judicial review does not further the policy purposes of the administrative exhaustion doctrine. We take each contention in turn.

¶29 Section 17-2-103(2)(b) states that the parolee "may appeal to two members of the [B]oard." Abdul-Rahman argues that the General Assembly knows the difference between "may" and "shall," and its use of "may" in section 17-2-103(2)(b) reflects legislative intent to give the parolee the option to seek either administrative or judicial review of an initial revocation decision. However, Abdul-Rahman's reading is inconsistent with the plain and ordinary meaning of this phrase and with the statutory scheme as a whole.

¶30 The plain and ordinary meaning of "may appeal" is permission to appeal—that is, a parolee can choose to appeal the initial revocation decision. *See May*, Merriam-Webster Dictionary, https://www.merriam-webster.com/

dictionary/may [https://perma.cc/7UD4-FYUG] (defining "may" as "used to indicate possibility or probability" or "have permission to"); *A.S. v. People*, 2013 CO 63, ¶ 21, 312 P.3d 168, 173 ("[T]he legislature's use of the term 'may' is generally indicative of a grant of discretion or choice among alternatives."). Implied in the grant of permission is the understanding that one may choose *not* to appeal and allow the revocation decision to stand.

¶31 Importantly, section 17-2-103(2)(b) states that the appeal is to the Board's appellate body. Like section 17-2-201(9)(c), section 17-2-103(2)(b) makes no mention of alternatively seeking judicial review. Under Abdul-Rahman's reading, the discretion to seek judicial review instead of appealing to the Board's appellate body must be inferred. Yet there is no language in section 17-2-103(2)(b) on which to base such an inference.

¶32 Instead, reading section 17-2-103(2)(b) in harmony with the parallel language in section 17-2-201(9)(d) confirms that the legislature intended to provide the option to appeal the Board's revocation decision—but that, if pursued, the appeal must be to the Board's appellate body. Section 17-2-201(9)(d) provides that "[t]he district attorney or the attorney general *may appeal* the [revocation] decision of a member of the [B]oard to two members of the [B]oard." (Emphasis added.) Under Abdul-Rahman's interpretation of "may appeal," this same phrase in section 17-2-201(9)(d) would mean the *State* would have the ability to seek

immediate judicial review in lieu of pursuing an administrative appeal. But the only type of permissible judicial review of a revocation decision is through a Crim. P. 35(c)(2)(VII) petition for postconviction relief, *see* § 17-2-201(4)(b), which the State may not pursue. *See* § 18-1-410(1) (describing "every person convicted of a crime" as those with the right to petition for postconviction review); Crim. P. 35(c)(2) (same). Logically then, the phrase "may appeal" in section 17-2-201(9)(d) refers to the State's choice to appeal the decision at all. The identical phrase in section 17-2-103(2)(b) therefore should not be given a different meaning.

¶33 Abdul-Rahman also points to section 17-2-201(4)(b) to support his reading of section 17-2-103(2)(b). He contends that section 17-2-201(4)(b) authorizes immediate judicial review of an initial revocation decision and exempts parole revocation hearings from the exhaustion requirement. We disagree.

¶34 Section 17-2-201(4)(b) gives the Board the power to

> conduct hearings on parole revocations as required by section 17-2-103. Such hearings shall be exempt from the requirements set forth in section 24-4-105, C.R.S. Judicial review of any revocation of parole shall be held pursuant to section 18-1-410(1)(h), C.R.S.

¶35 When read in harmony with the other relevant provisions, the phrase "[j]udicial review of any revocation of parole" simply circumscribes a court's authority to review parolees' claims of unlawful parole revocation under section 18-1-410(1)(h).

¶36 As previously discussed, both section 17-2-103(2)(b) and section 17-2-201(9)(c) allow a parolee to appeal to two members of the Board and prescribe the administrative review process that "shall" be followed. To interpret the phrase "[j]udicial review of any revocation of parole" in section 17-2-201(4)(b) to instead allow immediate judicial review would directly conflict with the process mandated in sections 17-2-103(2)(b) and 17-2-201(9)(c). *See People v. Steen*, 2014 CO 9, ¶ 9, 318 P.3d 487, 490 ("Where possible, we interpret conflicting statutes in a manner that harmonizes the statutes . . . ." (quoting *City of Florence v. Pepper*, 145 P.3d 654, 657 (Colo. 2006))). Instead, we conclude that the language in section 17-2-201(4)(b) directing that "[j]udicial review of any revocation of parole shall be held pursuant to section 18-1-410(1)(h)" simply limits the type of relief a parolee may seek in court.

¶37 Abdul-Rahman also contends that because section 17-2-201(4)(b) exempts parole revocation hearings from the APA's hearing requirements, the General Assembly intended to excuse a parolee's duty to exhaust administrative remedies. We are not persuaded.

¶38 Section 24-4-105 of the APA prescribes the process for most agency hearings and includes an administrative exhaustion requirement. *See* § 24-4-105(14)(c). Here, the exemption from the APA merely reflects that parole revocation hearings

must instead comply with the procedures in section 17-2-103, a requirement plainly stated in section 17-2-201(4)(b) itself.

