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ADVANCE SHEET HEADNOTE
November 16, 2026

2026 CO 69

No. 24SC802, *Hernandez-Escajeda v. People*—Resentencing on Remand—Multi-Count Sentencing Packages—*People v. Johnson*, 2015 CO 70, 363 P.3d 169—Law of the Case—Mandate Rule—Remand Instructions.

The supreme court holds that when, as here, (1) a partial reversal on appeal disrupts a sentencing package in a manner that reduces the aggregate sentence and (2) the remand instructions are silent on resentencing, the trial court retains inherent authority to resentence the defendant on any remaining conviction. In such circumstances, a trial court may—but is not required to—reassess the sentence imposed on any remaining conviction. If it does so, it should convene a new sentencing hearing and consider all relevant sentencing factors. Even after a resentencing hearing, the court remains free to leave the existing sentence on any remaining conviction unchanged. Because the supreme court's analysis aligns with that of the division of the court of appeals, the judgment is affirmed. The matter is therefore remanded to the division with instructions to return it to the trial court for further proceedings consistent with this opinion.

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

2026 CO 69

Supreme Court Case No. 24SC802
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 23CA521

Petitioner:

Octavio Hernandez-Escajeda,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed
en banc
November 16, 2026

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

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 Adjust even a single lens, and the picture can become blurry. Displace even a single supporting beam, and the structure can become unstable. Alter the trajectory by even a single degree, and the destination can become lost. So, too, with sentencing: Take away even a single aspect of the sentencing package on appeal, and the ultimate punishment can become distorted. Today, we consider whether a trial court may, on remand, resentence a defendant on any remaining conviction when (1) a partial reversal disrupts the sentencing package in a way that reduces the aggregate sentence and (2) the remand instructions are silent on resentencing.[1]

¶2 The defendant, Octavio Hernandez-Escajeda, pleaded guilty to two felonies, each carrying a possible maximum sentence of thirty-two years in prison. The trial court imposed a prison term of twenty-two years on each count and ran the sentences consecutively for a total of forty-four years. A division of the court of

[1] By "sentencing package," we mean sentences imposed on two or more counts during a single hearing as part of one unified punishment framework. Further, when we refer to a "partial reversal" that "disrupts a sentencing package," we mean the reversal or vacatur of one or more, but not all, components of that package. Of course, not all such reversals are created equal—some do not reduce the aggregate sentence. For example, when sentences of equal length run concurrently, reversing or vacating one of them does not reduce the aggregate sentence. In this case, we address a trial court's authority to resentence on remand following a partial reversal that disrupts the sentencing package in a way that reduces the aggregate sentence.

appeals, however, later determined that double jeopardy principles required one conviction to merge into the other. The partial reversal disrupted the sentencing package the trial court had originally crafted and reduced the aggregate term of imprisonment from forty-four to twenty-two years. But the remand instructions did not address whether the trial court could resentence Hernandez-Escajeda on the unaffected conviction. On remand, the trial court ruled it had no authority to reassess the sentence on that conviction.

¶3 The case made a second trip to the court of appeals, where a different division addressed the question raised on remand. Relying in part on our decision in *People v. Johnson*, 2015 CO 70, 363 P.3d 169—a case not on all fours but nevertheless illuminating—the division perceived nothing in the earlier remand instructions that would have prevented the trial court from exercising its discretion on remand to resentence Hernandez-Escajeda on the remaining conviction. *People v. Hernandez-Escajeda*, 2024 COA 111, ¶¶ 30–31, 562 P.3d 440, 445. Relatedly, the division determined that the trial court had the discretion to hold a new sentencing hearing. *Id.* at ¶ 31, 562 P.3d at 445. Hernandez-Escajeda then brought the issue into our line of sight, and we agreed to take it up.

¶4 We now hold that when, as here, (1) a partial reversal on appeal disrupts a sentencing package in a manner that reduces the aggregate sentence and (2) the remand instructions are silent on resentencing, the trial court retains inherent

authority to resentence the defendant on any remaining conviction. The court may—but is not required to—reassess the sentence imposed on any remaining conviction. If it does so, it should convene a new sentencing hearing and consider all relevant sentencing factors. Even after a resentencing hearing, the court remains free to leave the existing sentence on any remaining conviction unchanged. Because our analysis aligns with the division's, we affirm.[2]

I. Facts and Procedural History

¶5 After Hernandez-Escajeda was charged with numerous criminal offenses, he and the People reached a plea agreement. In exchange for the dismissal of all pending charges, he would plead guilty to three new counts: first degree burglary, first degree assault, and a crime-of-violence sentence enhancer. During the providency hearing, the trial court advised Hernandez-Escajeda that each of the two substantive counts carried a sentencing range of ten to thirty-two years in prison and that, under the parties' agreement, the sentences would run consecutively. Before entering his guilty pleas, Hernandez-Escajeda confirmed

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

> Whether the division erroneously expanded *People v. Johnson*, 2015 CO 70, [363 P.3d 169,] a case resolving a due process claim alleging vindictive resentencing, to conclude a district court has the inherent authority to resentence a defendant on convictions that remain on remand where the successful appeal results in a reduced aggregate sentence.

that he understood these consequences. The court accepted the pleas and imposed a prison term of twenty-two years on each substantive count. Because the court ran the sentences consecutively, Hernandez-Escajeda received an aggregate prison term of forty-four years.

¶6 Hernandez-Escajeda did not directly appeal his judgment of conviction. He did, however, file a Crim. P. 35(b) motion seeking reconsideration of his sentences. The trial court denied that motion, observing that it makes sentencing decisions "very carefully after full consideration of all relevant circumstances," and the relevant circumstances in this case had "not changed sufficiently . . . to warrant" reconsideration of the sentence.

¶7 Thereafter, Hernandez-Escajeda filed a Crim. P. 35(c) motion for postconviction relief. That motion included a request for appointed counsel. The court obliged and appointed Hernandez-Escajeda an attorney, who then filed two supplemental submissions in support of the Crim. P. 35(c) motion. Among other things, the supplemental filings raised a double jeopardy challenge, arguing that Hernandez-Escajeda's convictions and sentences were based on identical facts.

