IN THE
MISSOURI SUPREME COURT

STATE EX REL. TRAVIS JONES, Relator, vs. THE HONORABLE TONY WILLIAMS, CIRCUIT JUDGE, 46TH JUDICIAL CIRCUIT, Respondent.	)	Cause No. SC97417

ORIGINAL PETITION FOR WRIT OF PROHIBITION IN THE MISSOURI SUPREME COURT, FROM THE CIRCUIT COURT OF TANEY COUNTY, MISSOURI
THE HONORABLE TONY WILLIAMS, CIRCUIT JUDGE

RELATOR'S REPLY BRIEF IN SUPPORT OF HIS PERMANENT WRIT OF PROHIBITION

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JURISDICTIONAL STATEMENT

Relator adopts the Jurisdictional Statement set forth in his original brief.

STATEMENT OF FACTS

Relator adopts the Statement of Facts set forth in his original brief.

POINT RELIED ON

Relator is entitled to a writ of prohibition to prohibit Respondent, the Honorable Tony Williams, from conducting a probation violation hearing in Relator's Taney County case, because Respondent is without authority to take any further action in Relator's case, in that Relator's probation, which began on December 11, 2014, ended by operation of law no later than March 20, 2018, due to his accrual of earned compliance credits under §217.703 RSMo., and Respondent did not make every reasonable effort to conduct a probation violation hearing before March 20, 2018, and is now required under §217.703 RSMo. and §559.036 RSMo. to discharge him. Allowing Respondent to revoke Relator's probation would deprive him of due process guaranteed by the 14th Amendment to the United States Constitution and Article I, §10 of the Missouri Constitution.

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

State ex rel. Culp v. Rolf, 2018 WL 7021618 (Mo. App. W.D. 2019);

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

State ex rel. Zimmerman v. Dolan, 514 S.W.3d 603 (Mo. banc 2017);

14th Amendment to the United States Constitution and Article I;

Article I, §10 of the Missouri Constitution;

Sections 217.703 and 559.036,RSMo. (Cum. Supp. 2017).

ARGUMENT

Relator is entitled to a writ of prohibition to prohibit Respondent, the Honorable Tony Williams, from conducting a probation violation hearing in Relator's Taney County case, because Respondent is without authority to take any further action in Relator's case, in that Relator's probation, which began on December 11, 2014, ended by operation of law no later than March 20, 2018, due to his accrual of earned compliance credits under §217.703 RSMo., and Respondent did not make every reasonable effort to conduct a probation violation hearing before March 20, 2018, and is now required under §217.703 RSMo. and §559.036 RSMo. to discharge him. Allowing Respondent to revoke Relator's probation would deprive him of due process guaranteed by the 14th Amendment to the United States Constitution and Article I, §10 of the Missouri Constitution.

In his brief, Respondent made two main points. First, that Relator is not eligible for discharge because: (a) the prosecutor's filing of a motion to revoke probation makes Relator ineligible for discharge under §217.703.10;[1] (b) all of Relator's earned compliance credits (ECCs) have been suspended; and, (c) Relator's probation has not yet expired (Respondent's Brief, pp. 7-25). Second, Respondent argued that even if Relator's probation has expired, Respondent not only manifested an intent to conduct a hearing prior to the expiration of Relator's

1 All statutory citations are Cum. Supp. (2017) unless otherwise stated.

probation, but also made every reasonable effort to notify Relator and conduct a hearing prior to Relator's probation expiring (Respondent's Brief, pp. 26-36). Both of Respondent's arguments, however, fail due to his misreading of both §217.703 and §559.036 as well as his failure to apply a rule of statutory construction. Namely, that related statutes must be read *in pari materia.*

