

No. 97331

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IN THE  
MISSOURI SUPREME COURT

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STATE OF MISSOURI EX REL. ERICA LONG,

Relator,

v.

THE HONORABLE FRED COPELAND,

CIRCUIT JUDGE OF THE 34TH

JUDICIAL CIRCUIT,

Respondent,

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Petition for Writ of Prohibition and Writ of Mandamus  
to the Supreme Court of Missouri  
From the Circuit Court of Pemiscot County, Missouri  
34th Judicial Circuit, Division I  
The Honorable Fred Copeland, Judge

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RELATOR'S STATEMENT, BRIEF, AND ARGUMENT

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Respectfully submitted,

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**II. The Respondent abused his discretion when he denied Ms. Long’s motion for discharge from probation because Ms. Long’s probation expired on October 25, 2016, and Respondent’s authority under Section 217.703 RSMo (2017) is limited only in discharging Ms. Long from probation. Therefore, a writ of mandamus ordering Respondent to discharge Ms. Long from probation is appropriate.**

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## JURISDICTIONAL STATEMENT

Ms. Long filed a motion for discharge from probation due to Earned Compliance Credits, pursuant to Section 217.703 RSMo (2017), in the Circuit Court of Pemiscot County on March 28, 2018. Respondent denied the motion on its merits on May 15, 2018. Missouri law does not allow Ms. Long to challenge the Respondent's ruling on appeal or on a motion for postconviction relief. § 217.703.8 RSMo. (2017). Prior to a scheduled probation violation hearing, Ms. Long filed a writ with the Court of Appeals Southern District cause number SD35560 on June 14, 2018. The Southern District denied the petition for writ on June 28, 2018. Ms. Long then filed a petition for writ in this Court on August 1, 2018, and a preliminary writ was issued on August 6, 2018. Jurisdiction lies in this Court, the Supreme Court of Missouri. Mo. Const. Art. V §§ 4, 5.

## STATEMENT OF FACTS

On September 16, 2014, in the Circuit Court of Pemiscot County, Erica Long entered a plea of guilty to the sole count of Property Damage in the 1st Degree in case styled 14PE-CR00458-01. (Appendix, p. A5). As part of a plea agreement, Respondent suspended imposition of sentence and placed Ms. Long on supervised probation for a period of three years. (Appendix, p. A5). Respondent further ordered that Ms. Long pay court costs, \$46.00 to the Crime Victim Compensation Fund, \$300.00 to the Pemiscot Law Enforcement Restitution Fund, and all restitution within five months. (Appendix, p. A5).

On May 16, 2016, an officer with the Missouri Board of Probation and Parole (P&P) filed an initial violation report alleging Ms. Long had failed to comply with the special conditions of her probation; specifically, Ms. Long had allegedly failed to pay all owed restitution and costs. (Appendix, pp. A8,9). In the May 2016 violation report, P&P noted that Ms. Long had accrued Earned Compliance Credits (ECC), and was scheduled for discharge from probation in September 2016. (Appendix, p. A9). From October 2014 until April 2016, there were no violation reports, motions to suspend probation, or motions to revoke probation against Ms. Long. (Appendix, p. A3). The May 2016 probation violation was Ms. Long's first. (Appendix, p. A3).

The recommended action of the May 2016 violation report was continuance. (Appendix, p. A8). On June 7, 2016, at a probation violation hearing, Respondent followed P&P's recommendation but extended Ms. Long's probation an additional year. (Appendix, p. A3). Ms. Long's new date of discharge, not factoring in ECC, was

September 15, 2018. The docket entry for the June 7, 2016 hearing also notes “No Earned Compliance Credits,” but does not indicate what, exactly, that means. (Appendix, p. A3).

After Respondent continued Ms. Long on probation, no additional violations were reported until P&P filed a second probation violation report on December 22, 2017. (Appendix, p. A3). This December 2017 violation report again alleges Ms. Long had failed to pay all restitution and costs, as well as failed to abide by federal and state laws. (Appendix, p. A9). P&P’s recommendation was for Ms. Long’s probation be revoked. (Appendix, p. A10). The December 2017 violation report also notes that Ms. Long was not receiving ECC, but gives no justification or explanation as to why. (Appendix, p. A11). Ostensibly, denial of Ms. Long’s ECC is related to the order given at the June 2016 violation hearing and the related docket entry.

