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ADVANCE SHEET HEADNOTE
November 23, 2026

2026 CO 73

No. 26SA212, *Gottorff v. Exec. Dir.*—Habeas Corpus—Docket Fee Waiver—Subject Matter Jurisdiction—Venue.

In this opinion, the supreme court reviews the habeas court's rulings that imposed a docket fee, changed venue, dismissed petitioner's habeas petition, and denied petitioner's motion for the entry of default judgment. The supreme court first rejects petitioner's argument that defendants' failure to file a return to the writ of habeas corpus stripped the district court of jurisdiction. A return is required only after the court issues the writ, and here, because no court issued a writ of habeas corpus, defendants had no obligation to file a return to the writ. Furthermore, because every district court is granted jurisdiction by constitution and by statute to hear and decide habeas petitions, the district courts here had subject matter jurisdiction to change venue and to determine the merits of the habeas petition. Therefore, the supreme court affirms those orders as well as the habeas court's order denying petitioner's post-dismissal motion for an entry of default judgment.

However, the supreme court also concludes that the habeas court erred by ordering petitioner to pay the docket fee under section 13-17.5-103(2), C.R.S. (2026). Therefore, the supreme court vacates the docket-fee related portion of the habeas court's order.

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

2026 CO 73

Supreme Court Case No. 26SA212
Appeal from the District Court
El Paso County District Court Case No. 26CV196
Honorable Samuel A. Evig, Judge

Plaintiff-Appellant:

David J. Gottorff,

v.

Defendants-Appellees:

Executive Director of the Colorado Department of Corrections and Bryan Coleman, Warden of Buena Vista Minimum Center.

Orders Affirmed in Part and Vacated in Part
en banc
November 23, 2026

Plaintiff-Appellant David J. Gottorff, pro se
Olney Springs, Colorado

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PER CURIAM.

PER CURIAM.

¶1 David J. Gottorff, an inmate in the Colorado Department of Corrections ("CDOC"), seeks review of several orders and decisions from the habeas court related to his petition for a writ of habeas corpus.[1] We address each of his arguments below and mostly affirm the court's orders. However, we reaffirm our conclusion from *Gottorff v. Lengerich*, 2026 CO 37, ¶ 13, 590 P.3d 296, 299 ("*Gottorff I*"), regarding the imposition of fees in habeas corpus proceedings and therefore vacate the portion of the habeas court's "Order Granting Poor Person

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[1] Gottorff presented the following issues for review:

1. Whether the Pitkin District Court improperly assessed Gottorff the filing fee contrary to C.R.S. 13-17.5-102(1) and 13-17.5-103(3).
2. Whether the Pitkin District Court failed to enforce the Appellee(s) return and answer of a writ of habeas corpus as mandated in the provisions of C.R.S. 13-45-101(2) under C.R.S. 13-45-113.
3. Whether the Pitkin District Court abused its discretion by granting the Appellee(s) "Motion for Change of Venue" to the El Paso District Court without first requiring the return and answer of the writ as mandated in the provisions of the Habeas Corpus Act.
4. Whether the El Paso District Court proceeded without jurisdiction to dismiss Gottorff's "petition" upon his challenge to the subject matter jurisdiction of the El Paso District Court pursuant to C.R.C.P. 12(b)(1) attached to his Motion to Change Venue pursuant to C.R.C.P. 98(b)(l); (2).
5. Whether Gottorff is entitled to the entry of a Default Judgment as an appropriate sanction for the Appellee(s) unwarranted delay in making the proper return of a writ of habeas corpus.

Status" requiring Gottorff to pay a $235 docket fee pursuant to section 13-17.5-103(2), C.R.S. (2026).

I. Facts and Procedural History

¶2 In 2023, a jury convicted Gottorff of three counts of attempting to influence a public servant, one count of felony menacing, and one count of stalking. The trial court sentenced him to an eight-year prison term, which he is currently serving. Gottorff appealed, Notice of Appeal, *People v. Gottorff*, No. 23CA1857 (Colo. App. Oct. 30, 2023), and that appeal remains pending.

¶3 Gottorff has also filed numerous postconviction motions and petitions for a writ of habeas corpus. We addressed two of those habeas petitions in *Gottorff I*, a combined opinion announced during the last term. In *Gottorff I*, we affirmed the lower courts' dismissals of Gottorff's habeas petitions because those "petitions raised arguments that prior courts ha[d] already reviewed and ruled on or that [were] more appropriately resolved in his pending direct appeal." ¶ 1, 590 P.3d at 297. We also, however, vacated the fee-payment portions of the habeas courts' orders after concluding that actions for habeas corpus are expressly excluded from the limitations in section 13-17.5-103. *Gottorff I*, ¶ 13, 590 P.3d at 299.