I. Respondent Misread §217.703.10.

In his brief, Respondent argued that Relator was ineligible for ECC discharge since the prosecutor had taken action under §217.703.10 by filing a motion to revoke (Respondent's Brief, pp. 8-10). Respondent, however, ignored Relator's argument that while §217.703.10 prevents Relator from being automatically discharged under §217.703.7, every step must still be taken to hold the probation violation hearing before Relator's probation has expired. In other words, the hearing cannot be pending indefinitely. Clearly, not every step was taken regardless of whether Relator's discharge date was October 1, 2017, December 20, 2017, or March 20, 2018. In fact, no action was taken to make sure a probation violation hearing was held before Relator's probation expired. Respondent's argument implied that since the State had filed a motion to revoke, no action was necessary, despite knowing that Relator was in the Barry County Jail, as long as the hearing was held before his regular discharge date of December 10, 2019. This is not supported by Missouri law. As this Court made clear in *State ex rel. Strauser v. Martinez,* 416 S.W.3d 798, 801, n. 3 (Mo. banc 2014), "a court

must rule on the revocation motion before the probation term ends unless it meets the two conditions outlined in [559.036.8].” Despite knowing Relator’s probation was going to expire soon, and despite knowing where Relator was located, Respondent took *no* action to hold the probation violation hearing before Relator’s probation period ended.

Respondent’s argument that the judge in the *Amorine* case did not take action under §217.703.10 because he did not actually have a hearing or suspend the defendant’s probation also fails (Respondent’s Brief, pp. 23-25).[2] Respondent misread the statute. Section 217.703.10 states:

> If the sentencing court, board, or the circuit or prosecuting attorney upon receiving such notice does not take any action under subsection 5 of this section, the offender shall be discharged under subsection 7 of this section.

The language in §217.703.5 discusses probation violation reports, motions to revoke, probation violation hearings, suspending probation and ECCs, and revoking ECCs. Further, the language in §217.703.10 states *any* action. As the Missouri Court of Appeals, Western District has stated:

> The term “any” connotes, “one, no matter what one: EVERY – used as a function word especially in assertions and denials to indicate one that is selected without restriction or limitation of choice.” Webster's Third New

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

> International Dictionary 97 (1981). This court does not recognize ambiguity in this term. Just as "the word 'any' as used in a constitutional provision is 'all-comprehensive, and is equivalent to "every," ' " it should also be construed as "all-comprehensive" in a statutory provision.

State v. Bouser, 17 S.W.3d 130, 138-39 (Mo. App. W.D. 1999)(citing *Boone County Court v. State,* 631 S.W.2d 321, 325 (Mo. banc 1982)(overruled on other grounds). Thus, any action taken under subsection 5 that relates to probation violation hearings qualifies. If the legislature had wanted to limit the action that qualifies, it would not have used the term "any." Respondent's argument that §217.703.10 prevents Relator from being discharged fails.

Respondent placed a lot of emphasis on the fact that, in Relator's case, the State did file a motion to revoke probation. As Respondent stated in his brief, the fact that the State filed a motion to revoke demonstrates that action was taken under §217.703.10 (Respondent's Brief, pp. 7-10). This argument, however, fails for the reason discussed, *supra.* Action, *any* action, under §217.703.10 can be taken by the prosecutor *or* the sentencing court. Contrary to Respondent's belief, Relator respectfully submits that the importance this Court was placing on the absence of a motion to revoke in *Amorine* was that by its absence, it meant Amorine was considered to be in compliance and therefore his discharge date was April 1, 2015. *State ex rel. Amorine v. Parker,* 490 S.W.3d at 375. *Then,* based on a discharge date of April 1, 2015, the Court proceeded to apply §559.036.8 to

Amorine's case to discuss why it had concluded that the trial court no longer had authority to conduct a probation violation hearing. *See Id.* at 375-76. Additionally, establishing the discharge date of April 1, 2015 was important because the trial court suspended Amorine's probation two days later. *Id.* at 375.

II. Respondent Misread §217.703.5

Respondent's argument that all of Relator's ECCs have been suspended, pending a hearing fails for three reasons. First, Respondent ignored the fact that the meaning of a term is derived by the context in which it is used. "The plain and ordinary meaning of the words in a statute is determined from the words' usage in the context of the *entire* statute." *State ex rel. Goldsworthy v. Kanatzar,* 543 S.W.3d 582, 581 (Mo. banc 2018)(emphasis added). Looking at the context of the term "credits" in the entire statute shows that it does not mean all credits but credits a probationer can earn.

First, the second sentence of §217.703.4 states:

> Credits shall begin to accrue for eligible offenders after the first full calendar month of supervision or on October 1, 2012, if the offender began a term of probation, parole, or conditional release before September 1, 2012.

