IN THE SUPREME COURT OF MISSOURI
AT JEFFERSON CITY

STATE OF MISSOURI, ex rel. CHRISTINE DELF, Relator/Defendant, v. THE HONORABLE ROBERT G. WILKINS, Circuit Court Judge, Div. 1 Jefferson County Courthouse 300 Main Street Hillsboro, MO 63050 Respondent.	)	Sup. Ct. No. SC95800 Cause No. 14JE-CR03488-01

RELATOR CHRISTINE DELF'S BRIEF

IN SUPPORT OF WRIT OF PROHIBITION

Respectfully submitted,

/s/ W. Scott Rose
W. Scott Rose, #61587
ROSE LEGAL SERVICES, LLC
3636 South Geyer Road, Suite 100
Saint Louis, MO 63127
(314) 812-4700
wsrose@roselegalservices.com
Attorney for Christine E. Delf

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I. JURISDICTIONAL STATEMENT

The action is one involving the question of whether a circuit court may add 120 days of shock time and a prohibition on working in a particular industry to a binding plea agreement without allowing the defendant to withdraw her plea and stand trial, and hence involves the construction and applicability of Missouri Supreme Court Rule 24.02(d)(4), the Due Process Clause, and the constitutional right to a trial. Petitioner seeks an original remedial writ pursuant to Article V, § 4.1 of the Missouri Constitution.

II. STATEMENT OF FACTS

On May 21, 2015, the State charged Defendant by felony Information with a single count of forgery, a Class C felony. (Pet. ¶ 1 & Relator's Ex. A at 1-2). The State and Defendant subsequently reached a plea agreement, and the agreement was filed with the Court on February 25, 2016. (Pet. ¶ 2 & Relator's Ex. B at 3). The plea agreement stated in full as follows:

> "7 years MDC, SES, 5 years probation. Restitution of $5,000 plus administrative fee to be paid through P.A. Restitution Dept., and to be paid in full prior to the expiration of probation."

(Pet. ¶ 3 & Relator's Ex. B at 3). The plea agreement noted at the bottom as follows: "The Parties agree that this recommendation is being entered into pursuant to Rule 24.02(d)(1)(c) and agree to be bound by its terms." (Pet. ¶ 4 & Relator's Ex. B at 3). No part of the plea agreement was left "open" or "blind." (Pet. ¶ 5 & Relator's Ex. B at 3). During negotiations of the final plea agreement (before the prosecutor reduced it to writing), Ms. Delf's attorney specifically asked the prosecutor whether there would be

any "shock" time, and the Assistant Prosecuting Attorney confirmed that the plea agreement would NOT include shock time. (Pet. ¶ 6).

The plea agreement followed a very contested case, in which there was a preliminary hearing, depositions, and extensive plea negotiations. (Pet. ¶ 7). The final plea agreement was the third written recommendation issued by the prosecutor in the case, and it was the only recommendation that did not include jail or prison time (which is why Ms. Delf accepted it). (Pet. ¶ 7). Ms. Delf maintained her innocence throughout the case until the Plea Hearing, at which time she admitted the State's version of facts – with the understanding and on the advice of counsel that she would either (a) receive probation and no jail time, or (2) have the right to withdraw her guilty plea and have a trial. (Pet. ¶ 8). At the Plea Hearing on March 17, 2016, Respondent accepted the guilty plea, ordered a Sentencing Assessment Report, and deferred sentencing to a later date. (Pet. ¶ 9 & Relator's Ex. F at 31-32).

The Sentencing Hearing took place on June 15, 2016. (Pet. ¶ 10 & Relator's Ex. C at 4-6). At the Sentencing Hearing, Respondent sentenced Ms. Delf to 120 days of "shock" time in the Jefferson County Jail. (Pet. ¶ 11 & Relator's Ex. C at 4-6). Respondent also prohibited Ms. Delf from working in the home health care industry. (Pet. ¶ 11 & Relator's Ex. C at 4-6). At the Sentencing Hearing, Ms. Delf (through counsel) objected to the addition of these terms, arguing that neither the fact of probation nor the conditions of probation had been left "open" or "blind." (Pet. ¶ 12 & Relator's Ex. G at 52-54). Ms. Delf (through counsel) argued that Respondent's authority was limited to either (1) accepting the plea agreement, or (2) rejecting it and allowing Ms.

