

**IN THE
MISSOURI SUPREME COURT**

STATE OF MISSOURI)	
)	
ex. rel.)	
)	
CHARLES ZIMMERMAN)	
)	
Relator,)	
)	
vs.)	No. SC95619
)	
THE HONORABLE)	
DAVID DOLAN,)	
CIRCUIT JUDGE)	
MISSISSIPPI COUNTY)	
)	
)	
Respondent.)	

**PEITION FOR WRIT OF PROHIBITION TO THE
MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF MISSISSIPPI COUNTY, MISSOURI
THIRTY THIRD JUDICIAL CIRCUIT,
THE HONORABLE DAVID DOLAN, JUDGE**

RELATOR’S BRIEF

**Amy E. Lowe, Mo. Bar 63423
Assistant Public Defender
1010 Market Street, Suite 1100
Saint Louis, Missouri 63101
Phone: (314)340-7662
FAX: (314)340-7685
Email: Amy.Lowe@mspd.mo.gov
ATTORNEY FOR APPELLANT**

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JURISDICTIONAL STATEMENT

Relator filed a writ with the Court of Appeals Southern District cause number SD34363. The Southern District then denied the writ without opinion on March 16, 2016. Although procedure generally mandates initially filing in the circuit court, the honorable David Dolan, the subject of this writ, is the sole sitting circuit judge of Mississippi County. As such, this cause fell into the exception for cases in which an initial filing in the circuit court would be futile. *See, e.g., Abel v. Wyrick* 574 SW2d 411 (Mo 1978). Relator then filed a writ with this Court on April 7, 2016. Jurisdiction lies in the Supreme Court of Missouri. Mo. Const., Art. V, §§ 4,5,Rule 97.01.

STATEMENT OF FACTS

In 1997 Bill Clinton was president, undersigned counsel was in the seventh grade, and Charles Zimmerman was the first teenager sentenced under Missouri's Dual jurisdiction statute RSMO 211.073. The Honorable David A. Dolan accepted his plea of guilty to Robbery in the 1st degree and sentenced him to twenty (20) years in the Department of Corrections, suspended execution of sentence, and placed him on five (5) years of supervised probation on September 11, 1997. [*Exhibit 1, Sentence and Judgement*] Mr. Zimmerman transferred his probation to his home state of Indiana

In January of 2000, Bill Clinton was serving his last year in office. On January 11, 2000, the Court issued a Capias Warrant on Information for Mr. Zimmerman demanding that he be brought from the custody of Allen County, Indiana to the Circuit Court of Mississippi County to answer to a probation violation on the Robbery 1st case. [*Exhibit 2, Capias Warrant on Information*]. On March 22, 2000, Mr. Zimmerman executed a waiver of extradition in Fort Wayne, Allen County, Indiana. [*Exhibit 3, Waiver of Extradition*]. On March 27, 2000, a Return on the Capias Warrant was filed by the Mississippi County Sheriff's Department, which indicated that Mr. Zimmerman had been transported from Allen Co. Indiana "by Trans Corp." [*Exhibit 4, Capias Return*] On March 30, 2000, the Sheriff's Department received an extradition invoice in the amount of \$720.00

from TransCor America for the delivery of Mr. Zimmerman from Allen Co to Mississippi County. The invoice indicates Mr. Zimmerman was picked up on March 25, 2000 and delivered March 26, 2000. [*Exhibit 5*, Extradition Invoice]

Mr. Zimmerman appeared in the Circuit Court of Mississippi County on May 9, 2000 for his probation violation hearing. The Court revoked his probation, retained jurisdiction pursuant to RSMO §559.115, and ordered 120 days of shock incarceration. [*Exhibit 6*, Probation Violation Determination and Order]. On September 5, 2000, approximately 120 days later, the Honorable David A. Dolan executed a Judgment and Order placing Mr. Zimmerman on probation for a period of five (5) years. A condition of the order reads as follows:

“Be allowed to reside in the State of Indiana upon receipt of reporting instructions and upon signing agreement to the terms of an Order of Extradition in favor of the State of Missouri.”

