

CASE NO. SC84229

**IN THE
SUPREME COURT OF MISSOURI**

IN RE THE MATTER OF:

AMY M. RODRIGUEZ,

PETITIONER

V.

PATRICIA CORNELL, SUPT.

RESPONDENT

ORIGINAL PROCEEDING IN HABEAS CORPUS

**BRIEF OF APPELLANT
AMY M. RODRIGUEZ**

ampbell, Turner & Simpkins, LLC

**Scott W. Turner #37496
4215 S Hocker, Suite 300
Independence, Missouri 64055
Telephone: (816) 478-7772
Facsimile: (816) 350-2319
ATTORNEY FOR APPELLANT
AMY M. RODRIGUEZ**

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JURISDICTIONAL STATEMENT

At issue in this proceeding in habeas corpus is whether or not Petitioner is being

unconstitutionally restrained of her liberty within the State of Missouri as a result of violations of her rights to due process under the United States' and Missouri Constitutions.

The Missouri Supreme Court maintains jurisdiction over this matter pursuant to the Missouri Constitution Art. V, Sect. 4 and Art. I, Sect. 12 and Missouri Supreme Court Rules 84 and 91.

STATEMENT OF FACTS

On March 25, 1999, in the Circuit Court of Jackson County, Missouri, in front of the Honorable John I. Moran, Petitioner plead guilty to three counts of Statutory Rape, an ungraded felony, in violation of Section 566.032, R.S.Mo. Petitioner pled guilty pursuant to a plea agreement in which it was agreed that the court would decide the punishment and she would receive a maximum of fifteen

years in prison. (Appendix pg. A15)

Prior to the guilty plea and sentencing, Petitioner discussed with her attorney what sentencing options she would be subject to. Petitioner was advised by her attorney that she could possibly receive a one hundred and twenty day callback pursuant to Section 559.115, R.S.Mo. (Appendix pg. A33-A34)

On June 18th, 1999, Petitioner was sentenced to ten (10) years on each count, to run concurrently. Petitioner was sentenced pursuant to Section 559.115, R.S.Mo, which would allow her release after one hundred and twenty days. (Appendix pg. A1 - A2) The judge indicated that, if space was available and she was qualified, that she should be placed in the Missouri sex offender program. (Appendix pg. A7-A8) The judge simply stated he would ask for a report after ninety days and review the file at that time. (Appendix pg. A7-A8) Subsequent to this sentence, Petitioner's attorney made further attempts to insure her release after one hundred and twenty days. He filed a "Motion to Request 120 Day Call Back", in which specifically sets forth grounds as to why Petitioner should be released after one hundred and twenty days. (Appendix pg. A61-A65) Petitioner also received a letter from her attorney which indicated that he was preparing the motion and which gave her instructions on what she could do to assist in obtaining her release. (Appendix pg. A60)

On October 6, 1999 the Honorable John I. Moran ordered Petitioner released pursuant to Section 559.115. The State filed it's objection to the release on October 8, 1999¹. (Appendix pg.

¹ The State apparently faxed it's motion to the court, as indicated by the facsimile information located at the top of the motion. It was apparently not file-stamped.

A66-A69) The State's position was that Section 559.115, R.S.Mo prohibited Petitioner's release and thus Judge Moran was without jurisdiction to order such action. (Appendix pg. A66-A67) The court then vacated the order of release on October 14, 1999 and ordered Petitioner to remain in the custody of the Missouri Department of Corrections. (Appendix pg. A5)

Upon learning of the trial court's actions, Petitioner attempted to file for relief pursuant to Missouri Supreme Court Rule 24.035. (Appendix pg. A37-A38) Prior to that time, Petitioner had no reason upon which to file for post-conviction relief. (Appendix pg. A37) Her motion was denied for being filed out of time. (Appendix pg. A70-A72)

Petitioner remains in custody to this day. Habeas corpus relief has previously been sought in the Circuit Court of Audrain County, Missouri and said relief was denied on May 23, 2001. Relief has also been sought in the Eastern District of the Missouri Court of Appeals and said relief was denied on July 2, 2001.

According to the trial court's order of October 14, 1999 (Appendix, pg. A5), the judge indicated that the motion had been filed on October 8, 1999.

