

**IN THE
MISSOURI SUPREME COURT**

STATE OF MISSOURI)	
)	
ex rel.)	
)	
ANTHONY W. BOWMAN)	
)	
Relator,)	
)	
vs.)	No. SC95783
)	
THE HONORABLE)	
TIMOTHY W. INMAN,)	St. Francois County Case No.
JUDGE, DIVISION 9)	14SF-CR01416
ST. FRANCOIS COUNTY)	
)	
Respondent.)	

**PETITION FOR WRIT OF PROHIBITION TO THE
MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF ST. FRANCOIS COUNTY, MISSOURI
TWENTY FOURTH JUDICIAL CIRCUIT,
THE HONORABLE TIMOTHY W. INMAN, JUDGE**

RELATOR'S REPLY BRIEF

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STATEMENT OF FACTS

Relator, Mr. Bowman, relies on the statement of facts in his initial brief.

REPLY ARGUMENT FOR POINT RELIED ON

Relator is entitled to an order prohibiting Respondent from adding the condition to Relator's probation that he pay restitution to Christina Moore in the amount of \$4,064 and to St. Francois County Prosecuting Attorney's Office in the amount of \$75, because Respondent clearly abused his discretion under RSMO 559.105.1, in that Respondent ordered Relator to pay restitution for a victim's losses due to an offense to which Relator did not plead, nor was he convicted of such offense. The court's error was a clear excess of the court's authority under RSMO 559.105.1 and will deprive Relator of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 10 of the Missouri Constitution if Respondent is allowed to conduct a probation revocation proceeding for Relator failing to pay the ordered restitution. This error was a clear abuse of discretion such that the lower court lacked the power to act as it did, and thus requires the issuance of an extraordinary writ.

Reply Argument

1) Relator correctly filed an original writ with this Honorable Court.

On September 21, 2016, Respondent filed a Motion for Dismissal of this pending writ asserting that Relator should have appealed the Missouri Court of Appeals, Eastern District's denial of writ, rather than filing an original writ with

this Honorable Court. On September 21, 2016, Relator filed his Suggestions in Opposition to Respondent's Motion for Dismissal, asserting that Relator correctly filed an original writ with this Honorable Court. On November 14, 2016, Respondent filed his Brief, again asserting that the writ should be dismissed because an appeal of the denial was not filed. On November 22, 2016, this Honorable Court overruled Respondent's Motion to Dismiss. Therefore, Relator will not set forth his argument in opposition to Respondent's Motion for Dismissal, as the issue is now moot.

2) Regardless of the application of RSMO §§ 559.021 and 559.100, RSMO § 559.105 still limits Respondent's discretion when ordering restitution.

In support of his opposition, Respondent asserts that Relator is mistaken that RSMO § 559.105 is the only statute controlling Respondent on the issue of restitution. However, Relator never asserted that RSMO § 559.105 was the only statute governing a judge's jurisdiction when dealing with restitution. Regardless, the other two statutes cited by Respondent do not negate the limitations of Respondent when ordering restitution in a criminal case as addressed in RSMO § 559.105.1.

"The doctrine of *in pari materia* recognizes that statutes relating to the same subject matter should be read together, but when one statute deals with the subject

in general terms and the other deals in a specific way, to the extent they conflict, the specific statute prevails over the general statute.” *State ex rel. Taylor v. Russell*, 449 S.W.3d 380 (Mo. banc 2014) (quoting *Turner v. Sch. Dist. Of Clayton*, 318 S.W.3d 660 (Mo. banc 2010)). “When interpreting statutes, we ascertain the legislature’s intent from the language used, giving words and phrases their ordinary and plain meaning.” *PDQ Tower Services, Inc. v. Dennis and Bonnie Adams*, 213 S.W.3d 697 (Mo.App.W.D. 2007) (quoting *Battis v. Hofmann*, 832 S.W.2d 937, 939 (Mo.App.W.D.1992)). “In addition ‘[a]ll consistent statutes relating to the same subject matter are *in pari materia* and are construed together as though constituting one act, whether adopted at different dates or separated by long and short intervals.’” *Id.* at 698. (quoting *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 200 (Mo. banc 1991)). “Where two statutory provisions covering the same subject matter are unambiguous when read separately but conflict when read together, the reviewing court must attempt to harmonize them and give effect to both.” *Yates v. Progressive Preferred Ins. Co.*, 331 S.W.3d 324, 327 (Mo. App. W.D. 2001).