Delf to withdraw her guilty plea and set the case for trial. (Pet. ¶ 12 & Relator's Ex. G at 52-54). Respondent rejected these arguments, taking the position that "shock" time and Defendant's employment are conditions of probation that Respondent may set. (Pet. ¶ 12 & Relator's Ex. G at 51-57). Respondent ordered that Ms. Delf be taken into custody at the Sentencing Hearing on June 15, 2016. (Pet. ¶ 13 & Relator's Ex. G at 53).

On June 20, 2016, Ms. Delf filed Defendant's Motion to Enforce Plea Agreement or, in the Alternative, Withdraw Guilty Plea and Set Case for Trial. (Pet. ¶ 14 & Relator's Ex. D at 7-9). On June 22, 2016, the Circuit Court denied Defendant's Motion to Enforce Plea Agreement or, in the Alternative, Withdraw Guilty Plea and Set Case for Trial. (Pet. ¶ 15 & Relator's Ex. E at 10-12).

On June 23, 2016, Ms. Delf filed a Petition for Writ of Mandamus, Suggestions in Support, and exhibits in the Eastern District of the Missouri Court of Appeals. (Pet. ¶ 17). The case number was ED104510. (Pet. ¶ 17). On June 24, 2016, the Missouri Court of Appeals construed Ms. Delf's filings as a Petition for Writ of Habeas Corpus and provisionally issued the writ, ordering her to be released from the Jefferson County Jail on her own recognizance, pending the outcome of those proceedings. (Pet. ¶ 18 & Relator's Ex. H at 59-60). On July 7, 2016, the State – evidently acting on Respondent's behalf – filed an Answer to the Petition for Writ of Mandamus and Suggestions in Opposition. (Pet. ¶ 19). Nowhere in its filings did the State address the arguments presented by Ms. Delf. (Pet. ¶ 19). Minutes later on July 7, 2016, the Court of Appeals issued an Order quashing its provisional Writ of Habeas Corpus and denying all relief sought by Ms. Delf. (Pet. ¶ 20 & Relator's Ex. I at 61-62). The Court of Appeals did not

issue a reasoned opinion. (Pet. ¶ 20 & Relator's Ex. I at 61-62). The Court of Appeals ordered Ms. Delf to surrender herself at the Jefferson County Jail on July 11, 2016, to serve the balance of her sentence. (Pet. ¶ 20 & Relator's Ex. I at 61-62).

Ms. Delf surrendered to the Jefferson County Jail on July 11, 2016 (Pet. ¶ 21), and remained in custody at that location until this Court ordered her release pending the outcome of these proceedings on July 27, 2016. To this day, no court has addressed or even acknowledged Ms. Delf's arguments. (Pet. ¶ 22).

III. POINTS RELIED ON

Point 1: Relator is entitled to an order prohibiting Respondent from doing anything other than setting aside its Order dated June 22, 2016, denying Defendant's Motion to Enforce Plea Agreement or, in the Alternative, Withdraw Guilty Plea and Set Case for Trial and entering an order sustaining the same, because, with respect to binding plea agreements, Rule 24.02(d) requires circuit courts to either accept them without modification or reject them and allow defendants to withdraw their guilty pleas, in that Respondent modified the plea agreement by adding 120 days of "shock time" and a prohibition on working in the home health care industry and did not allow Ms. Delf to withdraw her plea and stand trial.

- Rule 24.02(d)
- *Santobello v. New York*, 404 U.S. 257 (1971)
- *Schellert v. State*, 569 S.W.2d 735 (Mo. 1978)

Point 2: Relator is entitled to an order prohibiting Respondent from doing anything other than setting aside its Order dated June 22, 2016, denying Defendant's

Motion to Enforce Plea Agreement or, in the Alternative, Withdraw Guilty Plea and Set Case for Trial and entering an order sustaining the same, because defendants have a constitutional right to have plea agreements enforced or to stand trial in that Respondent effectively rejected the plea agreement by adding 120 days of "shock time" and a prohibition on working in the home health care industry and did not allow Ms. Delf to withdraw her plea and stand trial.

