

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAVID A. KLINE,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD76228

Date: April 15, 2014

Appeal from:
Buchanan County Circuit Court
The Honorable Daniel F. Kellogg, Judge

Appellate Judges:
Division Two: Gary D. Witt, P.J., Lisa White Hardwick and Alok Ahuja, JJ.

Attorneys:
Jeannie M. Willibey, Kansas City, Mo, for appellant.
Shaun J. Mackelprang, Jefferson City, Mo, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

DAVID A. KLINE

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STATE OF MISSOURI,

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WD76228

Buchanan County

On January 17, 2002, the Buchanan County Prosecuting Attorney charged Kline with sodomy under § 566.060.2, RSMo Cum. Supp. 1993. At the time, Kline was also facing unresolved charges in federal and state courts in California. Kline's federal public defender contacted Buchanan County prosecutors, as well as state prosecutors in California, in an attempt to negotiate a global resolution of the charges pending against Kline in all three jurisdictions.

Buchanan County prosecutors indicated in 2002 and 2003 that they would be willing to accept a disposition under which Kline was sentenced to a term of imprisonment of eight years on the Missouri charge, to be served concurrently with his California state and federal sentences. Kline alleges that this offer from Buchanan County prosecutors became an enforceable plea agreement.

Kline pleaded guilty in California state and federal courts in 2003. He was not promptly returned to Missouri, however, to enter a guilty plea and be sentenced in Buchanan County. Kline served a total of over eight years on his federal sentence. At the conclusion of his term of imprisonment, he was extradited to Buchanan County in 2010 to address the sodomy charge. The circuit court sentenced Kline to eight years' imprisonment consistent with the prosecution's recommendation; Kline was given no credit or adjustment to his Missouri sentence, however, based on the time he had previously served in the federal correctional system.

Kline filed a motion for post-conviction relief, contending that his plea counsel was ineffective for failing to move to enforce the concurrent-sentencing aspect of his 2003 plea agreement. The circuit court denied the motion after an evidentiary hearing. Kline appeals.

AFFIRMED.

Opinion Holds:

Even if we assume that the 2003 plea agreement was binding on Buchanan County prosecutors (despite the fact that Kline had not yet pleaded guilty in Missouri), the Buchanan County prosecutors did not violate that agreement. At the time of Kline's Missouri sentencing in 2011, he had fully served his California state and federal sentences, and therefore at that time there was no pending California sentence to which Kline's Missouri sentence could run concurrently. Kline's Missouri sentence, imposed in 2011, could not be made retroactively concurrent with California sentences which had concluded before Kline's Missouri sentencing. Kline's plea counsel cannot be faulted for failing to file a motion for concurrent sentencing, when that motion would have been unsuccessful.

Kline may have a legitimate complaint that the courts, and counsel, did not assist him to obtain his early return to Missouri, so that he could be sentenced on the Buchanan County charges, and begin the running of his Missouri sentence at a time when it could have run concurrently with the California sentences. We are troubled by the fact that it appears Kline will now serve nearly twice the amount of prison time as Buchanan County prosecutors indicated they would find acceptable in 2003. Nevertheless, while prosecutors and the circuit court may have had the ability to address this issue in 2011 in the exercise of their charging and sentencing discretion, we do not.

Before: Division Two: Gary D. Witt, P.J., Lisa White Hardwick and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

April 15, 2014

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