In this context, credits clearly refers to those credits *one can earn.* Earned credits cannot begin to accumulate until after a full month of compliance.

Second, the first part of §217.703.5 states:

> Credits shall not accrue during any calendar month in which a violation report has been submitted or a motion to revoke or motion to suspend has been filed…

Here, the phrase "shall not accrue *during* any calendar month" clearly shows that the credits being discussed are ones that can be earned, not those which have already been earned. In other words, in the months that a violation report or motion to revoke is filed, a probationer shall not be able to earn any credits. The next part of the first sentence of §217.703.5 states:

> and shall be suspended pending the outcome of a hearing, if a hearing is held.

Thus, the credits that a probationer will not be able to earn in a month that a violation report or motion to revoke is filed will also be suspended pending a hearing.

Finally, this interpretation is confirmed by the second sentence of §217.703.5, which states:

> If no hearing is held or the court or board finds that the violation did not occur, then the offender shall be deemed to be in compliance and shall begin earning credits on the first day of the next calendar month following the month in which the report was submitted or the motion was filed.

Thus, if a hearing is never held or no violation if found to have occurred at a hearing, a probationer, who was not allowed to earn credits during the month a

violation report or a motion to revoke was filed, and was also not allowed to earn credits while a hearing was pending, can begin earning credits again when it becomes clear a hearing will not be held or when a hearing is held and it is determined that no violation occurred.

After discussing what happens with the current earning of credits, §217.703.5 then discusses what happens with the credits that have already been earned.

Respondent argued that if the legislature wanted to limit the term "credits" to credits that an offender was presently earning, it could have written the statute differently and that Relator never explained why the legislature did not "specify that only the 'ability' to earn credit was suspended" (Respondent's Brief, p. 14). The reason is simple. The context makes it clear that the credits being discussed in the first two sentences of §217.703.5 are the ones a probationer is *earning*. Because it is clear, there was no reason to write the statute any differently.

A second reason Respondent's reading of §217.703.5 fails is that it does not take into account two cardinal rules of statutory construction. The first rule is that "the legislature is presumed to know the existing law when enacting a new piece of legislation." *State ex rel. Nothum v. Walsh,* 380 S.W.3d 557, 567 (Mo. banc 2012)(internal citation and quotation omitted). Section 217.703 was enacted in 2012. Section 559.036 was enacted prior to 2012 (Exhibit B, p. A5). Section 559.036.7 states:

> The prosecuting or circuit attorney may file a motion to revoke probation or at any time during the term of

> probation, the court may issue a notice to the probationer to appear to answer a charge of a violation, and the court may issue a warrant of arrest for the violation. Such notice shall be personally served upon the probationer. The warrant shall authorize the return of the probationer to the custody of the court or to any suitable detention facility designated by the court. Upon the filing of the prosecutor's or circuit attorney's motion or on the court's own motion, the court may immediately enter an order suspending the period of probation and may order a warrant for the defendant's arrest. The probation shall remain suspended until the court rules on the prosecutor's or circuit attorney's motion, or until the court otherwise orders the probation reinstated.

Prior to 2012, this language was in subsection 5 (Exhibit B, p. A5). Despite being in a different subsection, the language has remained the same. Under this subsection, a court may suspend a person's probation, "but only as a consequence of an alleged violation of that probation. *State ex rel. Julian v. Hendrickson,* 486 S.W.3d 379, 381 (Mo. App. S.D. 2015).[3] In other words, probation can only be

3 This opinion is attached as Exhibit B, pp. A4-A6.

suspended when there is a probation violation hearing already pending.[4] If Respondent's interpretation of §217.703.5 is correct, and *all* credits are suspended when a probation violation hearing is pending, and probation can only be suspended when a probation violation hearing is pending, then the final sentence of §217.703.5 is completely unnecessary, for the legislature has already addressed what happens to earned credits in the first sentence. Thus, Respondent is also ignoring the rule of statutory construction that "[t]he legislature will not be presumed to have inserted idle verbiage or superfluous language in a statute. *State ex rel. Goldsworthy v. Kanatzar,* 543 S.W.3d at 586.

