SUMMARY
September 3, 2026

2026 COA 68

No. 25CA0020, *People v. Page* — Criminal Law — Postconviction Testing of DNA — Procedure for Application for DNA Testing — Denial Without Hearing; Appeals — Standard of Review — De Novo

This is an appeal of a court order denying a petition for postconviction DNA testing pursuant to sections 18-1-411 to -416, C.R.S. 2026, without a hearing. In 2023, the General Assembly substantially lowered a criminal defendant's burden to obtain an order authorizing postconviction testing of DNA evidence. For the first time in a published opinion, a division of the court of appeals considers the legal standard a postconviction court must apply when determining whether a defendant is entitled to a hearing on a petition for postconviction DNA testing under the current statute.

The division concludes that the postconviction court must apply the same standard it applies when determining whether a

defendant is entitled to a hearing on a Crim. P. 35(c) petition: A postconviction court may deny a defendant's petition for postconviction DNA testing without a hearing only if (1) the defendant's allegations are bare and conclusory; (2) the allegations, even if true, don't establish an entitlement to postconviction DNA testing; or (3) the record refutes the defendant's claims directly. And in determining the adequacy of a defendant's allegations, the postconviction court must assume that the requested testing would yield "favorable results" — that is, within the range of possible results, the results that are most favorable to a defendant's claim that there's a reasonable probability the defendant wouldn't have been convicted had the results been available at the original prosecution.

The division further holds that because a postconviction court doesn't make any factual findings when it denies a petition for postconviction DNA testing without a hearing, an appellate court reviews a postconviction court's summary denial de novo.

Applying these standards, the division concludes that the defendant here adequately alleged an entitlement to postconviction DNA testing and, therefore, reverses the postconviction court's order and remands the case for the court to hold a hearing on the petition.

Court of Appeals No. 25CA0020
Mesa County District Court No. 92CR571
Honorable JenniLynn Everett Lawrence, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Billy Joe Page,

Defendant-Appellant.

ORDER REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division IV
Opinion by JUDGE WELLING
Schock and Lum, JJ., concur

Announced September 3, 2026

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¶ 1 Defendant, Billy Joe Page, appeals the postconviction court's order denying his petition for postconviction DNA testing pursuant to sections 18-1-411 to -416, C.R.S. 2026, without a hearing. In 2023, the General Assembly substantially lowered a criminal defendant's burden to obtain an order authorizing postconviction testing of DNA evidence. For the first time in a published opinion, we consider the legal standard a postconviction court must apply when determining whether a defendant is entitled to a hearing on a petition for postconviction DNA testing under the current statute.

¶ 2 We conclude that the postconviction court must apply the same standard it applies when determining whether a defendant is entitled to a hearing on a Crim. P. 35(c) petition: A postconviction court may deny a defendant's petition for postconviction DNA testing without a hearing only if (1) the defendant's allegations are bare and conclusory; (2) the allegations, even if true, don't establish an entitlement to postconviction DNA testing; or (3) the record refutes the defendant's claims directly. Moreover, in determining the adequacy of a defendant's allegations, the postconviction court must assume that the requested testing would yield "favorable results" — that is, within the range of possible results, the results that are most favorable to a defendant's claim that there's a reasonable probability the defendant wouldn't have been convicted had the results been available at the original prosecution.

¶ 3 We further hold that because a postconviction court doesn't make any factual findings when it summarily denies a petition for postconviction DNA testing without a hearing, we review a postconviction court's summary denial de novo.

¶ 4 Applying these standards to the postconviction court's denial of Page's petition, we conclude that Page adequately alleged an entitlement to postconviction DNA testing. We, therefore, reverse the postconviction court's order denying his petition without a hearing and remand the case for the court to hold a hearing on Page's petition.

I. Background

A. The Shooting

¶ 5 In 1992, Martelle Daniels and RoseAnne Schweissing[1] were out for a run in the desert near Grand Junction, Colorado. As they

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[1] At the time of the shooting, Daniels was a Mesa County District Court Magistrate. Schweissing was a Mesa County District Court Clerk.

approached an Interstate 70 underpass, they saw a man on a motorcycle watching them from the top of a nearby hill. They continued their run north of the underpass and turned around. As they approached the underpass again, they saw the man with the motorcycle stopped ahead of them. The man drew a gun and began firing at them. Daniels was struck in the hand and head; Schweissing was struck in the face and back. While the man reloaded his gun, Daniels briefly struggled with him before running toward the Interstate for help. In the meantime, Schweissing got onto the man's motorcycle, but the man pulled her off and rode away. The victims survived their injuries.

¶ 6 The victims told police that the man's motorcycle had a red fuel tank. Police searched the scene and collected cartridge casings from the area where the victims said the perpetrator had stood while shooting at them. They also collected as evidence a soda can and a chimichanga wrapper from the hill where the victims said they had first seen the shooter. These items were tested for fingerprints. No prints were found on the casings. Latent prints were found on the can and the wrapper, but they weren't Page's and remain unconnected to any person to this day.

¶ 7 Both victims worked with an artist to create a composite drawing of the perpetrator. The sketches are depicted below, with the sketch based on Daniels's description on the left and Schweissing's on the right.

