

**IN THE
MISSOURI SUPREME COURT**

STATE OF MISSOURI)	
)	
ex. rel.)	
)	
WILLIAM FLEMING)	
)	
Relator,)	
)	
vs.)	No. SC95764
)	
THE BOARD OF)	
PROBATION AND PAROLE)	
)	
)	
Respondent.)	

**PETITION FOR WRIT OF HABEAS CORPUS TO THE
MISSOURI SUPREME COURT**

RELATOR’S REPLY BRIEF

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STATEMENT OF FACTS

William Stands on the statement of facts in his initial brief

REPLY ARGUMENT FOR POINT RELIED ON

The trial court erred in finding Relator in violation of the terms of his probation, because Respondent had no legal grounds to revoke relators probation, in that Relator’s probation was revoked solely due to Relator’s poverty and inability to pay his court costs, which, without notice to the relator at the time he was placed on probation, included several thousand additional dollars in jail board fees. By revoking Relator’s probation, the court exceeded the its authority and deprived Relator of his right to due process of law and equal protection as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 10 of the Missouri Constitution. This error was severe enough to have resulted in a usurpation of judicial power by the lower court, as well as a miscarriage of justice requiring the issue of an extraordinary writ, and Relator’s continued confinement is unlawful.

Reply Argument

“But if the probationer has made all reasonable efforts to pay the fine or restitution, and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically.” *Bearden v. Georgia*,

461 U.S. 660, 668-69 (1983)

William made good faith efforts to pay his restitution and court costs. Despite his poverty, he had paid almost all of them. [Exhibit 2]. The record of this case shows William making payments as ordered, with his missed payments occurring because he was too poor to make them. His probation officers note his injuries, his need for surgery, and his work to try to be retrained to re-enter the work force. [Appendix volume 2, at 81-4]. Despite making less than a thousand dollars a month, William managed to pay almost everything he was ordered to pay when he was placed on probation. The remainder of the jail board bill, an item never mentioned in his plea or sentencing, was turned over to civil collections.

Then he was sent to prison for not paying it. [Exhibit 1: TR at 21].

Nothing in the record indicates that William failed to act in good faith. He was impoverished. He was on disability. He was so poor the state provided a public defender. [Exhibit 2]. The State paid for his probation officer, waiving intervention fees. He was so poor he was excused from paying for classes and services required for his probation, and allowed to find alternative programs he could afford. [Appendix volume 2 at 81]. Despite this, he did what he could. [Appendix volume two at 86]. His probation officer noted his poverty and his efforts to complete vocational rehabilitation and improve his financial situation in order to pay his court costs. [Appendix volume 2 at 84]. William's probation officer asked the court to try and find some other arrangement such as community

service to let him receive a credit towards the debt. [Appendix volume 2, 62]. His probation officer officer notes that his inability to pay is due to his financial difficulties. [Appendix volume at 84]. Despite this, William was still ordered to pay. He was ordered to pay what he was initially sentenced to pay. He was then ordered to pay an additional three thousand dollars.

The State urges this Court to assume the silence of the record indicates that William Fleming was on notice at the time he was placed on probation that he would have to pay a three thousand dollar jail board bill. But a silent plea record, a silent sentencing record are not notice. And demanding an indigent man go to prison merely for the failure to pay the costs of his own prior incarceration is not due process of law-- especially when he was never told he would have to pay these costs at his plea or sentencing.

William was not told of the jail board bill when he pleaded guilty. At his probation revocation he was order to work to pay his court costs and restitution to the victim. Court Costs, historically, have not included the jail board bill. *See, e.g., State ex rel. Parrott v. Martinez*, ED 104007, 2016 WL 1230506. Once William had already pleaded, he was faced with the choice of going to prison, or attempting to pay off an additional three thousand dollars. Although the State claims exhibit B and D show that William agreed to pay the jail board bill, neither do so. [Respondent's brief at 1]. Exhibit B shows William agreed to pay court

costs, with no amount listed. Exhibit D is an accounting sheet, that reflects separate accounting for court costs and the board bill. The State claims Mr. Fleming was ordered to pay 4200 dollars and stated “No Problem”. [Respondent's Brief] However, no amount was given to Mr Fleming. [Respondents Exhibit N at 24]. He was instead told “As part of that probation, Mr. Fleming, the Court is going to order you to pay your court costs and the Crime Victims' Compensation Fund, \$46 for each count, and the Court is going to order you to have that paid off within three years, okay.” [Respondents Exhibit N at 24].