[*Exhibit 7*, Judgment and Order for Release]

By 2003, George W. Bush was president, the first iPod had been sold, and the World Trade Center destroyed by terrorists. Counsel for Mr. Zimmerman had graduated from high school. In January, 2003, a probation violation report was filed with the Mississippi County Circuit Court recommending delayed action based on Charles Zimmerman being charged with a crime in Indiana. On June 4,

2003, a second probation violation report was filed with the Court recommending revocation/capias. These reports are not located in the court file. A warrant for Mr. Zimmerman's arrest was issued on June 2006. [*Exhibit 8, Warrant for Arrest (Probation violation)*].

By 2004, George Bush was still president, but beginning his fight for a second term. On December 30, 2004, a probation hearing was scheduled for January 11, 2005 at the request of Mr. Zimmerman's probation officer. By 2005, the election had been decided in Bush's favor, and on January 11, 2005, the Court continued Mr. Zimmerman's hearing to May 8, 2005. The docket entry for that date indicates a plan to writ Mr. Zimmerman to court for the May 8, 2005 court date: i.e. reads "(need writ)." [*Exhibit 10, Docket Entries, Page 2*]

No writ ever issued. [*Exhibit 10, passim*]. On March 8, 2005, the probation violation hearing was again continued. A Docket entry indicates "cause passed for writ." No future court date was given and the case was not re-docketed. [*Exhibit 10, Docket Entries, Page 2*].

On March 9, 2005, the Circuit Clerk emailed the Honorable David A. Dolan stating that Mr. Zimmerman's probation is due to expire on September 7, 2005 and inquiring if it should be suspended. The Honorable David A. Dolan replied "yes"

and an entry suspending Mr. Zimmerman's probation appears on March 9, 2005 in the docket entries. [*Exhibit 11, Emails & Exhibit 10, Docket Entries, Page 2*].

On March 17, 2005, Defendant received correspondence from an Indiana Department of Corrections official stating that Missouri had contacted Indiana and had informed them on March 16, 2005 that they would be filing the necessary paperwork for Mr. Zimmerman's extradition "this week." [*Exhibit 12, Indiana Department of Correction Request Form*]. The corrections official assured Mr. Zimmerman that he need not file anything as "they definitely want to pick you up for trial." This correspondence appears in the Court file, but it is unclear when it was received. [*Exhibit 12, Indiana Department of Correction Request Form*]

On May 24, 2005, the Court filed Mr. Zimmerman's "Demand for Trial" correspondence. [*Exhibit 13, Demand for Trial*]. The demand referenced the interstate agreement on detainers and explicitly stated that he "agrees to waive extradition." The correspondence included his physical location in the Indiana State Prison in Michigan City, included the PO Box, and stated that he was currently 2+ years into a 30 year sentence. [*Exhibit 13, Demand for Trial*]. Mr. Zimmerman also requested the appointment of counsel. [*Exhibit 13, Demand for Trial*].

In 2006, George Bush was well into his second term in office. Samuel Alito took the bench of the United States Supreme Court. And on January 4, 2006, another interstate agreement on detainers motion authored by Mr. Zimmerman, was notarized and sent to Mississippi County. [*Exhibit 14*, Interstate Agreement on Detainer Motion, Page 5] It is not time stamped for receipt by the Mississippi County Clerk but is included in the Court file. [*Exhibit 14*, Interstate Agreement on Detainer Motion, Page 5]. Mr. Zimmerman requested dismissal of charges and detainers and again provided his location in Michigan City, IN at the Department of Corrections, the PO box, and his Indiana DOC ID number. [*Exhibit 14*, Interstate Agreement on Detainer Motion, Page 5]

On November 26 through 28 of 2006, the Court received several more items of correspondence from Mr. Zimmerman. These items appear to have come as a whole, but are timestamped November 26, 27, or 28. Mr. Zimmerman again provided his physical location in the Indiana Department of Corrections, at this point in New Castle, Indiana, the facility address, and his DOC ID number. The items include a letter to the clerk, a letter to the judge, a petition for the appointment of counsel, and an incomplete Interstate Agreement on Detainers Form. [*Exhibit 15*, Letter to Clerk] [*Exhibit 16*, Letter to Judge] [*Exhibit 17*, Petition for Counsel] [*Exhibit 18*, IAD Form].

