

SC88721

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IN THE SUPREME COURT OF MISSOURI

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State ex rel. ROBERT T. POUCHER

Relator,

v.

THE HONORABLE DAVID LEE VINCENT III,

et al.,

Respondents.

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RESPONDENTS' BRIEF

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(Addresses Argument IA)

II. The claim that the trial court lacked jurisdiction because the indictment allegedly did not provide sufficient detail about Poucher’s prior DWI convictions is without legal merit as this Court has rejected the idea that alleged defects in an indictment deprive a trial court of subject matter or personal jurisdiction. *State v. Parkhurst*, 845 S.W. 2d 31 (Mo. banc 1992). This is also a proper issue for direct appeal, as opposed to mandamus, and Poucher only added this claim after this

Court granted a preliminary writ of mandamus on a petition that dealt with an entirely different issue

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III. The claim that Poucher's consecutive sentences of seven and three years are void because the trial court only taxed Poucher \$46.00 for the crime victim's compensation fund, as opposed to a larger amount, as Poucher alleges he should have been assessed, is without legal merit, is not a proper subject for mandamus, and is not an issue on which this Court granted the preliminary writ.

(Addresses Argument IC)

IV. The claim that Poucher's consecutive sentences of seven and three years are void because the trial court imposed court costs on the state as opposed to Poucher is without legal merit, is not a proper subject for mandamus, and is not an issue on which this Court granted the preliminary writ.

(Addresses Argument ID)

V. The trial court initially imposed consecutive seven and three year sentences on Poucher and placed Poucher on probation suspending execution of the sentences. But when it revoked the probation and ordered that the "previously imposed" sentences be executed it erroneously referred to these sentences as concurrent. The trial court corrected this mistake through a nunc pro tunc order as was proper. *State v. Pruitt*, 192 S.W. 3d 512, 514 (Mo. App. E.D. 2006) (nunc pro tunc order may be used to conform the sentence and judgment form to the verdict actually rendered at trial and sentencing). Poucher is not entitled to a windfall of having

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## INTRODUCTION

This is an action in mandamus by Robert T. Poucher who is serving consecutive seven and three year sentences, imposed by the Circuit Court of St. Louis County, for persistent offender driving while intoxicated and driving while cancelled. Poucher has named the sentencing judge, his institutional warden, and his institutional records officer as respondents.

In his original petition, based upon which this Court granted a preliminary writ, Poucher alleged that his sentences should run concurrently as opposed to consecutively. Poucher was originally sentenced to consecutive terms of seven and three years with execution of the sentences suspended and sent to long term drug treatment then released on probation. But, Poucher admittedly violated conditions six, eight and nine of his probation, waived a hearing in exchange for probation time credit, and was revoked.

In revoking probation, the trial court ordered the previously imposed sentences executed, but mistakenly referred to the previously imposed consecutive sentences as concurrent, as opposed to consecutive, both orally at the probation revocation hearing and in the judgment memorializing the revocation. The trial court caught its mistake and issued a nunc pro tunc order conforming the judgment from the probation revocation to judgment originally imposing consecutive sentences.

Poucher's position is that the sentences became concurrent as opposed to consecutive when the court revoked probation and ordered the sentences executed, and that the trial court was without jurisdiction to correct its mistake and conform its order of probation revocation

to be consistent with the consecutive sentences that actually had been imposed. This was the only issue in the case when this Court granted a preliminary writ.

After granting a preliminary writ, this Court appointed counsel to represent Poucher. Counsel asked for leave to file an amended petition. That petition and the subsequent brief raise issues not presented prior to this Court granting a preliminary writ. Those issues include an assertion that it was improper to enhance the sentence under two statutes, an assertion that the indictment did not allege prior driving while intoxicated convictions in sufficient detail, and a claim that the judgment of conviction and sentence is void because it allegedly did not sufficiently tax Poucher for the crime victim's compensation fund and awarded court costs against the state as opposed to Poucher (Relator's Brief). Poucher has briefed and seeks relief on these issues. Poucher alleges that the indictment was deficient in that although it listed his prior DWI convictions it did not state whether these were felonies or misdemeanors. Poucher has not made the allegedly defective indictment part of the record before this Court. (Relator's Exhibits A-D).

