

IN THE
MISSOURI SUPREME COURT

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

FROM THE CIRCUIT COURT OF STE. GENEVIEVE COUNTY,
TWENTY-FOURTH JUDICIAL CIRCUIT,
THE HONORABL WENDY L. WEXLER HORN, CIRCUIT JUDGE

RESPONDENT'S BRIEF

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RESPONDENT'S ARGUMENT

Relator is not entitled to a writ of prohibition directing Respondent to not hold a probation revocation hearing because Respondent has retained statutory authority to conduct such a hearing in that Relator has not accrued earned compliance credits (ECCs) under Section 217.703, RSMo. because Relator incurred notices of citations which were initial reports to Respondent of violations of Relator's probation and are therefore violation reports such that Relator did not accrue ECCs during the months in which they were filed and therefore Relator's period of probation has not expired.

Standard of Review

Respondent agrees with Relator's statement of the Standard of Review.

Argument

The critical issue in this case is whether the documents captioned “Notice of Citation” are initial violation reports within the meaning of Section 217.703.1(4) or violation reports within the meaning of Section 217.703.5. Section 217.703.1(4) provides that compliance for ECCs “[f]or purposes of this section, . . . shall mean the absence of an initial violation report submitted by a probation or parole officer during a calendar month” Section 217.703.5 provides that ECCs “shall not accrue during any calendar month in which a violation report has been submitted . .

. . " If a "Notice of Citation" is either an initial violation report or violation report, then the trial court has jurisdiction to revoke Relator's probation because Relator was not in compliance with the conditions of supervision and did not accrue ECCs during the calendar months in which the citations were submitted. If they are not, then the trial court lacks such jurisdiction because Relator did accrue ECCs during those months and her term of probation has expired.

Neither "initial violation report" nor "violation report" is defined in the statute. Relator's position appears to be that a report is not an initial violation report or violation report unless it is so labelled. Respondent's position is that a report is an initial violation report if it is the initial report to a judge of a probation violation and is a violation report if it is a report to a judge of a probation violations. Thus, the issue before this Court is one of form versus substance.

The phrase "initial violation report" does not appear anywhere else in Missouri statutes. The phrase "violation report" appears in Section 217.718. That provision allows as an alternative to probation revocation proceedings for the probation officer to order the defendant to submit to periods of detention. Section 217.718.3 provides that the probation officer shall provide the offender "with a written report detailing in what manner the offender has violated the conditions of . . . probation . . . and advise the defendant of the right to a hearing before the court or board prior to the period of detention. The division shall file a copy of *the*

violation report with the sentencing court " The implication is that a violation report is a "written report detailing in what manner the offender has violation the conditions of . . . probation" It follows that an initial violation report is the first report of such violation.

The citation documents, Relator's Exhibits 7-10, report numerous and specific violations of probation. Relator's position, nevertheless, is that they are not violation reports. This is based on four arguments. "First, the plain language of the words themselves demonstrates that they are not used interchangeably." that a citation is not a violation report. *Relator's Petition*, p. 9. "Second, the Board of Probation and Parole has different designations for different types of reports, which also shows they are not used interchangeably." *Relator's Petition*, p. 9. Third, the citations are not violation reports because they "have only a brief statement of the action the 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." *Relator's Petition*, p. 10. Relator's fourth argument, which was not expressly raised before the Eastern District Court of Appeals, is that a citation is not an initial violation report because it "does not typically trigger actions to suspend or revoke probation." *Relator's Petition*, p.10. Respondent shall address these arguments in order.

Plain Meaning Supports Respondent's Assertion of Jurisdiction

Relator does not and cannot deny that the citation is a report, that it reports a violation of probation, and that it is the initial report of the violation received by the court. Each citation, after setting forth the date and nature of the “Violation(s)”, includes a “Violation Response” indicating additional requirements for the Relator. Nevertheless, Relator seeks to add another requirement to “an initial violation report”, namely that it be labelled “initial violation report”. This additional requirement is the antithesis of the plain meaning. “When the plain and ordinary language of a statute is clear, ‘there is no need to resort to tools of interpretation.’” W.C.H. v. State, No. E.D. 105675 (Mo. App. E.D. March 13, 2018), quoting State v. Bazell, 497 S.W.3d 263, 266 (Mo. banc 2016).

