

**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 REPLY BRIEF

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STATEMENT OF FACTS

Relator, Ms. Coleman, relies on the statement of facts in her initial brief.

REPLY 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.

Reply Argument

- 1) A "notice of citation" is not interchangeable with an initial violation report for the purposes of Section 217.703 and should not prevent the accrual of earned compliance credits.**

In opposing this writ, Respondent argues that Relator is promoting form over substance by distinguishing an initial violation report from a notice of citation for the purpose of accruing ECCs under Section 217.703. However, the statute is clear. An offender is deemed to be in compliance when there is “absence of an *initial violation report* submitted by a probation or parole officer during a calendar month, or a motion to revoke or a motion to suspend filed by a prosecuting or circuit attorney, against the offender.” Section 217.703.4. Moreover, ECCs “shall not accrue during any calendar month in which a *violation report* has been submitted.” Section 217.703.5

The primary rule of statutory interpretation is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words in their plain and ordinary meaning. *State v. McLaughlin*, 265 S.W.3d 257, 267 (Mo. banc 2008). Courts do not have the authority to “read into a statute a legislative intent that is contrary to its plain and ordinary meaning.” *State v. Rowe*, 63 S.W.3d 647, 650 (Mo. banc 2002).

Recognizing that the phrase “initial violation report” appears nowhere else in Missouri statutes, Respondent turns to Section 217.718 for guidance merely because it includes the phrase “violation report.” Unfortunately, that Section, which governs alternatives to revocation proceedings, provides no support for Respondent’s attempt to equate a notice of citation to an initial violation report. It

merely provides a framework for probation officers to order a probationer to submit to periods of detention. Just as in Section 217.703, the word “citation” appears nowhere in the Section 217.718. Respondent simply bolsters Relator’s contention that field violation reports issued by the Board of Probation and Parole are the only logical analogue to initial violation reports referenced in Section 217.703.

Relator will address the remaining points raised by Respondent in order. First, Respondent argues that the Court should ignore the different designations the Board of Probation and Parole gives its own reports and focus on the content. In support of this argument, Respondent states that the Board has no document labeled as an “initial violation report” and that the phrase “violation reports” in Section 217.703.5 is broader than “initial violation reports.”

The argument appears to be that Relator is being unreasonable in giving the greatest weight to the very designations the Board of Probation and Parole uses to label its own reports. However, Missouri courts have specifically referenced the “field violation reports” in several probation revocation cases. In *State ex rel. Amarine v. Parker*, also an ECC case, the opinion specifically discusses the Board’s issuance of a “field violation report” in relation to the Board’s calculation of an optimal discharge date. 490 S.W.3d 372, 373 (Mo. banc 2016). In *State ex rel. Dotson v. Holden*, the court found that the probationer lacked proper notice of

the filing of a “field violation report” recommending revocation or the court’s intention to hold a probation revocation hearing. 416 S.W.3d 821, 824 (Mo.App. S.D. 2013). Relator respectfully states that a notice of citation on its face does not fit within the meaning of a “violation report” or “initial violation report” as required to suspend the accrual of ECCs under Section 217.703.

Second, Respondent asserts that a notice of citation meets the necessary criteria of an initial violation report merely because it includes allegations that a probation condition has been violated and that it can be “the initial report” of a probation violation received by the court. It doesn’t. There can be no confusing the potential consequences of a notice of citation versus a field violation report. In Ms. Coleman’s case, none of the four notices of citation, taken alone or together, triggered the filing of a motion to revoke or suspend her probation. Each contained a brief statement describing the action plan to correct the situation and, significantly, no recommendation of action the court should take.

In support of this position, Respondent argues that a notice of citation is a “violation report” notwithstanding its brevity merely because it references a possible probation violation. Respondent’s argument would be the equivalent of equating a traffic ticket to a felony complaint, merely because both contain the word “violation” within the verbiage of the respective documents. As stated in Relator’s original brief, a notice of citation carries only a brief statement of the

alleged action a probationer 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 those purported violations, the probationer's statements, if any, about the alleged violations, a brief section of past violations and citations, and, most notably, 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. Relator respectfully submits that a notice of citation by virtue of its content does not fit within the meaning of a "violation report" or "initial violation report" as required to toll the accrual of ECCs.

Finally, Respondent argues that a notice of citation informs the court of a probationer's alleged violation so that the court may take action, and that this places a citation on equal footing to other violation reports. Here, Relator restates the facts of her own case. Relator did receive four notices of citation, but it was not until the first "field violation report" was filed that any action was taken to revoke her probation. Specifically, Respondent's Order of August 9, 2016, referenced her review of the just-filed "violation report of Probation and Parole" in suspending Relator's probation and issuing a *capias* warrant. [*Exhibit 12*, Court's Order Suspending Relator's Probation]. Relator respectfully states that Respondent's

treatment of notices of citation versus field violation reports in this very case underscores that a citation is not the equivalent to a violation report.

2) Even if the term initial violation report is subject to more than one interpretation, then Section 217.703 should still be construed in favor of Ms. Coleman.

If Respondent prevails in the argument that an “initial violation report” lends itself to multiple interpretations under Section 217.703, then the statute could be found to be ambiguous. *State v. Rowe*, 63 S.W.3d at 649. 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).

Relator steadfastly maintains that the plain meaning of Section 217.703 requires an actual “initial violation report” to toll the accrual of ECCs, and that the Board of Probation and Parole’s field violation report, and not a notice of citation, uniquely fits that definition for all of the reasons stated in this brief. However, should Respondent prevail in the contention that the reading of “initial violation report” or “violation reports” encompasses a broader range of reports, then this ambiguity should be construed in favor of Relator.

CONCLUSION

WHEREFORE, based on the argument as set forth in this reply brief and Relator's initial brief, Relator April 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 13th day of August, 2018, to:

Honorable Wendy L. Wexler Horn, Judge, Division II, Twenty-Fourth Judicial Circuit, Court House Building, 1 North Washington Street, Suite 202, Farmington, Missouri 63640, Phone: 573-756-5144 (wendy.horn@courts.mo.gov);
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/s/ Kenneth Leiser
 Kenneth Leiser

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 1,961 words, and 12 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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