

**IN THE SUPREME COURT OF MISSOURI**

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**NO. SC95619**

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**STATE EX REL., CHARLES ZIMMERMAN,**  
**Relator,**

**v.**

**HONORABLE DAVID DOLAN,**  
**Respondent.**

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**BRIEF IN OPPOSITION TO WRIT OF PROHIBITION**

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## STATEMENT OF THE CASE

This case is about the authority of a Missouri court to hold a probation violation hearing on a Missouri term of probation that expired while the offender was serving an Indiana sentence for a crime the offender committed in Indiana while on a Missouri probation term. The Missouri court issued a *capias* warrant and suspended the probation during the five-year period following the imposition of a probation term. But the offender was not returned to Missouri, and the violation hearing was not held until well beyond five years after the imposition of the probation term.

The offender seeks relief through the extraordinary and discretionary writ of prohibition. The offender, Zimmerman, raises two issues. First, Zimmerman alleges that holding a probation violation hearing many years after the violation, when Zimmerman returned to Missouri following the completion of his Indiana sentence, violates the Due Process Clause. Second, Zimmerman alleges that holding a hearing only after he returned to Missouri violates Mo. Rev. Stat. §559.036. Zimmerman argues that the court violated statute because it did not make every reasonable effort to conduct a revocation hearing before the expiration of the probation period.

This case therefore presents three issues for this Court. Did the probation court violate the Due Process Clause? Did the probation court violate the

relevant statute? And is this a matter in which this Court should issue the extraordinary and discretionary writ of prohibition?

## STATEMENT OF THE FACTS

Charles Zimmerman pled guilty in the Circuit Court of Mississippi County to first-degree robbery in 1997 (Petitioner's Exhibit 1). The Circuit Court of Mississippi County sentenced Zimmerman to twenty-years' imprisonment, but suspended execution of the sentence and placed Zimmerman on five-year period of probation on September 11, 1997. *Id.* The court allowed Zimmerman to serve his probation in Indiana. Zimmerman violated his probation and was returned to Missouri as a probation violator using a capias warrant in 2000 (Petitioner's Exhibits 2-7).

The Circuit Court of Mississippi County revoked Zimmerman's probation on May 9, 2000, and sent Zimmerman to 120 days' shock incarceration under Mo. Rev. Stat. §559.115 (Petitioner's Exhibit 6). On September 5, 2000, the court issued an order placing Zimmerman on a second five-year term of probation to start on September 8, 2000, that could be served in the State of Indiana (Petitioner's Exhibit 7). But on the night of September 17 and 18, 2000, Zimmerman was involved in an armed robbery in Indiana that resulted in the victim's death (Petitioner's Exhibit 9). The initial probation violation report related to the Indiana offense issued on December 31, 2002, with a supplemental report issuing on May 29, 2003. *Id.* Zimmerman pled guilty to felony robbery on May 21, 2003, in Indiana, with his charges being reduced from murder, robbery,

and assisting a criminal (Violation Hearing Transcript at 25). According to testimony, Zimmerman received a 26-year sentence and Indiana offenders usually serve half. *Id.* at 28-29. Zimmerman began serving an Indiana sentence for that offense on or about September 28, 2003, according to Zimmerman's pleadings (Petitioner's Exhibit 13, a filing by Zimmerman alleging that on March 22, 2005, he had served two years, 5 months and 22 days on his Indiana sentence).

A docket entry on January 16, 2003, indicates the initial probation report recommended delayed action (Petitioner's Exhibit 10). A docket entry of June 4, 2003 indicates that the May 29, 2003 report recommends revocation and a *capias* warrant. *Id.* A docket entry of June 6, 2003 indicates the court issued a *capias* warrant for Zimmerman. *Id.* The warrant calls for Zimmerman's arrest and return for a probation violation on his Missouri first-degree robbery probation. (Petitioner's Exhibit 8).