A third reason Respondent's interpretation fails is shown by the *Amorine* case. In order for credits to be suspended (regardless of whose interpretation is correct) two things have to be present: (1) an initial violation report OR a motion to revoke or suspend probation has to be filed; (2) a probation violation hearing must be pending. As the language of subsection 7 (formerly subsection 5) of

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4 Any argument that this interpretation comes from a 2015 case and thus does not predate the enactment of §217.703 is without merit. In *State v. Severe,* 307 S.W.3d 640, 643 (Mo. banc 2010), this Court explicitly held that "the clear words of the statute govern interpretation." (internal citation and quotation omitted). The clear words of this subsection clearly demonstrate that probation cannot be suspended unless the prosecutor files a motion to revoke or the court on its own motion manifests an intent to revoke.

§559.036 demonstrates, a probation violation hearing can be pending by the prosecutor filing a motion to revoke, or through the motion of the court. In *State ex rel. Amorine v. Parker,* 490 S.W.3d 372 (Mo. banc 2016), both existed. On January 8, 2015, a probation violation report was filed. *Id.* at 373. Then, on January 26, 2015, the trial court set a case review hearing for February 17, 2015. *Id.* Then the case was passed to March 17, 2015, "*for setting of a probation violation hearing." Id.* At 374 (emphasis added). On March 17, 2015, a probation violation hearing was set for May 19, 2015. *Id.* Once the trial court set the case for an actual hearing, a probation violation hearing was then pending. If Respondent's interpretation is correct, the filing of the violation report and the pendency of a probation violation hearing based on that report would have suspended all of Amorine's ECCs and he would not have been able to be discharged on April 1, 2015.

III. Respondent Failed to Apply the Rule of *In Pari Materia.*

Respondent failed to acknowledge the principle of statutory construction of *in pari materia.* "The doctrine of *in pari materia* recognizes that statutes relating to the same subject matter should be read together." *In the Matter of A.L.R.,* 511 S.W.3d 408, 413 (Mo. Banc 2017)(internal quotations and citations omitted). In Relator's case, the two statutes are §217.703 and §559.036. Recently, the Missouri Court of Appeals, Western District, handed down the decision of

State ex rel. Culp v. Rolf, 2018 WL 7021618 (Mo. App. W.D. 2019).[5] Its analysis demonstrates how §217.703 and §559.036 should be construed *in pari materia.* [6]

In this case, the defendant pleaded guilty to felony stealing and was sentenced to seven years in the Department of Corrections (DOC). *Id.* at *1. Execution of sentence was suspended and the defendant was placed on five years of probation. *Id.* On March 16, 2017, a violation report was filed alleging drug and assault violations. *Id.* This report stated the defendant had an earned discharge date of June 26, 2019 and an optimal discharge date of May 2, 2018. *Id.* Five days later, the State filed a motion to revoke and the Court issued an arrest warrant the next day. *Id.* at *2. On April 11, 2017, a supplemental violation report was filed, which provided more details about the alleged violations and also stated that the defendant had an earned discharge date of June 26, 2019 and an optimal discharge date of June 1, 2018. *Id.* No more action was taken on this case for another seventeen months until September 28, 2018, when the defendant's lawyer filed a motion to withdraw the warrant and discharge him from probation. *Id.* The defendant argued that after April, 2017, he began accruing ECCs again. *Id.* The

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5 This opinion was handed down on January 15, 2019. Westlaw, however, erroneously states that it was handed down on January 15, 2018. This is why a 2018 number is being used. It is attached as Exhibit C, pp. A7-A12.

6 While this opinion is not final and is not binding on this Court, Relator respectfully submits that the analysis is sound.

trial court denied the motion because it believed the motion to revoke suspended the accrual of ECCs. *Id.* Based on the following analysis of the 2017 version of §217.703, the Court of Appeals agreed with the defendant. *Id.* at *4.