¶8 The trial court was unpersuaded and denied the Crim. P. 35(c) motion without a hearing. But a division of the court of appeals reversed in part, concluding that the convictions for first degree burglary and first degree assault could not lawfully coexist. *People v. Hernandez-Escajeda*, No. 19CA1519, ¶¶ 37–38

(July 7, 2022). The division reasoned that the latter was a lesser included offense of the former and noted that a person "may not be convicted of more than one offense for the same conduct if one of the offenses is included in another." *Id.* at ¶ 38. Therefore, the division ordered that the assault conviction merge into the burglary conviction, leaving Hernandez-Escajeda with only one sentence—the twenty-two-year prison term for burglary. *Id.* at ¶ 41. Hernandez-Escajeda's remaining claims were rejected. *Id.* at ¶ 14.

¶9 Of particular relevance here, the division remanded the case to the trial court with the following instructions:

> The postconviction court's order is affirmed in part and reversed in part, and the case is remanded to the district court with directions to vacate Hernandez-Escajeda's conviction for first degree assault and correct the mittimus accordingly.

Id. at ¶ 42. The mandate incorporated the remand instructions. *People v. Hernandez-Escajeda* (Colo. App. No 19CA1519, Aug. 30, 2022) (unpublished order).

¶10 On remand, the trial court scheduled a hearing to discuss the division's instructions with the parties. In response, the People requested a resentencing hearing. Hernandez-Escajeda objected, asserting that the trial court could not resentence him on the remaining conviction—the burglary count—because the court only had authority to perform the actions explicitly included in the remand instructions: vacate the assault conviction and correct the mittimus. But, relying on *Johnson*, ¶ 21, 363 P.3d at 177, the People countered that, even absent remand

instructions expressly permitting resentencing, a trial court has inherent authority to resentence a defendant when a partial reversal on appeal disrupts the sentencing package in a way that reduces the aggregate sentence.

¶11 Determining that our decision in *Johnson* was not dispositive, the trial court sided with Hernandez-Escajeda. It explained that the remand instructions directed it to perform only two actions: vacate the assault conviction and correct the mittimus accordingly. And because the division specified that the mittimus should be corrected, the trial court inferred that the division did not believe resentencing was appropriate. The trial court added that, had the division simply ordered vacatur of the assault conviction without requiring correction of the mittimus, it would have had "no problem" holding a resentencing hearing because it would have found that "the portion that was presumptively left out [of the remand instructions], according to the People, was left out by mistake." Accordingly, the trial court declined to hold a resentencing hearing, vacated the assault conviction, and corrected the mittimus to reflect only the burglary conviction, the sentence enhancer, and a single twenty-two-year prison term.

¶12 The case traveled back to the court of appeals—this time at the People's behest. *Hernandez-Escajeda*, ¶ 1, 562 P.3d at 440. A different division agreed with the People's position and concluded that the trial court had inherent authority on remand to resentence Hernandez-Escajeda on the burglary conviction. *Id.* at ¶ 24,

562 P.3d at 444. The division acknowledged that *Johnson* was not directly on point because that case (1) ultimately resolved a due process claim alleging vindictive resentencing and (2) included remand instructions specifically requiring a new sentencing hearing. *Id.* at ¶ 19, 562 P.3d at 443. But the division nevertheless found *Johnson*'s reasoning instructive. *Id.* It explained that *Johnson*'s rationale "recognizes that, following a defendant's 'successful appeal on his other convictions,' a district court has the inherent authority to resentence the defendant on convictions that remain on remand, at least where the defendant's initial appeal results in a reduced aggregate sentence." *Id.* (quoting *Johnson*, ¶¶ 1, 37, 363 P.3d at 172–73, 181). And, added the division, nothing in *Johnson*'s analysis made the express instruction to resentence in that case "essential to a district court's resentencing authority." *Id.*

¶13 Having addressed a trial court's inherent authority to resentence, the division next considered whether that authority was limited in this case by the remand instructions. *Id.* at ¶ 23, 562 P.3d at 444. The division concluded that it was not: The directive in those instructions "to perform a particular action did not amount to a prohibition on any other action that the district court had the authority to perform." *Id.* at ¶ 24, 562 P.3d at 444. Therefore, the division reversed and remanded the case with instructions that the trial court exercise its discretion in

determining whether to reassess the burglary sentence and, if so, whether to hold a resentencing hearing. *Id.* at ¶¶ 31–32, 562 P.3d at 445.

¶14 At Hernandez-Escajeda's request, the case arrived at our certiorari loading dock, and we agreed to bring it aboard. Before proceeding to the merits of the question presented, we take a moment's interlude to set out the standard of review.

II. Standard of Review

¶15 The parties agree, as do we, that whether the trial court had inherent authority to resentence Hernandez-Escajeda on remand is a question of law. *See People v. Silva-Jaquez*, 2025 CO 11, ¶ 18, 564 P.3d 650, 654 (concluding that whether the district court had inherent authority to order the defendant to provide the People discovery during postconviction proceedings was a question of law). Relatedly, neither party disputes that whether the trial court complied with the division's remand instructions is likewise a question of law. *See Thompson v. Catlin Ins. Co. (UK)*, 2018 CO 95, ¶ 20, 431 P.3d 224, 228 (addressing whether a trial court followed a court of appeals' mandate). We review questions of law de novo. *People v. Justice*, 2023 CO 9, ¶ 22, 524 P.3d 1178, 1183.

¶16 With the standard of review illuminating our path, we turn to the issue before us. We first take up whether the trial court had inherent authority to reassess Hernandez-Escajeda's burglary sentence on remand, and we then address

whether the remand instructions precluded the trial court from exercising that inherent authority.

III. Analysis

A. The Trial Court Had Inherent Authority to Reassess Hernandez-Escajeda's Burglary Sentence

¶17 We do not paint on a blank canvas today. We laid the first brushstrokes in *Johnson*. *Johnson* therefore sketches the outline of our analysis.