The court scheduled revocation hearings for January 11 and March 8, 2005, but in each case Zimmerman did not appear because he was serving a sentence in Indiana (Petitioner's Exhibit 10). On March 9, 2005, the Circuit Court of Mississippi County suspended Zimmerman's probation. *Id.*

A March 17, 2005 note to Zimmerman from Indiana officials indicates that Missouri contacted Indiana on March 16, 2005, and indicated they would be

filing paperwork as they wanted to pick up Zimmerman “for trial” (Petitioner’s Exhibit 12). In May 2005, Zimmerman filed a document in the probation court demanding disposition of his Mississippi County case based on Article III of the Interstate Agreement on Detainers (Petitioner’s Exhibit 13). A document dated in December 2006, and denominated as a motion to dismiss in Mississippi County asks that the Missouri case be dismissed based on the Interstate Agreement on Detainers (Petitioner’s Exhibit 14). In November 2006, Zimmerman wrote the circuit clerk and the probation court judge asking for disposition of his Missouri case under the Interstate Agreement on Detainers (Petitioner’s Exhibits 15 and 16). Zimmerman attached a motion for appointment of counsel and a form requesting disposition of his case under the Interstate Agreement on Detainers (Petitioner’s Exhibits 17 and 18). These documents are noted on the docket sheet (Petitioner’s Exhibit 10).

On April 8, 2008, Indiana authorities informed Zimmerman that they had spoken to “dispatch” in Mississippi County and had been informed that Zimmerman’s warrant was active “but they will not extradite” and that Indiana authorities “have ended the warrant in our system.” (Petitioner’s Exhibit 19). What appears to be an Indiana printout concerning the warrant dated May 2, 2008, contains the notion “PER SHERIFF’S DEPARTMENT, STILL ACTIVE BUT WILL NOT EXTRADITE” (Document 20).

Nearly three years later, on March 1, 2011, Zimmerman filed a motion to dismiss his case based on the Interstate Agreement on Detainers pointing out to the circuit court that Missouri officials had indicated to Indiana officials the warrant is active but they will not extradite. (Document 21). On April 5, 2011, the circuit court issued the following docket entry “By order of the Court, Prosecuting Attorney to prepare writ for Sheriff’s Department to pick up in Indiana. Sheriff’s Office ordered to remove ‘will not extradite’ per notation.” (Document 10).

But apparently the probation court’s order was not carried out, because a fax from the Mississippi County Sheriff’s Department to an Indiana official dated January 16, 2014, apparently in response to an inquiry about Zimmerman, states “Subject does have active warrant, however per Cory (465) Jail Administrator we will not extradite.” (Document 23). A subsequent Indiana computer printout indicates a violation of probation warrant for the first-degree robbery offense “PER FAX FROM SHERIFF, BUT WILL NOT EXTRADITE FROM INDIANA.” *Id.*

The Indiana Department of Corrections contacted The Mississippi County Sheriff’s Office shortly before Zimmerman’s scheduled release, and the Mississippi County Sheriff’s Office sent someone to pick Zimmerman and bring him back to Missouri on the probation violation warrant on the day of

Zimmerman's scheduled release (Violation Hearing Transcript at 16-18). The violation warrant was served on January 25, 2016 (Petitioner's Exhibit 10).

On March 8, 2016, Zimmerman filed a petition for a writ of prohibition in the Missouri Court of Appeals raising essentially the same claims he raises here. The Court of Appeals denied the petition on March 16, 2016 (Docket Sheet *State ex rel. Zimmerman v. Dolan*, SD54363). On April 7, 2016, Zimmerman filed a petition for a writ of prohibition in this Court; Respondent filed Suggestions in Opposition then a return to this Court's preliminary writ (Docket Sheet *State ex rel. Zimmerman v. Dolan*, SC95619).

On April 26, 2016, Zimmerman moved to continue the scheduled violation hearing until May 10, 2016, and the court granted Zimmerman's motion (Docket Sheet, *State v. Zimmerman*, 33RO29600741). The court held a violation hearing on May 10, 2016, before this Court issued its preliminary writ (Transcript of Violation Hearing).

The Extradition Coordinator for the Indiana Department of Corrections testified that it was his policy to adhere to orders and release temporary custody of offenders. *Id.* at 5. He testified on cross-examination that he is aware that the Interstate Agreement on Detainers does not apply to probation violations. *Id.* at 6. On questioning from the court, the Director made clear that if he had released Zimmerman on a writ to Missouri before completion of his Indiana prison term,

he would have expected Zimmerman's return to complete his Indiana sentence. *Id.* at 6-7.

On redirect, the Director testified that if he had received a writ, Indiana *probably* would have had a hearing to grant the writ, and probably would have placed specifics on the writ concerning where the offender would be housed, ineligibility for bond, and return to Indiana. *Id.* at 8. When the court asked the Director if he was referring to a return from the Department of Corrections, the Director responded, no a return from the court. *Id.* at 8. But the court noted it would lose jurisdiction over the case after sentencing. *Id.* The Director testified that he knew Indiana had sent prisoners to Missouri on detainers, but did not recall if they had ever done so on a writ. *Id.* at 9.