Here, there is no inconsistency whatsoever between RSMO § 559.105.1 and RSMO §§ 559.021 and 559.100. RSMO § 559.105.1, states:

Any person who has been found guilty of or has pled guilty to an offense may be ordered by the court to make restitution to the victim

for the victim's losses due to such offense. Restitution pursuant to this section shall include, but is not limited to a victim's reasonable expenses to participate in the prosecution of the crime.

RSMO § 559.021 states:

1. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will not again violate the law. When a defendant is placed on probation he shall be given a certificate explicitly stating the conditions on which he is being released.
2. In addition to such other authority as exists to order conditions of probation, the court may order such conditions as the court believes will serve to compensate the victim, any dependent of the victim, any statutorily created fund for costs incurred as a result of the offender's actions, or society. Such conditions may include restorative justice methods pursuant to section 217.777, or any other method that the court finds just or appropriate including, but not limited to:
 - (1) Restitution to the victim or any dependent of the victim, or statutorily created fund for costs incurred as a result of the offender's actions in an amount to be determined by the judge;

These two statutes are completely consistent and completely unambiguous given the plain meaning of the words used in both. RSMO § 559.021.1 grants Respondent with the authority to make certain conditions of probation that he deems reasonably necessary to ensure that the defendant will not again violate the law. This subsection has always been held by Missouri courts as authorizing certain conditions pertaining to correcting a defendant's conduct. *See Whitney v. State*, 789 S.W.2d 852, 855 (Mo. App. S.D. 1990) (holding that RSMO § 559.021.1 allows a court to order sentences to be served consecutively rather than concurrently to ensure that the defendant will not again violate the law); *State ex rel. Doe v. Moore*, 265 S.W.3d 278, 279 (Mo. Banc 2008) (holding that RSMO § 559.021.1 allows a court to modify probation conditions to include that a defendant be supervised as a sex offender, evaluated by a physician at the direction of probation and parole, and that he attend and successfully complete sex offender treatment to ensure that the defendant will not again violate the law); *State v. Welsh*, 853 S.W.2d 466, 469 (Mo. App. S.D. 1993) (holding that RSMO § 559.021.1 allows a court to impose the condition of probation that the defendant complete an alcohol program to ensure that the defendant will not again violate the law).

However, the purpose of ordering a defendant to pay restitution is to compensate the victim of a crime and to make the victim whole again; it is not

specifically to correct the conduct of the defendant, and thus RSMO § 559.021.1 is not relevant to the issue at hand. Even if ordering a defendant to pay restitution is used to correct the conduct of the defendant, RSMO § 559.021.1 still does not conflict with RSMO § 559.105.1. RSMO § 559.021.1 simply would allow Respondent to order Relator to pay restitution; however, such an order would still be limited by RSMO § 559.105.1 to that amount of restitution for the victim's losses due to the offense to which Relator pled guilty. Therefore, RSMO §§ 559.021.1 and 559.105.1 do not conflict in the slightest, but rather can easily be read in harmony using the plain meaning of the words used in the statutes.

In addition, RSMO § 559.021.2 grants Respondent with the authority to order such probation conditions that serve to compensate a victim including ordering restitution to the victim. This does not conflict with RSMO § 559.105.1. RSMO § 559.105.1 only reinforces that Respondent has the authority to order restitution to a victim as stated under RSMO § 559.021.2; however, RSMO § 559.105.1 adds a limitation to that authority granted to Respondent under RSMO § 559.021.2. It limits Respondent's authority to order such restitution to a victim only for the victim's losses due to such offense to which the defendant was found or pled guilty. Therefore, RSMO §§ 559.021.2 and 559.105.1 do not conflict in the slightest, but rather can be read in harmony using the plain meaning of the words used in the statutes.

