

IN THE MISSOURI SUPREME COURT

**STATE OF MISSOURI,
Respondent,**

vs.

**MICHAEL JAY TEER,
Appellant.**

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Cause No. 89501

**APPEAL FROM THE CIRCUIT COURT OF ST. CHARLES COUNTY
ELEVENTH JUDICIAL CIRCUIT, STATE OF MISSOURI
THE HONORABLE WILLIAM T. LOHMAR, TRIAL JUDGE
THE HONORABLE TED C. HOUSE, RESENTENCING JUDGE**

APPELLANT'S REPLY TO RESPONDENT'S SUBSTITUTE BRIEF

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¹ All further statutory references are to Mo. Rev. Stat. 1994, unless otherwise noted.

JURISDICTIONAL STATEMENT

Appellant Michael Jay Teer restates and incorporates by reference his Jurisdictional Statement filed with the Statement, Brief, and Argument in Cause No. ED89409 in the Missouri Court of Appeals on February 1, 2008.

* * * * *

Sources will be cited as follows: legal file – “L.F.” and trial transcript – “Tr.”

STATEMENT OF FACTS

Appellant restates and incorporates by reference his Statement of Facts filed with the Brief and Argument in Cause No. ED89409 in the Missouri Court of Appeals on February 1, 2008.

POINT RELIED ON

The trial court erred in granting the state's motion to file an amended information charging Mr. Teer as a prior offender after the jury had begun deliberations because it violated Mr. Teer's rights to due process, equal protection of law, trial by jury, fair and reliable sentencing, and freedom from cruel and unusual punishment² in that Missouri Revised Statute § 558.021.2 requires that the state in a jury trial plead all essential facts warranting a finding that the defendant is a prior offender before the case is submitted to the jury. Mr. Teer was prejudiced by the court's error because the court found Mr. Teer a prior offender and ordered sentences five times longer than the maximum incarceration assessed by the jury.

Greenbriar Hills Country Club v. Director of Revenue, 47 S.W.3d 346 (Mo. banc 2001);

State v. Greer, 783 S.W.2d 527 (Mo. App. W.D. 1990);

State v. Jennings, 815 S.W.2d 434 (Mo. App. E.D. 1991);

Weeks v. State, 140 S.W.3d 39 (Mo. banc 2004);

Mo. Const., Art. 1, § 2;

Mo. Const., Art. 1, § 10;

² These rights are guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, and Article I, §§ 2, 10, 18(a), and 21 of the Missouri Constitution.

Mo. Const., Art. 1, § 18(a);
Mo. Const., Art. 1, § 21;
Mo. Const., Art. V, § 5
U.S. Const., Amend. V;
U.S. Const., Amend. VI;
U.S. Const., Amend. VIII;
U.S. Const., Amend. XIV;
Mo. Rev. Stat. § 477.010;
Mo. Rev. Stat. § 557.036;
Mo. Rev. Stat. § 558.021;
Mo. Rev. Stat. § 558.021 (1978);
Mo. Sup. Ct. Rule 19.02;
Mo. Sup. Ct. Rule 23.08; and
Mo. Sup. Ct. Rule 24.02 (repealed).

ARGUMENT

The trial court erred in granting the state’s motion to file an amended information charging Mr. Teer as a prior offender after the jury had begun deliberations because it violated Mr. Teer’s rights to due process, equal protection of law, trial by jury, fair and reliable sentencing, and freedom from cruel and unusual punishment³ in that Missouri Revised Statute § 558.021.2 requires that the state in a jury trial plead all essential facts warranting a finding that the defendant is a prior offender before the case is submitted to the jury. Mr. Teer was prejudiced by the court’s error because the court found Mr. Teer a prior offender and ordered sentences five times longer than the maximum incarceration assessed by the jury.

In its brief, Respondent contended that the trial court did not abuse its discretion in allowing the state to file an amended information charging Mr. Teer as a prior offender after the jurors had already started deliberating because the trial court was allowed to do so by Missouri Supreme Court Rule 23.08. Brief for Respondent at 13-14, State v. Michael Jay Teer, No. ED89501 (Mo. filed October 14, 2008)[hereinafter “Brief for Respondent”]. The state needed to argue for Rule 23.08 because the trial court allowed the state to file its amended information charging Mr. Teer as a prior offender after the time set out in Missouri statute (Tr. 741-42). Mo. Rev. Stat. § 558.021.2. This Court should not use Rule 23.08 in

³ See n.2.

deciding Mr. Teer's case.

The first reason that this Court should not use Rule 23.08 is because the Court of Appeals did not. State v. Michael Jay Teer, No. ED89409 (Mo. App. E.D. filed March 1, 2007) [hereinafter, "Memorandum"]. The Court instead found – as Mr. Teer argues – that the trial court violated § 558.021. Memorandum at 3. The Court did not grant relief because it found that Mr. Teer was not prejudiced by the trial court's violating the statute. Id. The Court did *not* find that Rule 23.08 justified what the trial court did.

