The summaries of the Colorado Court of Appeals published opinions constitute no part of the opinion of the division but have been prepared by the division for the convenience of the reader. The summaries may not be cited or relied upon as they are not the official language of the division. Any discrepancy between the language in the summary and in the opinion should be resolved in favor of the language in the opinion.

SUMMARY
November 5, 2026

2026 COA 79

No. 24CA1533, *People v. Rogers* — Constitutional Law — Sixth Amendment — Right to Counsel; Attorneys and Clients — Ineffective Assistance of Counsel

In this direct appeal, the defendant argues that he was denied his right to counsel when the district court conducted a competency review hearing while his lawyer's motion to withdraw was pending, which prevented his lawyer from objecting to the competency evaluation. A division of the court of appeals considers whether such a claim requires a showing of deficient performance and prejudice under *Strickland v. Washington*, 466 U.S. 668, 686 (1984), or whether, as the defendant asserts, prejudice is presumed under *United States v. Cronic*, 466 U.S. 648, 658 (1984). Because a pending motion to withdraw does not alone establish a denial of counsel, and because the narrow circumstances described in *Cronic* do not otherwise apply to the facts of this case, the division

concludes that this claim must be evaluated as an ineffective assistance of counsel claim under *Strickland*. But ineffective assistance of counsel claims should be raised in postconviction proceedings, not on direct appeal. Accordingly, the division dismisses the appeal.

COLORADO COURT OF APPEALS **2026 COA 79**

Court of Appeals No. 24CA1533
Adams County District Court No. 21CR1877
Honorable Patrick H. Pugh, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Christopher Rogers,

Defendant-Appellant.

APPEAL DISMISSED

Division IV
Opinion by JUDGE HARRIS
Lipinsky and Gomez, JJ., concur

Announced November 5, 2026

Philip J. Weiser, Attorney General, Caitlin E. Grant, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Adrienne R. Teodorovic, Alternate Defense Counsel, Windsor, Colorado; Cody Jeff, Alternate Defense Counsel Fellow, Denver, Colorado, for Defendant-Appellant

¶ 1 A jury convicted defendant, Christopher Rogers, of sexual assault. On appeal, he argues that he was denied his right to counsel at a competency review hearing held while his lawyer's motion to withdraw was pending. The withdrawal motion, Rogers argues, prevented his lawyer from advocating on his behalf by objecting to the competency evaluation. He contends that under *United States v. Cronic*, 466 U.S. 648, 658 (1984), he is entitled to reversal of his convictions without a showing of actual prejudice.

¶ 2 We conclude that a pending motion to withdraw does not alone establish a denial of counsel, and, because the narrow circumstances described in *Cronic* do not otherwise apply, Rogers's claim arising from counsel's failure to object to the evaluation must be analyzed as an ineffective assistance of counsel claim under *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Ineffective assistance of counsel claims should be raised in postconviction proceedings, however, not on direct appeal. Accordingly, we dismiss the appeal.

I. Background

¶ 3 At the time Rogers's case was pending, from fall 2021 to summer 2024, the competency statute provided, in relevant part, as follows[1]:

- If a party raised the issue of the defendant's competency to proceed, the court could make a preliminary finding of competency or incompetency. If no party objected to the preliminary finding, the court's preliminary finding would become a final determination. § 16-8.5-103(1)(a), C.R.S. 2023.
- If either party objected, or the court lacked sufficient information to make a preliminary finding, the court had to order a competency evaluation. § 16-8.5-103(2).
- Within seven days after receiving the competency evaluation, either party could request a hearing or a second evaluation. § 16-8.5-103(3), (6).

[1] Section 16-8.5-103 was substantially amended in 2026. *See* Ch. 142, sec. 1, § 16-8.5-103, 2026 Colo. Sess. Laws 682-83.

- If no party timely requested a hearing or a second evaluation, the court had to enter a final determination of competency based on the available information. § 16-8.5-103(5).

¶ 4 Rogers was charged in November 2021 with three counts of distributing drugs to a minor and two counts of sexual assault. The court appointed a public defender to represent him. A few months later, the public defender requested a determination of Rogers's competency. The court ordered an evaluation pursuant to section 16-8.5-103(2). The evaluator opined that Rogers was competent to proceed. Because neither party objected to the evaluation or requested a hearing or a second evaluation under section 16-8.5-103(3), the district court entered a determination of competency. § 16-8.5-103(5).

¶ 5 Shortly thereafter, the court granted Rogers's request for substitute counsel and appointed alternate defense counsel (ADC) to represent him.