¶18 In *Johnson*, the People charged the defendant with sexual assault, first degree kidnapping, and second degree kidnapping after an incident during which he smoked crack cocaine. ¶ 3, 363 P.3d at 173. The parties then reached an agreement under which the defendant would plead guilty to a new charge of possession of a controlled substance in exchange for dismissal of the three pending charges. *Id.* at ¶ 4, 363 P.3d at 173. The court accepted the agreement, and the defendant pleaded guilty. *Id.* But at the sentencing hearing—after accepting the plea and dismissing the original counts—the court had a change of heart. *Id.* The court backpedaled because the parties could not agree on whether it could consider the facts underlying the dismissed charges in fashioning the sentence on the possession count. *Id.* As a result, the court rejected the plea agreement and set the case for trial, including on the added possession count. *Id.*

¶19 A jury found the defendant guilty of sexual assault, first degree kidnapping, and possession of a controlled substance. *Id.* The court then sentenced the

defendant to concurrent prison terms of twenty years to life for the sexual assault, twenty years for the kidnapping, and six years for the possession. *Id.* In total, the defendant received an aggregate sentence of twenty years to life. *Id.*

¶20 The defendant appealed, and a division of the court of appeals reversed, holding that the trial court had violated his double jeopardy rights by initially accepting the plea agreement and then subjecting him to trial on the dismissed charges. *Id.* at ¶ 5, 363 P.3d at 173. The division accordingly remanded the case to the trial court with instructions to reinstate the plea agreement and resentence the defendant only on the possession count. *Id.*, 363 P.3d at 173–74.

¶21 On remand, the trial court did as directed. *Id.* at ¶ 6, 363 P.3d at 174. In determining the new sentence on the possession count, however, the court considered the facts underlying the dismissed charges and imposed an aggravated sentence of twelve years in prison, double the original six-year sentence. *Id.* In support of this harsher sentence, the court noted, among other things, that it was "looking at a totally different situation" than before when the defendant "was facing a possibility of life in prison" as a result of the guilty verdict on the sexual assault count. *Id.*

¶22 The defendant appealed a second time. *Id.* at ¶ 7, 363 P.3d at 174. As relevant here, he maintained that the sentence imposed on remand violated his due process rights. *Id.* A different division of the court of appeals agreed,

concluding that a presumption of vindictiveness applied because no new information had come to light between the first sentencing hearing and the second. *Id.* And since that presumption was unrebutted, the division held that there was a reasonable likelihood that vindictiveness had influenced the second sentence. *Id.* Accordingly, the division vacated the new sentence and remanded the case to the trial court yet again, this time with directions to impose a sentence of no more than the original six-year prison term. *Id.*

¶23 We granted the People's petition for certiorari and reversed in pertinent part. *Id.* at ¶ 2, 363 P.3d at 173. We recognized that trial courts "need . . . broad discretion . . . to ensure a sentence is appropriate under the circumstances of a given case." *Id.* at ¶ 16, 363 P.3d at 176. More to the point, we emphasized that trial courts must have "significant discretion" on remand to reassess a sentence following a partial reversal that unravels the sentencing package in a way that reduces the aggregate sentence.[3] *Id.* at ¶¶ 21, 26, 37, 363 P.3d at 177–78, 181.

¶24 But in *Johnson*, we did not traffic in unsupported blanket statements. We articulated the rationale for our conclusions about the discretion afforded to trial courts both in initially imposing a sentence and in resentencing on remand. We did so in the course of considering the aggregate method—which examines

[3] The initial division's double jeopardy determination was not before us in *Johnson*, and we expressed no view regarding its correctness.

whether the new aggregate sentence on remand exceeds the original one—to determine whether a presumption of vindictiveness applies in evaluating a defendant's due process challenge. *Id.* at ¶¶ 24–37, 363 P.3d at 177–81. We first spoke as follows in describing the aggregate approach—the one endorsed by the majority of jurisdictions:

> The rationale that supports the aggregate approach is that judges imposing sentences in multi-count cases "typically craft sentences on the various counts as part of an overall sentencing scheme," *but when that scheme "unravels," a judge should have discretion to reevaluate the underlying facts and the sentences on the remaining convictions to "reflect[] the gravity of the crimes for which the defendant is being resentenced."* The aggregate approach thus recognizes the fact-intensive analysis in which the trial court must engage when sentencing a defendant on multiple interrelated convictions, and acknowledges the need for the same level of discretion at resentencing as at the original sentencing proceeding . . . .

Id. at ¶ 26, 363 P.3d at 178 (alteration in original) (emphasis added) (quoting *State v. Hudson*, 748 S.E.2d 910, 913 (Ga. 2013)).

¶25 Then, refining our analytical lens, we adopted the aggregate approach. *Id.* at ¶¶ 25, 37, 363 P.3d at 177, 181. We reiterated why the aggregate approach made sense:

> *When a new sentence is less than the original aggregate sentence, the defendant necessarily benefits from his appeal and the presumption of vindictiveness need not apply in order to avoid a chilling effect on defendants exercising their constitutional rights*. . . . A reasonable likelihood of vindictiveness does not necessarily arise, and therefore vindictiveness should not be presumed, when a sentencing judge increases a sentence on one conviction but the aggregate time of incarceration does not exceed the aggregate original sentence; *the increase on the*

> *individual count may simply reflect the fact that the trial court was faced with a different situation, in which the defendant was subject to a different combination of charges for the same criminal episode.*

Id. at ¶ 37, 363 P.3d at 181 (emphases added). *Johnson* thus grounded its framework in the practical realities of multi-count sentencing: Reversal of a conviction in a multi-count case can undo the sentencing package and reduce the aggregate sentence.

¶26 Although acknowledging our decision in *Johnson*, Hernandez-Escajeda seeks to sideline it as inapposite. To be sure, *Johnson* is not a perfect analogue. But we disagree that it has no place in our analysis. *Johnson* may not be the centerpiece that controlling precedent typically is, but it remains an essential part of the canvas. Its reasoning provides important guidance we cannot ignore.

¶27 Indeed, *Johnson* speaks directly to how trial courts should handle resentencing following a partial reversal that disrupts a sentencing package in a way that reduces the aggregate sentence. More specifically, *Johnson* recognized the reason why trial courts must have discretion on remand in such a situation: In multi-count cases, judges generally craft sentences as part of an overall scheme, and when one component of that scheme disappears, it can unravel the sentencing package and reduce the aggregate sentence, thereby altering the intended punishment. *Id.* at ¶¶ 26, 37, 363 P.3d at 178, 181.