In his letter to the Honorable David A. Dolan, Mr. Zimmerman indicated that he had been trying to resolve his warrant for some time. It also indicated that the State of Indiana had agreed to release temporary custody of him for the purpose of conducting probation violation proceedings. [*Exhibit 16*, Letter to Judge]

In his Petition for the Appointment of Counsel, Mr. Zimmerman again referred to the Interstate Agreement on Detainers, his 30 year sentence, but also included several paragraphs about his need for an attorney. He stated that he “is indigent and cannot pay a (sic) attorney.” He stated that he “can be better assisted with legal counsel” and that he “needs proper counsel to assist him.” There is no indication that this paperwork was provided to the Public Defender’s Office. [*Exhibit 17*, Petition for Counsel]

By 2008 Barack Obama was campaigning to become the first African American President of the United States. Mr. Zimmerman was still campaigning to have his probation revoked and his sentence executed. On April 8, 2008, a document was executed to Mr. Zimmerman from Autumn Sexton, a re-entry specialist at the New Castle Correctional Facility in the Indiana Department of Corrections. It indicated that she has contacted Mississippi County about the active warrant. Dispatch informed her that the warrant was active, but Missouri would not extradite. It is unknown when the court received this document, but it appears in the Court file. [*Exhibit 19*, Indiana DOC/Mississippi County MO correspondence]

A document generated on May, 8, 2008 by the Indiana Department of Corrections referencing the warrant appears in the case file, but there is no indication of when it was received. It indicated the warrant “End Date was April 8, 2008 and states “PER SHERIFF’S DEPARTMENT, STILL ACTIVE BUT WILL NOT EXTRADITE.” [Exhibit 20, Indiana Department of Corrections Warrant Status Document].

By 2011, President Barack Obama had been elected, was facing the first volleys of a reelection fight in 2012. On March 1, 2011, the Court received and filed another item of correspondence from Mr. Zimmerman referring to the Interstate Agreement on Detainers. Mr. Zimmerman again provided his physical location, now in Miami Correctional facility in Bunker Hill, IN, the facility address, and his DOC ID number. [Exhibit 21, 2011 Correspondence from Mr. Zimmerman, page 6]

On April 11, the Court entered the following order: “By Order of the Court, Prosecuting Attorney to prepare Writ for Sheriff’s Department to pick up in Indiana. “Sheriff’s Office to remove “will not extradite” per notation. (Copy of docket entry and Warrant/Detainer faxed to SO and PA)” [Exhibit 10, Docket Entries, Page 1] [Exhibit 22, Order to Prepare Writ and Remove Will Not Extradite Notation]. No writ appears to have been prepared. [Exhibit 10, passim]. Prior to the Order and with the exceptions of simply showing “Filings” of Mr.

Zimmerman's correspondence, the Court had not made a docket entry since Defendant's probation was suspended in 2005 when it issued the 2011 order. No further docket entries were made until January 2016. [*Exhibit 10*, Docket Entries, Pages 1-2]

By 2014, the President had not changed, though rumors of who would stand for election in 2016 had begun. On January 16, 2014, the Mississippi County Sheriff's Department faxed the Miami Correctional Center in Bunker Hill Indiana in reference to the warrant. It again indicated the warrant is active but, per jail administrator Corey, will not extradite. [*Exhibit 23*, Fax from Mississippi County Sheriff's Department]

By 2016, yet another presidential election was in full swing. On January 14, 2016, upon his release from the Indiana Department of Corrections on parole, Mr. Zimmerman was arrested on the 2003 warrant by the Mississippi County Sheriff's Department, who travelled to Indiana to stop him from being released. He had served 13 years in custody in the State of Indiana for the offense that violated his probation in Missouri. [*Exhibit 9*, Probation Violation Report dated 02/05/16, pages 1 & 3]

On February 8, 2016, a third probation violation report was filed. This report referred back to the 2003 reports and referenced investigations in January

2002 with regard to a crime taking place in 2000. A family member of the victim refers to Mr. Zimmerman having received a 26 year sentence. Mr. Zimmerman states he received a 30 year sentence. His probation officer verifies he served 13 years in the Indiana Department of Corrections for the offense that violated his Missouri Probation. This indicates his sentence began in 2003. [*Exhibit 9, Probation Violation Report dated 02/05/16*]