While it is unclear if Respondent is arguing that RSMO § 559.021.2 grants Respondent the authority to award restitution to the victim in an unlimited amount as determined by Respondent, if Respondent were arguing such, then Respondent would be flawed in his interpretation of RSMO § 559.021.2 when reading all of the statutes governing restitution together. By including the language “in an amount to be determined by the judge” in RSMO § 559.021.2(1), the legislature gave Respondent the authority to determine the amount of restitution in a case. This authorizes Respondent to hold a hearing to determine what the value of restitution is in a particular case. However, this does not mean Respondent has authority to issue restitution in any amount he so chooses. It must still be limited to the amount of restitution due to the offense to which the defendant was found or pled guilty. Therefore, both RSMO §§ 559.105 and 559.021 do not conflict with one another and can be read in harmony using the plain meaning of the words used in the statutes.

Additionally, RSMO §§ 559.100 and 559.105 do not conflict with one another and can easily be read in harmony using the plain meaning of the words used in the statutes. RSMO § 559.100 addresses restitution in subsections 2., 3. and 7. RSMO § 559.100.2 states: “The circuit court may require that the defendant pay restitution for his or her offense. The probation or parole may be revoked under section 559.036 for failure to pay restitution or for failure to

conform his or her behavior to the conditions imposed by the circuit court.” The first sentence of RSMO § 559.100.2 reinforces what RSMO § 559.105 states: that a court only has the authority to order restitution for a victim’s losses due to his offense. RSMO § 559.100.2 also states that if a defendant doesn’t pay restitution as ordered, then his probation or parole may be revoked. Nothing about RSMO § 559.100.2 conflicts with RSMO § 559.105, and thus they can easily be read in harmony using the plain meaning of the words used in the statutes. .

RSMO § 559.100.3 RSMo states:

Restitution whether court-ordered as provided in subsection 2 of this section or agreed to by the parties, or as enforced under section 558.019, shall be paid through the office of the prosecuting attorney or circuit attorney. Nothing in this section shall prohibit the prosecuting attorney or circuit attorney from contracting with or utilizing another entity for the collection of restitution and costs under this section. When ordered by the court, interest shall be allowed under subsection 2 of section 408.040. In addition to all other costs and fees allowed by law, each prosecuting attorney or circuit attorney who takes any action to collect restitution shall collect from the person paying restitution an administrative handling cost. The cost shall be twenty-five dollars for restitution of less than one hundred

dollars and fifty dollars for restitution of at least one hundred dollars but less than two hundred fifty dollars. For restitution of two hundred fifty dollars or more an additional fee of ten percent of the total restitution shall be assessed, with a maximum fee for administrative handling costs not to exceed seventy-five dollars total.

Notwithstanding the provisions of sections 59.525 and 50.745, the costs provided for in this subsection shall be deposited by the county treasurer into a separate interest-bearing fund to be expended by the prosecuting attorney or circuit attorney. This fund shall be known as the “Administrative Handling Cost Fund”, and it shall be the fund for deposits under this section and under section 570.120. The funds shall be expended, upon warrants issued by the prosecuting attorney or circuit attorney directing the treasurer to issue checks thereon, only for purposes related to that authorized by subsection 4 of this section.

RSMO § 559.100.3 clearly does not conflict with RSMO § 559.105. It specifically deals with the processing of restitution when ordered. Therefore, RSMO §§ 559.100.3 and 559.105 do not conflict with one another and can easily be read in harmony using the plain meaning of the words used in the statutes.

Likewise, RSMO §§ 559.100.7 and 559.105 do not conflict with one another and can easily be read in harmony using the plain meaning of the words used in the

statutes. RSMO § 559.100.7 states: “Nothing in this section shall be construed to prohibit a crime victim from pursuing other lawful remedies against a defendant for restitution.” This makes it clear that a victim of a crime still can pursue other lawful remedies against a defendant for restitution; it does not say anything whatsoever that conflicts with RSMO § 559.105. Therefore, when you read the restitution statutes together as a whole, they do not conflict and are completely unambiguous. Therefore, Respondent’s discretion was limited as indicated in RSMO § 559.105, and Respondent could only order Relator to pay restitution for Christina Moore’s losses due to the offense to which Relator pled guilty.