¶28 Much like in *Johnson*, the multi-count sentencing package crafted by the trial court here unraveled on appeal. Pursuant to the parties' plea agreement, the court had originally been called upon to select a prison sentence in the range of twenty to sixty-four years—a minimum of ten years and a maximum of thirty-two years on each conviction. After carefully considering a wide array of fact-sensitive factors, the court had assembled a deliberately integrated sentencing package with an aggregate prison sentence of forty-four years by imposing two consecutive twenty-two-year sentences.[4] Because of the partial reversal, however, the sentencing package came unstitched, resulting in a reduction in the aggregate sentence. The disruption of the sentencing package on appeal left Hernandez-Escajeda with a single sentence (of twenty-two years) on the sole surviving conviction (for burglary), thereby nullifying the trial court's intention that he serve forty-four years in prison.

¶29 Had the trial court known at the initial sentencing hearing that it could only lawfully sentence Hernandez-Escajeda on the burglary count, would it have imposed the maximum thirty-two-year sentence instead of a twenty-two-year sentence on that count? Framed another way, had the court realized that double

[4] In doing so, the court moved with the prevailing current: "[J]udges considering multiple related counts stemming from a single course of conduct typically craft sentences on the various counts as part of an overall sentencing scheme." *Hudson*, 748 S.E.2d at 913.

jeopardy prevented it from imposing two consecutive sentences for assault and burglary, would its sentencing package have included a longer prison term on the burglary conviction? Perhaps. Perhaps not. We don't know. But we do know this: The only way to answer that question is to allow the trial court to exercise its broad discretion on remand to decide whether to reassess its sentence. Accordingly, we instruct the trial court to exercise that discretion when the case returns to it from the division.

¶30 If the trial court elects to reassess its original sentence on the burglary conviction, it should hold a new hearing to consider the full range of factors relevant to sentencing. *See Johnson*, ¶ 37, 363 P.3d at 181 (indicating that the remand court should "tak[e] into account the panoply of factors" pertinent to sentencing); *see also United States v. Campbell*, 106 F.3d 64, 68 (5th Cir. 1997) ("When an appellate court subsequently reverses a conviction (or convictions) that was part of the original sentence, the district court's job on remand is to reconsider the entirety of the (now-changed) circumstances and fashion a sentence that fits the crime and the criminal."); *Hudson*, 748 S.E.2d at 913 ("[W]here [the sentencing] unravels due to elimination of some of the original counts, the judge should be given a wide berth to fashion a new sentence that accurately reflects the gravity of the crimes for which the defendant is being resentenced."). Among those considerations is any postconviction rehabilitation that might warrant a

downward recalibration of the original sentence. *See Pepper v. United States*, 562 U.S. 476, 481 (2011) (holding that "when a defendant's sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant's postsentencing rehabilitation"). After all, "a court's duty is always to sentence the defendant as he stands before the court on the day of sentencing." *United States v. Bryson*, 229 F.3d 425, 426 (2d Cir. 2000) (per curiam). Regardless of whether the court holds a new sentencing hearing, it may elect to leave the original burglary sentence intact.[5]

¶31 Hernandez-Escajeda nevertheless takes issue with this directive, noting that *Johnson* involved a claim of vindictiveness—one not present in this case. But that distinction is a red herring. Hernandez-Escajeda *could not* have asserted a vindictiveness claim because the trial court refused to resentence him on remand, concluding that it lacked the authority to do so. Besides, the absence of a

[5] A resentencing hearing on remand is not intended to afford the parties a second bite at the sentencing apple. Neither party may raise issues or arguments that could and should have been presented at the original sentencing hearing. Limiting resentencing on remand in this manner promotes fairness and avoids unnecessary delay. *See United States v. Whren*, 111 F.3d 956, 959–60 (D.C. Cir. 1997) ("The alternative of requiring the parties to raise all relevant issues at the original sentencing hearing serves both equity and efficiency: Each party gets early notice of the other's position, and the district court can resolve all material issues early on—when the record is fresh in mind—and in a single proceeding, thereby minimizing the scope of any second proceeding, i.e., should the first result in a remand.").

vindictiveness claim does not diminish the relevance of *Johnson*'s discussion of a trial court's discretion to resentence on remand in circumstances like these. Hernandez-Escajeda's argument therefore cannot redraw the silhouette of *Johnson*'s reasoning.

¶32 In short, we hold that when, as here, a partial reversal on appeal disrupts a sentencing package in a manner that reduces the aggregate sentence,[6] the trial court generally retains inherent authority to resentence the defendant on any remaining conviction.[7] The court may—but is not required to—reassess the sentence imposed on any remaining conviction. If it does so, it should convene a new sentencing hearing and consider all relevant sentencing factors. Even after a resentencing hearing, the court remains free to leave the existing sentence on any remaining conviction unchanged.

¶33 That this was a remand from an appeal in a Crim. P. 35 postconviction proceeding—rather than a remand from a direct appeal—is of no moment. We decline Hernandez-Escajeda's invitation to draw a distinction between the two.

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[6] Hernandez-Escajeda urges us to frame our holding in terms of "interdependent" sentences rather than "a sentencing package." But in light of our definition of "sentencing package," the distinction is the same meat, just different gravy. We think it clearer to say that when a partial reversal on appeal *disrupts a sentencing package in a way that reduces the aggregate sentence*, the trial court generally retains inherent authority to resentence the defendant on any remaining conviction.

[7] We use the qualifier "generally" here because, as we discuss in the next section, remand instructions may limit the trial court's authority.

Although the general rule is that a judgment of conviction and sentence become final when a defendant does not pursue a direct appeal, or after a direct appeal results in affirmance of the judgment and sentence, *see People v. Hampton*, 876 P.2d 1236, 1239 (Colo. 1994), a Rule 35 motion may disturb that finality. Rule 35(c) makes this clear: "If the court finds that defendant is entitled to postconviction relief, the court [may] . . . vacat[e] and set[] aside the judgment, impos[e] a new sentence, grant[] a new trial, or discharg[e] the defendant"—all outcomes that necessarily deprive a defendant of any expectation of finality. Crim. P. 35(c)(3)(V); *see also People v. Woellhaf*, 199 P.3d 27, 31 (Colo. App. 2007) (explaining that when "a defendant challenges his or her judgment of conviction and entire sentencing plan, the defendant loses any expectation of finality of his or her sentences").