- Rule 24.02(d)
- *Reed v. State*, 114 S.W.3d 871, 874-76 (Mo. App. 2003)

IV. ARGUMENT

Relator/Defendant Christine Delf seeks only the benefit of the bargain that her attorney negotiated with the State. Her plea agreement, which was drafted by a prosecutor and signed by her, stipulated that she would receive probation. It left no terms "blind" or "open." Her attorney and the prosecutor had even discussed and agreed that there would be no "shock" time. Yet Respondent "blue penciled" the plea agreement by adding terms to it – namely 120 days "shock" time in the Jefferson County Jail and a prohibition on working in the home health care industry. Respondent further would not allow Ms. Delf to withdraw her guilty plea and set the case for trial.

Respondent's actions were contrary to Rule 24.02(d)(4) and violated Ms. Delf's due process rights and constitutional right to a trial. And since her plea was premised on the understanding that she would not serve any jail time, Respondent's deviation from the plea agreement rendered Ms. Delf's plea unknowing and involuntary. Accordingly, this Court should issue the writ of prohibition and direct Respondent to either (1) accept and

honor the plea agreement as stated, without any additional terms, or (2) permit Ms. Delf to withdraw her guilty plea and set this case for trial.

Petitioner seeks an original remedial writ pursuant to Article V, § 4.1 of the Missouri Constitution. The extraordinary remedy of a writ of prohibition is available:

(1) To prevent the usurpation of judicial power when the trial court lacks authority or jurisdiction;

(2) To remedy an excess of authority, jurisdiction, or abuse of discretion where the lower court lacks the power to act as intended; or

(3) Where a party may suffer irreparable harm if relief is not granted.

State ex rel. Richardson v. Green, 465 S.W.3d 60, 62-63 (Mo. 2015) (quoting *State ex rel. O'Basuyi v. Vincent*, 434 S.W.3d 517, 519 (Mo. 2014)).

A. Relator is entitled to an order prohibiting Respondent from doing anything other than setting aside its Order dated June 22, 2016, denying Defendant's Motion to Enforce Plea Agreement or, in the Alternative, Withdraw Guilty Plea and Set Case for Trial and entering an order sustaining the same, because, with respect to binding plea agreements, Rule 24.02(d) requires circuit courts to either accept them without modification or reject them and allow defendants to withdraw their guilty pleas, in that Respondent modified the plea agreement by adding 120 days of "shock time" and a prohibition on working in the home health care industry and did not allow Ms. Delf to withdraw her plea and stand trial.

Missouri Supreme Court Rule 24.02(d)(1) provides for four different kinds of plea agreements, only one of which is not binding on the circuit court:

> The prosecuting attorney and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will do any of the following:
>
> (A) Dismiss other charges; or
>
> (B) Make a recommendation, or agree not to oppose the defendant's request, for a particular disposition, with the understanding that such recommendation or request shall not be binding on the court; or
>
> (C) Agree that a specific sentence is the appropriate disposition of the case; or
>
> (D) Make a recommendation for, or agree on, another appropriate disposition of the case.
>
> The court shall not participate in any such discussions, but after a plea agreement has been reached the court may discuss the agreement with the attorneys including any alternative that would be acceptable.

Mo. Sup. Ct. R. 24.02(d)(1). For all four types of agreements, circuit courts have the authority to accept the agreement pursuant to Rule 24.02(d)(3) or reject it pursuant to Rule 24.02(d)(4).