Sketches of the Shooter Based on the Victims' Descriptions

¶ 8 After the sketches were published to the public, the police received a call from Page's mother-in-law. She told police that Page owned a motorcycle and looked like the person depicted in the sketches. She also told police that Page, who previously had long hair, had cut his hair shortly after the shooting. The police began investigating Page. They visited him at his home and saw him washing his blue motorcycle with gasoline. After learning that he owned a gun similar to the one that was used in the shooting, they went to two spots in the desert where Page had recently gone shooting and collected cartridge casings from both spots. The police also conducted a lineup with the two victims. The lineup included Page and five other men. Neither victim definitively identified Page as the shooter. Daniels said that Page was "a possible match," and Schweissing said that Page and one of the other men "could possibly be the assailant."

¶ 9 The police arrested Page. Although Page initially told police that he wasn't involved in the shooting, he later allegedly confessed to shooting the victims. According to the officer who heard the confession, Page said that he had thrown the gun he used in a river. But police never found the gun. According to the officer who heard the confession, Page didn't explain why he had shot the victims; instead, he said he went into a dissociative state. Page's confession was neither audio- nor video-recorded, nor was it put in writing and signed or acknowledged by him. At trial and to this day, Page contends that he never confessed to the shooting.

B. Procedural History

¶ 10 Page was charged with two counts of attempted first degree murder, two counts of first degree assault, and four crime of violence sentence enhancers. At the preliminary hearing, Daniels testified that she believed, but wasn't one hundred percent certain, that Page was the shooter. Schweissing testified that Page looked very similar to the shooter but that she didn't know for sure who had shot her. The case proceeded to trial. At trial, both victims positively identified Page as the shooter.

¶ 11 The prosecution presented evidence of Page's confession, the eyewitness identifications, and the cartridge casing comparisons. With respect to the casings, an expert testified that casings found at one of the locations where Page had gone shooting were fired from the same firearm that had produced the casings found at the crime scene. The expert also testified that the casings found at the other location weren't fired from the same firearm used in the shooting.

¶ 12 Page's theory of defense was that he didn't commit the shooting. He claimed that he had never confessed and that he had no motive to harm the victims. He testified that he had once owned the same type of gun that was used in the shooting but that it was stolen from his wife's car a few weeks before the shooting. He also testified that he was home at the time of the shooting. Finally, he testified that his wife had cut his hair the night of the shooting because he believed that shorter hair would help him get a job. His wife corroborated each of these statements. Page's defense also focused on the fact that his motorcycle was blue, not red like the motorcycle the victims had initially told police that the shooter had ridden.

¶ 13 The jury found Page guilty on all counts. The court sentenced him to ninety years in the custody of the Department of Corrections. On direct appeal, a division of this court affirmed Page's convictions but remanded the case for resentencing. *People v. Page*, 907 P.2d 624 (Colo. App. 1995), *overruled by People v. Muckle*, 107 P.3d 380 (Colo. 2005). At resentencing, the court sentenced Page to eighty years in the custody of the Department of Corrections.

C. The DNA Testing Statute

¶ 14 In 2003, Colorado enacted for the first time a postconviction DNA testing statute. *See* Ch. 90, sec. 1, §§ 18-1-411 to -416, 2003 Colo. Sess. Laws 815-17 (enacting Senate Bill 03-164). We will refer to this as the original statute. That original statute provided a procedure for an "incarcerated person" to apply to the district court in which the conviction was secured for an order authorizing postconviction DNA testing. *See* § 18-1-412, C.R.S. 2003. Among other prerequisites to obtaining relief, the original statute provided that "[a] court *shall not* order DNA testing unless the petitioner demonstrates *by a preponderance of the evidence* that . . . [f]avorable results of the DNA testing *will demonstrate* the petitioner's *actual innocence*." § 18-1-413(1)(a), C.R.S. 2003 (emphasis added).

¶ 15 In the two decades immediately following the enactment of the original statute, only three individuals were able to obtain an order requiring testing under that statute. *See* Hearing on H.B. 23-1034 before the H. Judiciary Comm., 74th Gen. Assemb., 1st Reg. Sess. (Jan. 31, 2023).

¶ 16 In 2023, the legislature amended the statute to substantially expand the circumstances under which a convicted person could secure an order for postconviction DNA testing. *See* Ch. 15, secs. 1-6, §§ 18-1-411 to -416, 2023 Colo. Sess. Laws 44-47 (enacting House Bill 23-1034, entitled "Concerning measures to expand postconviction DNA testing"). We will refer to this as the current statute.

¶ 17 One of the substantial changes made in 2023 was amending section 18-1-413(1)(a) to provide that a court "*shall* order DNA testing" if it finds, among other prerequisites, "a *reasonable probability* that the petitioner *would not have been convicted* if *favorable results* had been obtained through DNA testing at the time of the original prosecution." § 18-1-413(1)(a), C.R.S. 2026 (emphasis added).

¶ 18 The current statute became effective for petitions filed on or after October 1, 2023. Sec. 9, 2023 Colo. Sess. Laws at 47. A comparison of the relevant portions of the original and current versions of the statute is set forth in the table below:

Original Version of the Statute (effective for petitions filed between August 6, 2003, and September 30, 2023)	Current Version of the Statute (effective for petitions filed on or after October 1, 2023)
Section 18-1-413(1)(a)	
"(1) A court *shall not* order DNA testing unless	"(1) The court *shall* order DNA testing if:
the petitioner demonstrates by a *preponderance of the evidence* that:	(a) It finds a *reasonable probability* that

Original Version of the Statute (effective for petitions filed between August 6, 2003, and September 30, 2023)	Current Version of the Statute (effective for petitions filed on or after October 1, 2023)
(a) Favorable results of the DNA testing will establish the petitioner's actual innocence[.]" (Emphasis added.)	the petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution[.]" (Emphasis added.)
Definition of "Actual Innocence"[2]	
"'Actual innocence' means clear and convincing evidence such that no reasonable juror would have convicted the defendant."	*Definition of "actual innocence" repealed, as that term is no longer used in the statute.*
Definition of "Favorable Result"[3]	
No definition of "favorable result."	"'Favorable result' means a result that indicates a reasonable probability that the petitioner would not have been convicted."