On March 6, 2018, Ms. Long applied for the services of the Missouri Public Defenders in relation to her probation case. The next day, current counsel entered his appearance. (Appendix, p. A3). Through counsel, Ms. Long filed a motion for discharge from probation on March 28, 2018. (Appendix, pp. A12-15). The motion argued that, due to ECC, Ms. Long’s probation had expired prior to the second filed violation report in December 2017.<sup>1</sup> On April 3, 2018 a hearing was held and Respondent requested a supplemental report from P&P regarding Ms. Long’s ECC status. (Appendix, p. A3). On April 18, 2018, P&P filed a third probation violation report alleging new violations.

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<sup>1</sup> The motion for discharge from probation relied primarily on the ECC Ms. Long accrued prior to the first violation report, and did not address any ECC she would have received after the June 2016 revocation hearing. In the motion, it is argued that Ms. Long’s probation expired no later than February 23, 2017.

(Appendix, p. A16). In the April 2018 report, P&P addressed the ECC issue by stating, “In regards to Long’s ECC time, on 06/07/2016 [Respondent] extended her probation a years [sic] and NO EARNED COMPLIANCE CREDIT was ordered.” (Appendix, p. A17). On May 15, 2018, at a probation violation hearing, Respondent denied Ms. Long’s motion for discharge based upon P&P’s notation in the April 2018 violation report. (Appendix, p. A4).

On August 7, 2018, one day after this Court issued its preliminary writ commanding Respondent to take no further action, Respondent suspended Ms. Long’s probation. (Appendix, p. A4). This was the only time Ms. Long’s probation in this matter has been suspended.

To Ms. Long’s knowledge, there are no transcripts of any of the probation violation hearings held in her case.

**POINTS RELIED ON**

**I. The Respondent is without authority to hold a probation revocation hearing because Ms. Long's probation expired on October 25, 2016. Ms. Long was entitled to ECC pursuant to Section 217.703 RSMo (2017), and was in statutory compliance for twenty-three months during her probation, earning a total of 690 days of ECC. Therefore, a writ of prohibition preventing further revocation proceedings is appropriate.**

*State ex rel. Amorine v. Parker*, 490 S.W.3d 372 (Mo. 2016).

*State ex rel. Strauser v. Martinez*, 416 S.W.3d 798 (Mo. banc 2014).

*State ex rel. Parrott v. Martinez*, 496 S.W.3d 563 (Mo. App. E.D. 2016); *App. for transfer denied*.

§ 217.703 RSMo (2017)

**II. The Respondent abused his discretion when he denied Ms. Long's motion for discharge from probation because Ms. Long's probation expired on October 25, 2016, and Respondent's authority under Section 217.703 RSMo (2017) is limited only in discharging Ms. Long from probation. Therefore, a writ of mandamus ordering Respondent to discharge Ms. Long from probation is appropriate.**

§ 217.703 RSMo (2017)



## ARGUMENT

### Standard of Review

The standard of review for writs is abuse of discretion, and an abuse of discretion occurs where the trial court fails to adhere to applicable statutes. *State ex rel. Trans World Airlines v. David*, 158 S.W.3d 232 (Mo. banc 2005). Whether a trial court has abused its discretion and exceeded its authority is a question of law, which an appellate court reviews independently of the trial court. *State ex rel. Mo. Pub. Defender Comm'n. v. Pratte*, 298 S.W.3d 870, 881 (Mo. banc 2009).

**I. The Respondent is without authority to hold a probation revocation hearing because Ms. Long's probation expired on October 25, 2016. Ms. Long was entitled to ECC pursuant to Section 217.703 RSMo (2017), and was in statutory compliance for twenty-three months during her probation, earning a total of 690 days of ECC. Therefore, a writ of prohibition preventing further revocation proceedings is appropriate.**

If legislative intent in a statute is clear through the use of plain and unambiguous language, courts are bound by that intent. *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011). "When the words are clear, there is nothing to construe beyond applying the plain meaning of the law." *Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. banc 2013).