## STATEMENT OF FACTS

Robert T. Poucher pled guilty on July 24, 2003, to driving while intoxicated, persistent offender, driving while cancelled, leaving the scene of an accident, and careless and imprudent driving (Relator's Exhibit A). The Circuit Court of St. Louis County imposed consecutive sentences of seven and three years imprisonment on the driving while intoxicated and driving while cancelled counts, to run concurrently with one year sentences on the leaving the scene of an accident and careless driving counts (Relator's Exhibit A). The court also sentenced Poucher to a long term treatment program, under §217.362 RSMo (Relator's Exhibit A).

Section 217.362.2 RSMo 2003 Cum. Supp. states that "the court may sentence a person to the program which shall consist of institutional drug or alcohol treatment for a period of at least twelve and no more than twenty-four months and a term of incarceration." The statute, also states that "Execution of the Offender's term of incarceration shall be suspended pending completion of said program." *Id.*

Following completion of long term drug treatment and release on probation, Poucher came before the Circuit Court of St. Louis County at a Probation Revocation hearing on November 3, 2005 (Relator's Exhibit B, Revocation Hearing Transcript). Poucher waived his right to a hearing on whether he had violated probation (*Id.* at 2). The prosecutor then made the following recommendation: "The State recommends the previously-imposed sentence in the above cause be executed at this time with consideration for the time spent on probation. The state would recommend an additional sixty days credit for waiving the probation revocation hearing today." (*Id.* at 2-3).

Poucher admitted violating the terms of his probation regarding dealing with drugs, reporting directives, and supervision strategies (*Id.* at 4). The circuit court then revoked probation (*Id.* at 4). The court stated: “It is the order judgment and sentence of this Court that the probation granted is herein revoked and the previously imposed sentence as to Count I of seven years shall be executed forth with concurrently with Count II of three years for a total not to exceed seven years.” (*Id.* at 5). This was memorialized in a written probation revocation order (Relator’s Exhibit C).

But, the original sentences imposed on counts I and II, before Poucher went to the substance abuse treatment program, were consecutive (Relator’s Exhibit A). The circuit court subsequently realized this and issued a *nunc pro tunc* order reading in pertinent parts as follows:

This Court hereby enters this Judgment and Order nunc pro tunc to amend the Probation Revocation Hearing and Judgment court order entered on November 3, 2005 in this matter to reflect the original sentencing of Count I: 7 years consecutive to Count II: 3 years in the Missouri Department of Corrections, as provided in the sentence and judgment entered on July 24, 2003.

(Relator’s Exhibit D)

The Circuit Court of St. Francois County, Missouri denied a petition for mandamus by Poucher, seeking to enforce the concurrent sentences erroneously mentioned in the order of revocation (Judgment in *Robert T. Poucher v. The Honorable David Lee Vincent III*, No.

0SF-CC00933). The Missouri Court of Appeals also denied a petition for habeas corpus and for mandamus seeking to enforce the order of revocation mentioning concurrent as opposed to consecutive sentences (Order in *Robert Poucher, Jr. v. Larry Rowley and Judge David L. Vincent III* E.D. 89215). Poucher now seeks a writ of mandamus from this Court directing the Honorable David Lee Vincent III to enter an order directing that the sentences for counts I and II are to run concurrently, and an order from this Court finding that the *nunc pro tunc* order is void, vacating it, and requiring that it be set aside (Mandamus Petition at 9-10).

Poucher pled guilty to the D felony of persistent offender driving while intoxicated and the D felony of driving while cancelled and was sentenced as a persistent offender under §558.016 RSMo (Relator's Exhibit A at 1). The judgment of conviction and sentence indicates that Poucher is to pay forty-six dollars to the crime victim's compensation fund and that the state is to pay court costs (Relator's Exhibit A at 5).

## STANDARD OF REVIEW

The Missouri Court of Appeals, Western District, set out the standard of review in a mandamus action as follows:

To be entitled to a writ of mandamus, the relator must have a clear, unequivocal, specific right to have an act performed.

*Farnsworth v. Wee*, 743 S.W.2d 115, 117 (Mo. App. 1988).

The respondent must have a correspondent present, imperative, unconditional duty to perform the action sought. *Id.* The

function of a writ of mandamus “is to enforce, not establish, a claim or right and its purpose is to execute, not adjudicate.” *Id.*

Therefore, to the extent that legal or factual issues must be adjudicated, mandamus is not an appropriate mechanism.