POINTS RELIED ON

- I. PETITIONER IS ENTITLED TO AN ORDER GRANTING HER RELEASE AND/OR SETTING ASIDE HER PLEA OF GUILTY BECAUSE PETITIONER WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE UNITED STATES' AND MISSOURI CONSTITUTIONS WHEN COUNSEL ADVISED HER THAT SHE COULD BE SENTENCED PURSUANT TO SECTION 559.115, R.S.MO AND BE RELEASED AFTER ONE HUNDRED AND TWENTY DAYS.

Strickland v. Washington, 466 U.S. 668 (1984)

Sanders v. State, 738 S.W.2d 856 (Mo. banc 1987)

Brown v. Gammon, 947 S.W.2d 437 (Mo.App. 1997)

Beal v. State, 51 S.W.3d 109 (Mo.App. 2001)

II. PETITIONER IS ENTITLED TO AN ORDER GRANTING HER RELEASE AND/OR SETTING ASIDE HER PLEA OF GUILTY BECAUSE SHE WAS DEPRIVED OF HER RIGHT TO DUE PROCESS AS GUARANTEED BY THE UNITED STATES' AND MISSOURI CONSTITUTIONS WHEN SHE WAS SENTENCED BY THE TRIAL COURT, WHICH WAS WITHOUT JURISDICTION TO SENTENCE HER AS IT DID.

Searcy v. State, 981 S.W.2d 597 (Mo.App. 1998)

Section 559.115, R.S.Mo.

III. PETITIONER IS ENTITLED TO AN ORDER GRANTING HER RELEASE

AND/OR SETTING ASIDE HER PLEA OF GUILTY BECAUSE SHE WAS DEPRIVED OF HER RIGHT TO DUE PROCESS AS GUARANTEED BY THE UNITED STATES' AND MISSOURI CONSTITUTIONS WHEN THE STATE FAILED TO OBJECT OR OTHERWISE OPPOSE HER RELEASE PURSUANT TO SECTION 559.115, R.S.MO., AT EITHER HER GUILTY PLEA OR SENTENCING.

Section 559.115, R.S.Mo.

IV. PETITIONER IS ENTITLED TO AN ORDER GRANTING HER RELEASE AND/OR SETTING ASIDE HER PLEA OF GUILTY BECAUSE A PETITION FOR WRIT OF HABEAS CORPUS IS THE PROPER REMEDY IN THIS CASE.

Clay v. Dormire, 37 S.W.3d 214 (Mo. banc 2000)

Brown v. State, No. SC83406 (Mo. Banc February 13, 2002)

State ex rel. Nixon v. Jaynes, No. SC83480 (Mo. Banc December 4, 2001)

Schlup v. Delo, 513 U.S. 298 (1995)

Section 559.115, R.S.Mo.

Missouri Supreme Court Rule 24.035

ARGUMENT

- I. PETITIONER IS ENTITLED TO AN ORDER GRANTING HER RELEASE AND/OR SETTING ASIDE HER PLEA OF GUILTY BECAUSE PETITIONER WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE UNITED STATES' AND MISSOURI CONSTITUTIONS WHEN COUNSEL ADVISED HER THAT SHE COULD BE SENTENCED PURSUANT TO SECTION 559.115, R.S.MO AND BE RELEASED AFTER ONE HUNDRED AND TWENTY DAYS.**

Pursuant to Section 559.115, any person pleading guilty to Statutory Rape in the First Degree is not eligible for a 120-day call back. Petitioner was charged with and pled guilty to three counts of that offense. However, she was lead to believe that she could possibly get probation subsequent to a callback. (Appendix pg. A34) In the Court's Judgment/Guilty Plea dated June 18, 1999 and its subsequent Order

dated October 8, 1999, releasing her from custody, the Court indicated that Petitioner would be released upon probation.

To prevail on a claim of ineffective assistance of counsel, the Petitioner must show that her counsel's performance was deficient and that she was thereby prejudiced as a result. Strickland v. Washington, 466 U.S. 668, 687 (1984). Petitioner must "satisfy both the performance prong and the prejudice prong to prevail on an ineffective assistance of counsel claim." Sanders v. State, 738 S.W.2d 856, 857 (Mo. banc 1987)(emphasis in original). Petitioner has the burden of establishing prejudice by a preponderance of the evidence. State v. Young, 844 S.W.2d 541 (Mo.App. 1992). It is presumed that counsel's conduct is competent. Amrine v. State, 785 S.W.2d 531 (Mo. banc 1990).