The provisions of Section 217.703 RSMo are clear and unambiguous. *See generally State ex. rel Amorine v. Parker*, 490 S.W.3d 372, 374-75 (Mo. banc 2016). Eligible offenders are entitled to ECC, with credits beginning to accrue after the first full calendar month on probation. §217.703.3 RSMo (2017). The effect of ECC is that it

reduces the term of probation by thirty days for each full calendar month an offender is in compliance. § 217.703.3 RSMo (2017); *Amorine*, 490 S.W.3d at 374-75. Compliance is specifically and statutorily defined, and “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 attorney or circuit attorney, against the offender.” §217.703.4 RSMo (2017).

In *Amorine*, this Court used the plain language of Section 217.703 RSMo to find the offender should have been discharged from probation early due to ECC. *Amorine*, 490 S.W.3d at 375. There, Amorine was placed on five years of supervised probation on May 4, 2011. *Id.* at 373. In a January 2015 violation report, P&P explicitly gave an optimal discharge, due to ECC, of April 2015. *Id.* This Court’s ruling in *Amorine* was due primarily to the trial court not holding revocation proceedings prior to Amorine’s discharge date, pursuant to Section 559.036 RSMo. However, this Court also found Amorine was in statutory compliance under Section 217.703 RSMo and had indeed earned an optimal discharge date due to ECC. *Id.* at 375.

The Court of Appeals in the Eastern District examined precisely the issue of compliance under Section 217.703.4 RSMo. *See State ex rel. Parrott v. Martinez*, 496 S.W.3d 563 (Mo. App. E.D. 2016); *App. for transfer denied*. In *Parrott*, the Eastern District held that an offender need not be in “strict fulfillment of each and every term of probation in a given month.” *Parrott*, 496 S.W.3d at 569. Rather, an offender need only be in compliance as defined by the statutory definition. *Id.* Further, the Eastern District held that a trial court cannot “unilaterally deny” an offender credit that he or she would

otherwise earn under Section 217.703 RSMo. *Id.* The holding in *Parrott* is consistent with the plain language in Section 217.703 RSMo.

In the present case, it is uncontroverted that Ms. Long was entitled to ECC when she was placed on supervised probation on September 16, 2014 for a term of three years. Indeed, the initial violation report filed in May 2016 explicitly mentions Ms. Long's ECC, and gave her an optimal discharge date of September 15, 2016. Through the use of the plain language of Section 217.703 RSMo as recognized by this Court in *Amorine*, the term of Ms. Long's probation can be easily calculated.

Beginning in October 2014, the first month she was eligible for ECC, through April 2016, there were no motions to revoke, motions to suspend, nor initial violation reports filed against Ms. Long. Thus, for these nineteen months, she met the statutory definition of compliance and was entitled to 570 days of ECC. As mentioned, P&P filed its first violation report in May 2016<sup>2</sup>, and a hearing was held in June 2016 where Ms. Long's probation was continued but extended by one year. She would not have earned ECC for May and June 2016. The year extension put Ms. Long's probation expiration date at September 15, 2018, not factoring in ECC. In the months following the June 2016 hearing, specifically July through October 2016, Ms. Long was again in statutory compliance, and earned an additional 120 days of ECC, for a total of 690 days.

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<sup>2</sup> Although Ms. Long had earned 570 days of ECC at the time of the May 2016 violation report, her optimal date of discharge was September 15, 2016 because an offender must serve at least two years of probation. *See* §217.703.7 RSMo (2017).

Subtracting Ms. Long's accrued ECC of 690 days from her maximum date of September 15, 2018, her probation expired on October 25, 2016. However, both Respondent and P&P failed to notice, and in December 2017 P&P filed a second probation violation report.

Unlike in *Amorine*, where the offender's ECC status was recognized by the court, Ms. Long's ECC was effectively erased at the June 2016 violation hearing. The associated docket entry states "No Earned Compliance Credit." Although no transcripts are available, it is clear that P&P interpreted the ruling to mean that Ms. Long's already accrued ECC was revoked, and that she was not entitled to any subsequent ECC. This interpretation is evidenced in P&P's report filed in April 2018, and by the fact that Ms. Long was never properly discharged from probation. However, there is no statutory justification for Ms. Long's ECC to be rescinded or suspended by the Respondent or P&P outside the limited exceptions outlined in Section 217.703 RSMo, none of which apply in this case.

