

IN THE  
SUPREME COURT OF MISSOURI

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MICHAEL WILLIAMS,	)	
	)	
	)	Appellant,
	)	
vs.	)	No. SC97272
	)	
STATE OF MISSOURI,	)	
	)	
	)	Respondent.

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APPEAL TO THE SUPREME COURT OF MISSOURI  
FROM THE CIRCUIT COURT OF WARREN COUNTY, MISSOURI  
TWELFTH JUDICIAL CIRCUIT  
THE HONORABLE WESLEY CLAY DALTON, JUDGE

APPELLANT’S SUBSTITUTE REPLY BRIEF

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**JURISDICTIONAL STATEMENT**

Appellant adopts and incorporates by reference the Jurisdictional Statement from his original Substitute Brief.

**STATEMENT OF FACTS**

Appellant adopts and incorporates by reference the Statement of Facts from his original Substitute Brief.

## ARGUMENT

Respondent concedes that the State's plea agreement with appellant was for eight years imprisonment and long-term drug treatment (Resp. br. at 14).

Respondent concedes that the trial court was required to notify the Department of Corrections before sentencing appellant of the intent to sentence him to long-term treatment, pursuant to Section 217.362.2, so that appellant's eligibility for long-term treatment could be assured (Resp. br. at 14).

Respondent does not appear to contest deficient performance by appellant's trial counsel, arguing only that appellant must show that "counsel's inadequate representation" prejudiced him (Resp. br. at 13).

So what does respondent contest? Only that appellant was prejudiced by being allowed to plead guilty by both the trial court and his own attorney to a sentence for which he was not eligible (Resp. br. at 13-14). Appellant and respondent agree upon these facts from the evidentiary hearing: (1) appellant testified that he believed he would be placed in long-term treatment and he would not have pleaded guilty had he known he was ineligible (H.Tr. 5-6); (2) the motion court's findings, in addressing the ineffective assistance of counsel claim, held that appellant's testimony that he would have insisted on going to trial lacked credibility (L.F. 47); and (3) the motion court's findings as to the due process claim was that the claim was not cognizable (L.F. 48-49) (Resp. br. at 8-10).

Appellant recognizes that this Court has held that credibility findings by the motion court are essentially inviolate. *State v. Taylor*, 929 S.W.2d 209, 224 (Mo. banc 1996). Appellant asks this Court to consider whether such deference can in fact never be clearly erroneous in a case such as this – where the findings have no support at all in the record. In any event, the motion court's findings appear only to pertain to the ineffective assistance of counsel claim, not the due process claim, which the motion court erroneously found not to be cognizable. See, *State ex rel. Taylor v. Moore*, 136 S.W.3d 799 (Mo. banc 2004).

Most important is that even if the motion court's credibility finding is sustained, appellant has lost the benefit of his bargain. Appellant's plea agreement has been converted by the errors of the trial court and his trial attorney into something to which he did not agree – converted from eight years with long-term treatment to eight years in prison. And even respondent would agree that appellant pleaded guilty with the expectation that he would receive long-term treatment. Had the trial court rejected the plea agreement, appellant would have been given the opportunity to withdraw his plea. Rule 24.02(d)(4). Vacating appellant's plea would give him that opportunity now.

**CONCLUSION**

For the reasons presented, appellant respectfully requests that this Court reverse the motion court's denial of postconviction relief and vacate his conviction and sentence.

Respectfully submitted,

*/s/ Ellen H. Flottman*

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**Certificate of Compliance**

I, Ellen H. Flottman, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word in Times New Roman size 13 point font. Excluding the cover page, the signature block, and this certificate of compliance, the brief contains 557 words, which does not exceed the 7,750 words allowed for an appellant's substitute reply brief.

*/s/ Ellen H. Flottman*

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Ellen H. Flottman