Mr. Zimmerman applied for counsel and Travis C. Bargeon of the Missouri State Public Defender's Office entered his appearance. At the first court date of February 9, 2016, Mr. Bargeon indicated to the Court his position that the probation term had expired and that every reasonable effort to conduct a probation violation hearing over the past 13 years had not been properly exhausted. The Court disagreed and indicated its intention to hold a probation violation hearing on March 8, 2016. The Honorable David A. Dolan has been the judge throughout the pendency of this entire case

Mr. Zimmerman filed a request for a writ of prohibition prohibiting the honorable David Dolan from revoking his probation. The writ was denied without opinion by the Southern District Court of appeals. A writ was then filed in this Court. While this writ was pending but before a preliminary writ was issued a probation violation hearing in cause 33R029600741 was held the afternoon of May, 10 2016. At that hearing the extradition coordinator with the Indiana Department

of Corrections testified by live video from Indiana on behalf of relator Charles Zimmerman. The testimony adduced from this witness was that had Indiana received a writ or other court order, of any sort, that Mr. Zimmerman would have been released into Missouri custody to allow a probation revocation hearing. Such interstate releases, even outside the interstate disposition of detainers act, were a common and routine matter. Relator also called the sheriff and the chief of staff at the Mississippi county jail. Both the sheriff and the jail's head of staff testified that they had no knowledge of the removal of the no extradition language on the warrant. They never received a writ. The State did not address why a writ was never issued or generated, despite Court orders to do so. The State's sole witness was a probation officer who testified that while on probation, Mr. Zimmerman was incarcerated for a new felony offense in Indiana. Then, at the conclusion of this hearing, the Court made a finding that Mr. Zimmerman had violated his probation. The Court made no explicit finding on the matter of jurisdiction

The Court took the matter under advisement, but noted that Mr. Zimmerman would be sent to prison on June 14th if this writ was not granted. The Court had previously ordered that should the writ not be granted, the office of the Public Defender is to pay costs, including jail board, through this time. [See docket. April 26, 2016 in 33R029600741].

Petitioner has not sought habeas relief in any higher court. He has not sought relief in the circuit court. However, as the honorable David Dolan is the sole circuit judge for the 33rd judicial circuit, any such writ filed at the circuit level would be futile. As such this cause falls into the exception for generally filing an extraordinary writ first in the lower court. See e.g. *Abel v. Wyrick* 574 SW2d 411 (Mo 1978).

To avoid needless repetition additional facts may be set out in the argument section of this brief.

POINT RELIED ON

The trial court erred in setting Relator's case for a probation revocation hearing and finding Relator in violation of the terms of his probation, because Respondent no longer has jurisdiction over Relator under RSMO 559.036, in that Relator's probation ended by operation of law years before this hearing, there was a known and readily available means to procure the presence of the relator for that hearing, and Respondent should have procured the presence of the relator and held a probation violation hearing within the time allowed by law or discharged Relator. The court's error exceeded the court's authority under RSMO § 559.036 and deprived Relator of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 10 of the Missouri Constitution. This error was severe enough to have resulted in a usurpation of judicial power by the lower court, as well as a miscarriage of justice requiring the issue of an extraordinary writ.

Strauser v. Martinez, 416 S.W.3d 798, 801-02 (Mo. 2014)

State ex rel. Dotson v. Holden, 416 S.W.3d 821, 823 (Mo. App. S.D. 2013)

Betterman v. Montana ___US___, No 14-1457 (2016)

RSMO § 559.036

US Const. IV, XIV; Mo Const, Article I, Section 10

ARGUMENT FOR POINT RELIED ON

The trial court erred in setting Relator's case for a probation revocation hearing and finding Relator in violation of the terms of his probation, because Respondent no longer has jurisdiction over Relator under RSMO 559.036, in that Relator's probation ended by operation of law years before this hearing, there was a known and readily available means to procure the presence of the relator for that hearing, and Respondent should have procured the presence of the relator and held a probation violation hearing within the time allowed by law or discharged Relator. The court's error exceeded the court's authority under RSMO § 559.036 and deprived Relator of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 10 of the Missouri Constitution. This error was severe enough to have resulted in a usurpation of judicial power by the lower court, as well as a miscarriage of justice requiring the issue of an extraordinary writ.

