

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**THEODORE MITCHELL,
APPELLANT
vs.**

**JAY NIXON,
RESPONDENT**

DOCKET NUMBER WD73321

DATE: JULY 19, 2011

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Paul C. Wilson, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, P.J., Victor C. Howard and Thomas H. Newton, JJ.

Attorneys:

Theodore Mitchell, Appellant Pro-se

Michael J. Spillane, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

THEODORE MITCHELL, APPELLANT

v.

JAY NIXON, RESPONDENT

WD73321

Cole County, Missouri

Before Division Three Judges: Joseph M. Ellis, P.J., Victor C. Howard and Thomas H. Newton, JJ.

In 2003, Theodore Mitchell was convicted of one count of sodomy and sentenced to a term of ten years imprisonment for an offense committed on November 27, 2001. After Mitchell failed to complete the sex offender treatment program, following a hearing before the Board of Probation and Parole ("the Parole Board"), Mitchell was informed by the Parole Board that he would not be conditionally released and would have to serve his entire ten-year sentence. Mitchell subsequently filed a declaratory judgment action in the Circuit Court of Cole County seeking a declaration that § 558.011 is unconstitutional because it allows the Parole Board to usurp the role of the judiciary and increase his sentence. He further claimed that appearing before the Parole Board and being denied conditional release violated the prohibition against double jeopardy and denied him the right to jury trial and counsel. Mitchell, acting *pro se*, appeals from a judgment on the pleadings entered on his petition in the Circuit Court of Cole County.

AFFIRMED WITH MODIFICATION.

Division Three holds:

- (1) The exercise of judicial or quasi-judicial powers by an administrative agency does not violate the separation of powers clause.
- (2) Mitchell was not exposed to a second trial for his offenses, nor was he exposed to additional punishment, when he appeared before the Parole Board.
- (3) The Parole Board had the authority to extend Mitchell's conditional release date for failure to complete the sexual offender program.
- (4) In rendering that judgment, the trial court failed to include a declaration that § 558.011 did not violate article II, § 1 of the Missouri Constitution or the 5th or 6th Amendments to the United States Constitution, thereby failing to expressly address the request for a declaration before it. Pursuant to

our authority under Rule 84.14 to enter such judgment as the trial court should have, we hereby modify the judgment to include such a declaration.

Opinion by Joseph M. Ellis, Judge

Date: JULY 19, 2011

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