

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**COMPLETE TITLE OF CASE:**

**STATE OF MISSOURI EX REL ERIC G. ZAHND, PLATTE COUNTY  
PROSECUTING ATTORNEY, RELATOR,**

**v.**

**THE HONORABLE ABE SHAFER, JUDGE OF THE CIRCUIT COURT OF  
PLATTE COUNTY, MISSOURI, DIV 1, RESPONDENT.**

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DOCKET NUMBER WD69983

DATE: January 27, 2009

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Writ From:  
PLATTE COUNTY CIRCUIT COURT

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Appellate Judges:  
Division One: Victor C. Howard, P.J., and Lisa White Hardwick and Alok Ahuja, JJ.

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Attorneys:  
Joseph W. Vanover, Esq., Platte City, MO, **for relator.**

Erin Cozad, Esq., North Kansas City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY  
COURT OF APPEALS – WESTERN DISTRICT

STATE OF MISSOURI, EX REL, ERIC G. ZAHND  
PLATTE COUNTY PROSECUTING ATTORNEY,

RELATOR,

V.

THE HONORABLE ABE SHAFER, JUDGE OF THE CIRCUIT COURT  
OF PLATTE COUNTY, MISSOURI, DIVISION I,

RESPONDENT.

WD69983

Platte County

Before Division One Judges: Victor C. Howard, P.J., and Lisa White Hardwick and Alok Ahuja, JJ.

In 2006, Milissa Gabauer pleaded guilty to robbery in the second degree. The circuit court sentenced her to 12 years' incarceration. The court's June 2006 Judgment suspended execution of the sentence and placed Ms. Gabauer on probation for five years.

On June 19, 2008, the circuit court revoked Ms. Gabauer's probation based on her admitted violation of her probation conditions. Although it had entered judgment in 2006 sentencing Ms. Gabauer to 12 years' imprisonment, after finding that her probation should be revoked the court sentenced her to a six-year term.

The State petitioned this Court for a writ of mandamus, arguing that the trial court exceeded its jurisdiction in reducing Ms. Gabauer's sentence from 12 to six years at the time of probation revocation in 2008.

**ABSOLUTE WRIT OF MANDAMUS ISSUED.**

**Division One holds:**

In *State ex rel. Poucher v. Vincent*, 258 S.W.3d 62, 64 (Mo. banc 2008), the Missouri Supreme Court made clear that a trial court generally has no authority to alter the prison sentences previously imposed in a judgment of conviction, even though *execution* of the sentences was suspended in that earlier judgment. The statements to this effect in *Poucher* are confirmed by prior Missouri appellate decisions, and by § 559.036.3, RSMo 2000, which specifies the trial court's authority upon revocation of a defendant's probation.

Under the principles discussed in *Poucher*, the circuit court acted in excess of its jurisdiction when, in the course of revoking Ms. Gabauer's probation, it purported to modify the sentence it had imposed upon her at the time of her conviction in 2006. We

accordingly issue an absolute writ of mandamus ordering that the circuit court vacate the judgment it entered on June 19, 2008.

**Opinion by: Alok Ahuja, Judge**

January 27, 2009

**THIS SUMMARY IS UNOFFICIAL AND  
SHOULD NOT BE QUOTED OR CITED.**