D. Page's Petition for DNA Testing and the Court's Summary Denial

¶ 19 Less than three months after the current statute became effective, Page, through counsel, filed a petition for DNA testing. In it, Page requested DNA testing of the cartridge casings, drink can, food wrapper, and latent fingerprint lifts taken from the latter two

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[2] The definition of "[a]ctual innocence" on the left is from section 18-1-411(1), C.R.S. 2003.

[3] The definition of "[f]avorable result" on the right is from section 18-1-411(3.5), C.R.S. 2026.

items.[4] In his petition, he asserted that "favorable results" of the requested testing would be finding DNA from the same third party and not Page on all of the items. Based on this characterization of "favorable results," Page argued that there is a reasonable probability that he wouldn't have been convicted for three reasons. First, he asserted that because the drink can and food wrapper were collected from the area where the victims first saw the man on his motorcycle, if the same DNA profile was found on both items, it could lead to the identification of an alternate suspect who actually had a motive to commit the charged offenses. Second, he asserted that because the cartridge casings were "the most important physical evidence in the prosecution's case," evidence that someone else had handled those items would "cause a reasonable juror to harbor reasonable doubt as to Mr. Page's guilt," particularly if the third party's DNA profile matched a profile in the Combined DNA

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[4] Latent fingerprints were lifted from the drink can and food wrapper. According to his petition, Page says that "[l]atent fingerprints are developed by dusting the prints, lifting them with adhesive tape, and then sandwiching the print between the tape and paper." He goes on to allege that "[l]atent fingerprints contain DNA from skin, sweat, and oils," and, therefore, "STR DNA may be obtained from fingerprint cards."

Index System (CODIS) database and the profile belonged to a person with a motive to commit the charged crimes. Third, he argued that the "redundancy of favorable results" — that is, finding the same third party's DNA on multiple items recovered from the crime scene — "may be critical to the argument that DNA found on the various items, which does not belong to the defendant, comes from the person who committed the crime." (Quoting U.S. Dep't of Just., Off. of Just. Programs, Nat'l Inst. of Just., *DNA for the Defense Bar* 146 (June 2012), https://perma.cc/5BDC-WW7P.)

¶ 20 The People objected. First, they argued that the statute didn't require the court to presume "favorable results" when assessing whether Page made a prima facie case "because that presumption does not appear in the plain language of the Colorado statute." They contended that such a presumption would "effectively eliminate the 'reasonable probability' standard altogether, because . . . virtually every case would qualify for" testing. Second, and without presuming favorable results, the People argued that Page had failed to make a prima facie case as required under section 18-1-413, C.R.S. 2026, because (1) there was overwhelming evidence supporting Page's conviction and (2) the jury already considered — and rejected — all of the supposed weaknesses in the government's case that Page identified in his petition. In other words, every point Page made in his petition, "whether concerning the supposed weakness of the government's case or the supposed probative value of the items he wants tested, was thoroughly argued and cross-examined before the jury" at trial and rejected, as evidenced by the jury's verdict. So, the People argued, DNA testing results wouldn't change anything.

¶ 21 The People also challenged the relevance and probity of the specific testing Page requested. For the drink can and food wrapper, the People argued that those items were "likely left by someone completely unconnected to the crime," so the presence of a third party's DNA on those items would be irrelevant. For the casings, the People asserted that any DNA on the casings "was likely significantly degraded after firing" and, in any event, the casings were "likely contaminated by third parties handling those items" before, during, and after the trial, so DNA test results from those items wouldn't be illuminating.

¶ 22 In a written order, the postconviction court denied Page's petition without a hearing. As a threshold matter, the court settled the parties' dispute about whether it must presume favorable results, concluding that "the statute plainly and unambiguously requires a presumption that DNA results would be favorable to the defendant." The court then turned to whether Page had made a prima facie showing that he was entitled to an order authorizing postconviction DNA testing. In doing so, it considered two possible scenarios for "favorable results": (1) testing showed the absence of Page's DNA on all of the items; and (2) testing showed the presence of someone else's DNA on all of the items. With respect to the testing revealing the absence of Page's DNA, the court found as follows:

> [T]he absence of the defendant's DNA on the shell casings, the can, the wrapper[,] or the latent fingerprint card would not present a *reasonable probability that he did not shoot the weapon*, especially when considered in light of the overwhelming evidence presented during the prosecution of this case that he did. Someone else *may have* loaded the gun, the [d]efendant *may have* worn gloves to load the gun, the wrapper and the can *may simply have* been someone else's trash.

(Emphasis added.)

¶ 23 With respect to the possibility that the requested testing could reveal the presence of someone else's DNA on all of the items, the court explained as follows:

> [T]he presence of another person's DNA on the shell casings, the can, the wrapper and the latent fingerprint card would establish that someone one else at sometime or another touched those items. However, that fact would not present *a reasonable probability that the [d]efendant did not shoot the weapon* that caused the injuries to the victims in this case.

(Emphasis added.)

¶ 24 Based on these findings, the postconviction court denied Page's petition without a hearing.