However, except for agreements pursuant to Rule 24.02(d)(1)(B), where there is an understanding that the agreement is not binding on the circuit court, if the circuit court rejects the agreement, the defendant has a right to withdraw his or her guilty plea:

> If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw defendant's plea if it is based on an agreement pursuant to Rule 24.02(d)1(A), (C), or (D), and advise the defendant that if defendant persists in his guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

Mo. Sup. Ct. R. 24.02(d)(4). The principles behind Rule 24.02(d)(4) are based on *Santobello v. New York*, 404 U.S. 257 (1971), in which the United States Supreme Court held that when a prosecuting attorney fails to follow the terms of a plea agreement, due process requires that the court either order specific performance of the previous plea bargain or, alternatively, allow the defendant to withdraw the guilty plea. 404 U.S. at 263. This Court implemented Rule 24.02(d)(4) after its holding in *Schellert v. State*, 569 S.W.2d 735 (Mo. 1978), in which it observed, "For a system of criminal justice strongly to encourage a defendant to believe that a certain sentence will follow the abandonment of his constitutional rights and yet to impose an entirely different sentence seems manifestly unfair and a mockery of justice." 569 S.W.2d at 738 (quoting sources). Appellate courts in Missouri have reversed circuit courts for failure to follow Rule

24.02(d)(4) several times, including in *State v. Bryan*, 335 S.W.3d 1 (2010); *Eckhoff v. State*, 201 S.W.3d 52 (Mo. App. 2006), *Reed v. State*, 114 S.W.3d 871 (Mo. App. 2003); *Benford v. State*, 54 S.W.3d 728 (Mo. App 2001), *Green v. State*, 32 S.W.3d 208 (Mo. App. 2000), *Boyd v. State*, 10 S.W.3d 597 (Mo. App. 2000), *Simpson v. State*, 990 S.W.2d 693 (Mo. App. 1999), *President v. State*, 925 S.W.2d 866 (Mo. App. 1996), *Blackford v. State*, 884 S.W.2d 98 (Mo. App 1994), and *State v. Simpson*, 836 S.W.2d 75 (Mo. App. 1992).

It should be noted that the authority to reject plea agreements (even if the defendant is allowed to withdraw the guilty plea) affords circuit courts very substantial power to oversee and influence plea negotiations and the outcomes of cases. The practical effect is that, when a circuit court rejects a plea agreement, the prosecutor and defense attorney typically "go back to the drawing board" to try to come up with an agreement the circuit court will approve. And if renegotiating a new plea agreement fails, the defendant can always proceed to trial. But to give circuit courts the power *to modify* a "binding plea agreement" after accepting it would mean that the so-called "binding plea agreement" is neither binding nor an agreement.

The plea agreement in this case was entered pursuant to Rule 24.02(d)(1)(C), in which the State and Ms. Delf agreed "that a specific sentence is the appropriate disposition of the case." The bottom of the plea agreement even states, "The Parties agree that this recommendation is being entered into pursuant to Rule 24.02(d)(1)(c) and agree to be bound by its terms." The text of the plea agreement, which was drafted by a prosecutor, left no terms "open" or "blind":

> 7 years MDC, SES, 5 years probation. Restitution of $5,000 plus administrative fee to be paid through P.A. Restitution Dept., and to be paid in full prior to the expiration of probation.

Therefore, as with the thousands of guilty pleas "pursuant to an agreement with the State" that happen in Missouri ever year, no terms of the plea agreement were left to Respondent to decide. Respondent's options were to accept the plea agreement pursuant to Rule 24.02(d)(3) or reject it pursuant to Rule 24.02(d)(4), and if Respondent rejected it, Ms. Delf was entitled to withdraw her guilty plea and attempt to renegotiate a new plea agreement that Respondent would approve or, failing that, stand trial.

But Respondent in this case did neither. Instead, Respondent "blue penciled" the agreement by adding terms to it – namely 120 days "shock" time in the Jefferson County Jail and a prohibition on working in the home health care industry. Respondent did not have the authority to unilaterally add terms to the plea agreement. As Ms. Delf's attorney advised her several times before the Plea Hearing and again before the Sentencing Hearing, she is entitled to either (1) have the terms of the plea agreement honored as stated, or (2) stand trial. Accordingly, Respondent acted in excess of its authority, and Ms. Delf stands to suffer irreparable harm has a result, making an original writ of prohibition appropriate. Because the Judgment in this case deviated from the plea agreement, this Court should issue a writ of prohibition directing Respondent to either (1) accept and honor the plea agreement as stated, without any additional terms, pursuant to Rule 24.02(d)(3), or (2) permit Ms. Delf to withdraw her guilty plea pursuant to Rule 24.02(d)(4) and set this case for trial.