¶34 Hernandez-Escajeda cannot stand with a foot in two different boats. He cannot, on the one hand, challenge the judgment of conviction and aggregate sentence while, on the other, objecting to any resentencing on the ground that his judgment of conviction and sentence for burglary became final when he elected not to pursue a direct appeal. Accordingly, we reject his contention that the trial court lacked jurisdiction to resentence him.

¶35 Before completing the picture, however, one important contour remains. It is the contour Hernandez-Escajeda asks us to draw most boldly. We address it next.

B. The Remand Instructions Did Not Preclude the Trial Court from Exercising Its Inherent Authority to Reassess the Burglary Sentence

¶36 Hernandez-Escajeda insists that *Johnson*'s analysis is of limited value because the remand instructions there expressly directed the trial court to hold a resentencing hearing. But resentencing was required in *Johnson* because the first appeal resulted in a complete reversal of the judgment of conviction and sentence. ¶ 5, 363 P.3d at 173–74. Having vacated the judgment of conviction and sentence stemming from the jury verdicts, the division remanded with instructions to reinstate the plea agreement and resentence the defendant pursuant to that agreement. *Id.*

¶37 More importantly, Hernandez-Escajeda overlooks that our analysis in *Johnson* did not hinge on the wording of the remand instructions. Our discussion regarding the trial court's discretion to reassess its sentence on remand was moored to the fact that the multi-count sentencing package originally imposed had come apart at the seams on appeal, resulting in a reduction in the intended aggregate sentence. *Id.* at ¶¶ 26, 37, 363 P.3d at 178, 181. That was the impetus for concluding that the trial court needed discretion to reassess its sentence for the possession conviction on remand.

¶38 Because the discretion we spoke of in *Johnson* is inherent, trial courts do not need permission from an appellate court to exercise it. Other jurisdictions have

blended the same tones. *See, e.g.*, *United States v. Ruiz-Alvarez*, 211 F.3d 1181, 1184–85 (9th Cir. 2000) (noting that the district court had authority to resentence the defendant where the sentencing package had been disrupted on appeal and the remand instructions did not expressly prohibit it); *United States v. Moore*, 83 F.3d 1231, 1234 (10th Cir. 1996) (stating that district courts have inherent authority to resentence "where the appellate court has not specifically limited the scope of the remand"); *State v. Michael A.*, 1 A.3d 46, 51 (Conn. 2010) (applying the aggregate approach in a partial-reversal case and concluding that, because the appellate decision did not restrict resentencing on remand, the trial court "was free to 'reconstruct the sentence in any way necessary to ensure that the punishment [fit] both the crime and the defendant'" (alteration in original) (quoting *State v. Miranda*, 794 A.2d 506, 528 (Conn. 2002))); *State v. Abram*, 941 A.2d 576, 580 (N.H. 2008) (observing that although the appellate opinion and mandate did not address resentencing, the trial court retained the inherent power to resentence the defendant).

¶39 To be clear, we are not splashing new colors beyond the boundaries of the law-of-the-case doctrine today. Under that doctrine, "[t]he pronouncement of an appellate court on an issue . . . presented to it becomes the law of the case," which "must be followed in subsequent proceedings before the trial court." *People v. Roybal*, 672 P.2d 1003, 1005 (Colo. 1983). As we made clear at the dawn of the

twentieth century, "when a mandate of a reviewing court is issued," the trial court "must yield obedience to it." *People ex rel. Warren v. Carpenter*, 68 P. 221, 223 (Colo. 1902); *see also Powell v. Hart*, 854 P.2d 1266, 1267 (Colo. 1993) (same). Were it otherwise, we would risk rendering appellate opinions "advisory in nature" and undermining the judicial system. *Powell*, 854 P.2d at 1267. Necessarily woven into the law-of-the-case doctrine is the principle that trial courts must adhere to a reviewing court's remand instructions.

¶40 Here, nothing in either the opinion—including the remand instructions—or the mandate from the first appeal forbade the trial court from exercising its discretion to reassess the burglary sentence on remand. Had the opinion or the mandate expressly conveyed that the trial court should not resentence Hernandez-Escajeda on the burglary conviction on remand—a directive that may have been appropriate under other circumstances—our decision would be different. In that scenario, we would simply recognize that the trial court was duty-bound to comply with the law of the case in general and the remand instructions in particular.

¶41 Hernandez-Escajeda pushes back, however, arguing that the first appeal's mandate impliedly precluded resentencing. He maintains that the division in charge of that appeal unmistakably delineated the scope of the remand

proceedings: vacate the assault conviction and correct the mittimus accordingly. Any action beyond that, he contends, was foreclosed. We are unpersuaded.

¶42 Had the division meant to prevent the trial court from reassessing the burglary sentence, it presumably would have explicitly said so. Appellate courts are not wallflowers. When they intend to limit remand proceedings, they are clear about setting the applicable parameters; they do not speak in hints from which a trial court must draw inferences. We are unwilling to read a limitation on resentencing from the mere silence in the first appeal's remand instructions.[8]

¶43 Given the nature of Hernandez-Escajeda's appeal, it is unsurprising that the division's remand instructions mentioned only vacating the assault conviction and revising the mittimus accordingly. In his appeal, Hernandez-Escajeda took exception to the trial court's refusal to merge the assault conviction into the burglary conviction. Agreeing with him, the division held that the former was a

[8] Any assertion that different principles apply to *general* remand instructions and *specific* remand instructions is untethered to our jurisprudence. Although we've occasionally described the nature of particular remand instructions as general or specific when assessing the propriety of a trial court's actions on remand, we've never treated those labels as establishing distinct doctrinal frameworks or as requiring different standards. And tellingly, neither party asks us to do so today. Thus, far from flipping any longstanding rule on its head, today's opinion simply resolves an open question regarding a trial court's inherent authority on remand to resentence a defendant on any remaining conviction when (1) a partial reversal disrupts the sentencing package in a way that reduces the aggregate sentence and (2) the remand instructions are silent on resentencing.

lesser included offense of the latter and, therefore, Hernandez-Escajeda could not stand convicted of—and separately punished for—the assault. That is precisely what the remand instructions addressed. The appeal did not concern the burglary conviction or its accompanying sentence, and thus, neither was addressed in the opinion, the remand instructions, or the mandate.[9] But because merging the assault conviction into the burglary conviction unraveled the sentencing package in a way that reduced the aggregate sentence, the district court retained the inherent authority to reconsider Hernandez-Escajeda's sentence on the burglary conviction.