*Kelley*, 595 S.W.2d at 268.

*Carmack v. Saunders*, 884 S.W.2d 394, 398 (Mo. App. W.D. 1994).

The Missouri Supreme Court has stated the following:

[A] writ of mandamus has been justly denominated a hard and fast writ, and an unreasoning writ, a cast-iron writ, the right arm of the court. It is essentially the exponent of judicial power, and hence is reserved for extraordinary emergencies. It does not issue except in cases where the ministerial duty sought to be coerced is simple and definite, arising under conditions admitted

or proved and imposed by law. It does not issue where the right is doubtful, or where there is another adequate remedy.

*State ex rel. Kelley v. Mitchell*, 595 S.W.2d 261, 266 (Mo. banc 1980), *citing State ex rel.*

*Kansas City v. Kansas City Gas Company*, 163 S.W. 854, 857 (Mo. banc 1914).

I

**Poucher's argument that the trial court acted outside its jurisdiction in enhancing his sentence under both §557.023.4 RSMo and §558.016 RSMo is without legal merit, as this Court rejected the same argument in *State v. Ewanchen*, 799 S.W. 2d 607 (Mo. banc 1990) and the issue is now well settled. Additionally, this is a proper issue for a Rule 24.035 motion, as opposed to mandamus, and Poucher only added the claim after this Court granted a preliminary writ of mandamus on a petition that dealt with an entirely different issue.**

(Addresses Argument IA)

Poucher alleges that the sentencing court exceeded its jurisdiction in enhancing his drunk driving conviction to a D felony under §557.023.4 RSMo and enhancing his sentence under §558.016 RSMo to seven years based on Poucher's prior convictions making him a persistent offender (Relator's Brief 11-17). Poucher argues that the legislature did not intend both enhancements to be applicable in a single case and cites as evidence cases from other jurisdictions interpreting statutes in those jurisdictions.

In 1990 this Court accepted transfer in *State v. Ewanchen*, 799 S.W. 2d 607 (Mo. banc 1990) and agreed with Missouri Court of Appeals precedent that the legislature did intend to permit enhancement under both statutes in a single case. This has been settled law for the nearly two decades since *Ewanchen* and for a quarter century if one counts from the cases cited in *Ewanchen* on which *Ewanchen* relies. Poucher was sentenced in 2003 (Relator's Exhibit A).

Poucher could have raised this claim in a Rule 24.035 motion. Of course he would have lost based on the binding precedent of *Ewanchen*. Poucher does not have a clearly established right to have the sentencing court overrule the Missouri Supreme Court on the *Ewanchen* issue, as would be necessary for him to even properly bring the claim in mandamus.

What Poucher is really doing is using the grant of a preliminary writ of mandamus on an unrelated issue concerning a nunc pro tunc order to circumvent the normal course of post-conviction and appellate review, essentially attempting to use a mandamus proceeding as an untimely Rule 24.035 motion. This should not be permitted, and a writ of mandamus should not be granted on this claim.

## II

**The claim that the trial court lacked jurisdiction because the indictment allegedly did not provide sufficient detail about Poucher's prior DWI convictions is without legal merit as this Court has rejected the idea that alleged defects in an indictment deprive a trial court of subject matter of personal jurisdiction. *State v. Parkhurst*, 845 S.W. 2d 31 (Mo banc 1992). This is also a proper issue for direct appeal, as opposed to mandamus, and Poucher only added this claim after this Court granted a preliminary writ of mandamus on a petition that dealt with an entirely different issue.**

(Addresses Argument IB)

Poucher alleges that the trial court had no jurisdiction to sentence him as a persistent offender under §558.016 RSMo because, although the indictment set out two prior DWI convictions, it allegedly failed to state that these were felonies thereby failing to give Poucher adequate notice of the possibility of enhancement under §558.016 RSMo (Relator's Brief 18-20). Poucher has not favored this Court with a copy of the allegedly defective indictment, nor of the information in lieu of indictment that replaced it. Review of Casenet indicates that on July 24, 2003 an information in lieu of indictment was filed and that prior to his guilty plea then findings of fact were entered finding Poucher to be a prior and persistent offender under §558.021.2 RSMo, 558.016 RSMo and 557.036.4 RSMo prior to his guilty plea ([www.courts.mo.gov/casenet/2102R\\_02448-01](http://www.courts.mo.gov/casenet/2102R_02448-01) *State v. Robert Poucher* docket entry 7/24/03). Assuming for the sake of argument that the indictment or information in lieu of the indictment were defective, this did not deprive the sentencing court of jurisdiction. This Court rejected the idea that an allegedly defective charging document can deprive a criminal