¶ 6 About seven months later, in early 2023, ADC moved for a determination of Rogers's competency. The court ordered another competency evaluation, and a second evaluator determined that Rogers was competent to proceed. This time, ADC requested a

"second evaluation" under section 16-8.5-103(3) (the second opinion evaluation). The second opinion evaluation likewise concluded that Rogers was competent.

¶ 7 In the meantime, Rogers moved to dismiss ADC. His motion was pending when the second opinion evaluation was filed with the court. In July 2023, at a review hearing, ADC did not object to the second opinion evaluation or request a competency hearing under section 16-8.5-103(6). The court entered a second determination of competency. Later that same day, the district court granted the motion to dismiss ADC and appointed a third lawyer, Scott Reisch, to represent Rogers.

¶ 8 Within two weeks of his appointment, Reisch moved for a determination of competency. The court, noting that three evaluators had found Rogers competent (one within forty-five days of Reisch's motion), made a preliminary finding of competency. *See* § 16-8.5-103(1)(a). Reisch objected under section 16-8.5-103(2), and the court ordered a fourth competency evaluation. The evaluator, who had also conducted the first evaluation, noted that Rogers's "thought processes appeared coherent," his behavior was appropriate, he "demonstrated awareness of court proceedings and

his cases," his jail records did not indicate any "mental or developmental disability," and the testing results revealed "a very high probability" that he was feigning "psychiatric and/or cognitive symptoms." The evaluator again concluded that Rogers was competent to proceed.

¶ 9 Shortly thereafter, Reisch moved to withdraw, citing "irreconcilable differences" and Rogers's desire to discharge him.

¶ 10 The following week, the court held a competency review hearing, at which Reich appeared on Rogers's behalf. When neither party objected to the fourth evaluation, the district court entered a determination of competency. The court then turned to Reisch's motion to withdraw. After conducting a *Bergerud* hearing,[2] the court found that there was "a total breakdown of communication" between Rogers and Reisch and agreed to appoint Rogers a fourth lawyer (trial counsel).

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[2] When a defendant requests the appointment of substitute counsel, the court should generally hold a hearing to assess the "reasons for the [defendant's] dissatisfaction" with current counsel to determine whether to grant the request. *People v. Bergerud*, 223 P.3d 686, 694 (Colo. 2010) (citation omitted).

¶ 11 Trial counsel represented Rogers through the trial and sentencing. He did not raise any concern about Rogers's competency. A jury acquitted Rogers of the drug charges but convicted him of the sexual assault charges.

II. Denial of the Right to Counsel

¶ 12 Rogers contends that he was denied his right to counsel at a critical stage — the third competency review hearing — because Reisch was "functionally unable to advocate" on his behalf while the motion to withdraw was pending.

A. Legal Principles and Standard of Review

¶ 13 A defendant has a constitutional right to counsel at every critical stage of a criminal proceeding. *People v. Guzman-Rincon*, 2015 COA 166M, ¶ 18. A competency hearing (including a review hearing at which the court enters a final determination of competency) is a critical stage. *People v. Wingfield*, 2014 COA 173, ¶¶ 4, 17; *see also United States v. Bergman*, 599 F.3d 1142, 1147 (10th Cir. 2010) (holding that a review hearing, although "not a full competency hearing," was a critical stage because "the court declared [the defendant] competent at that hearing").

¶ 14 A lawyer's "mere presence" at a critical stage is "not enough to satisfy the Sixth Amendment's right to counsel." *People v. Rainey*, 2023 CO 14, ¶ 16. Rather, "the right to counsel is the right to the effective assistance of counsel," *id.* (quoting *Strickland*, 466 U.S. at 686) — meaning the right to a "reasonably competent" and "conscientious advocate," *People v. Jacobs*, 596 P.2d 1187, 1189 (Colo. 1979) (citation omitted).

¶ 15 Ordinarily, a defendant's allegation that his lawyer failed to act as an effective advocate is governed by the two-part *Strickland* test, which requires the defendant to show that (1) his lawyer's performance was deficient and (2) the lawyer's deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687-88. In very limited circumstances, however, a Sixth Amendment claim gives rise to presumed prejudice. *See Cronic*, 466 U.S. at 658. As relevant here, prejudice is presumed when there is a complete denial of counsel, when counsel fails to subject the prosecution's case to meaningful adversarial testing, or when even fully competent counsel could not provide effective assistance. *Id.* at 659-60.