An attorney's performance is deficient if his acts or omissions were "outside the wide range of professionally competent assistance." State v. Stepter, 794 S.W.2d 649, 656 (Mo. Banc 1990). If a claim for ineffective assistance of counsel includes an allegation the counsel misled the Petitioner, subsequently rendering her guilty plea involuntarily, the court must determine whether or not Petitioner's belief was reasonable. Only when it appears that the Petitioner's beliefs are based upon "positive representations" on which she is entitled to rely will the Court decide that the mistaken belief is reasonable. Beal v. State, 51 S.W.3d 109, 111 (Mo.App. 2001); McNeal v. State, 910 S.W.2d 767, 769 (Mo. App. 1995).

There is no doubt that Petitioner was given erroneous advice by her attorney, which resulted in a deficient performance by him. Up until the State filed the objection to her release, Petitioner had no idea that she could not received a callback. (Appendix pg. A34) She was counseled on the possibility of a callback before her guilty plea and even during her guilty plea. (Appendix pg. A34, A36) On or about

September 3, 1999, her attorney filed a Motion to Request 120 Day Callback. In that motion, he states “Under R.S.Mo. 559.115 this Court has jurisdiction to recall Defendant Rodriguez and place her on probation.” (Appendix pg A62) This is a clear and specific misstatement of the law. In a letter dated September 13, 1999 (long after Petitioner’s June 18, 1999 sentencing date), her attorney wrote Petitioner a letter which indicated that he was still trying to insure that she would receive her callback. (Appendix pg. A60) . All of this is evidence of the fact that Petitioner’s attorney did not know the relevant law regarding her case, which is a clear deficiency in his representation.

Not only did Petitioner’s attorney believe that she had the opportunity for a callback, but the court and the prosecuting attorney believed that also. Petitioner not only relied on the advice of her mistaken attorney when entering her guilty plea, but she also relied on the lack of objection by the prosecuting attorney and the sentence ultimately imposed by the court. This fact is important to show that Petitioner reasonably relied on the advice of her attorney, in that the advice relied upon was confirmed by an opposing party (the State) and a neutral party (the Court). The advice given to her was explicitly in contrast to express language of the statutes of the State of Missouri.

In the case of Brown v. Gammon, 947 S.W.2d 437 (Mo.App. 1997), the petitioner was offered the “opportunity” of a 120-day callback by the judge. Id. at 439. However, it was unclear as to what the petitioner had to do to actually obtain the release. It was not determined whether the petitioner merely had to complete the program involved to obtain his release or whether his release was up to the subjective determination of the judge. Id. at 441. After he completed the program, the judge denied his release. Because the terms of his sentence were ambiguous as to what the petitioner had to do to obtain his release after 120 days, the Court determined that his guilty plea was involuntary and he was granted habeas corpus

relief. Id. The Court determined that the judge's representations as to the conditions under which petitioner could have received a callback were in fact "positive" and the petitioner reasonably relied on them.

In the case at hand, Petitioner was sentenced to a 120 day callback and subsequently ordered to be released. There can be no doubt that positive representations were made. Furthermore, there appeared to be nothing ambiguous about Petitioner's sentence. Pursuant to the court's order, Petitioner was to be released pursuant to Section 559.115. This is exactly what she was led to believe would happen by her attorney and the court. However, even if the greatest deference was given to everyone involved, the sentencing procedure submitted to by Petitioner would be considered, at a minimum, to be ambiguous. As the three principles with legal degrees were not aware of the potential outcomes of the case, there is no way that the Petitioner could be expected to know.

II. PETITIONER IS ENTITLED TO AN ORDER GRANTING HER RELEASE AND/OR SETTING ASIDE HER PLEA OF GUILTY BECAUSE SHE WAS DEPRIVED OF HER RIGHT TO DUE PROCESS AS GUARANTEED BY THE UNITED STATES' AND MISSOURI CONSTITUTIONS WHEN SHE WAS SENTENCED BY THE TRIAL COURT, WHICH WAS WITHOUT JURISDICTION TO SENTENCE HER AS IT DID.

The trial court was without jurisdiction to sentence Petitioner to probation. On June 18, 1999, the court sentenced Petitioner to ten (10) years, with a 120-day callback pursuant to Section 559.115, R.S.Mo., on three counts of Statutory Rape in the First Degree. (Appendix pg. A1-A2) Pursuant to Section 559.115.5, anyone pleading guilty to Statutory Rape in the First Degree can not be sentenced to

a call back pursuant to that statute.