court of personal or subject matter jurisdiction in *State v. Parkhurst*, 845 S.W. 2d 31, 34-36 (Mo. banc 1992). In *State ex rel Simmons v. White*, 866 S.W. 2d 443, 446-447 (Mo banc 1993), which relied on *Parkhurst*, an inmate was convicted of the enhanced crime of persistent offender driving while intoxicated even though the information did not charge and the state had not proved a sufficient number of prior driving while intoxicated offenses to support this conviction. This Court held that as a matter of law this was not a jurisdictional defect and that therefore the claims was defaulted when it was not raised in a timely direct appeal or Rule 24.035 motion and could not be raised on habeas corpus.

*Parkhurst* and *Simmons* are on point. Poucher is again attempting to use mandamus as a vehicle to litigate in this Court a claim that should have been raised if at all in a Rule 24.035 motion. No writ of mandamus should be granted on this issue.

### III

**The claim that Poucher’s consecutive sentences of seven and three years are void because the trial court only taxed Poucher \$46.00 for the crime victims compensation fund as opposed to a larger amount as Poucher alleges he should have been assessed, is without legal merit, is not a proper subject matter for mandamus and is not an issue on which this Court granted the preliminary writ.**

(Addresses Argument IC)

Poucher alleges, without any authority, that because an assessment of forty-six dollars is to be paid to the crime victim’s compensation fund for a D felony, a person convicted of two counts, each being a D felony, should be charged ninety-two dollars (Relator’s Brief 21-24). He then reasons that his sentence is void because a sentence that does not comply with the statute is void and his sentence does not comply because he was only charged forty-six dollars. (Relator’s Brief 21). Poucher asserts that a new judgment must be entered, presumably re-starting the clock for a direct appeal and a Rule 24.035 motion challenging the new judgment. (Relator’s Brief at 23)<sup>1</sup>.

This is not a mandamus issue. If Poucher thought the sentencing court had not charged him a sufficiently high amount to pay to the crime victim’s compensation fund, he

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<sup>1</sup> Presumably under Poucher’s reasoning hundreds or thousands of inmates would be entitled to be resentenced if they were only assessed the amount mentioned in the statute for the crime victim’s compensation fund but had been convicted of more than one count.

could have raised the matter in a Rule 24.035 motion. More importantly, Poucher wants to use mandamus to have this Court adjudicate a legal question of statutory interpretation and to read the statute in a way that Poucher cannot support with any precedent. Mandamus exists to enforce the execution of ministerial duties, not to adjudicate factual or legal issues.

Poucher is again attempting to use mandamus to circumvent the Rule 24.035 and direct appeal process. Mandamus should not issue where the right sought to be enforced is doubtful or where there is another remedy. *State ex rel. Kelley v. Mitchell*, 595 S.W. 2d 261, 266 (Mo. banc 1980). In this case the alleged right is so doubtful as to be unprecedented and Poucher can correct the wrong he alleges, underpayment to the crime victim's compensation fund by writing them a check if he so chooses. A writ of mandamus should not issue on this claim.

#### IV

**The claim that Poucher’s consecutive sentences of seven and three years are void because the trial court imposed court costs on the state as opposed to Poucher is without legal merit, is not a proper subject for mandamus and is not an issue on which this Court granted the preliminary writ.**

(Addresses Argument ID).

Poucher alleges that his judgment of conviction and sentence is void because court costs were assessed against the state and Poucher alleges that the court costs should have been assessed against Poucher. This is not a proper mandamus issue, and it is not the issue on which this court issued a preliminary writ. Poucher is again trying to circumvent the time limits on direct appeal and Rule 24.035 motions by the issuing of a new sentence and judgment restarting the long expired clocks on those forms of action. If Poucher really feels aggrieved by not being made to pay courts costs then he has the available remedy of writing the circuit court a check. *See State ex rel. Kelley v. Mitchell*, 595 S.W. 2d 261, 266 (Mo. banc 1980) (mandamus does not lie where there is another remedy.)

