

MISSOURI SUPREME COURT

Supreme Court No. SC85091

State ex rel. Rocky LaChance,

Petitioner,

vs.

Michael Kemna, Superintendent

and

Jeremiah Nixon, Attorney General,

Respondents.

PETITIONER'S

Reply Brief

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ARGUMENT

MR. LaCHANCE IS ENTITLED TO A WRIT OF MANDAMUS REQUIRING THE DEPARTMENT OF CORRECTIONS TO MODIFY ITS INTERNAL RECORDS TO SHOW THAT MR. LaCHANCE WAS SENTENCED TO AN AGGREGATE OF THIRTEEN YEARS IMPRISONMENT RATHER THAN SEVENTEEN YEARS IMPRISONMENT BECAUSE A COURT’S ORAL PRONOUNCEMENT OF SENTENCE CONTROLS OVER A MATERIALLY INCONSISTENT WRITTEN JUDGMENT IN THAT THE TRIAL COURT’S ORAL PRONOUNCEMENT OF SENTENCE WAS FOR THIRTEEN YEARS AS OPPOSED TO THE WRITTEN JUDGMENTS OF EITHER SEVEN OR SEVENTEEN YEARS. ALTERNATIVELY, THE DEPARTMENT SHOULD ENFORCE THE SEVEN YEAR JUDGMENT RATHER THAN THE SEVENTEEN YEAR JUDGMENT UNDER THE RULE OF LENITY.

Respondents incorrectly allege that “[t]he written judgments of the St. Louis County Circuit Court accurately reflect to [sic] the oral judgments of the St. Louis County Circuit Court; thus petitioner is entitled to no relief” and that Mr. LaChance has no authority for the proposition that the oral description of the conglomeration of the sentences is binding. (Respondents’ brief at 6, 9). In reality, the written judgments and the oral pronouncement clash and Missouri law requires trial courts to explain orally whether its sentences will run concurrently or consecutively with prior sentences. As explained in Mr. LaChance’s opening brief and acknowledged by respondents, the St. Louis County Court, for all intents and purposes, orally sentenced Mr. LaChance to ten years imprisonment on the St. Louis

County crimes. With the exception of the written judgment in 96CR-1602 (discussed below), the St. Louis County Court’s written judgments correctly reflect this portion of the oral pronouncement of sentence. Respondents ignore, however, that courts must also declare whether their sentences will run concurrently or consecutively with prior sentences. *Moore v. State*, 761 S.W.2d 676, 677 (Mo.App. 1989); § 558.026, RSMo 2002; Rule 29.09. In Mr. LaChance’s case, the court explicitly declared that his sentences would run with the St. Louis City sentences to aggregate thirteen years. This declaration was not superfluous¹; case law, statutes and Supreme Court Rules require courts to declare how its sentences will run with prior sentences. The written judgments indicate that the sentences would run to aggregate seventeen years. This is a material discrepancy that entitles Mr. LaChance to have the Department’s records accurately reflect that he was sentenced to thirteen years imprisonment based on the St. Louis County Court’s oral pronouncement.

¹If this Court were to ignore the oral conglomeration of sentences, as Respondents suggest, then there is a total absence of an oral pronouncement concerning whether the sentences would run concurrently or consecutively with the prior sentences and, by operation of § 558.026, the sentences run concurrently for an aggregate of ten years. *Drennen v. State*, 906 S.W.2d 880, 882 (Mo.App. 1995); *State v. Young*, 969 S.W.2d 362, 364 (Mo.App. 1998) (“A sentence is presumed by operation of law to run concurrently with any previous sentence unless the Court specifically provides otherwise in pronouncing sentence in a defendant’s presence.”)

Respondents also erroneously claim that “the General Assembly imposes on the Missouri Department of Correction the obligation to enforce the written judgment of the circuit court.” (Respondents’ brief at 9). Respondents only cite § 217.305, RSMo 2002, for support. That statute, however, provides only that “a copy of the sentence” be delivered to the Department. The copy of the sentence may take any form. In fact, the statute provides that other documents, e.g. the judgment, may be sent to the Department along with the “copy of the sentence.” Therefore, nothing requires the Department to enforce the written judgment of the circuit court as the Department does not even have to receive a copy of the judgment.

Respondents also confuse the Department’s *ability* to rely on the judgment to determine sentence length with the Department’s supposed *inability* to rely on anything else when determining sentence length. No statute requires the Department to rely on any particular document when determining sentence length. Section 217.305, RSMo 2002, requires that a copy of the sentence be sent to the Department and presumably the Department may rely on that copy of the sentence when determining the sentence length. As noted earlier, that copy may take any form, e.g. judgment, sentence transcript, etc. The statute does not require that the Department rely on the written judgment. To the extent that the Department has made it a practice to rely primarily on the judgment, it can continue to do so but if an inmate raises issues concerning his sentence length, nothing bars the Department from looking beyond the judgment to address the inmate’s concern. The Department cannot hide behind its practice of relying on the written judgment to deny Mr.

LaChance the relief that he deserves. For these same reasons, the Department's hypothetical, logistical concerns (Respondents' brief at 10) are not legitimate as the Department may initially look to the judgment or any other copy of the sentence to make the initial sentence calculation but then look to any other source to resolve ambiguities or concerns.

Finally, Respondents incorrectly claim that "the written judgment in No. 96CR-1602 speaks only to the concurrent nature of the seven year sentence in No. 96CR-1602." The written judgment in No. 96CR-1602 makes clear that its sentences are to run concurrently with the other cases. The only way for the sentence in No. 96CR-1602 to run concurrently with the other cases is if the sentences in the other cases ran concurrently with each other. Therefore, it is impossible to read the written judgment in 96CR-1602 consistently with the written judgments in 96CR-1022 and 96CR-1405 that provides for some consecutive sentences. The three written judgments cannot be reconciled therefore under the rule of lenity Mr. LaChance has served his seven year sentence and should be released immediately.

CONCLUSION

For all of these reasons, Mr. LaChance requests that the Court issue a writ of mandamus to the Department of Corrections ordering it to modify its internal records to indicate an aggregate thirteen year sentence rather than a seventeen year sentence.

Alternatively, the Court should issue a writ of mandamus to the Department of Corrections ordering it to immediately release Mr. LaChance as he has served his seven year sentence.

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ATTORNEY'S RULE 84.06(c)
CERTIFICATE AND CERTIFICATE OF SERVICE

Pursuant to Rule 84.06(c), I certify:

1. The brief filed on behalf of petitioner complies with the requirements of Rule 84;
2. The brief complies with the limitations contained in Rule 84; and
3. The brief contains 1228 words.
4. An electronic copy of the brief is in the enclosed floppy disk, and both the disk and the files have been scanned for viruses and are virus-free.

Two copies of the brief, and a duplicate floppy disk, have been served on July 2, 2003 to: Mr. Stephen D. Hawke, Office of Missouri Attorney General, P.O. Box 899, Jefferson City, MO 65102.

Respectfully submitted,

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