II. The Court Erred by Denying Page's Petition for DNA Testing Without a Hearing

¶ 25 On appeal, Page contends that the postconviction court erred by summarily denying his petition without a hearing. We agree.

A. Postconviction DNA Testing Statute

¶ 26 To be entitled to an order for postconviction DNA testing, a defendant bears the burden of proving four elements. *See* § 18-1-413(1). Specifically, the statute provides that a court "shall order DNA testing" if (1) it finds by a preponderance of the evidence that officers collected biological evidence relating to the offense, § 18-1-

413(1)(b); (2) it finds by a preponderance of the evidence that (a) DNA results weren't available before the defendant's conviction, (b) the previously tested evidence is now subject to more advanced DNA testing, or (c) the defendant didn't secure DNA testing before his conviction because it wasn't reasonably available or there was justifiable excuse, ineffective assistance of counsel, or excusable neglect, § 18-1-413(1)(c)(I)-(II); (3) the defendant consents to provide a biological sample for testing, § 18-1-413(1)(d); and (4) "[i]t finds a reasonable probability that the petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution," § 18-1-413(1)(a).

¶ 27 The procedure following the filing of a petition for postconviction DNA testing bears some similarities to the procedures for considering a postconviction petition pursuant to Crim. P. 35(c). *Compare* § 18-1-412(2)-(6), C.R.S. 2026, *with* Crim. P. 35(c)(3)(IV)-(V). First, the postconviction court must evaluate the facial sufficiency of the petition. *See* § 18-1-412(3)-(4); *cf.* Crim. P. 35(c)(3)(IV). If a defendant isn't represented by counsel and requests appointment of counsel in their petition, the postconviction "court shall deny the motion without a hearing and without appointment of counsel" only "[i]f the motion, files, and record of the case show to the satisfaction of the court that the petitioner is not entitled to relief based on the criteria specified in section 18-1-413." § 18-1-412(3); *cf.* Crim. P. 35(c)(3)(IV). If, on the other hand, the court doesn't deny the petition pursuant to section 18-1-412(3), the court shall appoint counsel and forward the petition to the district attorney. § 18-1-412(4); *cf.* Crim. P. 35(c)(3)(V). (Because Page's petition was filed by counsel, this part of the procedure isn't implicated in this case.)

¶ 28 As relevant to this appeal, once a defendant has counsel and the petition for DNA testing is fully briefed, section 18-1-412 provides three dispositional pathways for the postconviction court, depending on the contents of the petition and the prosecution's response: (1) grant without a hearing; (2) deny without a hearing; (3) set for a hearing. *See* § 18-1-412(2)-(7).

¶ 29 *Dispositional Path 1.* If, and only if, the district attorney stipulates in writing to the requested testing, then the court can grant the petition without a hearing. § 18-1-412(7) ("A court shall not order DNA testing without a hearing, except upon written stipulation of the district attorney.").[5]

¶ 30 *Dispositional Path 2*. If the People object, the postconviction court can deny the request for DNA testing without conducting a hearing only "[i]f the motion, files, and record of the case show to the satisfaction of the court that the petitioner is not entitled to relief based on the criteria specified in section 18-1-413." § 18-1-412(3).

¶ 31 *Dispositional Path 3*. Given the constraints of the first two paths, if the People object but the defendant makes a prima facie showing of entitlement to DNA testing in the petition, then the postconviction court *must* conduct a hearing to determine whether

[5] Because the issue isn't presented by the facts of this case, we don't consider (and therefore offer no opinion regarding) whether, when the district attorney stipulates in writing to the requested testing, the court must still independently determine whether the defendant has made a prima facie showing of an entitlement to postconviction DNA testing or if the stipulation alone requires the court to grant the petition.

the defendant is entitled to an order authorizing such testing. § 18-1-412(5)-(7).[6]

¶ 32 Here, the postconviction court took the second path — it denied Page's petition without a hearing. Page asserts that it should have taken the third path and set his petition for a hearing. With these principles in mind, we turn to the legal standard a court must apply when deciding between denying a petition for postconviction DNA testing without a hearing or setting the petition for a hearing.

B. Legal Standards

¶ 33 First, we address the legal standard the postconviction court must apply when determining whether to set a petition for a

[6] It's true that nothing in section 18-1-412, C.R.S. 2026, expressly states that a hearing on a petition is ever *mandatory*. *See* § 18-1-412(5) (providing that counsel for a defendant "may request" a hearing or the court "may set the matter for a hearing" if a self-represented petitioner requests one). But because the statute provides that the court can only deny a petition without a hearing when the petition fails to make a prima facie case, § 18-1-412(3), and may only grant the petition for testing without a hearing when the People so stipulate, § 18-1-412(7), the *only* option that remains for a postconviction court faced with a facially adequate petition and an objection from the People is to set the matter for a hearing. At oral argument, both the Attorney General and counsel for Page agreed with this framing of the statute.

hearing. Then, we address the standard of review that we must apply when reviewing a postconviction court's denial of a petition without a hearing.[7]

1. Legal Standard for Denial Without a Hearing

¶ 34 As noted before, this isn't an unfamiliar procedural junction. Similar to the postconviction DNA testing statute, Crim. P. 35(c) provides that a postconviction court may deny a petition brought under that rule without a hearing "[i]f the motion and the files and record of the case show to the satisfaction of the court that the defendant is not entitled to relief." Crim. P. 35(c)(3)(IV). Case law has made clear that this provision means that "[a] motion for postconviction relief pursuant to Crim. P. 35(c) may be denied without an evidentiary hearing only where the motion, files, and record in the case clearly establish that the allegations presented in the defendant's motion are without merit and do not warrant

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[7] We don't address any issues beyond whether the postconviction court erred by denying Page's petition without a hearing. We save for another day all questions regarding the mechanics of a hearing or how an appellate court should review a disposition of a petition following a hearing. *See Stor-N-Lock Partners #15, LLC v. City of Thornton*, 2018 COA 65, ¶ 38 (we must avoid issuing advisory opinions).

postconviction relief." *Ardolino v. People*, 69 P.3d 73, 77 (Colo. 2003); *see White v. Denv. Dist. Ct.*, 766 P.2d 632, 634 (Colo. 1988).