¶44 Still, shouldn't the People have asserted—either in their briefing or through a petition for rehearing—that if the division agreed with Hernandez-Escajeda's merger claim, it should direct the trial court on remand to reassess the burglary sentence? While that may have been a prudent course—one that likely would have obviated the dispute on remand—it was nonetheless reasonable for the People to rely on *Johnson* and its progeny, *see Woellhaf*, 199 P.3d at 31–32; *People v. Johnson*, 2016 COA 15, ¶ 25, 381 P.3d 348, 354 (involving a different defendant with the surname Johnson), and to believe they would be able to seek resentencing for

[9] Going forward, in situations like this, appellate courts should consider whether resentencing may be appropriate and address that question expressly in their remand instructions.

the burglary conviction on remand. It would be unfair to hold the People's reliance on Colorado case law—including this court's—against them now.

¶45 Before we put down our analytical brushes and call it a day, two final touch-ups remain. First, nothing we say today should be understood as giving trial courts a blank check to take actions inconsistent with the remand instructions, the mandate, or the opinion simply because the instructions do not expressly prohibit those actions. Here, reassessing Hernandez-Escajeda's sentencing on remand in no way would have contradicted the division's opinion, mandate, or remand instructions. Second, our holding today is limited because it is anchored to a trial court's inherent authority on remand to resentence a defendant on any remaining conviction after a partial reversal disrupts the original sentencing package in a way that reduces the aggregate sentence. So let it be cabined; so let it be done.

IV. Conclusion

¶46 For the foregoing reasons, we affirm the division's judgment. Accordingly, we remand the case to the division with instructions to return it to the trial court for further proceedings consistent with this opinion.

CHIEF JUSTICE MÁRQUEZ, joined by **JUSTICE GABRIEL**, dissented.

CHIEF JUSTICE MÁRQUEZ, joined by JUSTICE GABRIEL, dissenting.

¶47 We have long held that it is "axiomatic that [a] . . . trial court must comply with the mandate of [an] . . . appellate court." *Powell v. Hart*, 854 P.2d 1266, 1267 (Colo. 1993). Contrary to this court's case law reaching back more than a century, the majority holds, for the first time, that a trial court is free to wander beyond the parameters of a specific mandate unless the mandate's instructions expressly prohibit a particular action. Maj. op. ¶¶ 40–42. In so doing, the majority misapplies principles applicable only to *general* remand orders and flips our longstanding rule governing *specific* remand instructions on its head.

¶48 Here, the division's specific remand instructions and the mandate directed the trial court to "vacate [the] conviction . . . and correct the mittimus"—nothing more. *People v. Hernandez-Escajeda*, No. 19CA1519, ¶ 42 (July 7, 2022); *see also People v. Hernandez-Escajeda* (Colo. App. No. 19CA1519, Aug. 30, 2022) (unpublished order) (incorporating remand instructions into the mandate). Right or wrong, under this court's case law, the division's specific instructions defined the limit of the trial court's authority to act on remand—and those instructions did not include resentencing. The People could have sought clarification of that remand order through a timely filed petition for rehearing, and the division would have been free to reconsider the scope of its own mandate. Having failed to request such clarification, however, the People—and the trial court—were bound

by the limits of the division's specific remand order. On remand, the trial court correctly understood the limits of its authority and acted accordingly.

¶49 The majority's ruling today subverts the mandate rule and invites lower courts to infer that they have inherent authority to take any action not expressly prohibited by an appellate remand order, including instructions in a specific mandate. The majority attempts to cabin its holding to "a trial court's inherent authority on remand to resentence a defendant on any remaining conviction after a partial reversal disrupts the original sentencing package in a way that reduces the aggregate sentence." Maj. op. ¶ 45. But saying so does not make it true. The majority's reasoning contains no such principled limitation.

¶50 Moreover, the majority's reliance on *People v. Johnson*, 2015 CO 70, 363 P.3d 169, is misplaced. *Johnson* does not stand for the proposition that a trial court has inherent authority to resentence on remand regardless of the language in the appellate court's mandate. Critically, the remand order in *Johnson* expressly directed the trial court to resentence the defendant. *People v. Johnson*, No. 05CA1255, slip op. at 8 (Sep. 11, 2008). Nothing about that decision suggests that a trial court has authority to resentence on remand absent such express direction.

¶51 For these reasons, I respectfully dissent.

I. The Language of a Specific Mandate Defines the Limits of a Trial Court's Authority to Act on Remand

¶52 The majority correctly observes that "[n]ecessarily woven into the law-of-the-case doctrine is the principle that trial courts must adhere to a reviewing court's remand instructions." Maj. op. ¶ 39. I agree. Indeed, more than a century ago, this court articulated the rule that

> where the mandate of an appellate court directs a *specific* judgment to be entered, the tribunal to which such mandate is directed must yield obedience thereto. No modification of the judgment . . . can be made by the trial court, nor can any provision be engrafted upon or taken from it.

Galbreath v. Wallrich, 109 P. 417, 418 (Colo. 1910) (emphasis added). We stated that "[t]he reason for this rule is obvious[,]" explaining that "[w]hen a particular judgment is directed by the appellate court, the lower court is not acting of its own motion, but in obedience to the order of its superior. What that superior says it shall do, it must do, and that alone." *Id.* As the United States Supreme Court later put it, a lower court simply "has no power or authority to deviate from the mandate issued by an appellate court." *Briggs v. Pa. R.R. Co.*, 334 U.S. 304, 306 (1948).

¶53 This longstanding mandate rule is necessary to preserve the structure of our judicial system—without it, "litigation would never be ended, and [appellate courts] would be shorn of . . . authority over [lower] tribunals." *Galbreath*, 109 P. at 418; *see also People v. Roybal*, 672 P.2d 1003, 1005 (Colo. 1983) (explaining that the

mandate rule "serves the dual purpose of protecting against the reargument of settled issues and assuring the adherence of lower courts to the decisions of higher courts"). Indeed, "[t]o permit a trial court to disobey in the least respect" an appellate court's mandate would disrupt our judicial system by bringing its parts into conflict and producing "disorganization, disorder, incalculable mischief and confusion." *Galbreath*, 109 P. at 419; *see also People ex rel. City & Cnty. of Denv. v. Dist. Ct.*, 168 P. 260, 262 (Colo. 1917) ("Where the appellate court directs that a designated course be pursued, the inferior tribunal must yield obedience, otherwise our courts would be in hopeless confusion.").

