

IN THE
MISSOURI SUPREME COURT

STATE OF MISSOURI)	
)	
ex rel.)	
)	
APRIL L. COLEMAN)	
)	
Relator,)	
)	
vs.)	No. SC97198
)	
THE HONORABLE)	
WENDY L. WEXLER HORN,)	Ste. Genevieve County Case No.
CIRCUIT JUDGE,)	12SG-CR00799-01
24 ^T JUDICIAL CIRCUIT)	
)	
Respondent.)	

PETITION FOR WRIT OF PROHIBITION TO THE
MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF STE. GENEVIEVE COUNTY,
MISSOURI
TWENTY-FOURTH JUDICIAL CIRCUIT,
THE HONORABLE WENDY L. WEXLER HORN, CIRCUIT JUDGE

RELATOR'S BRIEF

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US Const. XIV8

JURISDICTIONAL STATEMENT

Relator filed a writ with the Court of Appeals Eastern District cause number ED106634. The Eastern District issued a preliminary order in prohibition on April 25, 2018; however, later denied permanent writ without opinion on May 2, 2018. Although procedure generally mandates initially filing in the circuit court, doing so in this cause would have been futile because Respondent already had made her ruling with regards to the merits of this cause at the probation violating hearing. As such, this cause falls into one of the well-recognized exceptions for cases in which an initial filing in the circuit court would be futile. Relator then filed a writ with this Court on June 1, 2018. Jurisdiction lies in the Supreme Court of Missouri Mo. Const., Art. V, §§ 4, 5, Rule 97.01.

STATEMENT OF FACTS

On October 15, 2013, April Coleman pleaded guilty to one count of the Class C felony of distribution of a controlled substance. Ms. Coleman was given a suspended imposition of sentence and placed on five years' probation under the supervision of the State Board of Probation and Parole. [*Exhibit 1*, Certified Copy of the Ste. Genevieve County Circuit Court Docket Sheet; *Exhibit 2*, Copy of Signed Order of Probation].

The Board of Probation and Parole filed four Case Summary Reports with the court from January 23, 2014, to April 30, 2015, and all listed Ms. Coleman's optimal discharge date as May 1, 2016. [*Exhibit 3*, Case Summary Report Filed January 23, 2014; *Exhibit 4*, Case Summary Report Filed February 28, 2014; *Exhibit 5*, Case Summary Report Filed September 4, 2014; *Exhibit 6*, Case Summary Report Filed April 30, 2015].

During the period extending from April 14, 2015, to April 8, 2016, the Board of Probation and Parole issued four notices of citation to Ms. Coleman. In the first citation, Ms. Coleman was cited for a positive urinalysis for THC and nonpayment of monthly intervention fees. The citation spelled out an action plan that included continuing to pay court costs and intervention fees, file taxes, verify employment, complete the Pathways to Change Program and abstain from "illicit substances," including marijuana. [*Exhibit 7*, Citation filed May 4, 2015]. In the

second notice, Ms. Coleman was cited for testing positive for THC and failing to report as directed. Ms. Coleman was instructed to report as directed and contact her probation officer by phone if she were unable to make the appointment, and to attend weekly NA / AA meetings at Harris House. [*Exhibit 8*, Citation filed November 23, 2015]. In the third notice, Ms. Coleman was cited for admitting to the use of marijuana and failure to report as directed. She was instructed to enter and complete Pathways to Change, report as directed and abstain from using illegal substances. [*Exhibit 9*, Citation filed February 26, 2016]. In the final notice, Ms. Coleman was cited for admitting to use of marijuana and failure to report as directed. She was instructed to report as directed, complete Pathways to Change and abstain from illegal substances. [*Exhibit 10*, Citation filed April 12, 2016].

The Board of Probation and Parole filed its first Field Violation Report in Ms. Coleman's case on August 8, 2016. [*Exhibit 11*, Probation Violation Report]. In its report, the probation officer recommended "Capias, Suspension" and stated that a probation violation warrant would be issued. [*Exhibit 11*, Probation Violation Report]. The court issued an order suspending Ms. Coleman's probation and ordering issuance of a capias warrant for her arrest. [*Exhibit 12*, Court's Order Suspending Relator's Probation]. The order set a revocation hearing for September 20, 2016, or as soon thereafter as could be heard. On that date, the court took notice that the warrant had not been served and the cause was passed generally

pending the service of the warrant. [*Exhibit 1*, Certified Copy of Ste. Genevieve County Circuit Court Docket Sheet].