¶ 35 This has been distilled into a well-established and well-understood framework that postconviction courts routinely apply when determining whether to deny a Crim. P. 35(c) petition without a hearing. Specifically, a postconviction court may deny a Crim. P. 35(c) petition without a hearing only if (1) the allegations are bare and conclusory; (2) the allegations, even if true, don't warrant relief; or (3) the record directly refutes the defendant's claims. *People v. Lopez*, 2025 COA 73, ¶ 8 (citing *People v. Duran*, 2025 COA 34, ¶ 15). Moreover, "[a] defendant need not set forth evidentiary support for the allegations in the [Crim. P. 35(c)] motion but must assert facts that, if true, would provide a basis for relief." *Id.* (citing *White*, 766 P.2d at 635).

¶ 36 Given the parallels between Crim. P. 35(c)(3)(IV) and section 18-1-412(3), there's no reason that a similar framework shouldn't apply here. Accordingly, we hold that a postconviction court may deny a defendant's petition for postconviction DNA testing without a hearing only if (1) the defendant's allegations are bare and conclusory; (2) the allegations, even if true, don't establish an entitlement to an order for postconviction DNA testing; or (3) the record refutes the defendant's claims directly. As in the Crim. P. 35(c) context, a defendant need not set forth evidentiary support for the allegations in the petition but must assert facts that, if true, would provide a basis for relief. That includes describing the DNA testing being requested; what, in the defendant's view, constitutes favorable results; and how such results, if they had been obtained prior to trial, would raise a reasonable probability that the defendant wouldn't have been convicted, *see* § 18-1-413(1)(a). If a defendant's petition clears this hurdle, it may not be summarily denied and, instead, must be set for a hearing.

2. Standard of Review

¶ 37 We now turn to the appropriate standard of review when a postconviction court denies a petition for postconviction DNA testing without a hearing. The parties disagree on this issue. Page contends that, like when a postconviction court denies a Crim. P. 35(c) petition without a hearing, our standard of review should be de novo. The People, on the other hand, contend that a postconviction court's ruling on a petition for DNA testing is a mixed question of law and fact, so we should defer to the postconviction court's factual findings, meaning we would review any factual findings for clear error, and review only the court's legal conclusions de novo. We agree with Page.

¶ 38 As in the Crim. P. 35(c) context, when a postconviction court denies a petition without a hearing, a court doesn't make any factual findings for us to defer to. Thus, "[w]e review de novo the district court's denial of a Crim. P. 35(c) motion without a hearing." *Lopez*, ¶ 9 (citing *People v. Cali*, 2020 CO 20, ¶ 14). For the same reason, we conclude we must review de novo a court's denial of a petition for postconviction DNA testing without a hearing.

¶ 39 We aren't persuaded otherwise by the People's reliance on *People v. Thompson*, 2020 COA 117. True, the division in *Thompson* reviewed the court's denial of a petition for postconviction DNA testing as a mixed question of law and fact, reviewing "the postconviction court's factual findings for clear error and the court's legal conclusions de novo." *Id.* at ¶ 24 (citing *People v. Young*, 2014 COA 169, ¶ 37). But the procedural posture in *Thompson* was different than what we face. In *Thompson*, the postconviction court held a hearing on Thompson's petition for DNA testing, where experts for both Thompson and the People testified. *Id.* at ¶ 15.

After the hearing concluded, the postconviction court ruled that Thompson had failed to demonstrate that he was entitled to DNA testing under section 18-1-413, C.R.S. 2019. *Id.* The procedural posture in *Young*, on which *Thompson* relied, was similar. *See Young*, ¶¶ 15-33 (four different postconviction courts held hearings on defendant's petition).

¶ 40 Here, however, the postconviction court denied Page's petition for DNA testing without holding a hearing. Nothing about *Thompson* or *Young* casts any doubt on our conclusion that the proper standard of review when a court denies a petition for postconviction DNA testing without a hearing is de novo, as we are in the same position as the postconviction court in evaluating whether denial without a hearing is warranted. Accordingly, we hold that we review the denial of a petition for DNA testing without a hearing de novo.

¶ 41 We now apply this standard to our review of the court's denial of Page's petition for DNA testing.

C. Analysis

¶ 42 We conclude that the postconviction court erred by denying Page's petition without a hearing because Page made a prima facie showing that he met the criteria for postconviction DNA testing under the current statute.