Furthermore, Respondent asserts that Respondent found that as part of reducing the charge from a felony to a misdemeanor under the plea agreement, Relator would pay \$4,064 in restitution. However, Respondent did not make such a ruling at the restitution hearing.¹ It is clear from the transcript of the restitution hearing that Respondent based his ruling specifically on Christina Moore’s testimony that the value of the items that had not been recovered was \$4,064 and based on his review of the court’s file that “there was probably some property that was not recovered that was given to other people.”² Even if Respondent did make such a ruling, such ruling would have been an abuse of discretion because based on

¹ See E-9, P. 13, Ln. 350-359.

² See E-9, P. 13, Ln. 355-357.

the evidence, no reasonable person would find that as part of the plea deal, Relator agreed to pay \$4,064 in restitution. First, E-4 is the signed plea agreement which was filed with the court. On that signed plea agreement, there is a box that can be checked regarding restitution owed in a case and an amount of restitution can be inserted. However, this box is not checked and no amount is inserted on the plea agreement that Relator signed. In addition, Relator's witness, William Chapman-Kramer, testified at the restitution hearing the signed plea agreement represented the entire plea agreement as he remembered it.³ He also testified that he and the prosecuting attorney had spoken about the \$4,000 restitution amount, but that they then discussed how the property Relator was responsible for was recovered by Christina Moore, and thus restitution was not part of the agreement.⁴ Furthermore, the State's witness, Jerrod Mahurin, testified that he and Mr. Kramer would have discussed restitution; however, that he doesn't specifically remember the conversations that they had about the restitution.⁵ Based on this evidence, no reasonable person could conclude that the \$4,064 in restitution was part of the plea agreement, and thus even if Respondent found that \$4,064 in restitution was part of Relator's plea agreement, he clearly abused his discretion by doing so.

³ See E-9, P. 6, Ln. 165-166; P.7, Ln. 167.

⁴ See E-9, P. 7, Ln. 171-178.

⁵ See E-9, P. 10, Ln. 267-275.

Finally, Respondent states, “A court is permitted to consider matters outside the record in setting the conditions of probation,” citing *State v. Burton*, 198 S.W.2d 19, 23 (Mo. 1946). First, *Burton* is about sentencing a defendant for rape to 20 or 25 years in prison; it is not about adding conditions of probation. Second, while the court in *Burton* does state that a court is permitted to consider matters outside the record in fixing the sentence, punishment or costs, it also says “within the limits prescribed by law.” *Id.* at 22. RSMO § 559.105.1 is a limit on Respondent’s authority to consider matters outside the record in setting a restitution amount. The restitution amount still must be that amount based on the victim’s losses due to the offense to which Relator pled guilty. Therefore, Respondent abused his discretion.

Based on the foregoing reasons and in combination with Relator’s initial brief, Relator has met his burden in showing that Respondent abused his discretion when ordering Relator to pay \$4,064 in restitution to Christina Moore and a \$75 administrative fee to the St. Francois County Prosecutor’s Office because no reasonable person could find that (1) the \$4,064 restitution amount was restitution relating to Christina Moore’s losses due to the receiving stolen property offense to which Relator pled guilty, and (2) the \$4,064 restitution amount was part of Relator’s plea agreement.

CONCLUSION

WHEREFORE, based on the argument as set forth in this reply brief and relator's initial brief, relator Anthony Bowman respectfully requests that this Honorable Court make its preliminary writ permanent and prohibit Respondent from taking any action on this case with regards to Relator failing to pay restitution, and mandate that Respondent remove the condition to pay restitution in the amount of \$4,074 to Christina Moore and \$75 to the St. Francois County Prosecutor's Office from Relator's probation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Relator's Brief was served by e-mail on this 23rd day of November, 2016, to:

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Sarah Jackson

CERTIFICATE OF SERVICE

Pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Rule 55.03 and that it complies with the page limitations of Special Rule 360. This brief was prepared with Microsoft Word for Windows, uses Times New Roman 14 point font, and does not exceed the word limits for a reply brief in this court. The word-processing software identified that this brief contains 3,468 words, and 18 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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