In January 2018, a probation violation hearing was scheduled to be held on February 20, 2018, in Respondent's court. [*Exhibit 1*, Certified Copy of Ste. Genevieve County Circuit Court Docket Sheet].

On February 13, 2018, Ms. Coleman filed a Motion to Discharge Defendant from Probation for Lack of Jurisdiction Due to Earned Compliance Credits. [*Exhibit 13*, Relator's Motion to Discharge from Probation]. On March 20, 2018, Respondent issued an order overruling Ms. Coleman's Motion to Discharge Defendant from Probation and scheduling a probation violation hearing on May 15, 2018. [*Exhibit 14*, Respondent's Order Overruling Relator's Motion].

On April 24, 2018, Ms. Coleman filed her Petition for Writ of Prohibition or, in the Alternative, Writ of Mandamus in the Missouri Court of Appeals, Eastern District. [*Exhibit 16*, Relator's Petition for Writ of Prohibition or, in the Alternative, Writ of Mandamus Filed with the Missouri Court of Appeals Eastern District]. On April 25, the Missouri Court of Appeals, Eastern District, issued a preliminary order directing Respondent to file her answers and suggestions in opposition to the petition for prohibition, and that Respondent refrain from all action in the premises until further notice. [*Exhibit 17*, Missouri Court of Appeals Eastern District Preliminary Order in Opposition].

On May 1, 2018, Respondent through her counsel, filed her answer and suggestions in opposition to Ms. Coleman's Petition for Writ of Prohibition. [Exhibit 18, Respondent's Answer to Petition and Suggestions in Opposition Filed with the Missouri Court of Appeals Eastern District]. On May 2, 2018, the Court of Appeals, Eastern District denied Ms. Coleman's Writ of Prohibition without issuing an opinion. [Exhibit 19, Missouri Court of Appeals Eastern District Order in Case No. ED106634]. Ms. Coleman did not appear for the probation violation hearing on May 15, 2018, and Respondent set a probation violation hearing for June 19, 2018. [Exhibit 1, Certified Copy of Ste. Genevieve County Circuit Court Docket Sheet].

Ms. Coleman has not sought relief in any higher court. She has not sought relief in the circuit court. However, Respondent already has made a ruling regarding this issue at the probation violation hearing, and thus any writ filed at the circuit level would be futile. As such, this cause falls into the exception for generally filing an extraordinary writ first in the lower court. See *State ex rel. Henderson v. Cook*, 182 SW2d 292, 293 (Mo. banc 1944).

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

POINT RELIED ON

Relator is entitled to an order prohibiting Respondent from holding a hearing to revoke Relator’s probation because Respondent has lost statutory authority due to the accrual of earned compliance credits (ECCs) under RSMO 217.703. Under that statute, the accrual of ECCs “shall” reduce the term of probation by 30 days for each full calendar month of compliance with terms of supervision. Because Ms. Coleman incurred no initial violation reports or motions to revoke prior to her optimal discharge date of May 1, 2016, Respondent has since lacked jurisdiction over the Defendant and any further actions would be outside her statutory authority. A probation hearing would deprive Relator of her 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. This error was severe enough to have resulted in a usurpation of judicial power by the lower court, and thus requires the issuance of an extraordinary writ.

State ex rel. Mo. Pub. Def. Comm’n. v. Pratte, 298 S.W.3d 870 (Mo. 2009)

RSMO § 217.703

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

ARGUMENT FOR POINT RELIED ON

Relator is entitled to an order prohibiting Respondent from holding a hearing to revoke Relator's probation because Respondent has lost statutory authority due to the accrual of earned compliance credits (ECCs) under RSMO 217.703. Under that statute, the accrual of ECCs "shall" reduce the term of probation by 30 days for each full calendar month of compliance with terms of supervision. Because Ms. Coleman incurred no initial violation reports or motions to revoke prior to her optimal discharge date of May 1, 2016, Respondent has since lacked jurisdiction over the Defendant and any further actions would be outside her statutory authority. A probation hearing would deprive Relator of her 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. This error was severe enough to have resulted in a usurpation of judicial power by the lower court, and thus requires the issuance of an extraordinary writ.

Standard of Review

A writ of prohibition is appropriate (1) to prevent the usurpation of judicial power when a lower 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. Mo. Pub. Def. Comm'n. v. Pratte*, 298 S.W.3d 870, 880 (Mo. 2009).

Argument

Earned compliance credits shall reduce the term of probation, parole, or conditional release by thirty days for each full calendar month of compliance with the terms of supervision. Credits shall begin to accrue for eligible offenders after the first full calendar month of supervision or on October 1, 2012, if the offender began a term of probation, parole, or conditional release before September 1, 2012. ...

