

**IN THE  
MISSOURI SUPREME COURT**

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|-----------------------------|---|--------------------|
| <b>STATE OF MISSOURI</b>    | ) |                    |
|                             | ) |                    |
| <b>ex. rel.</b>             | ) |                    |
|                             | ) |                    |
| <b>WILLIAM FLEMING</b>      | ) |                    |
|                             | ) |                    |
| <b>Relator,</b>             | ) |                    |
|                             | ) |                    |
| <b>vs.</b>                  | ) | <b>No. SC95764</b> |
|                             | ) |                    |
| <b>THE BOARD OF</b>         | ) |                    |
| <b>PROBATION AND PAROLE</b> | ) |                    |
|                             | ) |                    |
|                             | ) |                    |
| <b>Respondent.</b>          | ) |                    |

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

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**RELATOR’S BRIEF**

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### **JURISDICTIONAL STATEMENT**

Relator filed a writ with the circuit court of Cole county in 15AC-CC00148 on October 26, 2015, challenging his confinement by the Missouri department of corrections. After that was denied without opinion, Relator filed a request for a writ in the Court of Appeals Western District cause number WD79524. The Western District then denied the writ without opinion on March 24, 2016. Relator then filed a writ with this Court on June 20, 2016. Jurisdiction lies in the Supreme Court of Missouri. Mo. Const., Art. V, §§ 4,5, Rule 91.

## STATEMENT OF FACTS

William Fleming was sentenced in cause number 08D7-CR00864-01 for two counts of class C felony Domestic Assault on the July 31, 2008. William pleaded guilty, and the Court sentenced William to seven (7) years imprisonment, the execution of the sentence to be suspended, and William placed on 5 years supervised probation. [Exhibit B].<sup>1</sup>

As part of the terms of his probation, William was to pay court costs and restitution. [Exhibit B]. No mention is made of the board bill for the jail in the order of probation. [Exhibit B at 2]. The fee report from the court in this case lists the board bill as a separate item from the court costs. [Exhibit D]. However, the probation violation reports include the board bill as court costs. [Exhibit F-G].

William worked to make his Court ordered payments. William's payments were limited by the fact he was on supplemental security income ("SSI") of four hundred forty nine dollars a months due to a physical injury and bipolar disorder. [Exhibit c]. He was ordered to pay ten dollars a month, after he was unable to afford to pay one hundred eighteen dollars a month from his SSI. [Exhibit J]. He regularly paid, missing few payments. [Exhibit c.] His probation reports frequently noted his financial difficulties, such as being unable to pay for some

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<sup>1</sup> For consistency relator is labeling the exhibits as they were filed. As such those filed by relator are numbers, those filed by respondent lettered.

programs and needing and intervention fee waiver. See, e.g. [Exhibit H]. Despite this, he finished his required court ordered programs, and continued making payments as he was able. [Exhibit H, D]. However, at the three year mark, he had still not paid his costs in full. [Exhibit 1,2]

On September 9, 2011, William admitted to violating his probation by not paying his court costs in full within three years. He was ordered to pay one hundred and fifty dollars in costs by his next Court date. William did so, and continued to make payments. [Exhibit 2].

He made payments as ordered by the Court. [Exhibit d, 1]. He paid off over one thousand dollars in costs, leaving only his board bill, and a tiny portion of other costs. [Exhibit 1, at 14].

April 12, 2013, William's probation was revoked and the original sentence of 7 years was ordered executed. [Exhibit 1]. At his revocation William's only violation of his probation was being unable to pay his full court costs. He owed a total of four thousand two hundred (4200) dollars. He had paid one thousand one hundred (1100) of that amount at the time of his revocation. Of this amount, about three thousand (3000) of the remainder was from Williams's jail board bill. Exhibit D]. William was indigent, represented by the public defender, and lived

social security disability for physical and mental disabilities. He was, however, revoked for non-payment. [Exhibit 1].

Petitioner has not sought habeas relief in any higher court. He previously filed for a writ of Habeas corpus in circuit court, and was denied in cause 15AC-CC00148 on October 26, 2015, as well as the western district on March 24, 2016, without issuance of a preliminary writ and without opinion,

To avoid needless repetition additional facts may be set out in the argument section of this brief.



**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.**

*Bearden v. Georgia*, 461 U.S. 660 (1983)

*Hendrix v. Lark*, 482 S.W.2d 427 (Mo. 1972).

*State ex rel. Parrott v. Martinez*, 2016 WL 1230506 (Mo.App. E.D. Mar. 29,2016)

US Const. IV, XIV; Mo Const, Article I, Section 10

### **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.**

### **Standard of Review**

Any person restrained of liberty within this state may petition for a writ of habeas corpus to inquire into the cause of such restraint. Rule 91.01(b).