The second reason that this Court should not use Rule 23.08 is because the Missouri legislature passed § 558.021 to amend Rule 23.08. The Missouri Constitution gives this Court the authority to promulgate rules concerning judicial procedure. Mo. Const., Art. V, § 5; *see* Mo. Rev. Stat. § 477.010. Using that authority, this Court decided that Supreme Court Rules 19 to 36, inclusive, supersede all inconsistent statutes. Mo. Sup. Ct. Rule 19.02. Thus, Rule 23.08 would ordinarily supersede § 558.021.

But the Missouri Constitution also gives the legislature power to make judicial procedural rules: "Any rule may be annulled or amended in whole or in part by a law limited to the purpose." Mo. Const., Art. V, § 5. Section 558.021 was enacted in 1977, and took effect in 1978, as part of the Missouri legislature's overhaul of the entire Missouri criminal code. Mo. Rev. Stat. § 558.021 (1978). Rule 23.08's predecessor rule 24.02 – with almost exactly the same language – was enacted by at least 1956. *See State v. Hunter*, 586 S.W.2d 345 (Mo. banc

1979). Because it is impossible to reconcile § 558.021 with Rule 23.08 where a trial court allows amended informations to be filed charging defendants as prior offenders after a case has been submitted to the jury, the legislature must have meant § 558.021 to amend Rule 23.08.

The legislature must have so intended because it is presumed that the legislature was aware of predecessor Rule 24.02 when it overhauled the criminal code in 1977. “The legislature is presumed to know the existing law when enacting a new piece of legislation.” Greenbriar Hills Country Club v. Director of Revenue, 47 S.W.3d 346, 352 (Mo. banc 2001). “When the legislature enacts a statute referring to terms which have had other judicial or legislative meanings attached to them, the Court of Appeals presumes that the legislature acted with knowledge of that judicial or legislative action.” Leiser v. City of Wildwood, 59 S.W.3d 597, 603 (Mo. App. E.D. 2001). That is because the legislature is not presumed to pass meaningless laws. Weeks v. State, 140 S.W.3d 39, 46 (Mo. banc 2004). Thus, when the legislature passed § 558.021, it must have intended to amend Rule 23.08 where it directly conflicts with § 558.021.

Respondent stated in its brief – as did the Court of Appeals in its decision – that Mr. Teer was not prejudiced by being deprived of jury sentencing because as a prior offender he had no right to it. Memorandum at 3; Respondent’s Brief at 16-23. But Mr. Teer could not be classified as a prior offender until the trial court, following § 558.021’s requirements, found him to be one. For example, if the state had elected **not** to file an amended information charging Mr. Teer as a prior

offender, the trial court would have had to follow the jurors' assessed punishments. Mo. Rev. Stat. § 557.036.3. Thus, until Mr. Teer was properly classified a prior offender, he could not be treated as one.

The Court of Appeals decided as it did below because it could not overrule this Court's previous rulings in similar circumstances that Mr. Teer was not prejudiced by the trial court's violating § 558.021. Memorandum at 3. As was the McGowen, Greer, and Jennings courts, the Court of Appeals was "disappointed" by the trial court's procedural laxity. Memorandum at 3; *see* State v. McGowen, 774 S.W.2d 855, 858 (Mo. App. W.D. 1989); State v. Greer, 783 S.W.2d 527, 531 (Mo. App. W.D. 1990)("We cannot agree that the Missouri Supreme Court intended that prosecutors employ Rule 23.08 to nullify the legislature's intent in § 558.021.2."); State v. Jennings, 815 S.W.2d 434, 446 (Mo. App. E.D. 1991)("In McGowan, the Western District of this court reiterated its dissatisfaction with prosecutorial laxity in complying with the timing provision of § 558.021.2 RSMo 1986 and warned that future violations would be dealt with harshly. McGowan, 774 S.W.2d at 858. We echo both the sentiment and admonition of McGowan."). Mr. Teer hopes this Court can do what the Court of Appeals could not.

For the above reasons, the trial court erred in granting the state's motion to file an amended information charging Mr. Teer as a prior offender after the jurors had begun deliberations. Mr. Teer was deprived of his rights to due process, equal protection of law, trial by jury, fair and reliable sentencing, and freedom from cruel and unusual punishment, under the Fifth, Sixth, Eighth, and Fourteenth

Amendments to the United States Constitution, and to Article I, Mo. Const., Art. I, §§ 2, 10, 18(a), and 21 of the Missouri Constitution. Because of the court's error, this Court needs to reverse the sentences of the trial court and remand for a resentencing following the jury's recommendation, or in the alternative, reverse the sentences and judgment of the trial court and remand for a new trial.

CONCLUSION

WHEREFORE, for the reasons set forth, Appellant Michael Jay Teer requests this Honorable Court reverse the sentences of the trial court and remand for a resentencing following the jury's recommendation, or in the alternative, reverse the sentences and judgment of the trial court and remand for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Two copies of the foregoing Appellant's Reply Brief were mailed by U.S. Mail, postage prepaid to the Attorney General, State of Missouri, and P.O. Box 899, Jefferson City, MO 65102 on this 27th day of October, 2008.