--RSMo. § 217.703.3

For the purposes of this section, the term “compliance” shall mean the absence of an initial violation report submitted by a probation or parole officer during a calendar month, or a motion to revoke or motion to suspend filed by a prosecuting or circuit attorney, against the offender.

--RSMo. 217.703.4

April Coleman received a suspended imposition of sentence and was placed on a felony probation term of five years after pleading guilty to a single count of distribution of a controlled substance in October 2013.

Ms. Coleman received four notices of citation prior to the optimal discharge date of May 1, 2016, that had been calculated by the Board of Probation and Parole. However, she received no initial violation reports before that date. Today, in 2018, the Court wishes to hold a probation revocation hearing. This does not and cannot satisfy the demands of due process of law nor does it satisfy the dictates of Missouri's Statutes.

The court's order denying Ms. Coleman's motion to discharge Ms. Coleman from probation conflicts with the statutory obligations imposed upon the Board of Probation and Parole and exceeds the court's authority. The Board's mandatory responsibilities directing the award and calculation of ECCs are discussed throughout the language of the statute. *See, e.g., 217.703.1* ("the division of probation and parole shall award earned compliance credits to any [qualifying] offender. ..."); *217.703.3* ("earned compliance credits shall reduce the term of probation, parole or conditional release by thirty days for each full calendar month of compliance with the terms of supervision"); and *§ 217.703.4* ("for the purposes of this section, the term 'compliance' shall mean the absence of an initial violation report submitted by a probation or parole officer during a calendar month, or a motion to revoke or motion to suspend filed by a prosecuting or circuit attorney against the offender"). The use of the word "shall" in a statute generally prescribes a mandatory duty. *See Buehrle v. Mo. Dept. of Corrections*, 344 S.W.3d 269, 271

(Mo.App. E.D. 2011). To determine whether the use of the word “shall” prescribes a mandatory or directory duty, we look to the context of the statute for legislative intent. *Id.*

Ms. Coleman clearly was eligible for earned compliance credits and early discharge based on the accrual of ECCs. She did not plead guilty to any of the enumerated offenses that are excluded from eligibility for ECCs under the terms of RSMo. § 217.703.1. She was not deemed an absconder prior to the optimal discharge date, which under § 217.703.6 would have excluded her from eligibility for earning credits. Finally, Ms. Coleman has served the minimum two years on supervised probation as required by RSMo. 217.703.7.

The primary rule of statutory interpretation is to effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language. *State ex rel. Parrott v. Martinez*, 496 S.W.3d 563, 568 (Mo.App.E.D. 2016). If the legislature’s intent is clear and unambiguous, the courts are bound by that intent and cannot resort to any statutory construction in interpreting the statute. *Id.* A court “will look beyond the plain meaning of the statute only when the language is ambiguous or would lead to an absurd or illogical result.” *Id.*

The words of RSMo. § 217.703.4 are clear and unambiguous. A probationer is deemed to be in compliance in the absence of an “initial violation report” or a motion to revoke or suspend probation has been filed. In this case, Ms. Coleman’s

probation began on October 15, 2013. A five-year term of probation meant her probation would be complete on October 14, 2018. Significantly, the Board of Probation and Parole calculated an optimum discharge date of May 1, 2016.

According to RSMo. § 217.703.4, Ms. Coleman began to earn ECCs on November 1, 2013, with credits accruing after that first full calendar month of supervision. Therefore, according to the statute, she earned ECCs from November 2013 through the month of April 2016. The combination of time on probation and ECCs totaled five years (or 1825 days) when the 30 days' of ECCs were earned by the end of April 2016.

The Board of Probation and Parole did not file its first field violation report against Ms. Coleman until August 2016. That same month, the court ordered Ms. Coleman's probation to be suspended and issued a *capias* warrant for her arrest. The field violation report, court order and *capias* warrant all occurred after Ms. Coleman's optimal discharge date.

Respondent argues that a "notice of citation" is the same as an "initial violation report" and, as such, prevents the accrual of ECCs. Ms. Coleman strenuously disagrees with this interpretation. Three factors clearly distinguish a citation from an initial violation report. First, the plain language of the words themselves demonstrates they are not used interchangeably. RSMo. § 217.703 does not reference notices of citation to toll the accrual of ECCs; only "initial violation

reports.” Second, the Board of Probation and has different designations for different types of reports, which also shows they are not used interchangeably. One example is that some reports are clearly designated as initial violation reports. By comparison, citations do not even contain the heading: “type of report” that are found on field violation or case summary reports. Third, a comparison of a citations filed in this case to an initial violation report shows that citations have only a brief statement of the action an offender has engaged in, a brief statement as to the action plan to correct it, and no recommendation as to what action the court should take. By comparison, field violation reports contain different sections, including an introduction to what the alleged violations are, the specifics of the alleged violations, the offender’s statements, if any, about the alleged violations, a brief section of past violations and citations, and, most importantly, a recommendation of the probation officer as to what action he or she wishes the court to take, and an explanation of the probation officer’s recommendation.