¶ 16 We review de novo whether a defendant was denied the right to counsel at a critical stage of the proceeding. *Guzman-Rincon*, ¶ 15. But absent one of the circumstances identified in *Cronic*, the claim must be construed as an ineffective assistance of counsel claim governed by *Strickland*. *See People v. Sharp*, 2019 COA 133, ¶¶ 27, 30. And in criminal cases, a claim of ineffective assistance of counsel generally may not be raised on direct appeal. *People in Interest of Uwayezuk*, 2023 COA 69, ¶ 21.

B. Analysis

¶ 17 It is undisputed that Reisch appeared on Rogers's behalf at the third competency review hearing. It is also undisputed that Reisch did not raise any concern that the motion to withdraw might affect his representation of Rogers. Still, Rogers says that he was constructively denied counsel under *Cronic* because Reisch could not advocate for further competency proceedings while the motion to withdraw was pending. As a result, Rogers says, the competency finding was not subjected to meaningful adversarial testing. That argument fails on both fronts.

¶ 18 First, the premise is wrong. Contrary to Rogers's assertion, for which he does not cite any authority, the mere filing of the motion

to withdraw did not create an "ethical vise" that prevented Reisch from objecting to the evaluation.

¶ 19 True, a lawyer generally must move to withdraw if the client seeks to discharge him. Colo. RPC 1.16(a)(3); *People v. DeAtley*, 2014 CO 45, ¶ 15. But under Crim. P. 44(d)(1), defense counsel "may withdraw from a case only upon order of the court." *See* Colo. RPC 1.16 cmt. 3 ("When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority."). Unless and until a motion to withdraw is granted, "counsel's representation of a defendant, whether retained or appointed," continues through the termination of trial court proceedings. Crim. P. 44(e)(1). It follows, then, that "[m]erely filing a motion to withdraw does not relieve the attorney of his or her obligation to fully represent the client." *Bryant v. State*, 75 S.W.3d 628, 631 (Tex. App. 2002).

¶ 20 Rogers's position is untenable. What if the court does not rule on the motion to withdraw for a couple of months? According to Rogers, counsel cannot provide any assistance during that period (and, apparently, need not communicate this problem to the court), giving rise to a potential retrospective Sixth Amendment violation in

every case involving a request for substitute counsel. And what if the court ultimately denies the motion to withdraw? The court, after all, has discretion to deny the motion, *see People v. Collie*, 995 P.2d 765, 770 (Colo. App. 1999), and under those circumstances, counsel must "continue [the] representation notwithstanding good cause" to withdraw, Colo. RPC 1.16(c). Under Rogers's theory, though, the motion to withdraw necessarily relieves the lawyer of his obligation to provide competent assistance, which effectively gives the lawyer, not the court, the authority to decide the motion.

¶ 21 Nor does the court's subsequent decision to grant the motion to withdraw compel a conclusion that Rogers was denied counsel at the review hearing. Reisch told the court that he did not think his differences with Rogers "r[o]se to th[e] level" of a complete breakdown in communication under *Bergerud*. He explained that he and Rogers were "not a good fit," leading to "irreconcilable differences" about case strategy. But he expressed a willingness to continue the representation. For its part, the court found that Reisch could "effectively assist [Rogers] and represent [him]," and it expressed concern about Rogers's pattern of second-guessing his lawyers' decisions. Nonetheless, the court determined that Reisch's

pursuit of an incompetency finding had led to a breakdown in trust and communication, and it agreed to appoint substitute counsel.

¶ 22 Nothing about the *Bergerud* hearing suggests that Reisch was not acting as Rogers's advocate with respect to the competency issue. (Indeed, Reisch had an independent ethical obligation to ensure that Rogers was competent to proceed: A lawyer who has a doubt about his client's competency is "duty bound to raise the issue and seek a reliable determination of it before further proceedings are held." *Jones v. Dist. Ct.*, 617 P.2d 803, 806 (Colo. 1980).) Rogers has not cited, and we are not aware of, any case standing for the proposition that whenever a court grants a motion to substitute counsel, it must also find that the defendant was denied counsel during the period the motion was pending.

¶ 23 In sum, the "relatively common factual underpinning of [Reisch's] motion to withdraw does not alone establish a deprivation of counsel." *United States v. Collins*, 430 F.3d 1260, 1265 (10th Cir. 2005).

¶ 24 Second, this case does not present one of the narrow circumstances in which *Cronic*'s presumption of prejudice applies. According to Rogers, Reisch's failure to object to the fourth

competency evaluation rendered the competency process nonadversarial under *Cronic*. But in *Bell v. Cone*, 535 U.S. 685, 696-97 (2002), the Supreme Court explained that when it "spoke in *Cronic* of the possibility of presuming prejudice based on an attorney's failure to test the prosecutor's case, [it] indicated that the attorney's failure must be complete." Thus, to demonstrate the absence of meaningful adversarial testing of the competency finding, Rogers must show that defense counsel failed to oppose the prosecution throughout the competency proceedings "as a whole," not "at specific points" during the process. *Id.* at 697.