The only statutory mechanism for the rescission of accrued ECC is covered in §217.703.5, which states that ECC will be rescinded upon revocation or if the court places the probationer in a department program pursuant to Section 559.036 RSMo. There is nothing within Section 217.703 RSMo (2007), either explicit or inferred, which would give a trial or sentencing court the authority to rescind ECC on its own motion short of revocation or a department program. Indeed, this is substantially similar to the issue addressed in *Parrott*, where the court held a trial court cannot unilaterally deny an offender credits. *Parrott*, 496 S.W.3d at 569. At the June 2016 hearing, Ms. Long's

probation was not revoked, nor was she placed into a department program pursuant to Section 559.036 RSMo. Therefore, Ms. Long's ECC should not have been rescinded and she should have been given credit for the 570 days of ECC she had accrued to that point.

Furthermore, Section 217.703 RSMo (2017) does not give the trial or sentencing court the authority to suspend an offender's ability to accrue ECC if the offender is otherwise eligible under the statute. *See generally Amorine*, 490 S.W.3d at 375; *Parrott*, 496 S.W.3d at 569. Indeed, Section 217.703 RSMo (2017) states clearly that eligible offenders "shall" be awarded ECC, that ECC "shall" reduce an offender's term of probation by 30 days for each month the offender is in compliance, and that the sentencing court "shall" discharge an offender when the probation has expired due to ECC. Ms. Long was again in statutory compliance for July through October 2016, earning an additional 120 days ECC.

Because Ms. Long was in statutory compliance for twenty-three months, or 690 days of ECC, her probation expired on October 25, 2016. The Respondent lacks the authority to hold revocation hearings. *See State ex rel. Strauser v. Martinez*, 416 S.W.3d 798, 801-804 (Mo. banc 2014) (held revocation court lacked authority to hold revocation hearings, unless it made reasonable efforts to do so, after the probation period had lapsed). Therefore, a permanent writ of prohibition is appropriate.

**II. The Respondent abused his discretion when he denied Ms. Long's motion for discharge from probation because Ms. Long's probation expired on October 25, 2016, and Respondent's authority under Section 217.703 RSMo (2017) is limited only in discharging Ms. Long from probation. Therefore, a writ of mandamus ordering Respondent to discharge Ms. Long from probation is appropriate.**

A writ of mandamus is appropriate "to compel a court to do what it is obligated by law to do and to *undo* that which the Court was by law prohibited from doing." *State ex rel. Schnuck Markets, Inc. v. Koehr*, 859 S.W.2d 696, 698 (Mo. banc 1993). Upon a showing of a "clear, unequivocal specific right to a thing claimed," a writ of mandamus may issue. *State ex rel. Hodges*, 460 S.W.3d 926, 927 (Mo. banc 2015). When the right at issue is statutory, a court "must analyze the statute under which the relator claims the right." *Id.*

Section 217.703.7 RSMo (2017) states that a sentencing court "shall order final discharge" of an offender "once the combination of . . . time served on probation . . . and earned compliance credits satisfy the total term of probation."

On October 25, 2016, Ms. Long had served two years, one month, and ten days of a four-year probation period that began on September 16, 2014. Ms. Long was in statutory compliance for twenty-three months between October 2014 and October 2016, earning 690 days of ECC. Therefore, On October 25, 2016, Ms. Long's probation period expired pursuant to the provisions in Section 217.703 RSMo (2017).

The Respondent erred when he denied Ms. Long's motion for discharge from probation filed in March 2018 because after October 25, 2016, the Respondent had lost

his authority under Section 217.703.7 RSMo (2017) to do anything other than discharge her from probation. Therefore, a writ of mandamus is appropriate to compel the Respondent to do what is required by the law.

**CONCLUSION**

Based on the arguments set forth above, Ms. Long respectfully requests this Honorable Court make its preliminary writ permanent, and prohibit the Respondent from taking any further action in this matter apart from discharging Ms. Long from probation.

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 7th day of September, 2018, to:

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*/s/ John Grobmyer*  
John Grobmyer

### 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, 13-point font, and does not exceed 31,000 words. The word processing software identified that this brief contains 3294 words, not including cover page or documents in the appendix. Finally, I hereby certify that the electronic copies of this brief have been scanned for viruses and found virus free.

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