

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

WALLACE N. WEIR,

Appellant

v.

STATE OF MISSOURI.

Respondent

DOCKET NUMBER WD70807

DATE: January 26, 2010

Appeal From:

Circuit Court of Bates County, MO
The Honorable James Kelso Journey, Judge

Appellate Judges:

Division **Three**

James Edward Welsh, P.J., Mark D. Pfeiffer, and Karen K. Mitchell, JJ.

Attorneys:

Wallace N. Weir, Jefferson City, MO

Appellant Acting Pro Se,

Attorneys:

Jamie P. Rasmussen, Jefferson City, MO

Counsel for Respondent

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

**WALLACE N. WEIR, Appellant, v.
STATE OF MISSOURI, Respondent**

WD70807

Bates County

Before Division Three Judges: Welsh, P.J., Pfeiffer, and Mitchell, JJ.

In 2001, a jury convicted Wallace Weir of first-degree burglary and armed criminal action. The court sentenced him as a persistent offender to consecutive terms of thirty years and fifteen years in prison. We affirmed his convictions and sentences on direct appeal and affirmed the circuit court's denial of his Rule 29.15 motion for post-conviction relief. In 2009, Weir filed a motion for reduction of his sentences pursuant to Rule 29.05 and for habeas corpus relief pursuant to Rule 91.06. The circuit court denied Weir's motion. On appeal, Weir claims that the insufficiency of the evidence to support the armed criminal action conviction entitles him to relief under either Rule 29.05 or Rule 91.06.

AFFIRMED.

Division Three holds:

(1) The circuit court did not err in finding that it lacked the power to grant Weir's request for relief under Rule 29.05. Rule 29.05 provides the circuit court with the power to reduce the punishment recommended by the jury if it finds that the punishment is excessive. Once the court imposes and enters a sentence that is consistent with the law, however, the court cannot grant the defendant the relief of reducing the sentence under this Rule. Weir was sentenced over seven years before he filed his Rule 29.05 motion. The sentences complied with the law and the judgment was final. Therefore, the court had no power to reduce Weir's sentences.

(2) Weir is not entitled to relief under Rule 91.06. Rule 91.06 makes it the duty of every court in this state to issue a writ of habeas corpus *sua sponte* where there is evidence from judicial proceedings before the court that a person is illegally confined. To the extent that Weir is appealing the circuit court's denial of his request to issue a writ of habeas corpus *sua sponte*, his appeal is tantamount to an appeal from the denial of a petition for writ of habeas corpus, which is not permissible. To the extent that Weir asks this court to issue a writ of habeas corpus *sua sponte*, we find no basis in the record to grant such relief.

Opinion by: James Edward Welsh, Judge

January 26, 2010

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