The *Culp* Court noted that there are two circumstances in which the accrual of ECCs will not resume in the month following the filing of an initial violation report or a motion to revoke or suspend probation. The Court stated:

> Section 217.703.5 specifies two circumstances in which the accrual of earned compliance credits will *not* resume in the month following the filing of a violation report or a motion to revoke or suspend probation. *First*, § 217.703.5 provides that, following the filing of a violation report or a motion to revoke or suspend, accrual of earned compliance credits "shall be suspended pending the outcome of a hearing, if a hearing is held." *Second*, "[e]arned credits shall continue to be suspended for a period of time during which the court or board has suspended the term of probation, parole, or release." These are the only two circumstances under § 217.703 in which continued accrual of earned compliance credits is suspended, after the month in which a violation report or motion to revoke or suspend is filed….The filing of a motion to revoke probation, standing alone, does not have the effect of suspending the accrual of

> earned compliance credits, beyond the month in which the motion is filed.

Id. at *5. The Court then noted that neither circumstance had occurred in the defendant's case since his probation had never been suspended nor had a violation hearing been held before his optimal discharge date, stating:

> Although § 217.703.5 provides that the accrual of earned compliance credits "shall be suspended pending the outcome of a hearing, if a hearing is held," that provision cannot be interpreted to suspend the accrual of earned compliance credits indefinitely, based merely on a possibility that the court may someday hold a probation revocation hearing. Instead, § 217.703.5 must be read in conjunction with the other statutes governing earned compliance credits and the operation of probation generally.

Id. at *5 (citing *State ex rel. Evans v. Brown Builders Electric Co.,* 254 S.W.3d 31, 35 (Mo. banc 2008), which discussed how statutes must be read *in pari materia).* The Court, like this Court in *Amorine,* briefly stated what subsections four, five, seven, and ten state. It then read them in conjunction and held:

> Considering these provisions together, an eligible offender's entitlement to earned compliance credits must be capable of being known as of the date on which he or she would be eligible for "final discharge" from probation through the

> operation of the earned compliance credits. If the circuit court fails to take action to suspend or revoke the offender's probation, or to rescind earned compliance credits, prior to that optimal discharge date, "the offender *shall* be discharged" from probation on that date. § 217.703.10 (emphasis added). Given that the State is under a mandatory statutory duty to "final[ly] discharge" an offender on his or her optimal discharge date, the offender's entitlement to discharge cannot be made to depend upon whether the court chooses to hold a probation revocation hearing *at a later date.* We hold that, where (1) an offender on probation is eligible for earned compliance credits; (2) a violation report or motion to revoke probation is filed; but (3) the court does not suspend probation, a probation revocation hearing must be held within the time when the offender would otherwise be eligible for discharge based on the continued accrual of compliance credits, or else the court must satisfy the requirements of § 559.036.8.

Id. at *6. The Court then remanded the case back to the trial court to determine whether it complied with §559.036.

Applying *Culp* to Relator's case nets the same result. Relator's probation has never been suspended and Respondent did not hold a probation violation

hearing before Relator's probation expired – whether this Court holds Relator's discharge date was October 1, 2017, December 20, 2017, or March 20, 2018. Moreover, contrary to his assertion in his brief, Respondent did not satisfy the requirements of §559.036.8.

IV. Respondent Did Not Comply With §559.036.8.

In his brief, Respondent made six arguments that he complied with §559.036.8: (1) he did not act the same way as the trial judges in the *Amorine* or *State ex rel. Zimmerman v. Dolan,* 514 S.W.3d 603 (Mo. banc 2017)[7]; (2) he acted diligently upon learning that Relator was in DOC; (3) Relator's interpretation of §559.036.8 requires "circuit courts to continuously monitor their probationers jailed on new, still pending charges;" (4) Relator's interpretation of §559.036.8 requires circuit courts to "periodically pillage each others' (sic) jails via uninvited writs of habeas corpus:" (5) a probationer's charges may still be pending and the probationer might have "no desire whatsoever to be whisked away before an approaching court date;" and, (6) Relator had counsel and that "should have been one reasonable step towards a timely disposition" Respondent's Brief, pp. 28-35). All six of these arguments fail.

Respondent's first argument appears to be that since he did not behave the way the judges in those cases did, he acted reasonably. This argument fails for the simple reason that just because Respondent may not have been as derelict in his duty as the judges in *Amorine* and *Zimmerman,* in no way means he made every

7 This opinion is attached as Exhibit D, pp. A13-A22.

reasonable effort to hold a probation violation hearing before Relator's probation expired.