Corey Hutchison, the former jail administrator of Mississippi County testified that he was the jail administrator for about two years. *Id.* at 10. Hutchison testified that from September 2008 through May 2012 he was the jail security officer. *Id.* at 11. He was generally the person making extradition arrangements when the sheriff and jail administrator decided to extradite someone. *Id.*

Hutchison testified that the sheriff would decide whether to extradite people from out of state, and dispatchers would put "will not extradite" language on warrants that are entered in the MULES system. *Id.* at 12. Hutchison

testified he does not know how the decision to put “do not extradite” on a warrant is made. *Id.* at 12-13. Hutchison testified that he was the jail administrator when Zimmerman was brought to the jail in January 2016. *Id.* at 13.

Hutchison indicated he was not aware until 2016, when Zimmerman was ready for pickup, that a docket entry indicated that the court had ordered the removal of the “will not extradite” notation from the warrant. *Id.* at 13-14. Hutchison had no recollection of a conversation about Zimmerman’s extradition referenced in public defender notes and no recollection of another alleged conversation with a Ms. Sexton in 2008. *Id.* at 13-15. Ms. Sexton was the Indiana official who indicated in April 2008 that she had spoken to “dispatch” who had indicated Mississippi County will not extradite (Petitioner’s Exhibit 19).

Sheriff Moore testified that he had been the elected sheriff since 2005 (Violation Hearing Transcript at 20). The sheriff did not know why a notation not to extradite was placed on the 2003 warrant. *Id.* He indicated he was never aware of an order to remove the notation. *Id.* at 21. When informed that a note was faxed to the sheriff’s office from the circuit clerk’s office on April 5, 2011, the sheriff indicated the note would have gone to the jail administrator and the sheriff did not remember it. *Id.* The sheriff testified that most of the time now

the jail administrator decides whether to put “will not extradite” language on a warrant, but the sheriff did not know who made that decision before he became sheriff. *Id.* at 21-22. The sheriff testified that he was never contacted by the judge or the clerks about the warrant from 2011 to 2016 to find out why his office was not following the court order. *Id.* at 23.

After testimony from a probation officer, the court found Zimmerman had violated his probation. *Id.* at 30. The court then scheduled sentencing for June 14, 2016. *Id.* But this Court entered its preliminary writ on May 24, 2016.

## SUMMARY OF ARGUMENT

United States Supreme Court precedent holds that it does not violate the Due Process Clause to wait until an offender completes an out of state sentence before considering whether to revoke his parole or probation. That is because how the offender behaved in prison throughout his sentence may provide useful information about whether an offender has been rehabilitated or should be revoked. Zimmerman's principal case, a case about delay between conviction and sentencing, is not on point.

There is no dispute that the probation court expressed its intention within the parole term to conduct a violation hearing. The court did this by issuing a capias warrant and suspending the probation. Therefore, the issue is whether the court made every reasonable effort to notify Zimmerman and hold a hearing within the probation term. The court did.

When an offender is serving an out of state criminal sentence, it should generally be considered reasonable to hold a violation hearing after the offender completes his out of state sentence. If a foreign state were to return an offender during the service of an out of state sentence, something it is not certain a foreign state would necessarily do, the offender would have to be returned to the foreign state after the hearing, then possibly brought back again to Missouri. That is inefficient and deprives the court of the full benefit of evaluating the

offender's rehabilitation after his foreign sentence. It also is not reasonable to risk releasing dangerous felons into the community because of uncertainties in the process of retrieving offenders. It is more reasonable to read the statute to allow the return of offenders after the completion of an out of state term of imprisonment so the probation court can make a reasoned determination of whether the offender may be safely released into the community with the benefit of full knowledge of his rehabilitation, or lack of it, during his foreign sentence.

Even if it is not per se reasonable to wait until the completion of an out of state prison term to hold a hearing, the offender has the burden of showing there was a way to get Zimmerman back during the probation term, and that the trial court did not make all reasonable efforts to execute that method. The record indicates it is probable but not certain that Indiana would have returned Zimmerman. The statute is aimed at the trial court. Here the court issued a *capias* warrant and then directed the prosecutor and the sheriff to take specific actions to execute it. That apparently did not happen. But the court took the reasonable steps it could take. The statute does not require the court to carry out the functions of the executive branch in securing the offender and bringing him back to Missouri.

