

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE:**

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

**RELATOR,**

**v.**

**THE HONORABLE GARY OXENHANDLER,  
Circuit Judge of Callaway County,  
and JUDY GRONER, Circuit Clerk Callaway  
County Circuit Court,**

**RESPONDENTS.**

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DOCKET NUMBER WD79277

DATE: March 15, 2016

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Appellate Judges:

Writ Division: Gary D. Witt, Presiding Judge, Thomas H. Newton, Judge and Cynthia L. Martin, Judge

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Attorneys:

Gregory M. Goodwin, Jefferson City, MO, for Relator.  
Susan Kister and Robert B. Ramsey, St. Louis, MO, for respondents.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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

**RELATOR,**

**v.**

**THE HONORABLE GARY OXENHANDLER,  
Circuit Judge of Callaway County, and  
JUDY GRONER, Circuit Clerk Callaway  
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**RESPONDENTS.**

No. WD79277

Callaway County

Before Writ Division: Gary D. Witt, Presiding Judge, Thomas H. Newton, Judge and Cynthia L. Martin, Judge

This is an original proceeding in certiorari to review the grant of a writ of habeas corpus to habeas petitioner Shanon Swickheimer by the Callaway County Circuit Court. Swickheimer was committed to the custody of the Department of Mental Health by an order of commitment issued on July 9, 2007 by the Polk County Circuit Court following acceptance of a plea of not guilty by reason of insanity ("NGRI") to the class A felony of Assault 1st Degree--Serious Physical Injury. The writ of habeas corpus set aside Swickheimer's NGRI plea, and ordered his delivery into the custody of the Sheriff of Polk County, Missouri to be held pending further proceedings to address the underlying charge.

**The habeas court's record granting the writ of habeas corpus is not quashed in part, and is quashed in part.**

1. Consideration of a petition for writ of habeas corpus is limited to determining the facial validity of confinement. The facial validity of confinement is determined on the basis of the entire record of the proceeding in question. The essential question to be determined is whether a review of the entire record establishes that a habeas petitioner is being deprived of his liberty without due process of law.

2. Commitment proceedings, whether civil or criminal, are subject to both the equal protection and due process clauses of the Fourteenth Amendment. Acceptance of the NGRI defense, which results in court-ordered commitment with the Department of Mental Health, implicates a due process liberty interest even though acceptance of the defense yields an acquittal. Where an accused complains that his commitment pursuant to section 552.040 violates due process, a writ of habeas corpus is the appropriate remedy, as habeas corpus affords redress for unlawful restraints of liberty.

3. NGRI is an affirmative defense that only the accused has the authority to raise. And an accused is not required to assert the NGRI defense to the exclusion of other defenses. As a result, Chapter 552 imposes strict procedural limits on the trial court's authority to require an accused to submit to a NGRI mental evaluation, and on the State's and the trial court's authority to accept a NGRI plea.

4. Before the State and trial court are authorized to accept the NGRI defense: (i) the accused must first inject the defense by timely pleading NGRI or by timely filing a notice of intent to rely on the defense pursuant to section 552.030.2; (ii) thereafter, the trial court must order of record, after notice and on motion, a criminal responsibility evaluation pursuant to either section 552.030.3 or section 552.020.4; (iii) the accused must have no other defense besides NGRI *and* must file a written notice of exclusivity to that effect pursuant to section 552.030.2; and (iv) the criminal responsibility report prepared pursuant to section 552.030.3 or section 552.020.4 must support the NGRI defense. These statutory requirements safeguard an accused's unilateral right to determine whether to assert the NGRI defense at all, and the accused's unilateral right to determine whether to pursue the NGRI defense to the exclusion of other defenses.

5. The required statutory procedures were not followed in Swickheimer's case. The July 9, 2007 order and judgment committing Swickheimer confirms that the State and the underlying trial court relied on a April 9, 2007 criminal responsibility report to accept Swickheimer's NGRI defense. However, the April 9, 2007 report was not an authorized pre-trial evaluation pursuant to either section 552.030.3 or section 552.020.4 because it was ordered off-the-record before Swickheimer had asserted the NGRI defense. In addition, the April 9, 2007 report did not support the NGRI defense as it revealed that Swickheimer claimed the shooting of M.J. was accidental, rendering the report facially irreconcilable with Swickheimer's written notice of exclusivity of defense filed on July 9, 2007, thus raising a bona fide doubt that Swickheimer had another defense he was not willing to waive. That bona fide doubt is not resolved by the record.

6. Swickheimer is thus being confined in constraint of his liberties and in violation of his due process rights. The habeas court's record granting a writ of habeas corpus to release Swickheimer from confinement with the Department of Mental Health is not quashed.

7. The habeas court did not commit legal error by refusing to apply the escape rule to bar Swickheimer's habeas petition. The escape rule operates to deny the right of appeal if deemed appropriate in the exercise of an appellate court's discretion. The habeas court was not an appellate tribunal. Even if the escape rule is presumed available to dismiss a petition for writ of habeas corpus, application of the rule is subject to the exercise of discretion. The habeas court did not abuse its discretion in refusing to apply the escape rule to dismiss Swickheimer's petition as there is no indication that Swickheimer's escape from confinement for 43 days adversely affected the criminal justice system.

8. The habeas court's calculation of jail-time credit was in excess of its authority and an abuse of discretion. The habeas record's calculation of jail-time credit is quashed.

Opinion by Cynthia L. Martin, Judge

March 15, 2016

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