¶39 Section 17-2-103 describes requirements relating to notice, location, and other hearing procedures that afford a parolee due process and provide for the safety of those present at the hearing—all of which are specific to the parole context where the parolee may be in custody at the time of the hearing. The APA's hearing requirements do not account for this unique context. *See* § 24-4-107, C.R.S. (2025) ("[W]here there is a conflict between [the APA's requirements] and a specific statutory provision relating to a specific agency, such specific statutory provision shall control as to such agency."); *cf. McCallum v. Colo. State Bd. of Parole*, 23 P.3d 1226, 1228 (Colo. App. 2000) (holding that the procedures of the APA are inapplicable to section 17-2-201 because when the two are read together "they reveal a clear, unambiguous, and exclusive procedure for consideration of parole applications").

¶40 And as already discussed, the revocation appeal process is set forth in section 17-2-201(9)(c) rather than in section 24-4-105. If, as Abdul-Rahman argues, parolees have no duty to follow the procedures outlined in section 17-2-201(9)(c) because parole revocation hearings are not subject to an administrative appeal, then section 17-2-201(9)(c) and the Board's appellate body would be rendered nullities—every parolee could simply seek postconviction relief under section

18-1-410(1)(h) and Crim. P. 35(c)(2)(VII) instead of appealing first to the Board. But we must presume that by creating it, the General Assembly intended for the Board's appellate body to be used. *See People v. Cooper*, 27 P.3d 348, 354 (Colo. 2001) ("Our analysis of any part of a statute is based on the assumption that the General Assembly intended that the entire statute be effective."); § 2-4-201(1)(b), C.R.S. (2025) (same).

¶41 Furthermore, exempting parole revocation hearings from the APA's hearing requirements does not automatically exempt parolees from the administrative exhaustion requirement—only from the APA's exhaustion requirement. The general rule requiring a party to seek available administrative relief from an agency's adverse decision before seeking judicial review long predates the 1959 enactment of the APA and the 1993 addition of an express exhaustion requirement to section 24-4-105. Ch. 37, secs. 1–7, §§ 3-16-1 to -7, 1959 Colo. Sess. Laws 158, 158–66; Ch. 253, sec. 4, § 24-4-105(14), 1993 Colo. Sess. Laws 1325, 1329; *see, e.g.*, *First Nat'l Bank of Greeley v. Patterson*, 176 P. 498, 501 (Colo. 1918) (observing that "any grievance which can be remedied by application to agencies specially invested with power to act in the premises" does not "call for" judicial intervention and concluding that the plaintiff "refrained from seeking [administrative] relief, and may not now complain"); *Bordner v. Bd. of Comm'rs*, 18 P.2d 323, 323 (Colo. 1932) ("Although the complaint alleges that the taxes were paid under protest, it

does not contain the indispensable allegation that any administrative remedy was invoked."); *Hannum v. Hillyard*, 278 P.2d 1015, 1017 (Colo. 1955) ("The doctrine of 'exhaustion of administrative remedies' is very clearly settled and without appreciable conflict. Our [c]ourt has many times been called upon to invoke this doctrine, which it has unhesitatingly done in so many cases that we now conclude and say that exhaustion of the administrative remedies is a judicial prerequisite to court action.").

¶42 Finally, Abdul-Rahman contends that there are no overwhelming policy considerations that warrant an exhaustion requirement in the parole revocation context. We disagree. Requiring parolees to exhaust their administrative remedies gives deference to the Board's authority over parole revocation proceedings and advances the policy prerogatives underpinning the exhaustion doctrine.

¶43 Requiring administrative exhaustion allows the Board to exercise its authority and subject matter expertise in an area requiring discretion. The nine Board members represent "multidisciplinary areas of expertise," including in law enforcement and offender supervision; each member must have at least five years of relevant experience; and each member must fulfill continuing education or training. § 17-2-201(1)(a), (e). Because the Board's decision to revoke parole is highly fact-specific and must be made "in a manner that is in the best interests of

the defendant and the public," § 17-2-201(4.5), deference to the Board allows it to use its subject-matter expertise to review initial revocation decisions.

¶44 Subject matter expertise also allows the Board to correct its own errors on appeal. This administrative appeal process both respects the Board's autonomy and advances judicial efficiency. Specifically, the Board's appellate body—two Board members who did not adjudicate the revocation complaint—may review the initial revocation decision for (1) irregularity that prevented a fair revocation hearing; (2) abuse of discretion or misconduct by the person who conducted the hearing; (3) an arbitrary and capricious revocation decision; (4) accident or surprise; (5) newly discovered evidence; (6) an error or change in law; or (7) discharge of a sentence. State Bd. of Parole, 8 Colo. Code Regs. 1511-1:14.00(E) (2013). Additionally, the Board may grant a new revocation hearing. *Id.* Thus, the Board's appellate review gives the Board an opportunity to correct another Board member's errors and may give a parolee the relief they seek, obviating any need for judicial review.