¶4 Gottorff filed the current habeas petition in the Pitkin County District Court (the "Pitkin court") while our decision in *Gottorff I* was pending. In his current petition, Gottorff raised essentially the same arguments he previously raised in the

two habeas petitions that were the subject of *Gottorff I*—that is, that his conviction violated double jeopardy and that the trial court had improperly admitted evidence under CRE 404(b).

¶5 The habeas court here granted Gottorff's motion to proceed in forma pauperis but ordered him to pay the $235 docket fee pursuant to section 13-17.5-103(2). The court also issued a "Notice of Filing of Complaint Pursuant to C.R.C.P. 106.5" to the Warden of the Buena Vista Minimum Center, which is the correctional facility where Gottorff was housed at the time of filing; the Colorado Attorney General; and CDOC (collectively, "defendants"). The court asked defendants to acknowledge receipt of the notice and the habeas petition.

¶6 Defendants did so and, the same day, moved for a change of venue. They asked for the case to be transferred to El Paso County, which is where the CDOC headquarters and relevant personnel are located. The Pitkin court granted the motion, and the El Paso County District Court (the "El Paso court") accepted the case.

¶7 Gottorff then filed a motion to dismiss the case with the El Paso court, asserting that the court lacked subject matter jurisdiction because defendants had failed to return the writ in Pitkin County. Defendants, in turn, filed a response to the habeas petition with the El Paso court, which Gottorff moved to strike.

¶8 The day after we announced our decision in *Gottorff I*, the El Paso court dismissed Gottorff's habeas petition with prejudice and denied the remaining issues and outstanding motions as moot. *Gottorff v. Exec. Dir. of the CDOC*, No. 26CV196, at ¶¶ 6–7, 10–12 (Dist. Ct., El Paso Cnty., June 2, 2026) (unpublished order).

¶9 Gottorff now appeals.

II. Analysis

¶10 We first discuss the nature of habeas corpus proceedings and the proper procedures applicable to petitioning for and issuing writs of habeas corpus. We then discuss the relevant scope of a district court's subject matter jurisdiction to issue writs of habeas corpus and the difference between subject matter jurisdiction and venue. Next, we consider whether the El Paso court had subject matter jurisdiction to hear Gottorff's petition, as well as whether it was a proper venue to do so. We then briefly discuss whether the habeas court erred by denying Gottorff's post-dismissal motion for default judgment before finally addressing the habeas court's docket-fee order.

A. The Writ of Habeas Corpus

¶11 "By constitution and statute, all those imprisoned for criminal matters in Colorado may 'apply to the . . . district courts for a writ of habeas corpus.'" *Gottorff I*, ¶ 9, 590 P.3d at 299 (omission in original) (quoting § 13-45-101(1), C.R.S.

(2026)); *accord* Colo. Const. art. II, § 21; *see also Jones v. Williams*, 2019 CO 61, ¶ 9, 443 P.3d 56, 59. Habeas corpus proceedings are civil actions, "the essential purpose of which is to determine whether a person is unlawfully detained." *Duran v. Price*, 868 P.2d 375, 377 (Colo. 1994).

¶12 Upon receiving a habeas petition, the court should issue the writ "unless the petition or supporting documents indicate that no relief is available." *Wiedemer v. People*, 784 P.2d 739, 740 (Colo. 1989); *accord* § 13-45-101(1). If issued, the writ "shall be . . . directed to the person in whose custody the prisoner is detained," § 13-45-101(1), and that person "shall make return of the writ" and shall bring the prisoner to the court within the specified time limits, § 13-45-101(2). But "[t]he 'return' referred to in that section is the return of the writ, not the return of the petition for the writ." *Wiedemer*, 784 P.2d at 740. So, a return is required only after the court issues the writ. *Id.*

¶13 Here, the habeas court sent defendants notice of the habeas petition. But notice of the filing of a habeas petition isn't the equivalent of issuing a writ of habeas corpus. *See People ex rel. Metzger v. Dist. Ct.*, 215 P.2d 327, 331 (Colo. 1949) (recognizing that a habeas petition may provide a defendant the opportunity for a hearing to determine whether he is properly imprisoned, but the petition doesn't necessarily guarantee that a writ will issue), *overruled on other grounds by Stilley v. Tinsley*, 385 P.2d 677 (Colo. 1963); *see also* § 13-45-101(2) (requiring that a writ of

habeas corpus "be endorsed with the words 'by the habeas corpus act'"). A notice, after all, is just a notice.

¶14 And once the proceedings were transferred from Pitkin County to El Paso County, the El Paso court determined that neither the petition nor any of the supporting documents entitled Gottorff to habeas relief. So, the court dismissed the habeas petition without issuing the requested writ. Therefore, because no court issued a writ of habeas corpus, defendants had no obligation to file a return to the writ. *See Wiedemer*, 784 P.2d at 740.