¶ 25 Rogers cannot make that showing. Reisch *did* oppose the prosecution's attempt to defend a competency determination — he raised the issue of Rogers's competency with the court (despite the three prior evaluators' competency findings), and, when the court made an initial determination of competency, Reisch objected and requested a fourth evaluation. Reisch's failure to object to the fourth evaluation or to request yet another evaluation under section 16-8.5-103(3) is "plainly of the same ilk as other specific attorney errors . . . subject to *Strickland*'s performance and prejudice" test. *Bell*, 535 U.S. at 697-98; *see also Sharp*, ¶ 31 (counsel's failure to

file a motion for a new trial does not trigger *Cronic*'s presumption of prejudice but instead must be analyzed under *Strickland*).

¶ 26 Rogers has not pointed us to any authority to support his argument that a lawyer's failure to object to a competency evaluation amounts to a constructive denial of counsel under *Cronic*. The cases we found are to the contrary. *See, e.g.*, *Martin v. State*, 226 N.E.3d 799, 809, 811 (Ind. Ct. App. 2024) (analyzing, under a state version of the *Strickland* test, a claim that counsel should have challenged two evaluations opining that the defendant was restored to competency and concluding that no reasonable lawyer would have "believed there was a need" to challenge the evaluations); *State v. Galindo*, 2019 UT App 171, ¶¶ 10-13 (analyzing, under *Strickland*, a claim that counsel should have objected to a competency evaluation and concluding that counsel did not provide ineffective assistance by stipulating to competency after two evaluators found the defendant competent); *State v. Ferguson*, 2006-Ohio-1502, ¶ 78 (analyzing, under *Strickland*, a claim that counsel should have objected to a competency evaluation and concluding that counsel was not ineffective).

¶ 27 We are not persuaded otherwise by *Collins*, the case on which Rogers primarily relies. In *Collins*, after an evaluator opined that the defendant was competent to proceed, defense counsel moved to withdraw. 430 F.3d at 1262-63. At the competency hearing, defense counsel told the court that he had uncovered new documents bearing on competency that were not available to the evaluator, but he refused to provide or comment on them because of the motion to withdraw. *Id.* at 1263. The trial court found the defendant competent; granted the motion to withdraw; and, when substitute counsel renewed concerns about the defendant's competency, denied a subsequent competency evaluation. *Id.* The *Collins* court concluded that defense counsel's refusal to represent the defendant at the hearing, coupled with the district court's refusal to permit substitute counsel to revisit competency, constituted a constructive denial of counsel. *Id.* at 1266.

¶ 28 *Collins* does not advance Rogers's position, though. For one thing, the record in this case does not establish, as it did in *Collins*, that counsel refused to serve as the defendant's advocate at the competency review hearing. Moreover, while the *Collins* court ostensibly reviewed the defendant's claim under *Cronic*, not

Strickland, it nonetheless conducted a prejudice analysis. The court concluded that a new trial was warranted only if the defendant could show that the denial of his right to counsel at the hearing "resulted in the district court erroneously finding him competent to stand trial" — in other words, only if "counsel could have made certain decisions or arguments that might have changed the result of the competency hearing." *Id.* at 1267-68. That standard essentially tracks *Strickland*'s prejudice standard. Indeed, the *Collins* court acknowledged that this inquiry ordinarily requires a remand for an evidentiary hearing. *Id.* at 1268. But because the record on direct appeal established that "evidence could have been introduced and arguments made that likely could have affected the outcome of [the defendant's] competency hearings," a remand was unnecessary and reversal of the conviction was required. *Id.*

¶ 29 Thus, even under *Collins*, Rogers is not entitled to reversal of his convictions without showing what amounts to *Strickland* prejudice.

¶ 30 For these reasons, we conclude that Rogers's complaint regarding the competency hearing amounts to a claim that Reisch provided ineffective assistance by failing to object to the fourth

evaluation. And because the claim is cognizable as an ineffective assistance of counsel claim, rather than a claim that Rogers was constructively denied counsel under *Cronic*, it should be raised in a postconviction motion. *See People v. Price*, 240 P.3d 557, 565 (Colo. App. 2010) ("Because of the need for a developed factual record, an ineffective assistance of counsel claim should ordinarily be raised in a postconviction proceeding, not on direct appeal.").

III. Disposition

¶ 31 The appeal is dismissed.

JUDGE LIPINSKY and JUDGE GOMEZ concur.