The consideration of a petition for writ of habeas corpus is limited to determining the facial validity of the confinement. *State ex rel. Nixon v. Jaynes*, 73 S.W.3d 623, 624 (Mo. banc 2002). If a claim could have been raised under 24.025 or 29.15 the petitioner must have filed under these rules or risk default. As the case at bar deals with a probation revocation, this potential default is not applicable

### 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 was sentenced to probation, and abided by the terms of his probation. The only probation violation in William’s record was that he was unable to pay his court costs and board bill. [Exhibis 1 &2]. It was uncontested that William was indigent, represented by a Public Defender, and that his only income was from SSI for bipolar disorder and a herniated disk in his back. [Exhibit 1at 16-20]. He was placed on an installment plan of ten dollars a month by his probation officer, and abided by that. [Exhibit 1, at 14]. He had already served nearly his full term of probation. [Exhibit 2]. The Court considered no other

options such as community service for the remaining months of William's sentence or civil collections. [Exhibit 1]. Instead, William was revoked purely for being unable to pay his board bill, and a tiny amount of his court costs. [Exhibit 1 at 12]. Such a revocation purely for being too poor to pay court costs and the board bill cannot pass Constitutional muster under the Federal or Missouri Constitutions.

It is not constitutional, under the Missouri or United States' Constitutions to impose a prison sentence solely for the inability of an indigent defendant to pay a fine or costs. *Bearden v. Georgia*, 461 U.S. 660, 668-69 (1983); *Spencer v. Basinger*, 562 S.W.2d 350, 353 (Mo. 1978); *Hendrix v. Lark*, 482 S.W.2d 427, 429-30 (Mo. 1972). In all of these cases, an indigent defendant could not be incarcerated because they are unable to pay a fine or costs after making a good faith effort to pay. The Court must, before incarceration, determine that the individual was willfully failing to pay, and that there were not methods other than incarceration that would fulfill the government's interest in collecting the fine.

The procedure used by the probation Court had been barred by the Supreme Court of Missouri since the 1970s. Where an indigent defendant is placed on an installment payment plan for a fine or costs, abides by it, and still cannot pay the entire amount of costs, the remedy is not further incarceration, but discharge. *Hendrix v. Lark*, 482 S.W.2d 427, 429-30 (Mo. 1972).

In the case at bar, the Court stated that it was revoking William because he admitted he was not paying his court costs, and did not mention that he was indigent and unable to pay at the time of that admission. But the court reacted to that admission by giving William small installment payments to make. [Exhibit 2]. Over two years, William made them, regularly. [Exhibit 2]. The Court continued to ask for small payments, which William made. [Exhibit 2]. The Court was also on notice that William was indigent. William was represented by a Public Defender at all Stages of the proceedings. [Exhibit 2]. The Court only moved to revoke William after it had been barred from leaving defendants on probation for longer than the term of their sentence, to act as a debt collection enforcer. [Exhibit 1 at 26]. It did not consider any alternatives to incarceration as required under *Bearden*. *Bearden v. Georgia*, 461 U.S. 660, 668-69 (1983).

At the time William was revoked, the State was already using its less onerous alternative to procure the court costs and board bill owned by William. William's debt had, already at the time of his revocation proceeding, been turned over to a debt collection agency. [Exhibit 1 at 18]. At the time William was revoked for willfully not paying his Court costs and board bill, William's SSI check had already been garnished through a civil debt collection agency. [Exhibit 1 at 18]. William was making payments through the garnishment. These payments would continue regardless of if William was on or off probation. Putting William

in prison actually cut off the Court from collecting the debt it claimed it wanted to collect. One cannot receive SSI payments when in prison for more than 30 days and must reapply for SSI benefits if incarcerated one or more years. The Social Security Administration “What Prisoners Need to Know”

<http://www.ssa.gov/pubs/EN-05-10133.pdf> (retrieved April 9, 2015).

William was revoked after he followed all court directives to the best of his ability. [Exhibit 1 and 2]. He paid as much as he was ordered and as much as he was able. He was poor, disabled, and already under an existing garnishment to this same debt. Whether or not he was on probation, collections would continue through the garnishment. Yet the following was stated at his revocation:

THE COURT.... “Also we have a situation where the Public Defender’s office has filed motions telling the Court Now, you know what, Court, you—if you keep working with these people, guess what, we’re going to take you up to the Court of Appeals and we’re going to make sure to terminate your jurisdiction over these cases because you have no right to do that. You have no right to extend their probation and you have no right to try and collect these amounts after the term of probation because your jurisdiction is terminated.

Well unfortunately, you can't have it both ways. Because if you are telling the court that once their probation is terminated we have to be done with this case and either terminate their probation or send them to prison, you're putting us in a situation as we are today with Mr. Fleming and that the Court has to make a very serious decision.