¶15 Moreover, even if defendants had such a duty and failed to return the writ, "the failure to file a return does not invalidate the habeas corpus hearing or operate to discharge the petitioner." *Ede v. Bray*, 495 P.2d 1139, 1140 (Colo. 1972). So, Gottorff still wouldn't be entitled to relief based on this hypothetical procedural error.

B. Jurisdiction and Venue

¶16 Gottorff argues that (1) the Pitkin court abused its discretion by granting defendants' motion for change of venue without first requiring that they return the writ and (2) the El Paso court then erred by dismissing his habeas petition because, based on the Pitkin court's error in transferring venue, it lacked jurisdiction to proceed. Because Gottorff seems to conflate jurisdiction and venue, we first discuss the difference between these concepts. *See Nelson v. Encompass*

PAHS Rehab. Hosp., LLC, 2023 CO 1, ¶¶ 22–23, 522 P.3d 707, 712 (explaining that considerations of jurisdiction and venue serve different purposes and are not interchangeable concepts).

¶17 Jurisdiction concerns authority; venue concerns place. "Jurisdiction is the authority of a court to hear and decide a case presented to it." *Sanctuary House, Inc. v. Krause*, 177 P.3d 1256, 1258 (Colo. 2008). It comprises both jurisdiction over the parties and jurisdiction over the subject matter. *Id.* Subject matter jurisdiction, which is the type of jurisdiction at issue here, "concerns a court's authority to deal with the class of cases in which it renders judgment." *Wood v. People*, 255 P.3d 1136, 1140 (Colo. 2011). Accordingly, "[a] court has subject matter jurisdiction where it has been empowered to entertain the type of case before it by the sovereign from which the court derives its authority." *Id.* Because the habeas statute allows individuals to file a petition for a writ of habeas corpus in any district court in the state, § 13-45-101(1), both the Pitkin and El Paso courts had subject matter jurisdiction to hear Gottorff's petition, *see Evans v. Dist. Ct.*, 572 P.2d 811, 813–14 (Colo. 1977), *overruled on other grounds by Jones*, ¶ 16, 443 P.3d at 60–61.

¶18 Unlike jurisdiction, however, venue "refers to the place of trial or 'the locality where an action may be properly brought.'" *Hagan v. Farmers Ins. Exch.*, 2015 CO 6, ¶ 13, 342 P.3d 427, 432 (quoting *State v. Borquez*, 751 P.2d 639, 641 (Colo. 1988)). "'Venue provisions come into play only after jurisdiction has been

established and concern "the place where judicial authority may be exercised."'" *Nelson*, ¶ 21, 522 P.3d at 712 (quoting *Lindahl v. Off. of Pers. Mgmt.*, 470 U.S. 768, 793 n.30 (1985)). An action brought in an improper venue isn't "a jurisdictional or fatal defect." *Associated Gov'ts of Nw. Colo. v. Colo. Pub. Utils. Comm'n*, 2012 CO 28, ¶ 9, 275 P.3d 646, 649.

¶19 The existence of a court's subject matter jurisdiction is a question of law that we review de novo. *See T.L.P. v. People*, 2026 CO 61, ¶ 13, 596 P.3d 308, 311; *City of Boulder v. Pub. Serv. Co. of Colo.*, 996 P.2d 198, 203 (Colo. App. 1999). But we review a court's decision to change venue for an abuse of discretion. *See Evans*, 572 P.2d at 813. A court abuses its discretion if its decision is manifestly arbitrary, unreasonable, unfair, or a misapplication or misinterpretation of the law. *See State Farm Mut. Auto. Ins. Co. v. Reyher*, 266 P.3d 383, 387 (Colo. 2011).

¶20 Section 13-45-101(1) allows individuals to "apply to the . . . district courts for a writ of habeas corpus." We've interpreted this provision to mean that "all district courts in Colorado have subject matter jurisdiction to hear and decide habeas corpus cases." *Jones*, ¶ 9, 443 P.3d at 59. But, as we've noted numerous times, this general concession to jurisdiction doesn't affect decisions related to venue. *Evans*, 572 P.2d at 814. Rather, determining the proper venue for a habeas proceeding is governed by C.R.C.P. 98. *See Evans*, 572 P.2d at 813; *Stilley*, 385 P.2d at 688.

¶21 C.R.C.P. 98(b)(2) explains that venue for actions against public officers for acts done in the course of their duties "shall be tried in the county where the claim, or some part thereof, arose." However, a court may change the venue if, "on good cause shown," it determines that "the convenience of witnesses and the ends of justice would be promoted by the change." C.R.C.P. 98(f)(2).