Standard of Review

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 Mo. Pub. Defender Commission v. Pratte*, 298 S.W.3d 870, 880 (Mo 2009).

Argument

The power of the court to revoke probation shall extend for the duration of the term of probation designated by the court and for any further period which is reasonably necessary for the adjudication of matters arising before its expiration, provided that some affirmative manifestation of an intent to conduct a revocation hearing occurs prior to the expiration of the period and that every reasonable effort is made to notify the probationer and to conduct the hearing prior to the expiration of the period.

--RSMO §559.036

Charles Zimmerman was placed on his current term of probation in the year 2000. He was sentenced to the standard felony probation term of five years. In 2005, shortly before his probation was to expire, Charles' probation was suspended. Now, in 2016, the Court wishes to revoke that probation. This does not and cannot satisfy the demands of due process of law nor does it satisfy the dictates of Missouri's Statutes.

The Missouri Supreme Court has addressed the limited circumstances in which probation may be revoked after term of probation has run. In *State ex rel. Strauser v. Martinez*, 416 S.W.3d 798, 801-02 (Mo. 2014), the Missouri Supreme court ruled that Section 559.036 governed the duration of probation terms and the power of a court to revoke a defendant's probation. The Supreme Court noted that the term begins on the day imposed, and ends after the term assigned by the judge, or five years. *Id.* When the probation term ends, so does the court's authority to revoke probation. *Id.*, citing *State ex rel. Stimel v. White*, 373 S.W.3d 481, 484 (Mo.App.2012); RSMO §559.036.8

By the operation of RSMO §559.036 there are two conditions, and only two conditions, under which a court may revoke probation after a probation term has ended. First, the court must have manifested its intent to conduct a revocation hearing during the probation term. Second, it must make every reasonable effort to notify the probationer and hold the hearing before the term ends. *See, Strauser v. Martinez*, 416 S.W.3d 798, 801-02 (Mo. 2014), *Stelljes v. State*, 72 S.W.3d 196, 200 (Mo.App.2002). Unless the court meets both of these conditions, it cannot hold a revocation hearing after probation expires.

Reasonable efforts include procuring the defendant from prison where the Court is aware he is incarcerated and has the means to procure the defendant from prison. For example in *State ex rel. Dotson v. Holden*, 416 S.W.3d 821, 825

(Mo.App. S.D. 2013) the defendant was incarcerated within Missouri. The Court knew he was incarcerated in Missouri. *Id.* The Court was aware of the procedure to writ the defendant to Court. *Id.* The Court failed to do so. Because the Court, through reasonable efforts could have brought the defendant to Court, the failure to do so deprived the court of authority to revoke probation after five years had run. *Id.*

Here it is established that the Court knew how to procure the defendant for a revocation proceeding, was able to procure the defendant, and failed to do so. This is established because the Court had previously brought Mr. Zimmerman from incarceration in Indiana and revoked his probation on this same case, and under the same judge. Mr. Zimmerman was first placed on probation in 1997. In 2000 he committed an offense in Indiana and was incarcerated. As a result, a warrant was issued, and Mr. Zimmerman was brought to Missouri for a probation violation hearing from where he was incarcerated. Mr. Zimmerman's probation was revoked in Missouri, and after completing a 120 day program, he was placed by on probation in 2000. The judge for all of these proceedings was the honorable David Dolan who is the sole circuit judge for Mississippi County, Missouri.