As applied to criminal courts, the term “jurisdiction” refers to the power of a court to hear and resolve the case involving a criminal offense, to render a valid judgment and to declare punishment. Searcy v. State, 981 S.W.2d 597 (Mo.App. 1998). Missouri law allows the circuit courts of this State the power to place a person on probation, except as set forth in other sections of the law, such as Section 559.115. Section 559.100, R.S.Mo. In the case at hand, the trial court sentenced Petitioner to a 120-day callback release, in violation of Section 559.115. Section 559.115.5 does not allow for a 120-day callback for the crime of Statutory Rape in the First Degree. As result, the court was without jurisdiction to sentence her and the judgment entered by the trial court was not valid.

The State, by and through the prosecuting attorney, admits that the court was without jurisdiction. In it’s “State’s Objection to Defendant’s Court Ordered Release Pursuant to Section 559.115 and Motion For Reconsideration and Request for Hearing Pursuant to Section 559.115.4”, the prosecuting attorney states not once, but twice, that the court was without jurisdiction to sentence Petitioner as it did. (Appendix pg. A66-A67). As a result, relief should be granted.

III. PETITIONER IS ENTITLED TO AN ORDER GRANTING HER RELEASE AND/OR SETTING ASIDE HER PLEA OF GUILTY BECAUSE SHE WAS DEPRIVED OF HER RIGHT TO DUE PROCESS AS GUARANTEED BY THE UNITED STATES’ AND MISSOURI CONSTITUTIONS WHEN THE STATE FAILED TO OBJECT OR OTHERWISE OPPOSE HER RELEASE PURSUANT TO SECTION 559.115, R.S.MO., AT EITHER HER GUILTY PLEA OR SENTENCING.

The State made did not suggest or make known to the Court that Petitioner was not entitled to a callback pursuant to Section 559.115. within a timely manner so as to allow Petitioner due process of the law. At no time prior to the Court ordering her release pursuant to that section, as set forth in its Order of October 6, 1999, did the prosecuting attorney bring to the Court's attention or otherwise object to the Petitioner's seeking a sentence of probation.

In fact, as mentioned above, the State furthered the belief that she could get probation. The State went through the guilty plea, a lengthy sentencing hearing, and four months of imprisonment before it said anything about the Petitioner not being eligible for probation. According to the Court's Order of October 14, 1999 (Appendix pg. A5), the State did not file it's objection to the release until October 8, 1999, which was two days after Petitioner was ordered to be released. By not contesting this at any previous time, the Petitioner was denied her right to a fair and impartial hearing on the matter, the right to argue to the Court any other sentences which would have been available to her, the right to timely file a post-conviction motion and the right to plead guilty in a knowing and voluntary manner.

IV. PETITIONER IS ENTITLED TO AN ORDER GRANTING HER RELEASE AND/OR SETTING ASIDE HER PLEA OF GUILTY BECAUSE A PETITION FOR WRIT OF HABEAS CORPUS IS THE PROPER REMEDY IN THIS CASE.

Pursuant to Missouri Supreme Court Rule 91.01, any person who is being illegally restrained of their liberty may petition for a writ of habeas corpus. As Petitioner is in fact being restrained of liberty within the State of Missouri and she is now inquiring into cause of this restraint, a petition for writ of habeas corpus is the appropriate remedy.

Petitioner's complaints revolve around the voluntariness of her guilty plea. Review of such a claim

would normally proceed through a Rule 24.035 postconviction motion. Brown v. Gammon, 947 S.W.2d 437, 440 (Mo.App. 1997). However, circumstances can exist to allow for habeas corpus relief without having first sought 24.035 postconviction relief. These circumstances, though, are extremely limited. See State ex rel. Simmons v. White, 866 S.W.2d 443 (Mo. banc 1993). There are just three such circumstances in the State of Missouri in which a petitioner may overcome the failure to file for postconviction relief and still seek relief under habeas corpus. A petitioner must show cause and prejudice, manifest injustice, or circumstances which were not previously known to her. See Brown v. State, No. SC83406 (Mo. Banc February 13, 2002). Petitioner qualifies for relief under all three standards.