What Poucher is really arguing is that the circuit court made a mistake and that every judgment of conviction and sentence that contains a mistake is not final and must be corrected through an extra-ordinary writ as opposed to a Rule 24.035 motion or a direct appeal (Relator’s Brief at 24-25). That is not the law. *State v. Morris*, 719 S.W. 2 761 (Mo. banc 1986), relied on by Poucher, is a case in which a sentence was held to be void because it was entered before the time for filing a new trial motion had expired. It is not on point. Case law on the contrary teaches that all errors in a sentence are not jurisdictional. Certainly

the sentence in *State ex rel Simmons v. White*, 866 S.W. 2d, 443, 336 (Mo. banc 1993) was erroneous in that Simmons was convicted and sentenced for felony driving while intoxicated even though the required number of priors had not been alleged or proved. But this Court noted that while this might have justified relief on direct appeal or in Rule 24.035 litigation, it could support relief through an extra-ordinary writ. *Id.* Were Poucher's analysis, that error in sentencing prevents appellate or Rule 24.035 relief because of lack of a final judgment, correct then neither Simmons nor any other erroneously sentenced defendant would be entitled to take a direct appeal or file a Rule 24.035 motion. That is not the law. The writ of mandamus should not issue on this claim.

**The trial court initially imposed consecutive seven and three year sentences on Poucher and placed Poucher on probation suspending execution of the sentences. But when it revoked the probation and ordered that the “previously imposed” sentences be executed it erroneously referred to these sentences as concurrent. The trial court corrected this mistake through a nunc pro tunc order as was proper. *State v. Pruitt*, 192 S.W. 3d 512, 514 (Mo. App. E.D. 2006) (nunc pro tunc order may be used to conform the sentence and judgment form to the verdict actually rendered a trial and sentencing). Poucher is not entitled to a windfall of having his sentences reduced from those actually imposed because the trial court misspoke at the probation revocation.**  
(Addresses Argument 2 A and B)

Poucher argues that it was improper for the revoking court to issue a nunc pro tunc order correcting the misstatement at the probation revocation and the judgment memorializing that revocation, which each mistakenly referred to sentences originally imposed as concurrent rather than consecutive. (Relator’s Brief at 26-28). Poucher appears to make two arguments. These are that a nunc pro tunc should not have been used because the court was not correcting a clerical error, and that the revoking court exceeded its jurisdiction by issuing the nunc pro tunc more than thirty days after the revocation (Relator’s Brief at 26-28). In the alternative Poucher argues that he should either receive a new sentencing or an opportunity to revoke his waiver of a probation revocation hearing because the issuance of the nunc pro tunc order somehow denied Poucher the right to be present at sentencing.

The Circuit Court of St. Louis County imposed consecutive seven and three year sentences on Counts I and II in July, 2003 (Relator's Exhibit A). The circuit court also ordered a long term treatment program under §217.362 RSMo (*Id.*). That statute states that “[e]xecution of the offender’s term of incarceration shall be suspended pending completion of said program.” §217.362.2 RSMo 2003 Cum. Supp.

When the circuit court revoked probation on November 3, 2005, it ordered that the “previously-imposed sentence ... shall be executed.” (Relator’s Exhibit B at 5). But the circuit court made a mistake in 2005, recording the previously imposed sentence as having involved concurrent as opposed to consecutive sentences (Relator’s Exhibit B at 5, Relator’s Exhibit C). The court had no power to change the previously imposed consecutive sentences when it ordered the sentences executed. The court simply misspoke or misremembered the sentence that had been imposed. Realizing its error, the court properly corrected it, through a nunc pro tunc order. *State v. Pruitt*, 192 S.W.3d 512, 514 (Mo. App. E.D. 2006) (nunc pro tunc order may be used to conform the sentence and judgment form to the verdict actually rendered at trial and the trial court’s sentencing). No writ of mandamus is appropriate, as the revoking court acted correctly in conforming the sentence mentioned at the hearing and in the revocation order to the sentence that was actually imposed at sentencing.

