

**IN THE  
MISSOURI SUPREME COURT**

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<b>STATE OF MISSOURI</b>	)	
	)	
<b>ex rel.</b>	)	
	)	
<b>ANTHONY W. BOWMAN</b>	)	
	)	
<b>Relator,</b>	)	
	)	
<b>vs.</b>	)	<b>No. SC95783</b>
	)	
<b>THE HONORABLE</b>	)	
<b>TIMOTHY W. INMAN,</b>	)	<b>St. Francois County Case No,</b>
<b>JUDGE, DIVISION 9</b>	)	<b>14sf-cr01416</b>
<b>ST. FRANCOIS COUNTY</b>	)	
	)	
<b>Respondent.</b>	)	

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**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**

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**RESPONDENT'S BRIEF**

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## **JURISDICTIONAL STATEMENT**

On May 16, 2016 Relator filed a Petition for Writ of Prohibition in the Missouri Court of Appeals, Eastern District in Case No. ED104371. On May 23, 2016, the Missouri Court of Appeals, Eastern District, issued a preliminary order directing Respondent Honorable Judge Inman to refrain from all actions until further notice. On May 27, 2016, Respondent filed an Answer and Reply to Relator's Petition for Writ of Prohibition. On June 3, 2016, the Court of Appeals, Eastern District, quashed its preliminary order issued on May 23, 2016 and denied Relator's Petition for Writ of Prohibition. Relator filed no appeal from the decision of the Court of Appeals, Eastern District denying Relator's Petition for Writ of Prohibition. On June 28, 2016 Relator filed a Petition for Writ of Prohibition in the Missouri Supreme Court.

Under *State ex rel. Ashby Rd. Partners, LLC v. State Tax Comm'n*, 297 S.W.3d 80, 83 (Mo. 2009), the Missouri Supreme Court ruled the normal proceedings for writ of prohibition is established in Rule 97. First, a Relator initiates a proceeding by filing a petition for a writ of prohibition in the appropriate court. Rule 97.03. Next, the court considers the petition and determines if a preliminary order in prohibition should issue. Rule 97.04. If the court does not grant a preliminary order, the petitioning party then must file its writ petition in the next higher court. *Atteberry v. Mo. Bd. of Prob. & Parole*, 193 S.W.3d 444, 445

(Mo.App.2006). If the court, however, “is of the opinion that the preliminary order in prohibition should be granted, such order shall be issued.” Rule 97.04. The preliminary order directs the respondent to file an answer within a specified amount of time, and it also may order the respondent to refrain from all or some action. Rule 97.05. If the court issues a preliminary order and a permanent writ later is denied, the proper remedy is an appeal. *State ex rel. Am. Eagle Waste Indus. v. St. Louis County*, 272 S.W.3d 336, 339 (Mo.App.2008).

Relator did not file an appeal of the denial by the Missouri Court of Appeals, Eastern District, of Relator’s Petition for Writ of Prohibition filed on May, 16, 2016. One should only file a writ with the Missouri Supreme Court if they have no other remedy. Here, the Relator had available to them the remedy of appealing the denial by the Missouri Court of Appeals, Eastern District, of Relator’s Petition for Writ of Prohibition. Jurisdiction then lies in the Missouri Court of Appeals, Eastern District and Respondent Honorable Judge Timothy W. Inman respectfully requests that this Court dismiss Relator’s petition for writ of prohibition.

## **STATEMENT OF FACTS**

Relator was placed on probation by Respondent Honorable Judge for two years following his plea of guilty to the class A misdemeanor of Receiving Stolen Property on June 17, 2015. On November 30, 2015, the State of Missouri filed Motion to Revoke Probation for failure to pay restitution and noticed the hearing on said motion for December 14, 2015. By agreement the hearing was passed to January 21, 2016, then to February 22, 2016, then to March 17, 2016, and finally April 22, 2016. On January 29, 2016 the State of Missouri filed a Motion to Amend Probation where Relator should be ordered to pay restitution of \$4,064 to Christina Moore and \$75 to Prosecutor's office as a processing fee.

On April 22, 2016 Respondent Honorable Judge presided over a hearing on State's Motion to Amend Probation, transcript can be found in Relator's Exhibit 9. On April 22, 2016, Respondent Honorable Judge found based on the testimony of witness' and the probable cause statement, which the Court took judicial notice of without objection, the conduct of Relator as follows: About a month after Victim's apartment was robbed Relator was found in possession of a large amount of the victim's stolen property hidden in his apartment. Relator's apartment, #25, is in the same apartment building as the Victim's apartment, #19. Relator admitted to receiving the property from a guy named "Rikki" about the same time as Victim's home was robbed, and figured it was stolen. Relator gave no further information

on “Rikki”. Relator had given some of the victim’s stolen property to Jerry Ellis as repayment of a debt, which led to the search of Relator’s apartment. Respondent Honorable Judge found that Relator’s story on how he obtained the Victim’s property was not credible and that based on the fact that Relator had transferred some of the victim’s property to Jerry Ellis, then Relator had given away or disposed of other property of the victim. Victim testified the replacement value of the items not recovered was \$4,064.00.