1. Page Adequately Alleged that There's a Reasonable Probability He Wouldn't Have Been Convicted If He'd Had Favorable DNA Testing Results

¶ 43 In their briefing to the postconviction court, the People didn't contest that Page had adequately alleged three of the four elements necessary for obtaining postconviction DNA testing. Specifically, the People didn't dispute Page's contentions that officers had collected biological evidence, that evidence of DNA testing results wasn't available before Page's conviction, and that Page consents to providing a biological sample for DNA testing. *See* § 18-1-413(1)(b)-(d). The only disputed issue before the postconviction court was whether Page had made a prima facie showing that there is "a reasonable probability that [he] would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution." § 18-1-413(1)(a). We conclude that he did and that the postconviction court erred in reaching a contrary conclusion.

a. Presumption of Favorable Results

¶ 44 As an initial matter, we agree with the postconviction court that the plain language of section 18-1-413(1)(a) requires a court to presume "favorable results" when assessing a defendant's petition for postconviction DNA testing. And this presumption applies when a postconviction court is determining whether a defendant's petition sets forth a prima facie case for ordering DNA testing. Determining what constitutes favorable results for the purpose of evaluating the sufficiency of a defendant's petition, however, is a more challenging question.

¶ 45 Section 18-1-411(3.5) defines "[f]avorable result" as "a result that indicates a reasonable probability that the petitioner would not have been convicted." We note, however, that there is a problem with strictly applying this definition of "favorable result" in the context of section 18-1-413(1)(a). As we discussed, section 18-1-413(1)(a) provides that a court shall order DNA testing if the court finds, among other elements, "a reasonable probability that the petitioner would not have been convicted if *favorable results* had been obtained through DNA testing at the time of the original prosecution." (Emphasis added.) Substituting in the statutory definition of "favorable result" in place of those words, section 18-1-413(1)(a) would require a court to order DNA testing if the court finds "a reasonable probability that the petitioner would not have been convicted if [*a result that indicates a reasonable probability that the petitioner would not have been convicted*] had been obtained through DNA testing at the time of the original prosecution." § 18-1-413(1)(a) (emphasis added) (replacing "favorable results" with the language from section 18-1-411(3.5)). Read like this, the circularity of section 18-1-413(1)(a) becomes apparent, as it seems to *require* DNA testing in *every* case (and, as a practical matter, renders "favorable results" virtually meaningless). This is the sort of illogical and absurd construction that we must avoid. *See, e.g.*, *Ford Motor Co. v. Walker*, 2022 CO 32, ¶ 18 ("[W]e avoid [statutory] constructions that would render any words or phrases superfluous or that would lead to illogical or absurd results." (quoting *Elder v. Williams*, 2020 CO 88, ¶ 18)); *Town of Erie v. Eason*, 18 P.3d 1271, 1276 (Colo. 2001) (we must avoid a statutory construction that leads to an absurd result).

¶ 46 Instead, we must take an approach to the question that effectuates the legislature's intent. *See Bly v. Story*, 241 P.3d 529, 533 (Colo. 2010) ("Our primary objective is to effectuate the intent of the General Assembly by looking to the plain meaning of the language used, considered within the context of the statute as a whole."); *AviComm, Inc. v. Colo. Pub. Utils. Comm'n*, 955 P.2d 1023, 1031 (Colo. 1998) ("[T]he intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result."). We agree with the postconviction court that "the definition of 'favorable result' allows for flexibility on a case-by-case basis." We further agree with the court that such an "interpretation is consistent with the statute's purpose, as, depending on the kind of case, whether a result is favorable or not may change. . . . Thus, the definition of 'favorable result' is appropriately flexible depending on the situation." But this only gets us so far.

¶ 47 In context, "favorable result" means the DNA testing result that, among the range of possible results, is most beneficial to the defendant's claim that had such a result been available at the time of the original prosecution, the defendant wouldn't have been found guilty. In other words, it's the result most favorable to the defendant, among the range of possible results. This is necessarily a case-by-case determination that depends on, among other things, the charged crime, the evidence supporting the defendant's conviction, and the nature of the evidence that the defendant seeks to have tested.

¶ 48 Here, Page is requesting DNA testing of four items — the cartridge casings, a drink can, a food wrapper, and latent fingerprints lifts. The "favorable results" posited by Page in his petition aren't just that he is excluded as a contributor to the tested DNA, but also that (1) the same third party's DNA is found on all of the tested items; (2) the identity of the person whose DNA is found on all of the items is able to be ascertained; and (3) that person is a viable alternate suspect (i.e., the person had a motive — something Page argues he lacked). The People argue that indulging this framing of "favorable results" is too speculative, characterizing it as a "long series of speculative best case scenarios." We disagree.

¶ 49 To begin, there is a substantial degree of speculation baked into the concept of "favorable results." Indeed, when a defendant files a petition for postconviction DNA testing, *no one* knows what the testing will reveal, if anything. After all, the point of the petition (and the statute) is to fill this information gap. All anyone can do is speculate what the results might be. Thus, the touchstone of what can constitute favorable results can't be whether such posited results are speculative.

¶ 50 To be sure, there may be a degree of speculation or farfetched inference that's a bridge too far. But what Page has posited as favorable results in his petition doesn't cross this line, wherever it may lie. The favorable inferences that Page asks the court to indulge at this juncture are that (1) there is a testable quantity of DNA on each of the four specific items; (2) the DNA test results will exclude him; (3) the DNA test results will identify the same third party's DNA on all four items; (4) the third party whose DNA is found on the items can be identified; and (5) the third party who is identified had the motive and opportunity to commit the charged crimes. Even if unlikely, none of these possibilities are foreclosed by the record, as they must be to deny the petition without a hearing. Thus, they are indulgences that must be made at this juncture.