¶45 Furthermore, requiring a parolee to appeal first to the Board's appellate body provides the parolee with more process in an expedited time frame and helps to ensure that the factual record will benefit a court if judicial review is sought. Unlike the uncertain timeline for postconviction review, which may take years (as was true in the present case), the Board's appellate body must render its decision

within twenty-five working days after a parolee files an appeal. § 17-2-201(9)(c). Thus, a parolee is ensured swift review, and if the decision is unsatisfactory, then the parolee may still seek judicial review under section 18-1-410(1)(h) and Crim. P. 35(c)(2)(VII). And although the appellate body does not collect new evidence, its review of the initial hearing and decision enables it to compile a record that will aid judicial review. *See* § 17-2-201(9)(c) (requiring that the Board's appellate body reduce its decision to writing).

¶46 In sum, we conclude that administrative exhaustion of remedies is a jurisdictional prerequisite to judicial review in the parole revocation context.

C. Application

¶47 It is undisputed that Abdul-Rahman failed to exhaust his administrative remedies before seeking postconviction relief pursuant to section 18-1-410(1)(h) and Crim. P. 35(c)(2)(VII). He does not contend that any exceptions to the exhaustion requirement apply to him. Therefore, because Abdul-Rahman was required to but did not exhaust his administrative remedies, the postconviction court lacked jurisdiction to consider his petition for postconviction relief.

III. Conclusion

¶48 In sum, we hold that a parolee appealing the Board's initial parole revocation decision must exhaust their administrative remedies before pursuing postconviction relief under section 18-1-410(1)(h) and Crim. P. 35(c). Because the

failure to do so deprives a court of jurisdiction over the matter, we vacate the decision of the court of appeals and remand the case with instructions to return it to the district court to dismiss for lack of jurisdiction.

JUSTICE GABRIEL dissented.

JUSTICE GABRIEL, dissenting.

¶49 The majority concludes that before appealing a revocation of parole, a defendant must first exhaust their administrative remedies. Maj. op. ¶¶ 2, 48. For two reasons, however, I do not believe that this question is properly before us in this case.

¶50 First, the People concede that they did not raise this issue in the district court but rather raised it for the first time in their answer brief in the court of appeals. It is well settled, however, that, in general, issues raised for the first time on appeal are deemed waived. *See Moses v. Diocese of Colo.*, 863 P.2d 310, 319 n.10 (Colo. 1993) ("We have consistently held, with few exceptions, issues not raised in the trial court cannot form the basis of an appeal."); *Paine, Webber, Jackson & Curtis, Inc. v. Adams*, 718 P.2d 508, 513 (Colo. 1986) (noting that, "[a]s a general rule, issues not presented in the trial court are deemed waived and cannot be raised on appeal," but recognizing an exception to that rule for challenges to the trial court's subject matter jurisdiction). Accordingly, I would conclude that the People waived their exhaustion of administrative remedies argument here.

¶51 I am not persuaded otherwise by the People's assertion, which the majority accepts, Maj. op. ¶ 10, that they were permitted to raise this issue for the first time on appeal because exhaustion of administrative remedies implicates a district court's subject matter jurisdiction. For the reasons set forth in my dissenting

opinion in *Masterpiece Cakeshop, Inc. v. Scardina*, 2024 CO 67, ¶¶ 89–91, 556 P.3d 1238, 1255–56 (Gabriel, J., dissenting), I do not believe that the question of exhaustion of administrative remedies presents an issue of subject matter jurisdiction, notwithstanding the fact that we have routinely but imprecisely used the word "jurisdiction" in this context in prior cases. *See* Maj. op. ¶ 12 (citing cases in which all but one that addressed exhaustion of administrative remedies referred to "jurisdiction" but not "subject matter jurisdiction"). The distinction matters because, although subject matter jurisdiction may not be waived or consented to by the parties, *People v. Sprinkle*, 2021 CO 60, ¶ 17, 489 P.3d 1242, 1246, other "jurisdictional" issues, such as personal jurisdiction, may be waived, *St. George v. Off. of State Pub. Def.*, 2026 COA 28, ¶ 12, __ P.3d __.

¶52 Second, even if the People did not waive their exhaustion of administrative remedies argument, they *won* this case on the merits in the court of appeals below. I am unaware of any other case in which we have granted certiorari to rule that a party should have won on a different basis below, and I would not now set a precedent encouraging parties to seek certiorari review if they prefer to have won on different grounds. This is particularly true here, where the likely result of the majority's ruling is that Shams Abdul-Rahman will not prevail when he exhausts his administrative remedies on remand, the postconviction court will then reiterate its ruling on Abdul-Rahman's renewed Crim. P. 35(c) petition, and we

will end up exactly where we are today. Our resources are limited. Therefore, and as a matter of judicial restraint, I would have deferred consideration of the exhaustion of administrative remedies issue to a case in which it was properly and necessarily before us.

¶53 For these reasons, I would dismiss this matter as improvidently granted. Accordingly, I respectfully dissent.