A. Cause and Prejudice

The exception of “cause and prejudice” was set forth in Schlup v. Delo, 513 U.S. 298 (1995). It was most recently discussed by this Court in the case of State ex rel. Nixon v. Jaynes, No. SC83480 (Mo. Banc December 4, 2001). In discussing the “cause and prejudice” standard, this Court stated that the “cause” of the procedural default “must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel’s efforts to comply with the State’s procedural rule.” Id. at 8, citing Murray v. Carrier, 477 U.S. 478, 488 (1986). “Cause” can be either ineffective assistance of counsel, Murray v. Carrier at 488, or an “external impediment, whether it be government interference or the reasonable unavailability of the factual basis of the claim” which prevented the claimant from making the claim. Id., see also McCleskey v. Zant, 499 U.S. 467, 497 (1991).

As discussed in Points Relied On I, infra, Petitioner was denied effective assistance of counsel. Her counsel (along with the prosecuting attorney and the judge) was apparently unaware of a basic aspect of

the statutes of Missouri which directly applied to sentencing. As a result, he failed to object to the sentence at the time it was issued, failed to advise Petitioner of the error or otherwise failed to appeal it. By his failing to advise Petitioner of the illegality of the sentence, he deprived her of the right to file a post-conviction motion under Missouri law.

This failure to properly advise Petitioner, along with the inaction by the judge and prosecuting attorney, essentially kept Petitioner in the dark as to the propriety of her sentence. As a result, her claim was unavailable to her until the state objected and the judge vacated his previous order. Until that time she had no factual basis known to her upon which to make a claim within the ninety day post-conviction time limits. (Appendix pg. A34) This Court has already determined that such actions constitute “cause” within this standard. See Brown v. State, No. SC83406, pg. 9 (Mo. Banc February 13, 2002).

Finally, Petitioner alleges that there is also government interference which gives rise to “cause”. The prosecuting attorney’s inaction, by his failure to timely object to the trial court’s initial sentence, effectively constituted interference. The prosecuting attorney waited until almost the entire one hundred twenty day sentence was complete (long after the ninety days in which Petitioner would have had to file her post-conviction motion) before objecting to the sentence issued. Either the prosecuting attorney was also not aware of the basic laws governing the sentence at issue or he knew and purposely withheld his objection until it was too late for Petitioner to act pursuant to Rule 24.035. The State failed to make it’s position as to Petitioner’s sentence known within a timely fashion, thus interfering with her rights of due process to address the issues involved.

In order for prejudice to occur, the trial errors must have “worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.” State ex rel. Nixon v. Jaynes

at 9, citing United States v. Frady, 456 U.S. 152, 170 (1982). The term “trial” apparently also refers to guilty pleas. See Ivy v. Caspari, 173 F.3d 1136 (8th Cir. 1999). In order for a plea of guilty to be free of constitutional errors, it must be entered into in a knowing, intelligent and voluntary fashion. Boykin v. Alabama, 395 U.S. 238, 242 (1969). A guilty plea must represent a voluntary and intelligent choice among the various options available to the defendant, North Carolina v. Alford, 400 U.S. 25, 31 (1970), including options available regarding the sentence. See Beal v. State, 51 S.W.3d 109 (Mo.App. 2001).

As discussed herein, it is apparent that Petitioner did not enter into her guilty plea with a correct awareness of the possible sentencing options. Her attorney (nor the judge and the prosecuting attorney) was apparently not aware that Petitioner could not receive a callback pursuant to Section 559.115, R.S.Mo. This is evidenced by the fact that he continued to push for her release during the time she was initially incarcerated. Missouri law has been clear that such mistakes regarding her sentence would render her guilty plea involuntary. See Beal v. State, supra; Coker v. State, 995 S.W.2d 7 (Mo.App. 1999); Brown v. Gammon, 947 S.W.2d 437 (Mo.App. 1997); Hampton v. State, 877 S.W.2d 250 (Mo.App. 1994).

B. Manifest Injustice

The “manifest injustice” standard was also set forth in Schlup v. Delo, supra. This Court recently adopted the Schlup standard in the case of Clay v. Dormire, 37 S.W.3d 214 (Mo. banc 2000). The “manifest injustice” standard requires the showing that a constitutional violation probably resulted in the conviction of an innocent person. Id. at 217. However, this Court stated that this standard only applies to issues involving guilt or innocence and does not apply to claims of error involving the sentencing process. Id. at 218. Errors in the sentencing process are only actionable if the sentencing court had no jurisdiction

to impose the sentence in question. Id. Petitioner alleges errors in her sentencing process.