Finally, this is not a proper case for the extraordinary and discretionary writ of prohibition. The trial court made reasonable efforts to bring Zimmerman

back during the term of probation. That did not ultimately happen until Zimmerman was released from prison in Indiana. But the soundest result here is for the trial court to evaluate whether Zimmerman has been rehabilitated, and then either discharge him from probation or not, based on that evaluation. The last time Zimmerman was released on probation he was quickly involved in a crime that resulted in a man's death. Prohibition should not be used here in a way that risks a similar result without an evaluation of Zimmerman's rehabilitation by the trial court.

## ARGUMENT

**The trial court acted constitutionally and within its statutory authority in holding a violation hearing on Zimmerman’s Missouri probation, after Zimmerman was released from the service of his Indiana sentence.**

**A. The standard of review for receiving a writ of prohibition is difficult to meet, and even if the standard is met, the writ is discretionary.**

A writ of prohibition is appropriate: (1) to prevent the usurpation of judicial power when a lower court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction, or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted. *State ex rel. Strauser v. Martinez*, 416 S.W.3d 798, 801 (Mo. 2014). (“In a prohibition proceeding the burden is on the petitioning party to show that the trial court exceeded its jurisdiction, and that burden includes overcoming the presumption of right action in favor of the trial court’s ruling.” *State ex rel. Dixon v. Darold*, 939 S.W.2d 66, 69 (Mo. App. S.D. 1997)). But prohibition is a discretionary writ with no right to have one issued. *State ex rel. Linthicum v. Calvin*, 57 S.W.3d 855, 857 (Mo. 2001).

**B. United States Supreme Court precedent dictates it is not a Due Process Clause violation for a court to delay a probation violation hearing until an offender completes the criminal sentence he is serving in another jurisdiction.**

In *Moody v. Daggett*, 429 U.S. 78 (1976) the United States Supreme Court rejected a claim that it violated the Due Process Clause to delay a parole revocation hearing until after an offender completed a ten-year sentence for manslaughter, a crime he committed while on parole. The Court found that the parolee clearly committed a violation of parole by committing the new offense for which he was sentenced and imprisoned. *Id.* at 89. The Court held that the only remaining inquiry was whether to revoke, which required a prediction of whether the offender could be released without his committing further antisocial acts. *Id.* The Court found that to hold a revocation hearing immediately would deprive the decision maker of one of its potentially most significant sources of information, the offender's prison record on his new sentence, and would foreordain revocation as the most significant new information would be the parolee's new crimes. *Id.*

In *Carchman v. Nash*, 473 U.S. 716 (1985), the United States Supreme Court dealt with the case of a New Jersey probationer who committed a crime in Pennsylvania and received a Pennsylvania sentence while on the New Jersey

probation. The holding of the case is that the Interstate Agreement on Detainers does not apply to probation revocation cases, but the reasoning is the same as the Due Process Clause analysis in *Moody*, which the Court cites. *Id.* at 730-34.

The Court noted that where a probation violation is based on an offense that has resulted in a new sentence, the fact that a violation occurred has already been determined and, as in *Moody*, the only remaining issue is whether to revoke based on the violation. *Id.* at 732. The Court distinguished *Barker v. Wingo*, 407 U.S. 507, 514 (1972), which deals with the Due Process Clause right to a speedy trial. *Carchman*, 473 U.S. at 732-33. The Court noted that in a speedy trial case a long delay can impair a defendant's ability to defend himself. *Id.* at 733. But that is not the case in a probation revocation case where the violation was a criminal offense that resulted in a conviction. *Id.* The Court also cited the reasoning of *Moody* for the proposition that it may often be desirable to delay rather than expedite the final disposition of probation revocation proceeding where the offender is serving a sentence for the offense that was the source of the violation. *Id.* at 733.

As *Moody* and *Carchman* teach, there is no Due Process Clause violation from delaying a revocation hearing until the completion of a sentence, when the sentence is the result of the alleged violation. The placement of Missouri detainer did not create such a right. In *Farish v. Missouri Dept. of Corrections*,

416 S.W.3d 793, 797 (Mo. 2013), in a case finding an offender was not entitled to credit on a Missouri sentence for time in custody in Kansas awaiting trial on a Kansas charge and later serving a Kansas sentence, this Court held that a detainer is a request filed by a criminal justice agency to either hold a prisoner for the agency or notify the agency when the release of the prisoner is imminent, and that it merely puts the institution in another jurisdiction on notice that the prisoner is wanted upon his release from confinement. That is what happened here. Zimmerman had no Due Process Clause right to dispose of his Missouri probation revocation caused by the placement of a Missouri detainer, or for any other reason.

