

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

APPELLANT,

**v.
TATUM CLARK McMILLIAN**

RESPONDENT.

DOCKET NUMBER WD79440

DATE: October 18, 2016

Appeal From:

Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division Four: Mark D. Pfeiffer, Chief Judge, Presiding, Victor C. Howard, Judge and Gary D. Witt, Judge

Attorneys:

Katharine A. Dolin, Jefferson City, MO, for appellant.

Tatum C. McMillian, Respondent Pro Se.

MISSOURI APPELLATE COURT OPINION SUMMARY

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STATE OF MISSOURI,

APPELLANT,

v.

TATUM CLARK McMILLIAN,

RESPONDENT.

No. WD79440

Cole County

Before Division Four Judges: Mark D. Pfeiffer, Chief Judge, Presiding, Victor C. Howard, Judge and Gary D. Witt, Judge

The State of Missouri ("State") appeals the order of the Circuit Court of Cole County granting Tatum McMillian's ("McMillian") motion to dismiss that sought the dismissal of his indictment based on the expiration of the statute of limitations.

AFFIRMED.

Division Four holds:

McMillian was charged with a felony of stealing government benefits by deceit under section 570.030. After the briefs were filed in this matter, the Missouri Supreme Court handed down *State v. Bazell*, No. SC95318, 2016 WL 4444392 (Mo. banc Aug. 23, 2016), which is dispositive of this appeal. *Bazell* held that the crime for which McMillian is charged may not be enhanced to a felony under section 570.030.3, as the felony enhancement provision as written is inapplicable.

Without the felony enhancement, the crime for which McMillian was charged is a Class A misdemeanor with a one-year statute of limitations. The State concedes that it failed to file the original charge against McMillian within the applicable one-year statute of limitations. Accordingly, the trial court did not err in dismissing McMillian's indictment.

Opinion by: Gary D. Witt, Judge

October 18, 2016

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