

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

LEON W. PETTIS

Appellant

v.

MISSOURI DEPARTMENT OF CORRECTIONS

Respondent

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DOCKET NUMBER **WD69398**

DATE: November 12, 2008

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Appeal From:

Circuit Court of Cole County, MO  
The Honorable Jon Edward Beetem, Judge

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Appellate Judges:

Division Four: Thomas H. Newton, C.J., Victor C. Howard and Alok Ahuja, JJ.

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Attorneys:

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Counsel for Appellant  
Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

LEON W. PETTIS, Appellant,

v.

MISSOURI DEPARTMENT OF CORRECTIONS, Respondent

**WD69398**

**Cole County**

Before: Division Four Judges: Thomas H. Newton, C.J., Victor C. Howard and Alok Ahuja, JJ.

Pettis, an inmate serving a life sentence for murder, filed an action against the Department of Corrections (DOC) seeking a declaration that he was entitled to jail-time credit on a subsequent sentence for drug possession within a correctional facility. Pettis’s possession sentence was ordered to run for four years *consecutive* to his life sentence. After appeal, the possession sentence was vacated. Pettis was subsequently resentenced on the possession conviction to five years running *concurrent* with his life sentence. In the instant action, Pettis sought credit for his time in prison between his original possession sentencing date and his re-sentencing date. The DOC filed a motion for judgment on the pleadings. The circuit court granted the motion. Pettis appeals, raising two points.

**AFFIRMED.**

**Division Four holds:**

(1) Pettis argues that section 558.031.1, which credits time in custody “related to” an offense, entitles him to credit because the “scheduled release date” from his prior life sentence was cancelled after he was charged with possession. We disagree. For time in custody to be “related to” a subsequent offense, an inmate must establish some right to be free absent the charge and a scheduled release date gives no such entitlement.

(2) Pettis argues that section 558.031.4, which grants a prisoner credit for “time served” under a vacated sentence, entitles him to credit for the time between his vacated sentencing date and his resentencing after appeal. However, the vacated sentence was imposed to run consecutively and he would not have started serving it until his life sentence was concluded. Pettis was thus not entitled to credit because he did not serve time under the vacated sentence. A prior version of the section would have entitled Pettis to credit for this time but the legislature removed the language and we must read such an amendment as purposeful.

**Opinion by: Thomas H. Newton, Chief Judge**    Date: November 12, 2008

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