The case Zimmerman cites in support of an alleged due process right to dispose of his probation revocation is not on point. The principal case on which Zimmerman relies for Due Process Clause analysis is *Betterman v. Montana*, 136 S. Ct. 1609 (2016) (Zimmerman Brief at 22-25). *Betterman* was a case in which the Court held that the Sixth Amendment right to a speedy trial does *not* apply to a delay between conviction and sentencing. But the Court noted in *dicta* that a defendant has a diminished right to due process after conviction that includes a fundamentally fair sentencing proceeding, which might be impacted by exorbitant delay. *Id.* at 1617-18. In a concurrence, Justice Sotomayor, suggested that if in the future a case challenging the impact of a delay between

conviction and sentencing on fairness should come before the Court, the four-factor *Barker* test should be used to evaluate the impact of the delay as it is used in delay before trial cases and civil forfeiture cases. *Id.* 1619 (Sotomayor J. concurring).

*Moody* and *Carchman* are on point. In fact, in *Carchman* the Court explicitly pointed out that the *Barker* analysis is not applicable to probation revocations where the offender is serving an out of state sentence, because in a speedy trial situation, delay makes defense of the case more difficult, but delay in a probation revocation like this one makes it easier to argue against revocation. *Carchmann*, 473 U.S. at 732-33. There is no Due Process Cause violation that results from deciding whether to revoke Zimmerman's probation after he has served his Indiana prison time.

**C. The probation court acted within its authority in this case in holding a violation hearing after the offender completed his out of state sentence and was returned to Missouri as a probation violator.**

**1. The general rule should be that if a probation violator is serving an out of state sentence, the probation court acts reasonably and within Missouri law by considering revocation when the offender completes**

**his out of state sentence and is returned to Missouri.**

In *Stelljes v. State*, 72 S.W.3d 196 (Mo. App. W.D. 2002) the Missouri Court of Appeals rejected a claim that a revoking court did not make all reasonable efforts to revoke an offender's probation within the probation term for two independent reasons. First, the court found that it was the probationer's burden to prove that there was a way to get the offender back to Missouri for the revocation hearing during the probationer's Washington State child molestation sentence, and that the probation court unreasonably failed to use that way. The court found that the probationer failed to meet that burden. *Id.* at 203. Second, the court held that assuming *arguendo* that there was a means to bring the offender back, and the court failed to utilize it, it was still reasonable to wait until the offender completed his Washington sentence. *Id.* at 203-04.

The court held that it was necessarily reasonable and in compliance with the Missouri statute not to bring the offender back until after his foreign sentence, because to do otherwise would be unreasonably burdensome. *Id.* The court noted that both 18 U.S.C. 3583(i) and Mo. Rev. Stat. §559.036 contained a reasonableness standard for the timeliness of a revocation hearing, but that federal precedent found that it was necessarily reasonable to wait until a federal offender on supervised release completed his state sentence before holding a federal revocation hearing. *Id.* *Stelljes* is still good law. *See State ex rel. Strauser*,

416 S.W.3d 798, 804 n.1 (Mo. 2014) (Fischer J. concurring) (a court uses every reasonable effort to hold a timely hearing when it issues a capias warrant, suspends probation, and holds a revocation hearing whenever the probationer is returned to the supervising court).

Zimmerman alleges that *State ex rel. Dotson v. Holden*, 416 S.W.3d 821 (Mo. App. S.D. 2013) “abrogated” *Stelljes* (Zimmerman’s Brief at 22). But that is not so. *Dotson* was held in the *Missouri* Department of Corrections and could have been brought to court at any time through a writ of habeas corpus, then returned to the Department. *Id.* at 824-25. The controlling case on a probationer serving an out of state sentence is still *Stelljes*. And the facts of this case illustrate the correctness of the decision in *Stelljes*.

