

**SC92230, *State of Missouri v. Grant L. Mixon*,  
consolidated with  
SC92450, *State of Missouri v. Jeffrey D. Anderson***

Appeals from the Greene County circuit court, Judges Jason R. Brown and Calvin R. Holden  
Argued and submitted Oct. 4, 2012; opinion issued Nov. 13, 2012

**Attorneys:** In SC92230, the state was represented by Evan J. Buchheim of the attorney general's office in Jefferson City, (573) 751-3321, and T. Todd Myers of the Greene County prosecuting attorney's office in Springfield, (417) 868-4061; and Mixon was represented by Rosalynn Koch of the public defender's office in Columbia, (573) 882-9855, and Bryan M. Delleville of the public defender's office in Springfield, (417) 895-6740.

In SC92450, the state was represented by Evan J. Buchheim of the attorney general's office in Jefferson City, (573) 751-3321, and J. Daniel Patterson of the Greene County prosecuting attorney's office in Springfield, (417) 829-6329; and Anderson was represented by Alexa I. Pearson of the public defender's office in Columbia, (573) 882-9855, and Shawn R. Markin of the public defender's office in Springfield, (417) 895-6740.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The state appeals the dismissals of two felony cases after the trial court found the applicable statute of limitations violated the state constitution. In a 6-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the trial court's judgments and remands (sends back) the cases. The constitutional provision governs how the state must proceed in a criminal prosecution but is silent as to when a prosecution commences, leaving such policy decisions within the province of the legislature. As such, the statute governing when prosecution commences does not violate or otherwise conflict with the constitution.

**Facts:** These cases involve very similar factual situations and procedural histories. In SC92230, the state in January 2011 filed a felony complaint, along with a probable cause statement, alleging Grant Mixon had committed the felony of receiving stolen property stemming from events occurring in May 2008. In SC92450, the state in February 2011 filed a felony complaint, along with a probable cause statement, alleging Jeffrey Anderson had committed the class C felonies of burglary and stealing stemming from events in March 2008. Both complaints were filed before the applicable statute of limitations – section 556.036.2(1), RSMo – expired. In May 2011, after Anderson waived preliminary hearing, the state filed an information charging him with one count of second-degree burglary and one count of stealing more than \$500. In December 2011 – prior to a preliminary hearing or the state filing an information in Mixon's case – the trial court dismissed the case with prejudice, declaring section 556.036.5 unconstitutional in violation of article I, section 17 of the Missouri Constitution. In February 2012, the trial court granted a motion to dismiss the case against Anderson with prejudice based on an allegation that section 556.036.5 was unconstitutional. The state appeals both dismissals.

**REVERSED AND REMANDED.**

**Court en banc holds:** Mixon and Anderson failed to demonstrate that section 556.036.5 “clearly and undoubtedly” violates article I, section 17.

The subsections of section 556.036 provide the statutes of limitation for criminal prosecution. Subsection 2 provides that prosecutions for most felony offenses “must be commenced” within three years. Subsection 4 provides that time for the period of limitations “starts to run ... on the day after the offense is committed.” Subsection 5 – at issue here –states: “A prosecution is commenced ... for a felony when the complaint or indictment is filed.” And subsection 6 tolls the statute of limitations “[d]uring any time when a prosecution against the accused for the offense is pending in this state[.]” Together, the plain language of these subsections provides that the statute of limitations for a felony is tolled when a complaint is filed.

Article I, section 17 details *how* the state must proceed in criminal cases – prohibiting felony prosecutions “otherwise than by information or indictment.” Nothing in the constitution provides the time frame for *when* that prosecution begins or even whether a statute of limitations is necessary for criminal cases. In fact, there are no statutes of limitations for certain prosecutions, such as for murder or any class A felony. The length and duration of statutes of limitation for felony prosecutions are purely policy decisions falling squarely within the legislature’s province.

The previous version of section 556.036.5 provided that a prosecution “is commenced either when an indictment is found or an information filed.” That language was amended in 2006 to provide that a prosecution for a felony “is commenced ... when the complaint or indictment is filed.” This amendment does not conflict with the constitutional provision as nothing in its language purports to allow a valid criminal prosecution for a felony without the filing of an information or indictment.

Mixon and Anderson mistakenly rely on this Court’s opinion in *State ex rel. Morton v. Anderson*, 804 S.W.2d 25, 27 (Mo. banc 1991), for the proposition that a prosecution commences “only when the indictment has been found or information filed ....” That case, however, did not involve a challenge to the constitutional validity of section 556.036.5, dealt with a previous version of that statute of limitations and held that the state failed to follow the explicit requirements of the statute.