On May 16, 2016 Relator filed a Petition for Writ of Prohibition in the Missouri Court of Appeals, Eastern District. On May 23, 2016, the Missouri Court of Appeals, Eastern District, issued a preliminary order directing Respondent Honorable Judge to refrain from all actions until further notice. On June 3, 2016, the Court of Appeals, Eastern District, quashed its preliminary order issued on May 23, 2016 and denied Relator’s Petition for Writ of Prohibition. On June 28, 2016 Relator filed a Petition for Writ of Prohibition in the Missouri Supreme Court. On August 23, 2016 this Honorable Court issued a Preliminary Writ of Prohibition where the Supreme Court of Missouri commanded Respondent to take no further action in the case, other than setting aside said order as set forth above until further order of this Court.

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

## **ARGUMENT**

Relator claims the trial court is without jurisdiction under Section 559.105 RSMo. to order the Relator to pay restitution because a defendant can only be ordered to pay restitution to a victim for the victim's losses that are due to the offense to which the person plead guilty. Relator is mistaken that Section 559.105 is the only statute controlling Respondent Honorable Judge on the issue of restitution.

In addition to Section 559.105, both Sections 559.021 RSMo. and 559.100 RSMo. authorize the court to order restitution to the victim. The court may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the probation term under Section 559.021 RSMo. *State ex rel. Doe v. Moore*, 265 S.W.3d 278, 279 (Mo. 2008). Mo. Ann. Stat. § 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 or she shall be given a certificate explicitly stating the conditions on which he or she 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;”

The standard applicable to review Relator’s claim for relief is to determine whether the trial court abused its discretion. In order to establish an abuse of discretion, Relator must show that reasonable persons could not differ as to the propriety of the action taken by the trial court. Unless the record clearly shows an abuse of discretion and a real probability of injury to the complaining party, the appellate court may not interfere with the discretion of the trial court. *State v. Jimerson*, 820 S.W.2d 500, 502–503 (Mo.App.1991). Probation is a privilege, not a right, which may be granted or withheld in the discretion of the court. *State v. Priesmeyer*, 719 S.W.2d 873, 876 (Mo.App.1986); *State v. Keller*, 685 S.W.2d 605, 606 (Mo.App.1985). The conditions of probation are also discretionary with the trial court. § 559.021.1. The imposition of conditions of probation are generally not subject to change on appeal, unless shown to have been arbitrary. *State v. Welsh*, 853 S.W.2d 466, 469-70 (Mo. App. 1993). A court is permitted to consider

matters outside the record in setting the conditions of probation. *State v. Burton*, 198 S.W.2d 19, 23 (Mo. 1946).

In addition, Relator argues that Respondent Honorable Timothy Inman abused his discretion by adding restitution that related to a burglary. Relator defines burglary in their brief and at no point was the restitution amount attributed to damage done by the Relator knowingly entering or unlawfully remaining in a building or inhabitable structure. The restitution amount is instead derived from the testimony of the Victim as to the replacement value of the items not recovered.

Relator further argues that Respondent Honorable Judge Timothy Inman used the restitution hearing to determine that the Relator is guilty in regards to the burglary of Christina Moore. But this in fact is not what occurred at the Hearing on April 22<sup>nd</sup>, 2015. Instead Respondent Honorable Judge found that as part of reducing the charge from a felony to a misdemeanor under the plea agreement, as testified to by the State's witness, the Relator would pay \$4,064.00 in restitution. Respondent Honorable Judge found that the State's witness' recollection of the plea agreement outweighed Relator's witness' recollection. Relator has failed to show that reasonable persons could differ as to the propriety of the action taken by the trial court in requiring restitution in this case.

Under these circumstances, the condition of probation to pay restitution imposed by Respondent Honorable Judge was such that reasonable persons would

not agree that it was improper and therefore did not constitute an abuse of discretion and was not arbitrary. Unless the record clearly shows an abuse of discretion and a real probability of injury to the complaining party, the appellate court may not interfere with the discretion of the trial court. *State v. Betts*, 646 S.W.2d 94, 98 (Mo.1983).

As is clear from the Relator's brief, the Relator has misunderstood the Respondent's reasoning behind his ruling on the restitution hearing, he in fact did not use the hearing to find the Relator guilty of a new crime but instead used the testimony given at the hearing to determine the circumstances of the original plea bargain and that restitution was in fact a part of that plea bargain, in addition based on the fact that Relator had transferred some of the victim's property to another, then Relator had given away or disposed of other property of the victim. As such, this Court should deny Relator's Writ of Prohibition.

## **CONCLUSION**

WHEREFORE, based on the argument as set forth in this brief, Respondent Honorable Timothy W. Inman, Judge, Division 9, Twenty-Fourth Judicial Circuit, respectfully requests that this Honorable Court either dismiss or deny Relator's Petition for Writ of Prohibition.

Respectfully submitted,

/s/ Ariel B. Epulle

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Respondent's Brief was served by e-mail on the 14<sup>th</sup> day of November, 2016, to:

Sarah Jackson, Missouri Bar #68157, Assistant Public Defender, Attorney for Relator Anthony W. Bowman, Liberty Office Park, 400 N. Washington St. Ste. 232, Farmington, Mo 63640, Phone 573-218-7080, Email: arah.jackson@mspd.mo.gov

### **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 and that it complies with the page limitation 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 2,378 words, and 13 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 AntiVirus software and found virus free. It is in searchable PDF form.

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