In this case, within a month of beginning a new term of Missouri probation, after an initial revocation, Zimmerman was involved in a robbery in Indiana that resulted in a man’s death (Petitioner’s Exhibits 7 and 9). This is exactly the type of fact pattern that the United States Supreme Court predicted in *Moody* would cause a revocation to be foreordained if a hearing were held immediately. If the court could have brought Zimmerman back, the county would have had to pay to have Zimmerman brought back to Missouri (Petitioner’s Exhibit 6, Extradition Invoice). Then the county would have had to pay to send him back to Indiana (Violation Hearing Transcript at 6-9). Finally,

when Zimmerman completed his Indiana prison term, Missouri would have to bring him back again to serve the remainder of his Missouri sentence.

So the burdens of an immediate hearing would have included a *less* accurate revocation hearing in which revocation would have probably been foreordained, thousands of dollars in transportation expenses, and a lack of incentive to Zimmerman to rehabilitate himself in Indiana as he would not be facing a chance of probation at the completion of his Indiana imprisonment.

- 2. Even if the general rule is not that a probation court acts reasonably and within its statutory authority by considering probation revocation after an offender completes an out of state sentence, in this case the offender failed to meet his burden of showing the court acted unreasonably and outside its statutory authority.**

It is the probationer's burden to show that the court did not make every reasonable effort to hold the revocation hearing during the probation term. *Stelljes*, 72 S.W.3d at 203. That includes showing how the offender could have been brought back to Missouri and how the court failed. *Id.*

The statutory command for reasonable action to revoke probation within the term of probation is aimed at the circuit court, not at various executive

officials. *See Williams v. State*, 927 S.W. 2d 903, 905-07 (Mo. App. S.D. 2006). In *Williams* the probation court issued a capias warrant, but allegedly at the court's direction, the warrant contained a notation "not to be entered in NCIC", presumably the National Crime Information Center database. *Id.* The Court of Appeals held that the court acted reasonably and did all it could do by issuing the capias warrant. *Id.*

In this case, the court not only issued a capias warrant, but ordered the "will not extradite" language, apparently added by executive officials, to be removed, and ordered the prosecutor to take further action when Zimmerman brought this language to the court's attention years after it had occurred, and years after it had been brought to Zimmerman's attention. (Petitioner's Exhibit 10, Docket Sheet). As in *Williams*, the court did what it reasonably could here. It is not reasonable to expect the court to personally arrange the return of out of state probation violators. That is a matter for the executive branch.

**D. This Court should not issue the extraordinary and discretionary writ of prohibition in this case.**

"Prohibition is a discretionary writ, and there is no right to have the writ issued." *State ex rel. Linthicum*, 57 S.W.3d at 57-8. Here, the probation court issued a capias warrant within the probation term and suspended the probation term. The court further ordered additional action by the prosecutor and sheriff

to return Zimmerman from his Indiana prison term. But that did not happen until after the completion of Zimmerman's prison term for an Indiana robbery resulting in a death. If Zimmerman had been returned to Missouri immediately, and an immediate hearing held, he likely would have been revoked, sent back to Indiana, and then eventually returned again to Missouri to serve the remainder of his 20-year Missouri sentence. That would not have been the best result for anyone, as the court would have been deprived of information, Zimmerman would have been denied a realistic chance of avoiding revocation, and the State would have incurred the expense of transportations of Zimmerman from Indiana and back, and then the expense of another return to Missouri.

Now, although Zimmerman quickly violated his probation by being involved in a killing, he has a chance to avoid revocation by convincing the probation court of his rehabilitation after serving around 13 years in an Indiana prison. But if he has not been rehabilitated, the probation court has chance to determine that as well, and a chance to protect society. That is the best possible result. If there had been a statutory violation in this case, which there has not been, this would still not be a proper case to issue an extraordinary and discretionary writ of prohibition. The best result is to allow the probation court to evaluate Zimmerman's rehabilitation and then either revoke or discharge him from probation, as the United States Supreme Court discussed in *Moody* and

*Carchman.*

**CONCLUSION**

This Court should deny the petition for writ of prohibition.

Respectfully submitted,

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**CERTIFICATE OF SERVICE AND COMPLIANCE**

The foregoing brief contains 5,312 words, which is within the applicable limitations in length set forth in Rule 84.06(b). The undersigned hereby certifies that on this 11th day of August, 2016, the foregoing was filed electronically with this Court, therefore to be served electronically by operation of the Court's electronic filing system upon counsel for Zimmerman, who are electronic filers.

/s/ Michael J. Spillane  
Assistant Attorney General