

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, ex rel., CHRIS KOSTER,
RELATOR**

v.

**THE HONORABLE ROBERT KOFFMAN, CIRCUIT JUDGE
OF COOPER COUNTY, AND JAMEY BRANDES, CIRCUIT
CLERK , COOPER COUNTY CIRCUIT COURT,
RESPONDENTS**

DOCKET NUMBER WD70688

DATE: JUNE 30, 2009

ORIGINAL PROCEEDING ON WRIT OF CERTIORARI

Appellate Judges:

Writ Division: Victor C. Howard, P.J., Harold L. Lowenstein and Lisa White Hardwick, JJ.

Attorneys:

Andrew Hassel, for Relator

David Grace, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

STATE OF MISSOURI, ex rel. CHRIS KOSTER, RELATOR

v.

**THE HONORABLE ROBERT KOFFMAN, CIRCUIT JUDGE OF COOPER COUNTY,
AND JAMMEY BRANDES, CIRCUIT CLERK , COOPER COUNTY CIRCUIT COURT,
RESPONDENTS**

WD70688

Before Writ Division: Victor C. Howard, P.J., Harold L. Lowenstein and Lisa White Hardwick, JJ.

The Attorney General seeks a writ of certiorari asking this court to quash the Cooper County Circuit Court's grant of a habeas corpus writ ordering prisoner Brian Prater be remanded to the county sheriff for further proceedings. Mr. Prater filed his petition for writ of habeas corpus arguing that the sentence imposed was in excess of the maximum sentence authorized by law because one of the two prior DWI offenses used to prove his status as a persistent offender was a prior municipal offense that resulted in an suspended imposition of sentence. *Turner v. State*, 245 S.W.3d 826 (Mo. banc 2008), held that a prior municipal DWI conviction resulting in an SIS cannot be used to enhance punishment under section 577.023, RSMo.

WRIT OF HABEAS CORPUS IS QUASHED.

Where nothing in the record supports Mr. Prater's allegation that the municipal offense used to prove his status as a persistent offender resulted in an SIS, his confinement was facially valid, and the circuit court exceeded the bounds of its jurisdiction in granting habeas corpus relief.

Opinion by: Victor C. Howard, Judge

June 30, 2009

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