

**Summary of SC93340, *State ex rel. Amy Strauser v. The Honorable Sandy Martinez*, consolidated with SC93345, *State ex rel. Sharon Edmonds v. The Honorable Sandy Martinez***

Proceedings originating in St. Francois County

Argued and submitted November 6, 2013; opinion issued January 14, 2014

**Attorneys:** Strauser and Edmonds both were represented by Courtney Goodwin of the public defender's office in Farmington, (573) 218-7080, and in both cases, the state was represented by Gregory L. Barnes of the attorney general's office in Jefferson City, (573) 751-3321.

*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:** Two defendants seek a writ (order) prohibiting the trial court from holding probation revocation hearings after their probation terms ended. In a 7-0 decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri makes permanent its writs of prohibition. Although the trial court was attempting to ensure the defendants made ordered payments while avoiding imprisonment, this is not permitted by the statute. Failing to make every reasonable attempt to rule on the pending probation revocation motions while the defendants still were on probation divested the trial court of authority to hold revocation hearings after their terms ended.

Judge Zel M. Fischer wrote a concurring opinion. He writes that the trial court would not have anticipated that the generosity it extended to the probationers would result in a loss of legal authority to revoke probation when the probationers again violated the terms of probation. Further, he suggests that a 2013 amendment to the statute will make it rarer for a court to lose authority to revoke probation.

**Facts:** The underlying criminal cases of Amy Strauser and Sharon Edmonds are similar, and because they present identical legal questions, they are consolidated for opinion. Both defendants pleaded guilty to criminal charges, and the trial court suspended imposition of sentence and placed both on probation for five years.

In SC93340, the court ordered that Strauser serve five years on probation, to end June 4, 2012, and pay nearly \$8,400 in restitution. The state filed a motion to revoke and suspend probation in August 2007 due to her failure to make restitution payments. The court held a hearing on the motion in September, passed the cause to the next month and ordered Strauser to pay \$100 each month toward her restitution. It ultimately suspended her probation in September 2011 and later scheduled a probation revocation hearing for April 2012. When the date came, the court continued the case and ordered Strauser to keep making restitution payments. She made 37 regular court appearances between September 2007, when the revocation hearing initially was scheduled, and June 4, 2012, when her probation ended. She then appeared in court an additional eight times until February 2013, when the court appointed a public defender to represent her.

In SC93345, the court ordered that Edmonds serve five years on probation, to end September 4, 2008, and to pay court costs. The court suspended her probation in July 2008 for failure to pay

court costs. On the last day of her probation, the court held a probation violation hearing and ordered her to pay \$55 per month. She appeared in court in person or through counsel more than 20 times between September 2008, when her probation ended, and January 2013, when she filed a motion to discharge probation, which the court overruled.

Both Strauser and Edmonds now seek writs prohibiting the trial court from holding probation revocation hearings after their probation terms expired.

### **WRITS MADE PERMANENT.**

**Court en banc holds:** In each case, the trial court did not have the authority to hold revocation hearings after the probation terms ended because it did not make every reasonable effort to hold the hearings during the probation terms pursuant to section 559.036.8, RSMo. Under this statute, a court may extend its authority to revoke probation after the term designated only if the court manifested its intent to conduct a revocation hearing during the probation term and then makes every reasonable effort to notify the person on probation and to hold the hearing before the term ends. Here, there is no issue that the court manifested its intent to conduct the revocation hearings during the probation term and notified Strauser and Edmonds. But it did not make every reasonable attempt to conduct the revocation hearings during their probation terms. Strauser made regular court appearances between the date of her initial revocation hearing and the date when her probation ended. The court could have held the hearing and ruled on the revocation motion during any of these appearances in satisfaction of section 559.036.8, but it did not. Similarly, even though Edmonds appeared in court on the day her probation was to end, the court did not rule on the revocation motion. Nothing in section 559.036.8 suggests the defendants must prove they are ready to proceed, nor was it their duty to ensure the trial court ruled on the pending revocation motions. Although the court was attempting to ensure the maximum payments while avoiding imprisoning the defendants, the statute does not permit that. Failing to make every reasonable attempt to rule on the pending probation revocation motions while the defendants still were on probation divested it of authority to conduct revocation hearings beyond the five-year probation terms.

**Concurring opinion by Judge Fischer:** The author notes that, given section 559.036.8's requirement that every reasonable effort be made to conduct the revocation hearing before the probationary period expires, future trial courts in similar circumstances will be likely to revoke probation quicker, impose a sentence, and then either suspend the execution of the sentence so it can order an additional term of probation or order the sentence to be executed rather than risk losing the legal authority to hold the probationer responsible for violating the terms of probation. He further notes a 2013 amendment to the statute will make it rarer for a similar case to result in the loss of legal authority to revoke probation but will likely result in more prison sentences because now restitution can be ordered as a condition of parole.