Moreover, a notice of citation, alone, does not typically trigger actions to suspend or revoke probation. In this case, none of the four notices of citation taken by themselves led immediately to the filing of a motion to revoke or suspend Ms. Coleman’s probation. To the contrary, Respondent’s Order of August 9, 2016, referenced her review of the just-filed “violation report of Probation and Parole” in

suspending Ms. Coleman's probation and issuing the capias warrant. [*Exhibit 12, Court's Order Suspending Relator's Probation*]. There is no ambiguity.

Regardless, even if there were, Missouri case law states "that when ambiguity exists in criminal statutes they are to be construed more strictly against the state." *State v. Withrow*, 8 S.W.3d 75, 80 (Mo. Banc 1999).

A court may conduct a revocation hearing after a term of probation has expired, but only if two requirements are met. RSMo. § 559.036.8, spells out those two requirements. First, there must be an affirmative manifestation of an intent to revoke probation before it expires. Second, every reasonable effort must be made to conduct the hearing prior to the expiration date. If these conditions are not met, a court has no statutory authority to conduct a hearing outside the probationary term. *State ex rel. Strauser v. Martinez*, 416 S.W.3d 798, 801 (Mo. banc 2014).

In Ms. Coleman's case, neither requirement was met. No warrant, motion to revoke, or any other manifestation to revoke her probation was filed before May 1, 2016. Moreover, no effort was made to hold a probation violation hearing before May 1, 2016. Therefore, any actions by Respondent after that date were without jurisdiction over the defendant and outside its statutory authority under RSMo. 559.036 and RSMo. 217.703. A writ of prohibition is the appropriate remedy.

Finally, Respondent may argue that Ms. Coleman's ability to accrue ECCs was tolled due to nonpayment of court costs. In its initial violation report, the

Board of Probation and Parole wrote that “the court has issued an order prohibiting Coleman from being awarded earned credits until court cost is paid in full.”

[*Exhibit 11*, probation violation report filed August 8, 2016]. The initial case summary report states Ms. Coleman was ordered to pay \$315 in court costs and \$46 toward the crime victims compensation fund, with the balance to be paid in full within three years. [*Exhibit 3*, case summary report Filed January 23, 2014]. Two hundred dollars was to be paid to the Law Enforcement Restitution Fund within one year.

Monthly “compliance” under the earned compliance credit statute is not defined as strict fulfillment of each and every term of probation in a given month, but is defined as the absence of an initial violation report or a motion to revoke or suspend. *State ex rel. Parrott v. Martinez*, 496 S.W.3d at 569.

Moreover, neither requirement of RSMo. § 559.036.8 was met to hold a hearing on unpaid court costs or any other alleged violation before the combination of time on probation and ECCs totaled five years. There was no affirmative manifestation of intent to revoke probation before it expired, and every reasonable effort was not made to conduct the hearing prior to that expiration date. Because those requirements were not met, the court had no statutory authority to conduct a hearing outside the probationary term.

In *State ex rel. Parrott v. Martinez*, the Missouri Court of Appeals Eastern District stated that “while the collection of court costs and restitution for victims as part of the penalty for committing a crime may be laudable in some circumstances, denying a criminal defendant his or her statutory rights in the process is not.” 496 S.W.3d at 570

For these reasons, prohibiting the accrual of ECCs because of unpaid court costs is not supported by the statute and should not toll ECCs. Moreover, the court did not manifest its intent to revoke a probation prior to the expiration and the court did not make every reasonable effort to conduct a hearing prior to that date.

CONCLUSION

WHEREFORE, based on the argument as set forth in this brief, Ms. Coleman respectfully requests that this Honorable Court make its preliminary writ permanent and prohibit Respondent from taking any action on this case with regards to Ms. Coleman violating her probation, and mandate that Respondent discharge her from probation because Respondent has lost statutory authority to conduct a probation violation hearing due to Ms. Coleman's accrual of earned compliance credits.

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 16th day of July, 2018, to:

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/s/ Kenneth Leiser
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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 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 3,835 words, and 20 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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