¶54 Critically, the majority disregards the important distinction between a *general* remand and a *specific* remand. When a case is remanded for "further proceedings" consistent with an appellate court's opinion, that is a general remand. *People in Int. of M.D.*, 2014 COA 121, ¶ 18, 338 P.3d 1120, 1124; *Musgrave v. Indus. Claim Appeals Off.*, 762 P.2d 686, 688 (Colo. App. 1988). When an appellate court issues a general remand, a lower court has authority to take additional actions so long as there is no conflict with the appellate court's ruling. *M.D.*, ¶ 18, 338 P.3d at 1124; *Musgrave*, 762 P.2d at 688.

¶55 Specific remand orders are different. "When an appellate court remands a case with specific directions to enter a particular judgment or to pursue a

prescribed course, a trial court has no discretion except to comply with the instructions." *M.D.*, ¶ 18, 338 P.3d at 1123 (citing *Musgrave*, 762 P.2d at 687–88).

¶56 The majority asserts, without citation, that the distinction between general and specific remands is "untethered to our jurisprudence." Maj. op. ¶ 42 n.8. To the contrary, this time-honored distinction is reflected both in appellate practice and this court's case law going back over a century. Our decision in *Galbreath* involved a specific remand. There, this court reversed the judgment of a trial court and remanded with directions to enter judgment in favor of one party for a certain amount of money. *Galbreath*, 109 P. at 417. But on remand, the trial court permitted the losing party to submit supplemental pleadings and continue the action. *Id.* at 418. We then rejected that course of action, issuing a writ of mandamus ordering the trial court to enter judgment according to the mandate, because "where the mandate of an appellate court directs a *specific* judgment to be entered, the tribunal to which such mandate is directed must yield obedience thereto. No modification of the judgment . . . can be made by the trial court . . . ." *Id.* (emphasis added).

¶57 Later in *Stokes v. Kirk*, 75 P.2d 1041, 1043 (Colo. 1938), we expressly distinguished the specific remand in *Galbreath* from a general remand. In *Stokes*, we reversed the judgment of the trial court and simply remanded "for further proceedings according to law." *Id.* at 1042. We reasoned that under these general

instructions, "the trial court was not precluded from granting leave to file the supplemental pleadings." *Id.* at 1043. The majority's claim that this court has "never treated [general or specific] labels as establishing distinct doctrinal frameworks," Maj. op. ¶ 42 n.8, fails to acknowledge, much less refute, over a century of this court's (still binding) case law.

¶58 While the majority claims it is "simply resolv[ing] an open question regarding a trial court's inherent authority on remand to resentence a defendant[,]" *id.*, its reasoning directly contradicts our longstanding mandate rule. The language of a mandate is critical because it guides trial courts in determining which actions they may take on remand. A general remand authorizes a lower court to take additional appropriate actions so long as those actions are consistent with the appellate court's ruling. But this court's case law has been clear for over a century: When a remand gives a lower court specific instructions to take certain actions, the lower court has no authority to deviate from those instructions. *See Galbreath*, 109 P. at 419; *City & Cnty. of Denv.*, 168 P. at 262.

II. The Remand in This Case Was Specific

¶59 Here, the remand order provided specific instructions to the trial court to vacate Octavio Hernandez-Escajeda's assault conviction and correct the mittimus:

> The postconviction court's order is affirmed in part and reversed in part, and the case is remanded to the district court with directions to *vacate* Hernandez-Escajeda's conviction for first degree assault and *correct the mittimus* accordingly.

Hernandez-Escajeda, ¶ 42 (emphases added). Based on Colorado's longstanding mandate rule, the remand instructions allowed the trial court to *only* vacate the conviction and correct the mittimus. *Cf. People v. Wise*, 2014 COA 83, ¶ 9, 348 P.3d 482, 486 (interpreting the supreme court's mandate and concluding that "[the division] cannot deviate from that mandate").

¶60 The majority concludes that resentencing is permitted because the division's remand is "silent" on resentencing. Maj. op. ¶ 4. This is incorrect under our longstanding rule given that this was obviously a specific remand order. The division did not "speak in hints[,]" *id.* at ¶ 42, it spoke clearly: It specifically directed the trial court to "vacate [the] conviction . . . and correct the mittimus accordingly." *Hernandez-Escajeda*, ¶ 42. Nothing more. In short, the division's specific remand directions did not authorize resentencing.

¶61 In a hearing on February 6, 2023, the trial court acknowledged the specificity of the remand order when considering whether the court was permitted to resentence Hernandez-Escajeda on remand:

> In this case, the court ordered that the post-conviction court's order is affirmed in part and reversed in part and the case is remanded to the district court with directions to vacate Hernandez-Escajeda's conviction for first-degree assault and correct the mittimus accordingly. The [c]ourt finds that this is somewhat different than directing the trial court to vacate the conviction and set a resentencing.
>
> . . . But here, the [c]ourt of [a]ppeals directs the trial court to correct the mittimus, suggesting that the [c]ourt of [a]ppeals does not believe

> that a resentencing is appropriate. And so based on that, the [c]ourt is going to go ahead and follow the *explicit directions* from . . . the [c]ourt of [a]ppeals.

(Emphasis added.) The trial court thus correctly recognized the limits of its authority under the specific remand issued by the division.

¶62 Other facts confirm that the division's remand order did not include resentencing. The majority observes that "it is unsurprising that the division's remand instructions mentioned only vacating the assault conviction and revising the mittimus accordingly" because Hernandez-Escajeda's appeal challenged only his assault conviction, not his burglary conviction. Maj. op. ¶ 43. But this fact only underscores that the remand order did not include resentencing. The division affirmed the burglary conviction and sentence. *Hernandez-Escajeda*, ¶ 42 ("The postconviction court's order is affirmed in part . . . ."). Therefore, there was nothing more for the trial court to do regarding the burglary count, making resentencing on that count unnecessary.