Here, the Court did not make reasonable efforts to procure Mr. Zimmerman's presence before his probation expired. The Court was aware of the violation since 2003. In 2004 and 2005, the court set the cause for revocation

hearing, then continued the case because the defendant had to be moved by writ, and no Writ had issued. [*Exhibit 10, Docket Entries, Page 2*]. In 2005, shortly before the probation was to expire, the Court suspended the term of probation. [*Exhibit 10, Docket Entries, Page 2*] The Court did not make another effort to bring the defendant in for a hearing until 2011, over five years after the term of probation had run. The Court discovered the sheriff's department had placed "no extradition" language in the capias warrant issued (there still was no writ, merely a warrant). The Court ordered the no extradition language be dropped and that Mr. Zimmerman be brought in by a writ. The Court ordered the prosecuting attorney to generate a writ. [*Exhibit 10, Docket Entries, Page 2*] No writ was generated or filed by the prosecuting attorney. [*Exhibit 10, Docket Entries, passim*] The Court never issued a writ. [*Exhibit 10, Docket Entries, passim*]

Mr. Zimmerman meanwhile had been diligently working to attempt to get his probation revoked. He repeatedly wrote the Court. He filed requests to dispose of detainers. He requested that the Court appoint Counsel. He confirmed with the Indiana Department of Corrections that they were willing to allow him to be extradited to Missouri. In arguing against issuing a writ the state has tried to use Mr. Zimmerman's efforts against him. They attempted to reframe Mr. Zimmerman's arguments as an interstate disposition of detainers argument. [Respondents brief in SD343634] despite Mr. Zimmerman never having raised

and interstate disposition of detainees argument. [Suggestions in support of a writ of habeas corpus SD34363]. The state raised *Stelljes v. State*, 72 S.W.3d 196 203-04 (Mo. App. W.D. 2002) as an argument that Mr. Zimmerman should have no recourse.

This ignores the fact that *Stelljes v. State*, 72 S.W.3d 196 203-04 (Mo. App. W.D. 2002) has been abrogated. In *State ex rel. Dotson v. Holden*, 416 S.W.3d 821, 823 (Mo. App. S.D. 2013), the Southern District Court of appeals noted that *Stelljes* does not apply where there is a known way to procure the defendants presence. In Mr. Zimmerman's case there was a known way to procure Mr. Zimmerman's presence.. [Exhibit 2, 4 and 5]. It was used in the same cause to secure his presence previously. [Exhibit 2, 4 and 5]. The Court ordered such methods to be used, but then failed to follow up with the Sherriff or prosecuting attorney to assure that they were used.

There is one thing that is nowhere in this record: a writ. The Court knew a writ was needed. The Court delegated drafting a writ to the prosecuting attorney. [Exhibit 10, Docket Entries, Page 2]. But the Court did nothing in 13 years to actually see that a writ was issued. Had a writ been issued, Mr. Zimmerman would have been released, as he had before. It was the policy of the department of corrections in Indiana to allow the transport of an inmate on any Court order such as a writ. [TR at]. Indiana was more than willing to allow him to be transported.

[*Exhibit 12*]. Indiana was in communication with Mr. Zimmerman and Missouri to allow Mr. Zimmerman to be picked up. [*Exhibit 12*, Indiana Department of Correction Request Form] Mr. Zimmerman was cooperative and actively working to be transported. The State of Missouri had the ability to transport him, and had previously done so using a prisoner transportation service. [*Exhibit 5*]. The Court was well aware of how to procure Mr. Zimmerman's presence from Indiana- it had done so to revoke his probation on this same case in 2000. [*Exhibit 10*]. The Court twice noted the need to issue a writ before the term of probation ended in 2000. It never issued a writ. [*Exhibit 10*]. It did not order a writ generated until 2011. [*Exhibit 10*]. It did not follow up on that request until 2016. This is not making reasonable efforts to hold a hearing.

Finally, the State has repeatedly argued that there is no due process interest in a timely revocation hearing. *See, e.g.*, [Response to writ at 10]. This ignores the Supreme Court of the United States' recent decision in *Betterman v. Montana* ___US___, No 14-1457 (2016). In *Betterman*, the Supreme Court explicitly noted that alongside statutes and rules, the due process clause of the United States Constitution protects against exorbitant delays between a finding of guilt and actual sentencing. *Id.* slip opinion at 10 ("Further, as at the prearrest stage, due process serves as a backstop against exorbitant delay"). However, the Court also noted the open question of the extent of such protections.