B. Relator is entitled to an order prohibiting Respondent from doing anything other than setting aside its Order dated June 22, 2016, denying Defendant's Motion to Enforce Plea Agreement or, in the Alternative, Withdraw Guilty Plea and Set Case for Trial and entering an order sustaining the same, because defendants have a constitutional right to have plea agreements enforced or to stand trial in that Respondent effectively rejected the plea agreement by adding 120 days of "shock time" and a prohibition on working in the home health care industry and did not allow Ms. Delf to withdraw her plea and stand trial.

1. Adding shock time and a prohibition on working in the home health care industry were inconsistent with Ms. Delf's reasonable expectations about the meaning of the plea agreement, and therefore, her plea was not knowingly, intelligently, and voluntarily entered.

A plea agreement is a binding contract between the state and a defendant. *Evans v. State*, 28 S.W.3d 434, 439 (2000). Rule 24.02 dictates that the terms must be clearly set forth in the record, and if a plea agreement impaired the voluntariness or intelligence of a guilty plea, then a defendant has a constitutional right to have the plea bargain specifically enforced or to withdraw the guilty plea. *Id.* (citing cases).

It is well settled in the law that: "When a plea [of guilty] rests in any significant degree on a promise or agreement of the prosecutor, so that it

> can be said to be part of the inducement or consideration, such promise must be fulfilled." *Eckhoff v. State*, 201 S.W.3d 52, 55 (Mo. App. 2006) (citing *North v. State*, 878 S.W.2d 66, 67 (Mo. App. 1994)). And, if the prosecutor fails to live up to such a promise or breaches such an agreement, the defendant is entitled to post-conviction relief. *Id.* This relief can consist of either specific performance of the promise, requiring re-sentencing before a different judge, or allowing the defendant to withdraw his guilty plea. *Evans v. State*, 134 S.W.3d 725, 727–28 (Mo. App. 2004).

Ivory v. State, 211 S.W.3d 185, 188-89 (Mo. App. 2007). *See also Shellert*, 569 S.W.2d at 738; *Santobello*, 404 U.S. at 26. Where a defendant is induced to plead guilty based on an understanding that he will receive a certain sentence, and instead receives a harsher sentence, his plea is unknowing, unintelligent, and involuntary, and he must be allowed to withdraw it pursuant to Rule 24.02(d)(4). *Eckhoff v. State*, 201 S.W.3d 52, 55 (Mo. App. 2006).

In formulating a plea agreement, the prosecuting attorney and the defendant should act fairly so that the reasonable expectations of both sides are met. *Schellert*, 569 S.W.2d at 739.

> Plea agreements and plea records are not the place for mincing of words and parsing of meanings after the fact. There is no legitimate reason why both counsel for the State and defendant and the trial court itself cannot and should not make the binding or non-binding nature of the plea

agreement crystal clear. To do so would eliminate many needless questions and unnecessary subsequent post-conviction litigation.

Reed v. State, 114 S.W.3d 871, 874 (Mo. App. 2003). When considering whether a defendant pleaded guilty based on a mistaken belief about the sentence and plea agreement, the test is whether a reasonable basis exists in the record for such belief. *Id.* at 876 (quoting *Brown v. Gammon*, 947 S.W. 2d 437, 440-41 (Mo. App. 1997)). *See also McNeal v. State*, 910 S.W.2d 767, 769 (1995). The court will find that a reasonable mistake exists only if the defendant's belief was based on positive representations upon which he or she was entitled to rely. *Id.*

