

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| STATE OF MISSOURI ex rel. |) | No. ED100826 |
| ERNEST KIZER, Relator, |) | |
| |) | Writ of Mandamus |
| vs. |) | Lincoln County Circuit Court |
| |) | 11L6-CR01524-01 |
| HONORABLE CHRIS KUNZA |) | Hon. Chris Kunza Mennemeyer |
| MENNEMEYER, JUDGE OF THE |) | |
| CIRCUIT COURT OF LINCOLN |) | |
| COUNTY, MISSOURI, Respondent. |) | Filed: February 25, 2014 |

The relator, Ernest Kizer, seeks a writ of mandamus and a writ of prohibition directing the respondent, the Honorable Chris Kunza Mennemeyer, to order that Kizer be released from the Missouri Department of Corrections and placed on probation and prohibiting the respondent from executing Kizer's sentence, respectively. We issued a preliminary order in mandamus. The respondent has filed an answer, and admitted all allegations in Kizer's petition. We dispense with further briefing in the interest of justice as permitted by Rule 84.24(j).

PRELIMINARY ORDER IN MANDAMUS MADE PERMANENT

WRIT DIVISION TWO HOLDS: Following Kizer's completion of a 120-day treatment program in the Department of Corrections, the trial court denied Kizer's release on probation, and ordered execution of his eight-year sentence without holding a hearing as required by section 559.115.3 RSMo. (Supp. 2012). Because the trial court failed to hold a hearing within 90 to 120 days of Kizer's sentence, the time to order execution of the sentence expired. Thus, Kizer must be released on probation. The preliminary order in mandamus is made permanent. The respondent is directed to release Kizer on probation.

Opinion by: Lawrence E. Mooney, P.J. Glenn A. Norton, J. and Gary M. Gaertner, Jr., J., concur.

Attorney for Relator: George M. Archer

Attorney for Respondent: Leah Wommack Askey

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
SHOULD NOT BE QUOTED OR CITED.**