Different Designations for Reports of Violations of Probation Show that

Respondent Correctly Focused on the Contents of the Reports

And Not Their Labels

Relator's argument that the Probation and Parole Board has different names for various reports is similarly unavailing. While Section 217.703.4 provides that “the term ‘compliance’ shall mean the absence of an initial violation report

submitted by a probation or parole officer during a calendar month”, Section 217.703.5, provides that earned compliance credits “shall not accrue during any calendar month in which a violation report has been filed.” This language indicates that initial violation reports are a subset of violation reports. Even if the citations are not *initial* violation reports, they are plainly reports of violations such that earned compliance credits do not accrue during the calendar months they are filed. The very order of probation in this case provides that the probation officer is "authorized to report . . . on all matters pertaining to your probation, and to make such recommendations and take such action as the Court may require in your case." *Relator's Exhibit 2*, p. 8. A citation plainly fits that description.

Relator contends that there the only report that stops the running of the ECC clock is an "initial violation report" and that the report must be labelled as such. A critical problem with this interpretation is that the Missouri Board of Probation and Parole does not have any document denominated an "initial violation report". It employs a document labelled "Case Summary Report" and it describes this "Type of Report" as "Initial". See *Relator's Exhibit 3*, p. 10. Still nowhere is the document itself called an "initial violation report." Thus, not only does Relator fail to recognize that the phrase "violation reports", as used in Section 217.703.5, is broader than "initial violation reports" in Section 217.703.4, but also that there is no document used by the Missouri Board of Probation and Parole labelled as such.

Relator argues further that citations cannot be violation reports because they "do not even contain the heading: type of report" that are found on Field Violation or Case Summary reports." *Relator's Petition*, p. 9. This argument illustrates the absurdity of the Movant's elevation of form over substance. Under Movant's analysis, presumably even a Case Summary Report would not constitute an initial violation report or even a violation report because its title does not include the word "violation". Respondent respectfully submits the phrases "violation report" and "initial violation report" are descriptive, not formalistic, and that a citation clearly fits the description.

The Citation is a Violation Report Notwithstanding its Brevity.

Relator's next argument is that the citations are not violation reports because they are too brief in their description of the violation, too brief as to the probation officer's correction plan, and contain no recommendation for action by the supervising court. This argument shows the vacuity of Relator's contention that a citation cannot be a violation report. Relator acknowledges that the citations describe the probation violations and set forth the violation response, the steps the probation officer intends to have the Relator take to address the violations. There is no requirement of a level of detail in Section 217.703. Relator has never argued

that the alleged lack of detail in a Notice of Citation prevents the notice for constituting a violation report. Any such requirement flies in the face of the plain meaning of the statute.

A Citation Informs the Court of a Probationer's Alleged Violation So That It May Take Action, Which is the Same As Any Other Violation Report.

Finally, Relator argues that "a citation is not the same as an initial violation report . . . [f]or if it were, the issuance of a citation would trigger actions to suspend or revoke probation." *Relator's Petition*, page 10. Again, Relator ignores the language in Section 217.703.5 providing that earned compliance credits do not accrue in a month in which a violation report, not just an initial violation report, is submitted. Furthermore, an initial violation report, indeed any report issued by a probation officer, does not trigger actions to suspend or revoke probation, despite Relator's assertion to the contrary. Actions to suspend or revoke probation are triggered by an order of the court or a motion filed by a prosecuting attorney. All that a report does, whether it be a citation, a field violation report, a case summary report, or a report otherwise denominated, is advise the court and sometimes the prosecutor of the alleged violation. Thus, Relator's effort to

distinguish a citation on the basis that it does not act as a "trigger" fails because no report acts as a "trigger".

Again, a comparison with Section 217.718 is instructive. It requires the probation officer to file a violation report with sentencing court after the probation officer has order an offender submit to a period of detention. Section 217.718.7 specifically provides that after the successful completion of detention the court may not revoke the offender's probation for the violation. It is thus clear that there is no requirement that a violation report "trigger" a probation revocation.

Conclusion

The ECC statute is intended to provide an additional incentive for probationers to comply with their probation conditions, namely earlier discharge from probation. It provides that if the probation officer files a report that the probationer has violated a condition, the probationer shall not receive ECC for that calendar month even if the Court does not any additional action. Relator's position is that a violation report has to be labelled a violation report and cannot be labelled a citation. Such a position elevates form over function, does not comport with plain meaning, and does not advance the legislative purpose. For those reasons, Respondent submits this Court should deny Relator's petition.

Respectfully submitted,

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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 this 26th day of July, 2018, to:

Honorable Wendy Wexler Horn, Judge, Division II, Twenty-Four Judicial Circuit, Court House Building, 1 N. Washington Street, Suite 202, Farmington, Missouri 63640, Phone: 573-756-5144 (wendy.horn@courts.mo.gov).

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/s/ Carl D. Kinsky
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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. 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 1876 words, and 11 pages. In addition, I hereby certify that this document has been scanned for viruses with Vipre Anti-Virus software and found virus-free. It is in searchable PDF form.

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