¶ 51 The People appear to argue that what constitutes "favorable results" at this stage should be cabined by whether such favorable evidence will ultimately be successful in securing a new trial or an acquittal at a retrial. Specifically, they contend that Page failed to allege how his posited favorable results would meet the "rigorous standard" for newly discovered evidence to secure a new trial, *see Farrar v. People*, 208 P.3d 702, 706-07 (Colo. 2009), or would entitle him to an alternate suspect instruction at a new trial, *see People v. Elmarr*, 2015 CO 53, ¶¶ 22-23, 32. But at this stage, it's premature to ask whether the favorable results would lead to the granting of a new trial, much less an acquittal at a theoretical new trial. Rather, the question at this stage is simply whether the petitioner has adequately alleged that the posited favorable results, if they had been available at the time of the "original prosecution," give rise to "a reasonable probability that the petitioner would not have been convicted." § 18-1-413(1)(a). This doesn't come with the additional burden, at least not at this juncture, of establishing (or even alleging) that such favorable results will or are likely to be successful in securing a new trial or an acquittal, if a new trial is granted.

b. Reasonable Probability that Page Wouldn't Have Been Convicted

¶ 52 Next we must determine whether, assuming the DNA testing were to return the posited favorable results described above, Page has adequately alleged that there is "a reasonable probability" that he "would not have been convicted" if those favorable results "had been obtained . . . at the time of the original prosecution." § 18-1-413(1)(a). We conclude that the answer to that question is "yes."

¶ 53 Although the statute doesn't define "reasonable probability," appellate courts have defined it in similar contexts. Reasonable probability "is a standard 'somewhat lower' than a preponderance of the evidence." *People v. Sifuentes*, 2017 COA 48M, ¶ 20 (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)) (defining reasonable probability in the context of establishing prejudice under *Strickland*). A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *People v. Bueno*, 2018 CO 4, ¶ 32 (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)) (defining reasonable probability in the context of *Brady v. Maryland*, 373 U.S. 83 (1963)).

¶ 54 And the subject of the reasonable probability inquiry is whether Page "would not have been convicted" had he obtained favorable results (not whether such results would prove his innocence, as it was under the original version of the statute). The postconviction court appears to have misdirected its reasonable probability inquiry. The postconviction court concluded that favorable results "would not present a reasonable probability that [Page] *did not shoot the weapon*," which frames the reasonable probability inquiry in terms of actual innocence. That, however, isn't the inquiry under the current version of the statute. The inquiry isn't whether the DNA evidence would establish Page's innocence (i.e., that he didn't commit the shooting); rather, it's just whether there's a reasonable probability that Page "would not have been convicted" had the postulated favorable DNA results been presented at the original trial. This is a subtle, but important, distinction, particularly in a case like this where the evidence, though abundant, was primarily circumstantial and the defendant had an innocent explanation for each piece of circumstantial evidence.

¶ 55 Still, the People contend (and the postconviction court appears to have agreed) that even assuming favorable results from the DNA testing, the evidence against Page was so strong that the posited favorable results don't establish a reasonable probability that Page wouldn't have been convicted had such results been available at his original trial. In advancing this argument, the People point to the victims' identification of Page, the expert testifying about the cartridge casing match, Page's confession, and Page's behavior after the shooting (for example, cleaning his motorcycle and cutting his hair) as strong, if not overwhelming, evidence of his guilt. They further point out that Page vigorously challenged this evidence at trial, and the jury, based on its verdict, already rejected such challenges. Thus, the People argue, there isn't a reasonable probability that the results of DNA testing, no matter how favorable, would have produced a different result.

¶ 56 The People's argument in this regard misses the mark. Just because the evidence the People cite was clearly sufficient to secure a conviction doesn't dispel the reasonable probability that the jury could have credited Page's retorts to that evidence had those rejoinders been accompanied by DNA results that pointed to someone else — particularly someone with a motive to commit the shooting. And that is the relevant inquiry at this juncture.

¶ 57 To put a sharper point on it, just because the evidence may have been viewed as substantial and compelling by the jury at Page's original trial doesn't mean that the same evidence would be similarly compelling or overwhelming when presented alongside the favorable DNA test results that Page posits in his petition. The People aren't wrong that all or nearly all the arguments regarding the weaknesses in the State's case that Page recites in his petition were made by the defense at trial and rejected by the jury.[8] While this is true, Page made and the jury rejected these arguments *in the absence of the favorable DNA test results we must assume are now available*. Recall, both victims initially said the motorcycle was red, but Page's motorcycle was blue; Page testified that he didn't confess; Page and his wife testified that he wasn't involved in the shooting; and the victims initially didn't identify Page as the shooter. Simply put, the jury may not have overlooked the conflicting evidence regarding the color of Page's motorcycle, been unpersuaded that he didn't confess, and been swayed by the circumstantial evidence if they had to weigh such evidence along

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[8] The People also point out that at Page's original trial, the jury heard evidence that the fingerprints of an unidentified third party were found on the food wrapper and soda can, so the presence of a third party's DNA on those same items would be neither surprising nor consequential. But at Page's trial, that fingerprint evidence was offered in the context of finding no fingerprints on the shell casings. In contrast, the posited favorable results would show the same third party's DNA on *all three items*, giving rise to an entirely different inference than could be drawn from the trial evidence.

with the posited favorable DNA test results. This is sufficient to make a prima facie case that there is a *reasonable probability* Page wouldn't have been convicted had the favorable DNA test results been available at his original trial. Accordingly, the postconviction court erred by denying Page's petition for DNA testing without a hearing.