In this case, Ms. Delf believed she would receive no jail time, and she surrendered her constitutional right to a trial based on that belief. This is plainly demonstrated by the text of the plea agreement, the transcript of the Plea Hearing, and the transcript of the Sentencing Hearing. Furthermore, Ms. Delf's attorney assured her – repeatedly and unequivocally – that she would not serve any jail time as a result of this plea agreement, unless Respondent rejected the plea agreement, in which case she would have the right to withdraw her plea and stand trial. Avoiding jail time was the whole point of the plea agreement. Accordingly, if Respondent was going to insist that any plea agreement require her to serve at least 120 days in jail, then Ms. Delf had a right to withdraw her plea and stand trial. The State's notion that Respondent "followed" a plea agreement by sentencing Ms. Delf to 120 days in jail, when the very purpose of the plea agreement was to avoid jail, is not credible.

2. Sections 559.021 and 559.026 do not authorize circuit courts to add "conditions of probation" to binding plea agreements without allowing the defendant to withdraw his or her plea.

The State's position is that Respondent did not "reject" the plea agreement; rather, so the argument goes, Respondent "accepted" the plea agreement and simply determined the "conditions" of probation. According to the State, circuit courts have authority to determine the conditions of probation pursuant to Section 559.021, RSMo., and Section 559.026 authorizes up to 120 days of shock time as a "condition of probation." The case is as simple as that, so the State contends.

Naturally, circuit courts do have the *statutory* authority to determine the conditions of probation pursuant Section 559.021. And of course circuit courts have the statutory authority to impose up to 120 days of shock time pursuant to 559.026. Circuit courts also have the authority to impose a prison sentence of up to seven years pursuant to Section 558.011. And the authority to impose a fine of up to $5,000 pursuant to Section 560.011. Or a special term of imprisonment in the county jail of up to one year pursuant to Section 558.011(2). Or long-term treatment pursuant to Section 217.362. Or ITC treatment pursuant to 559.115. Circuit courts have the statutory authority to do all of these things. But Ms. Delf has never argued that Respondent exceeded his *statutory* authority. The point is that, *in this case*, the State and Ms. Delf *had a binding agreement about which of these things Respondent would do.* Therefore, to respond by alluding to circuit courts' statutory authority is to miss the point.

Prosecutors and defense attorneys can and do make binding plea agreements about the special conditions of probation literally every day in circuit courts all across Missouri. General conditions of probation (laws, travel, residence, etc.) are different – they are promulgated by the Board of Probation and Parole and apply to all probationers. *See* 14 CSR § 80-3.010; § 217.755, RSMo. But the special conditions of probation, i.e., those that are applied to specific cases based on the circumstances of that case (like restitution, no contact with the victim, drug evaluation and follow recommended treatment, attend a financial management class, etc.), are so frequently the subject of plea negotiations that it is fair to call the practice "routine." Counsel in this case does it on a nearly daily basis in several circuits. Indeed, the plea agreement in the case at bar included restitution as a special condition of probation. Practitioners and judges would be shocked to learn that § 559.021 means there can be no such thing as a binding plea agreement about the special conditions of probation, and such a holding would transform the practice of plea negotiations throughout Missouri.

Moreover, the so-called "special condition of probation" known as "shock time" is a special condition unto itself. Avoiding jail time is certainly a material – if not the only – point of negotiating a plea agreement. Conventional language would suggest that detention, rather than being a "condition of probation," is an antonym of probation. Section 559.021, the lynchpin to the State's argument, even assumes that a probationer is not in custody:

> 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.*

§ 559.021, RSMo. (emphasis added). The notion that detention can be a "condition of probation" is a legal fiction created by § 559.026. For these reasons, even if circuit courts do have authority to determine other conditions of probation without permitting a defendant to withdraw his plea, there is good reason to treat shock time differently.

If this Court upholds the State and Respondent's position, then in every case in which there is a binding plea agreement for probation, defendants must be warned that only the fact of probation is binding. Defendants must be further warned that the circuit court alone determines the conditions of probation, so the circuit court can still impose up to 120 days of shock time in every probation case – without allowing the defendant to withdraw his or her plea. Defendants should also be warned that the circuit court can prohibit them from working in their field of choice – even though no such restriction appears in the plea agreement. It would be ineffective assistance of counsel for defense attorneys to fail to give such an advisory, and circuit courts will make the warning part of their standard plea colloquy. If the State and Respondent's position is correct, then get ready for The Delf Advisory.