The serious decision the Court has to make is that if every client who has a public defender, does that mean they don't have to pay Court costs. I mean if the Court rules that Mr. Fleming had a public defender in this case he is indigent, then the Court is wasting its time in ordering people to pay court costs and pay restitution. We're wasting our time because everyone who is represented by the public defender is then indigent and should not have to pay anything. And that precedent would be a nightmare to victims. Victims have a right to get their restitution, Court costs should be paid.

And so I know that one of the arguments is that the Court put Mr Fleming on probation knowing that he had a public defender. That's thousands of cases across the state. We put people on probation all the time who have public defender and

even though we—they have public defenders and they're indigent, that doesn't mean they don't—its not like we tell them to pay within a year or six months. They have five years, five years. And even There's a lot of people that we still worked with even after five years until these writs started going up to the Court of Appeals that is forcing our hand saying "Judge, No, you are not going to keep these people after this period of time, either revoke them or do something.

And I think with Mr. Fleming that is where we're at. He admitted to violating his probation. The Court tried to work with him. He still has not complied."

[Exhibit 2 24-5].

At the time of these statements, William did not owe any money to the victim. [Exhibit 1 at p 6-8]. Despite making only about four hundred and fifty (450) dollars a month, he had paid over one thousand (1000) dollars, including his court costs. [Exhibit 1 at p 6-8]. He only still owed money on the board bill, and was uncontested that this was subject to civil collections and a garnishment. [Exhibit 1 at p 18]. William had made his ten dollar payments as ordered by his probation officer, and then his 50 dollar payments as ordered by the court. [Exhibit 1 at p 6-8]. He produced money- as much as he could, almost always in the exact



amount requested by the Court, for two years. [Exhibit 2]. He complied with the Court orders. [Exhibit 2]. He had no other violations of his probation. [Exhibit 1 passim, Exhibit 2]. There was no indication that his efforts were insufficient, nor any attempt to place him in prison for making the payments at the pace he was making them- until William had the ill fate to be an indigent man, with a large board bill, and a public defender whose office had recently successfully writted the judge regarding her collection practices on indigent probationers. In short, William did everything he could to pay, and was still sent to prison solely for nonpayment. This cannot pass the muster of due process or equal protection.

Worse, the vast majority of the money William owed was his jail board bill. [Exhibit 1, Exhibit D]. Williams's order of probation made no mention that he had to pay his jail board bill. [Exhibit B]. The court tallied the jail board bill as a separate entity from costs elsewhere in its records. [Exhibit D].

The Missouri court of appeals, eastern district, has recently recognized that the jail board bill is not a necessary part of Court costs, and that a defendant ordered to pay court costs should not be expected to know this includes the board bill. *State ex rel. Parrott v. Martinez*, ED 104007, 2016 WL 1230506, at \*7 (Mo.App. E.D. Mar. 29, 2016 As the eastern district summarized in a similar case from St. Francois county wherein a probation order did not explicitly include the jail board bill in the order for costs:

..... Again, the orders of probation do not state Relator was responsible for paying board fees. Nothing in the record before this Court suggests Relator knew prior to entry of her guilty plea that she would be charged a board fee or that any such fee would be more than 1.5 times the combined total of the restitution and court costs delineated in the orders of probation.... So, in this case we are left with a system in which all Missouri taxpayers have to pay for the salaries of judges, clerks, prosecutors, public defenders, and probation officers to collect money from a grandmother on disability supporting her grandchildren in order to operate the St. Francois County jail. The amount of resources devoted to this task is astonishing.”

*State ex rel. Parrott v. Martinez*, ED 104007, 2016 WL 1230506, at \*7

(Mo.App. E.D. Mar. 29, 2016), reh'g and/or transfer denied (May 11, 2016)

Further, the timing of this revocation poses due process issues. A probationer is to be brought to a hearing on his probation violation a reasonable time after notice is filed. RSMO § 559.036. That was not done in the case at bar,

Here, William admitted violation, and was placed on a payment plan, then subject to a civil garnishment. Two years later, the court sent him to prison after he had abided by those conditions. The Court was, at all times, aware William was

indigent. He had a public defender. William was poor enough that at first his probation officer only told him to pay ten dollars a month towards the costs and board bill. The court later ordered him to pay fifty dollars a month. Two years after that order, after William abided by all of the Court's directives, the Court sent William to prison. The Court complained of the Writ litigation that left it unable to continue to supervise William during the collection process. It did not note any new violations in the intervening two years. It did not note why the installment plan and SSI garnishment were no longer enough to ensure the debt was paid.

William was charged with a probation violation two years before he was sent to prison. Two full years is not a reasonable time frame for the Court to set a hearing and complete the litigation.

## **CONCLUSION**

WHEREFORE, based on the argument as set forth in this 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 30th (originally filed on the 29<sup>th</sup>) of August 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 \_\_\_\_\_  
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### **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 3568 words, and 21 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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