

No. 97331

**IN THE
MISSOURI SUPREME COURT**

**STATE OF MISSOURI EX REL. ERICA LONG,
Relator,**

v.

**THE HONORABLE FRED COPELAND,
CIRCUIT JUDGE OF THE 34TH
JUDICIAL CIRCUIT,
Respondent,**

**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**

RELATOR'S REPLY BRIEF

Respectfully submitted,

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REPLY TO RESPONDENT'S POINTS

The Respondent, for the first time, relies on Section 559.105¹ in arguing that he does not have the authority to release Ms. Long from probation “early” because restitution has not been satisfied. He asserts that Section 217.703 (2017) should be read “in harmony” with Section 559.105, and, when done so properly, requires Ms. Long to “remain on probation for the maximum term.” See Respondent’s Brief, pgs. 4-5. Therefore, the Respondent argues, Ms. Long’s probation “must” be five years, citing Section 559.016, until September 15, 2019, and that she can be extended an additional year beyond that.

The harmony argument works against the Respondent precisely because there are more statutes at play other than Sections 559.105 and 217.703. Indeed, Sections 559.016, 559.036, and to a lesser extent Section 559.100, are also relevant in this case, and should all be read together. See generally, *Bowman v. Inman*, 516 S.W.3d 367, 369 (Mo. banc 2017) (“statutes on the same subject must be read together.”). When considering all

¹ The Respondent also references Article I, Section 32 of the Missouri Constitution, adopting the relator’s second argument in *State ex rel. Hillman v. Beger* (SC97171), also before this Court. However, the Respondent and *Hillman*’s invocation of Article I, Section 32 is misplaced, especially insofar as asserting that Section 217.703 is somehow unconstitutional. While Section 32.1(4) certainly guarantees crime victims the right to restitution, Section 35.5 gives the general assembly broad authority as to how that right should be enforced.

relevant statutes, Ms. Long's probation expired on October 26, 2016 and the Respondent lacks the authority to "extend" Ms. Long's probation under Section 559.105, revoke Ms. Long's probation under Sections 559.036 or 559.100, and is limited only to discharging Ms. Long from probation under Section 217.703.

A. The Respondent does not have the authority to find that Ms. Long was ineligible for earned compliance credits.

The Respondent asserts in his brief that the "he was well in his authority to make a finding that Relator was ineligible for earned compliance credits." See Respondent's Brief, pg 7, n 4. In support, Respondent quotes a portion of Section 217.703.2 out of context and, in doing so, misstates the law.

Under Section 217.703.2, a court may make a finding that an offender is ineligible for earned compliance credits "if an offender was placed on probation . . . for an offense of (1) involuntary manslaughter in the first degree; (2) involuntary manslaughter in the second degree; (3) assault in the second degree (with exceptions); (4) domestic assault in the second degree; (5) assault of a law enforcement officer in the second degree; (6) statutory rape in the second degree; (7) statutory sodomy in the second degree; (8) endangering the welfare of a child in the first degree; or (9) any case in which the defendant is found guilty of a felony offense under chapter 571." Further, the court must make the motion for ineligibility "within the first month in which the person may earn compliance credits."

Ms. Long's offense is not one of the ones listed under Section 217.702.2, nor did the court motion for Ms. Long to be ineligible for earned compliance credits prior to her

first month in which she could earn them. Simply put, Section 217.702.2 does not apply to the facts in this case. Indeed, the Respondent does not have the authority under Section 217.702 to rescind or prevent Ms. Long from having earned compliance credits.

Therefore, as argued at length in her original brief, Ms. Long is entitled, under Section 217.703, to the earned compliance credits she acquired both prior to the June 7 violation hearing and after, for a total of 690 days of credits.

B. Ms. Long has already served the maximum term of probation under Section 559.016; therefore, Section 559.105 is not relevant to the case at bar.

Section 559.105 authorizes a court to “order the maximum term of probation allowed” if a probationer has not completed restitution within the original term of probation. What constitutes a maximum term of probation is covered under Section 559.016, which states, “**Unless . . . modified under Section 217.703,**” a term of probation for a felony cannot be less than one year and cannot exceed five years. It is in the court’s discretion, under Section 559.016.2, to designate the term of probation, and such term “may be modified” by Section 217.703.

It is clear from the plain language of Section 559.016 that the general assembly intended for earned compliance credits to factor into what constitutes a maximum term of probation. Therefore, for a probationer receiving earned compliance credits, the maximum term of probation would depend on how many credits he or she received.

Here, Respondent exercised his authority under Section 559.016.2 and originally ordered Ms. Long to serve three years on probation. At the June 2017 hearing, he further

exercised his authority under Sections 559.016.3 and 559.036.2 and extended Ms. Long's probation an additional year, giving her a maximum discharge date of September 15, 2018. However, Ms. Long accrued earned compliance credits totaling 690 days during this period of time, meaning her maximum term of probation ended on October 26, 2016.

Section 559.105 does not apply in this case because Ms. Long has already served the maximum term of her probation.

C. Section 559.036.8 prohibits the Respondent from taking any further action on Ms. Long's probation other than to discharge her from probation.

While the Respondent relies on Section 559.105 for his argument, he would be better served to rely on Section 559.100. The recommendation by Ms. Long's probation officer is for revocation, outlined in both the December 2017 and April 2018 violation reports. Section 559.105 does not give a court the authority to revoke one's probation due to unpaid restitution, it only gives the court the authority to extend the probation. Section 559.100.2 does give the court authority to revoke one's probation due to unpaid restitution.

However, any action the Respondent would take, whether extension under Section 559.105 or revocation under Section 559.100.2, must have been done prior to Ms. Long's probation expiring. Section 559.036.8 states that the power of a court to revoke probation

extends only for the duration of that probation.² Indeed, this Court has consistently held that when a probation term ends, so does a court's authority to revoke it. See *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); and *State ex rel. Zimmerman v. Dolan*, 514 S.W.3d 603 (Mo. banc 2017).

Here, Ms. Long's probation expired under Sections 559.016 and 217.703 on October 25, 2016. There were no violation reports filed until December 2017 and a hearing on the violation was not until January 2018, well over a year after Ms. Long's probation expired. Therefore, the Respondent has lost his authority to revoke Ms. Long's probation or to hold further probation revocation hearings. Indeed, this Court's holding in *Zimmerman* would also prohibit the Respondent from attempting to extend Ms. Long's probation under Section 559.105, assuming he has the authority to do so.³

² While revocation can happen after probation has already expired, Section 559.036.8 is clear that "some affirmative manifestation of an intent to conduct a revocation hearing" must occur prior to that probation expiring.

³ The Respondent may argue that Section 559.105 is not governed by Section 559.036 because he is not revoking Ms. Long's probation, only extending it. However, "once the probationary term expires, the circuit court retains no authority over the probationer." *Zimmerman*, 514 S.W.3d at 608.

CONCLUSION

The Respondent's reliance on Section 559.105 is misplaced, and ignores other statutes that are relevant to this case. When all those statutes are read together, it is clear that Ms. Long's probation expired on October 25, 2016, and the Respondent has lost his authority to take any further action other than to discharge her from probation. 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:

Honorable Fred Copeland Circuit Judge, Pemiscot County Courthouse, 640 Ward Avenue, Caruthersville, Missouri, 63873, Telephone: (573) 333-0187, Fax: (573) 333-4157, E-mail: fred.copeland@courts.mo.gov

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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 7,750 words. The word processing software identified that this brief contains 1480 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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