Because the extent of such protections is an open question, both the Court and the two concurring opinions note the need for the question to be litigated in the near future. However, the court did offer some guidance. Justice Sotomayor's concurrence both suggested the correct test for judging if such a violation occurred, and also pointed out that the majority of Federal circuits already use that test for all delays after a finding of guilt, including collateral issues like forfeiture:

The Due Process Clause is “flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U. S. 471, 481 (1972). This Court thus uses different tests to consider whether different kinds of delay run afoul of the Due Process Clause. In evaluating whether a delay in instituting judicial proceedings following a civil forfeiture violated the Due Process Clause, the Court applied the test from *Barker v. Wingo*, 407 U. S. 514 (1972)—the same test that the Court applies to violations of the Speedy Trial Clause. See *United States v. \$8,850*, 461 U. S. 555, 564 (1983). Under the Barker test, courts consider four factors—the length of the delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *Ibid.* None of the four factors is “either necessary or sufficient,” and no one factor has a “talismanic qualit[y].” *Barker*, 407 U. S., at 533.... [I]t seems to me that the

Barker factors capture many of the concerns posed in the sentencing delay context and that because the Barker test is flexible, it will allow courts to take account of any differences between trial and sentencing delays. *See* 407 U. S., at 531. The majority of the Circuits in fact use the Barker test for that purpose. *See United States v. Sanders*, 452 F. 3d 572, 577 (CA6 2006) (collecting cases).

Betterman v. Montana ___US___, No 14-1457 (2016)(Sotomayor concurring).

Here, considering the *Barker* factors, there would be a violation of Due process. The length of the delay was over a decade. During the time Mr. Zimmerman waited for a probation revocation hearing, his attorney graduated from undergraduate, completed a masters degree , completed law school, passed the bar exam in three states and worked as a Public defender for five years. Two presidents have served, and there is a reasonable likelihood a third will be elected. This delay is, by no definition, short.

Further, as to the next factor, there is significant prejudice to the defendant as instead of concurrent time in prison he, after fully serving his other sentence and paroling, will now serve an additional 20 years at 85% to serve under RSMO §558.019. Had the Court acted within the time allowed by the law, Mr. Zimmerman would serve far less time in prison.

As to the final factor, Mr. Zimmerman repeatedly asserted his rights. He filed multiple requests. He worked with Indiana to make himself available for pick up. He did everything he could to have his sentence executed. But his sentence never was executed because the Court did not issue a writ.

A delay of over a decade due to no one filing the necessary paperwork is not holding a hearing as soon as reasonably possible. It is not fundamentally fair. It is not due process. There was a way to procure Mr. Zimmerman, which had been used before in this same case, and would have been used again had the Court taken reasonable efforts to hold the hearing.

CONCLUSION

WHEREFORE, based on the argument as set forth in this brief, relator Charles Zimmerman respectfully requests that this Honorable Court make its preliminary writ permanent and prohibit the honorable David Dolan from taking any action on this case other than discharging relator, Charles Zimmerman, from probation.

Respectfully submitted,

/s/ Amy E. Lowe
Amy Lowe
Missouri Bar #63423
Assistant Public Defender
1010 Market Street, Ste. 1100
St. Louis, MO 63102
Tel. (314) 340-7662
Fax (314) 340-7685

Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 20th of June 2016 a true and complete copy of the foregoing was submitted to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102, shaun.mackelprang@ago.mo.gov, via the Missouri e-filing system, care of Mr. Michael Spillane, Mike,spillane @ago.mo.gov Office of the Attorney General.

/s/ Amy E. Lowe _____
Amy E. Lowe

CERTIFICATE OF COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Rule 55.03 and that it complies with the page limitations of Special Rule 360. This brief was prepared with Microsoft Word for Windows, uses Times New Roman 14 point font, and does not exceed the word and page limits for a reply brief in this court. The word-processing software identified that this brief contains 5485 words, and 29 pages including the cover page, signature block, and certificates of service and of compliance. In addition, I hereby certify that this document has been scanned for viruses with Symantec Endpoint Protection Anti-Virus software and found virus-free. It is in searchable PDF form.

/s/ Amy E. Lowe _____
Amy E. Lowe
Missouri Bar #63423
Assistant Public Defender
1010 Market Street, Ste. 1100
St. Louis, MO 63102
Tel. (314) 340-7662
Fax (314) 340-7685

Attorney for Appellant