2. We Reject the People's Alternate Grounds to Affirm

¶ 58 Although not presented to the postconviction court, the People advance two alternate grounds for affirming the postconviction court's denial of Page's petition without a hearing.

a. Page Adequately Alleged that "Biological Evidence" Was Collected

¶ 59 For the first time on appeal, the People contest whether Page adequately alleged that the State collected "biological evidence," § 18-1-413(1)(b), because the items that Page wants tested — the cartridge casings, drink can, food wrapper, and fingerprint lifts —

aren't "biological evidence" under the statute.[9] They argue that because Page failed to make a prima facie case that these items are biological evidence, he didn't establish a prima facie case to support DNA testing, so we must affirm the postconviction court's ruling on this basis alone. *See Makeen v. Hailey*, 2015 COA 181, ¶ 21 ("[W]e can affirm on any grounds supported by the record."). Assuming without deciding that the People's failure to raise this contention to the postconviction court doesn't bar our consideration of it, we reject it.

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[9] We note that section 18-1-413(1)(b), C.R.S. 2026, requires a defendant to prove only that "a law enforcement agency collected biological evidence pertaining to the offense," not that the evidence that the defendant seeks to have tested is itself "biological evidence." And here it's undisputed that in the course of its investigation, the Mesa County Sheriff's Office collected a wide variety of biological evidence, including blood, tissue, and teeth from the crime scene, as well as blood from Page pursuant to a Crim. P. 41.1 order. But it doesn't make a great deal of sense that the sufficiency of a petition for postconviction DNA testing could turn on whether law enforcement collected biological evidence *unrelated* to what the defendant seeks to have tested. *See Ford Motor Co. v. Walker*, 2022 CO 32, ¶ 18 (we should avoid illogical statutory interpretations). Thus, for the purpose of considering the People's argument in this regard, we will assume that the term "biological evidence" in section 18-1-413(1)(b) refers to the evidence that the defendant seeks to have tested, not just to evidence collected in the course of the investigation generally.

¶ 60 The gravamen of the People's argument is that by referencing "biological evidence," the postconviction DNA testing statute wasn't intended to require testing of touch DNA found on various pieces of physical evidence collected at a crime scene but rather was intended to require only the testing of bodily fluids — such as blood or semen — left behind by the perpetrator. There is, however, no textual basis for this distinction. "Biological evidence" isn't defined. *See* § 18-1-411 (definitions). Neither semen nor blood nor any other bodily fluid is referenced in the statute.

¶ 61 And we decline to read the People's urged limitation into the statute. To begin, the People provide no basis for a court to discern between bodily fluids and other types of evidence that contain DNA. While it may stand to reason that all bodily fluids left behind at a crime scene are biological evidence, it doesn't follow that what constitutes biological evidence is limited to evidence that contains bodily fluids. Indeed, when it comes to performing DNA testing, there is little difference between testing bodily fluids and testing other sources of DNA. *See Sartain v. State*, 2017 MT 216, ¶ 10, 401 P.3d 701, 703-04 ("Touch DNA testing uses the same . . . technology used to test more traditional sources of DNA — blood, semen, saliva, and other bodily fluids — to test recovered epithelial cells." (quoting Victoria Kawecki, Comment, *Can't Touch This? Making a Place for Touch DNA in Post-Conviction DNA Testing Statutes*, 62 Cath. U. L. Rev. 821, 828-29 (2013))).

¶ 62 We conclude that for section 18-1-413(1)(b), if evidence contains a testable quantity of DNA, then such evidence is biological evidence. *Cf. State v. Burns*, 988 N.W.2d 352, 389 (Iowa 2023) (McDermott, J., dissenting) ("A DNA specimen . . . is a molecule found within the nucleus of a cell that carries the genetic instructions for a particular person's entire biological development and function."). And by alleging that these items may contain the DNA of an unknown third party and requesting postconviction DNA testing of them, Page adequately alleged that there is a testable quantity of DNA on each of the four items. Accordingly, we reject the People's contention that Page failed to adequately allege that "a law enforcement agency collected biological evidence pertaining to the offense," as required by section 18-1-413(1)(b).

b. Laches Doesn't Bar Page's Petition

¶ 63 Finally, we reject the People's argument that Page's petition should be denied under the doctrine of laches because Page waited "decades" before seeking postconviction DNA testing. Laches is "an equitable doctrine that may be asserted to deny relief to a party whose *unconscionable delay* in enforcing his rights has prejudiced the party against whom relief is sought." *Robbins v. People*, 107 P.3d 384, 388 (Colo. 2005) (emphasis added). To begin, the DNA testing statute expressly provides that a defendant may pursue this relief at any time, subject to a successiveness bar not applicable here. *See* § 18-1-412(1) ("An eligible person may apply at any time to the district court in the district where the conviction was secured for DNA testing concerning the conviction and sentence."); § 18-1-413(2) (setting forth limitations on "subsequent petition[s]").

¶ 64 More importantly, Page didn't wait "decades" to seek relief, as the People assert. Instead, once the current, more defendant-favorable standard to obtain DNA testing became effective on October 1, 2023, Page filed his petition only a few months later on December 29, 2023. Indeed, where, as here, the People contend that Page's petition fails under the newer, more favorable standard, the fact that Page didn't file his petition under the older, less favorable standard can't be held against him.

III. Disposition

¶ 65 The postconviction court's order denying Page's petition without a hearing is reversed, and the case is remanded for the postconviction court to conduct a hearing on Page's petition for postconviction DNA testing.

JUDGE SCHOCK and JUDGE LUM concur.