¶22 Here, Gottorff asserts that the Pitkin court erred by granting defendants' motion to change venue because defendants (1) failed to show good cause for the change, as required by C.R.C.P. 98(f)(2), and (2) failed to simultaneously file a C.R.C.P. 12 motion, as required by C.R.C.P. 98(e). We perceive no error.

¶23 First, in their motion to change venue, defendants noted that "[t]he relevant public officer and the people specially appointed to execute these duties are based at CDOC Headquarters in El Paso County, not Pitkin County." So, "in consideration of judicial efficiency, and to prevent forum shopping," defendants asked the court to transfer the case to El Paso County. We also note that, at the time of filing, Gottorff was housed in the Buena Vista Correctional Facility in Buena Vista, Colorado, which is in Chaffee County. And the alleged conduct that led to his convictions and incarceration occurred in Ouray County.

¶24 We acknowledge that defendants' showing to support a good-cause finding was minimal. *See, e.g.*, *Hagan*, ¶¶ 29–31, 342 P.3d at 434–35. But based on the circumstances of this case—namely, that neither the conduct, the witnesses, nor

the parties were located in Pitkin County—we can't conclude that the Pitkin court abused its discretion by granting defendants' request to transfer the case to El Paso County, the only proposed venue where any of the parties, conduct, or witnesses were located. *See Evans*, 572 P.2d at 814. Furthermore, Gottorff doesn't argue that El Paso County is an improper venue, just that the Pitkin court lacked authority to transfer the case absent defendants' return of the writ, an argument we have already rejected.

¶25 Second, turning to Gottorff's argument regarding defendants' failure to simultaneously file a C.R.C.P. 12 motion, we return to Rule 98. Rule 98(e)(1) provides that most motions to change venue must be filed within the same time limits as Rule 12(b)(1)–(4) motions. However, motions to change venue based on subsection (f)(2), like the one here, are expressly excluded from those limits. C.R.C.P. 98(e)(1). *If* a party files one of the specified Rule 12(b) motions, they waive the right to change venue unless they simultaneously file a motion to change venue. *Id.* Even so, nothing in Rule 98 requires a party to file a Rule 12(b) motion simply because they've requested a change of venue. *See id.* So here, defendants weren't required to file a simultaneous Rule 12(b) motion with their change of venue motion to preserve the right.

¶26 We therefore conclude that the Pitkin court didn't abuse its discretion by transferring venue to El Paso County and that the El Paso court properly obtained

both jurisdiction and venue by accepting that transfer. Furthermore, the El Paso court was a proper venue, with full jurisdiction, to address the merits of Gottorff's petition. *See Tillery v. Dist. Ct.*, 692 P.2d 1079, 1083 (Colo. 1984) ("After a change of venue has been granted, the receiving court has jurisdiction for all purposes . . . .").

C. Default Judgment

¶27 After the habeas court dismissed Gottorff's petition, Gottorff moved for an entry of default judgment. The court denied the motion because it had already dismissed the petition.

¶28 Gottorff now argues that the entry of default "is a warranted sanction" for defendants' failure to return the writ. We've already concluded that defendants had no obligation to return the writ based on the circumstances of this case. So, that conduct doesn't warrant a sanction.

¶29 Moreover, "[a] dismissal with prejudice is a final judgment; it ends the case and leaves nothing further to be resolved concerning the dispute between the parties." *Foothills Meadow v. Myers*, 832 P.2d 1097, 1098 (Colo. App. 1992). Once a matter is dismissed, "neither the action nor the parties remain within the jurisdiction of the court." *Id.* So, the habeas court no longer had jurisdiction to enter default judgment once it dismissed the case.

¶30 We therefore conclude that the habeas court properly denied Gottorff's motion for default judgment.

D. Docket Fee

¶31 The habeas court ordered Gottorff to pay a $235 docket fee pursuant to section 13-17.5-103(2). That statute provides that "[a]ny inmate who is allowed to proceed in the civil action as a poor person shall be required to pay the full amount of the filing fee and service of process fees previously paid by the court." § 13-17.5-103(2). However, "[a]s the term is used in article 17.5, a '"civil action" does not include . . . an action for habeas corpus.'" *Gottorff I*, ¶ 12, 590 P.3d at 299 (omission in original) (quoting § 13-17.5-102(1), C.R.S. (2026)). Therefore, this habeas action wasn't subject to section 13-17.5-103's limitations, and the habeas court erred by ordering Gottorff to pay the docket fee. *See Gottorff I*, ¶ 13, 590 P.3d at 299.

¶32 We therefore vacate the portion of the habeas court's "Order Granting Poor Person Status" requiring Gottorff to pay the $235 docket fee.

III. Conclusion

¶33 We affirm in part and vacate in part the habeas court's orders.