No where could counsel for Mr. Fleming locate any references that discussed a jail board bill as a part of court costs. As discussed in Relator's brief, the Eastern district had ruled that the jail board bill is separate from court costs. *State ex rel. Parrott v. Martinez*, ED 104007, 2016 WL 1230506, at *7 Similarly, the Missouri legislature, when dealing with types of fines against a criminal defendant, has treated jail and court costs as separate entities. See e.g. 479.260. 1. (listing fees and court costs as separate entities than jail costs in the matter of municipal court costs). All of the examples of court costs listed by Black's Law dictionary are directly related to the Court itself, such as filing fees and reporter fees. Black's Law Dictionary Third Pocket Edition, West Publishing Co. (1996). Notably, this does not include the rent for one's own cell.

This is the most invidious example of revocation of an individual for his poverty. William was in jail, because he could not afford a bond, because he was poor. He had pleaded guilty to a sentence of probation to avoid further incarceration. At the time of his plea and sentencing, he was ordered to pay restitution and court costs. Despite his poverty, he paid all restitution, and nearly all of his court costs. He was then placed in prison for being too poor to pay a jail board bill he was never ordered to pay as part of his sentence, which he acquired because he was too poor to leave the confines of the jail where he was involuntarily held pretrial in lieu of a bond. His bond in 08D7-CR00864-01 was 50,000 dollars surety- an amount reachable through a bondsman to most who are not impoverished. [Exhibit 2: Docket Sheets].

The state makes much of the fact that the court stated it was not revoking William for being poor. But the record is devoid of any failure on Williams account other than being poor. He paid as he could. His probation officer urged the Court to look at alternatives. [Appendix volume 2 at 81]. Despite poverty, disability, mandatory classes, and other hurtles, William managed to pay nearly all he owed other than the jail board bill- a bill he owed because he was poor. [Exhibit 2: Docket sheets, cause 08D7-CR00864-01].

Further, the state claims that there was no prejudice from the delay in the revocation proceedings in this case. This claim ignores the fact that at the

admission of the violation, William had not in fact paid off his court costs yet. [Respondent's exhibits M, D.]. However, by the time William's case was set for disposition, almost his entire balance was the jail board bill. [Respondent's exhibits M, D, Exhibit 1: TR 16-18] Despite this, his earlier admission to not having paid court costs was used to send him to prison. [Exhibit 1: TR 3-7,21]. Even though William's attorney informed the court that all William owed was the board bill, which he had never been ordered to pay as a condition of his probation, William was sent to prison based on his prior admission to having owed court costs two years before. [Exhibit 1: TR 16-18,21]

CONCLUSION

WHEREFORE, based on the argument as set forth in this brief and his initial brief , relator William Fleming respectfully requests that this Honorable Court make its preliminary writ permanent and order the Missouri Department of Corrections Board of Probation and Parole discharge relator, William Fleming, from his parole on this sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27^h of September 2016 a true and complete copy of the foregoing was submitted to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102, shaun.mackelprang@ago.mo.gov, via the Missouri e-filing system, care of Ms Caroline Coulter, Caroline.Coulter@ago.mo.gov, Office of the Attorney General.

/s/ Amy E. Lowe _____
Amy E. Lowe

CERTIFICATE OF COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Rule 55.03. This brief was prepared with Microsoft Word for Windows, uses Times New Roman 14 point font, and does not exceed the word and page limits for a brief in this court. The word-processing software identified that this brief contains 1847 words, and 13 pages including the cover page, signature block, and certificates of service and of compliance. In addition, I hereby certify that this document has been scanned for viruses with Symantec Endpoint Protection Anti-Virus software and found virus-free. It is in searchable PDF form.

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