As discussed previously in Point Relied On III, infra, as applied to criminal courts, the term “jurisdiction” refers to the power of a court to hear and resolve the case involving a criminal offense, to render a valid judgment and to declare punishment. Searcy v. State, 981 S.W.2d 597 (Mo.App. 1998). Missouri law allows the circuit courts of this State the power to place a person on probation, except as set forth in other sections of the law, such as Section 559.115. Section 559.100, R.S.Mo. In the case at hand, the trial court sentenced Petitioner to a 120-day callback release, in violation of Section 559.115. Section 559.115 does not allow for a 120-day callback for the crime of Statutory Rape. As result, the court was without jurisdiction to sentence her and the judgment entered by the trial court was not valid. As was also discussed in Points Relied On III, infra, the State, through the prosecuting attorney, has concurred that the trial court was without jurisdiction to sentence Petitioner as it did. (Appendix pg. A66-A67) As a result, Petitioner suffered a manifest injustice.

C. Claims Not Known

Finally, the rule in Missouri is that it is not a prerequisite that relief be sought pursuant to Missouri Supreme Court Rule 24.035 if the grounds set forth in the petition were not known or not reasonably discoverable during the time limits set forth in Rule 24.035. Brown v. Gammon, 947 S.W2d 437, 440 (Mo.App. 1997); Merriweather v. Grandison, 904 S.W. 2d 485, 489 (Mo. App. 1995). The Court of Appeals has previously determined that problems with a 120-day callback can not be cognizable within the ninety day time limit and thus a petition for writ of habeas corpus is the proper remedy. See Brown v. Gammon, supra; Matthews v. State, 863 S.W.2d 388 (Mo.App. 1993). This exception was recently reaffirmed by this Court as having survived the previous decision of Clay v. Dormire. See Brown v. State,

No. SC83406 pg. 9 (Mo. Banc February 13, 2002).

Petitioner did not have reason to contest her sentence and thus file for post-conviction relief prior to the trial court denying her release. (Appendix pg. A37-A38) Under the circumstances, Petitioner could not have know about the grounds set forth herein before the ninety day time constraint of Rule 24.035 expired. As discussed previously, neither the judge, the prosecuting attorney nor her attorney apparently knew of the problem with her sentence prior to the expiration of the time constraints of that rule. Prior to Judge Moran vacating his order of release, Petitioner had no reason to dispute the effectiveness of her attorney or the validity of what the court had done. In fact, the actions of the trial court was positively reaffirmed to her in writing by both her attorney (Appendix pg. A61-A65 and A60) and by the court in it's October 6, 1999 order. The first mention of any error in the sentence given to her was not brought to light until the State filed it's objection on October 8, 1999, which was which approximately thirty days past Petitioner's time limit to file a post-conviction motion.

D. Conclusion

Once a court determines that a petitioner is entitled to habeas corpus relief, the court must determine what remedy should be applied. "If the accused has been misled or induced to plead guilty by fraud, mistake, apprehension, fear, coercion or promises, the defendant should be permitted to withdraw his guilty plea." Brown v. Gammon, supra at 441, quoting Hampton v. State, 877 S.W.2d 250, 252 (Mo.App. 1994). As Petitioner entered her guilty plea on the mistaken presumption that she could receive a 120-day callback she should be entitled to withdraw her plea of guilty.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, Petitioner prays that this Honorable Court grant and issue a writ of habeas corpus and order that she be released and/or allowed to withdraw her previously entered plea of guilty.

Respectfully submitted,

Campbell, Turner & Simpkins, L.L.C.

Scott W. Turner (#37496)
4215 S. Hocker, Ste. 300
Independence, MO 64055
(816) 478-7772
(816) 350-2319 FAX

CERTIFICATE OF COMPLIANCE AND SERVICE

Comes now the undersigned counsel, Scott W. Turner, to hereby certify as follows:

1. The Brief of Petitioner complies with the limitations contained in Missouri Supreme Court Rule 84.06. The brief was completed using Wordperfect 7 in Times New Roman size 13 point font. This brief contains 4,725 words, which is within the maximum allowed by rule.
2. Pursuant to Missouri Supreme Court Rule 84.06, a 3.5 inch disc has been included which contains a copy of the brief. This disc has been scanned for viruses and it is virus-free.
3. Two true and correct copies of the Brief of Petitioner and disc containing a copy of the brief were mailed, postage prepaid, this ____ day of April, 2002 to Mr. Stephen D. Hawke, Office of the Attorney General, P.O. Box 899, Jefferson City, MO 65102.

Scott W. Turner