But there is probably not a single defense attorney or judge in Missouri currently doing so. Instead, attorneys and judges typically conduct themselves with an understanding that adding 120 days of shock time to a standard probation agreement is such a material deviation from the defendant's reasonable expectations that the defendant should be permitted to withdraw the plea.

In the case at bar, Respondent did not follow the plea agreement. No fair and reasonable reading of the plea agreement would suggest that shock time was contemplated. The plea agreement included a complete recitation of its terms and made no mention of "shock" time. In negotiating the plea agreement, Defendant's attorney specifically asked the prosecutor about "shock" time, and she confirmed no "shock" time. The plea agreement was the third written recommendation by the prosecutor in this case and the only one that did not include jail or prison time, which is why Ms. Delf accepted it. Thus, the very purpose of the plea agreement was to exclude the possibility of jail or prison. As in *Boyd v. State*, 10 S.W.3d 597 (Mo. App. 2000), the plea agreement in this case was "an unequivocal statement by the prosecutor" and "constitutes a 'true plea agreement.'" 10 S.W.3d at 597. As a reading of the transcript of the Sentencing Hearing will show, Respondent (who was unaware of the strengths and weaknesses of the State's case) simply thought the State had been too lenient.

V. CONCLUSION

As happens in almost every criminal case, the defendant in this case wanted to know only one thing before pleading guilty: "Will I go to jail?" Relying on the plea agreement negotiated with the State, Rule 24.02(d)(1)(C), and Rule 24.02(d)(4), her attorney answered her – repeatedly and unequivocally – no, unless the Circuit Court rejects the plea agreement, in which case you have a right to stand trial. By "blue penciling" the agreement with 120 days of shock time and a prohibition on working in the home health care industry, Respondent subverted Ms. Delf's reasonable expectations about the meaning of the plea agreement. Accordingly, for all of the reasons described

by this Court in *Schellert*, and as required by Rule 24.02(d)(4), Ms. Delf should be permitted to withdraw her guilty plea.

Relator/Defendant therefore respectfully requests that this Court issue a Writ of Prohibition to compel Respondent to either (1) accept and honor the plea agreement as stated, without any additional terms, or (2) permit Ms. Delf to withdraw her guilty plea and set this case for trial.

Respectfully submitted,

/s/ W. Scott Rose
W. Scott Rose, #61587
ROSE LEGAL SERVICES, LLC
3636 South Geyer Road, Suite 100
Saint Louis, MO 63127
(314) 812-4700
wsrose@roselegalservices.com
Attorney for Christine E. Delf

CERTIFICATE REGARDING LENGTH

I hereby certify that this brief complies with the limitations contained in Rule 84.06(b) in that, not counting the cover, Certificate of Service, this Certificate, signature block, and appendix, it contains 5,408 words, according to the word processing software used to draft it.

/s/ W. Scott Rose
W. Scott Rose, #61587
ROSE LEGAL SERVICES, LLC
3636 South Geyer Road, Suite 100
Saint Louis, MO 63127
(314) 812-4700
wsrose@roselegalservices.com
Attorney for Christine E. Delf

CERTIFICATE OF SERVICE

I hereby certify that on this the 26th day of September, 2016, a true and correct copy of the foregoing was served through the Missouri e-Filing System or via first-class mail to each of the following:

Prosecuting Attorney's Office of Jefferson County
Jefferson County Courthouse
P.O. Box 100
Hillsboro, MO 63050
Attorney for the State of Missouri

The Honorable Robert G. Wilkins
Circuit Court Judge, Division 1
300 Main Street
Hillsboro, MO 63050
Respondent

/s/ W. Scott Rose
W. Scott Rose, #61587
ROSE LEGAL SERVICES, LLC
3636 South Geyer Road, Suite 100
Saint Louis, MO 63127
(314) 812-4700
wsrose@roselegalservices.com
Attorney for Christine E. Delf