¶63 Given that the specific remand made no mention of resentencing, the People could have easily filed a petition for rehearing to ask the division to revisit or clarify the scope of its order. But they did not. This court has modified its opinions in response to petitions for rehearing requesting clarification of remand orders. *See, e.g.*, *People v. Dominguez*, 2026 CO 30M, ¶¶ 4, 48, 592 P.3d 1219, 1221, 1227 (modifying the opinion to include a remand for further proceedings below to

consider the issues the court of appeals did not originally reach), *as modified on denial of reh'g* (June 15, 2026); *People v. Garcia*, 2024 CO 41M, ¶¶ 3, 55, 550 P.3d 637, 640, 648 (modifying the opinion to include a remand to the court of appeals to consider other arguments the defendant previously raised), *as modified on denial of reh'g* (June 1, 2024). Requiring parties to seek clarification in these circumstances is not "unfair[,]" Maj. op. ¶ 44; it is consistent with both our rules and our longstanding case law regarding the mandate rule, which recognizes that appellate courts are intentional with their remand language. *Compare Woellhaf v. People*, 105 P.3d 209, 220 (Colo. 2005) (remanding the case to merge four convictions into one and "resentence the defendant accordingly"), *with Reyna-Abarca v. People*, 2017 CO 15, ¶ 84, 390 P.3d 816, 828 (reversing the division's judgments that one offense was not a lesser-included offense of another and "remand[ing] those cases for further proceedings consistent with [the] opinion").

¶64 Given the language of the specific remand, I would conclude, as the trial court did, that the trial court was permitted only to "vacate [the] conviction for first degree assault and correct the mittimus accordingly" per the mandate rule. *Hernandez-Escajeda*, ¶ 42.

III. The Majority Conflates Specific and General Remands, Creating Unintended Consequences

¶65 Today the majority disregards the distinction between specific and general remands that this court has recognized for over a century. Despite all evidence to

the contrary, the majority treats the remand order in this case as a general remand. *See* Maj. op. ¶ 40. Indeed, the majority concludes that "nothing in either the opinion—including the remand instructions—or the mandate from the first appeal forbade the trial court from exercising its discretion to reassess the burglary sentence on remand." *Id.* In other words, under the majority's logic, the remand in this case authorized the trial court to resentence Hernandez-Escajeda because the remand did not explicitly prevent the trial court from doing so. *See id.* at ¶¶ 40, 42.

¶66 But the language of the order, the circumstances of this case, and the practice of appellate courts all demonstrate that the remand order was specific. And as our case law makes clear, when an appellate court provides specific instructions to a trial court, the trial court may not deviate from those instructions. *See Galbreath*, 109 P. at 418. The majority's contrary conclusion effectively rewrites the mandate rule by holding that the trial court had authority to deviate from the appellate court's specific instructions.

¶67 The majority attempts to cabin its new rule by instructing trial courts that "nothing [the majority] say[s] today should be understood as giving trial courts a blank check to take actions inconsistent with the remand instructions." Maj. op. ¶ 45. But the majority's reasoning contains no such limitation—either a trial court

has authority to deviate from specific instructions in a remand or it does not. Today the majority holds that it does.

¶68 The majority's ruling invites trial courts to infer that they have authority to do anything not expressly prohibited by a mandate. It invites the very "disorganization, disorder, incalculable mischief and confusion" we warned against more than a century ago in *Galbreath*. 109 P. at 419. Equally problematic, the majority's new rule will require appellate courts to write comprehensive remand instructions in the negative; arguably, remand orders must now list everything a lower court *cannot* do on remand. In short, the majority has flipped the mandate rule on its head.

IV. *Johnson* Is Distinguishable and Does Not Establish Inherent Authority for Trial Courts to Resentence on Remand

¶69 The majority's reliance on *Johnson* is misplaced because that case is factually and legally distinguishable. It is true that in *Johnson* we gestured to the inherent authority of trial courts to resentence defendants. *See* Maj. op. ¶¶ 26–28. But *Johnson* does not establish that trial courts always have authority to resentence defendants, especially not when a remand specifically instructs the trial court to take another action, such as correcting the mittimus.

¶70 First, *Johnson* is factually distinguishable. *See id.* at ¶ 26 ("To be sure, *Johnson* is not a perfect analogue."). In *Johnson*, the specific remand expressly directed the

trial court to "reinstate the plea agreement . . . and to *sentence* defendant pursuant to that agreement." *Johnson*, slip op. at 8 (emphasis added). This key fact had ramifications for this court's analysis in that case: Our discussion about resentencing presupposed that the trial court in that case had authority to resentence because the remand language conferred that authority.

¶71 Second, *Johnson* is legally distinguishable because it concerned vindictive sentencing—not a trial court's inherent authority to resentence. *See Johnson*, ¶ 2, 363 P.3d at 173. The court's authority to resentence was not at issue.

¶72 Regardless of our statements approving of trial courts' discretion to resentence when a sentence package unravels in *Johnson*, *see* Maj. op. ¶¶ 24–25, a trial court's authority to act on remand is still necessarily limited by the express language in the remand order itself. *See Galbreath*, 109 P. at 418. The majority recognizes this by saying that "[h]ad the opinion or the mandate expressly conveyed that the trial court should not resentence Hernandez-Escajeda[,] . . . our decision would be different." Maj. op. ¶ 40. Here, the mandate expressly conveyed that the trial court should not resentence Hernandez-Escajeda. It did so by instructing the trial court to take other specific action: vacate the conviction and correct the mittimus. *Hernandez-Escajeda*, ¶ 42.

V. Conclusion

¶73 Our time-honored mandate rule is simple. When an appellate mandate is specific in its instructions, the trial court has no choice but to follow those instructions. When an appellate mandate is general, the trial court may take the actions it sees fit, including resentencing, so long as those actions are consistent with the appellate opinion. The mandate rule is essential to preserving the structure of our judicial system: It ensures that the orders of appellate courts have meaning.

¶74 Here, all the evidence demonstrates that the division's remand instructions were specific: "vacate [the] conviction . . . and correct the mittimus accordingly." *Id.* Therefore, the mandate rule requires that the trial court do nothing more and nothing less than what it was instructed to do.

¶75 Because the People had an opportunity to seek clarification of the division's mandate in this case but did not do so, and because the majority appears to overrule, *sub silentio*, more than a century of case law and appellate practice, I respectfully dissent.