Poucher’s argument that the trial court exceeded its jurisdiction in allegedly changing the sentence from concurrent to consecutive following the probation revocation in 2005 ignores the fact that consecutive sentences were imposed in 2003 and a sentence and judgment was issued (Relator’s Exhibit A). This sentence and judgment was appealable. Poucher did not appeal or file a Rule 24.035 motion apparently satisfied with receiving a

suspended execution of sentence, long term drug treatment and probation. But the sentencing court had no jurisdiction to change the consecutive sentences after the time for taking an appeal expired ten days later. *State ex rel. Wagner v. Ruddy*, 582 S.W.2d 692 (Mo. banc 1979). In *State ex rel Simmons v. White*, 866 S.W.2d 443, 445 (Mo. banc 1991) is a practical application of this principle to a fact pattern similar to the one in this case in which an inmate convicted of felony drunk driving alleged a sentencing court violated the protection against double jeopardy by re-sentencing the offender after the initial sentencing, and this Court declined to review the claim noting that the first sentencing controlled and everything afterward was a nullity because the court had no jurisdiction to re-sentence Simmons. That principle controls here.

The court imposed consecutive sentences on Poucher in 2003. It had the statutory jurisdiction to execute those sentences when it revoked probation in 2005. But it had no jurisdiction to change the sentences into concurrent sentences. When it misremembered the previously imposed sentences as concurrent as opposed to consecutive sentence and memorialized that mistake its act was a nullity, just as the attempt by the court to hold a new sentencing was a nullity in *Simmons*. Poucher's valid sentence imposed in 2003 is to consecutive terms of seven and three years imprisonment. His game of "got ya" with the sentencing court is an attempt to enforce a nullity that has no basis in law. As in *Simmons* the original 2003 sentence to consecutive terms of imprisonment controls regardless of what happened in 2005 on the concurrent/consecutive issue.

Whether or not a nunc pro tunc order was the proper way to communicate to the Department of Corrections that the information that the sentences were concurrent was a

nullity, the sentences are still consecutive. But the nunc pro tunc order was proper. In *State v. Pruitt*, 192 S.W.3d 512, 514 (Mo. App. E.D. 2006), a sentencing court sentenced a defendant for two crimes that were C felonies but, erroneously recorded these as A felonies on the judgment of conviction and sentence. The Court of Appeals held that the use of nunc pro tunc order was a proper method to fix this mistake. Similarly, in *State v. Olney*, 987 S.W.2d 466 (Mo. App. W.D. 1999), a defendant was convicted of the Class B felony of assault, but the sentencing court erroneously entered a judgment for the Class A felony of assault. The Court of Appeals held that a nunc pro tunc order was the proper way to correct this.

Poucher's argument seems to be that there is no proper way to communicate to the Department of Corrections that his sentences are consecutive as opposed to concurrent and that therefore he must receive an unlawful windfall. That is not the law.

Poucher's argument that the nunc pro tunc order issued in 2005 denied him the right to be present at the sentencing is illogical. Poucher was sentenced in 2003 to consecutive sentences and the court had no power to change that in 2005. Poucher's presence at sentencing in 2003 cannot be changed by a nunc pro tunc order issued in 2005 which explicitly directs that the 2005 document is made to conform to the original sentence and judgment of July 24, 2003 (Relator's Exhibit D).

Similarly Poucher's argument that he should receive a probation revocation hearing which he waived is illogical. The prosecutor recommended "that the previously imposed sentence in the above cause be executed at this time with consideration for time spent on probation." (Relator's Exhibit B at 2). The prosecutor went on to "recommend an additional

sixty days credit for waiving the probation revocation hearing today.” (Id. at 2-3). Poucher waived his revocation hearing and admitted the charged probation violations in exchange for sixty days probation time credit (Relator’s Exhibit B). After the revocation, the revoking court ordered the previously imposed sentences executed but erroneously referred to these sentences as concurrent as opposed to consecutive and awarded sixty days probation time credit (Relator’s Exhibit B). Nothing in this record supports the theory that Poucher is entitled to a new probation revocation hearing.

No writ of mandamus should issue on this claim.

CONCLUSION

The preliminary writ of mandamus should be quashed and the petition for mandamus denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06(b) and contains 5,032 words, excluding the cover, this certification and the appendix, as determined by Microsoft Office Word 2003 software; and
2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free and
3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, this 28th day of February, 2008, to:

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The Honorable David Lee Vincent III  
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