Respondent's second argument fails for the simple reason that when Relator wrote Respondent a letter in June, 2018, his probation had expired at least three months before and up to as many as eight months earlier. Even if Respondent had had Relator delivered to Court and had a hearing the same day he received Relator's letter, he would not have made every reasonable effort to hold a hearing before Relator's probation expired since it already would have expired. Thus, any "delays" that can be attributed to Relator in July and September of 2018 do not help Respondent's argument.

Respondent's third argument that Relator's interpretation requires circuit courts to continually monitor probationers in other jails fails for two reasons. First, Relator made no such argument. The "Track this Case" and MOVANS option Relator discussed actually allow a court, as well as a prosecutor, to be informed of a probationer's case in other jurisdictions without doing anything. Once the required information is entered, no further monitoring is necessary. The updates are emailed directly to the circuit court and/or the prosecutor.

Assuming, *arguendo,* that the use of MOVANS and "Track this Case" are not reasonable, the fact remains that Respondent knew Relator was in the Barry County Jail. (Relator's Amended Brief, Exhibit N, p. A41). Further, Respondent forgets that the State's motion to revoke filed on August 22, 2017, noticed a hearing for September 28, 2017 (Relator's Amended Brief, Exhibit O, pp. A43-

A44). Despite knowing where Relator was, and despite setting a hearing, neither Respondent nor the State made any effort to make sure Relator was present for that hearing. Moreover, when Relator's case was called on September 28, 2017, Respondent simply made a docket entry that a warrant was already active (Relator's Amended Brief, Exhibit A, p. A4). Knowing that Relator was in the Barry County Jail, it would not have been unreasonable for either Respondent or the State to have checked case net to see the status of Relator's Barry County cases. Had either done so, they would have realized that Relator had pleaded guilty and was sentenced to DOC (Exhibit A, pp. A1-A3). Respondent could have then suspended Relator's probation and had him writted to Taney County for a hearing.

Respondent's fourth argument that a writ is akin to pillaging other jails fails for the simple reason that it provides no support as to why writs like this should be regarded in such a way. Indeed, this Court has explicitly stated:

> In Missouri, writs of habeas corpus ad prosequendum have long been a traditional means of securing the presence of prisoners located in another jurisdiction for the purposes of prosecuting the prisoner for some other offense….While typically this writ is prepared or drafted by the prosecuting attorney, it is issued by the circuit court.

State ex rel. Zimmerman v. Dolan, 514 S.W.3d at 611.

Respondent's fifth argument that a probationer may not have a "desire whatsoever to be whisked away before an approaching court date" fails because the wishes of a probationer do not stop the probation from running nor do they supersede a trial court's wishes to have a hearing on alleged violations. Assuming, *arguendo,* that the wishes of a probationer are relevant, Respondent could have suspended Relator's probation while waiting for his Barry County cases to be disposed. Moreover, if the probationer wishes to wait until his charges are resolved first, he can consent to the hearing being held at a future date.

Finally, Respondent's six argument regarding Relator having counsel fails because it ignored the fact that neither Relator nor his counsel had *any* responsibility to expedite a hearing. *See Strauser v. Martinez,* 416 S.W.3d at 803(noting it was not the duty of the Relators in that case to make sure the court held a hearing). While it is true that "[c]ounsel's subsequent inaction is, at least, not attributable to Respondent, Respondent's own inaction can be.

Respondent correctly stated that Relator had the burden of demonstrating Respondent did not make every reasonable to hold a hearing before Relator's probation expired (Respondent's Brief, p. 27)(citing *State ex rel. Zimmerman v. Dolan,* 514 S.W.3d at 608). Relator, however, has not just demonstrated that Respondent did not make every reasonable effort to conduct a probation violation hearing before Relator's probation expired; he has also demonstrated that Respondent made *no* effort whatsoever. He did not even bother to suspend

Relator's probation. Relator has met his burden. Respondent did not comply with §559.036.8

CONCLUSION

This Court should make its preliminary writ permanent. Respondent did not have a hearing before Relator's discharge date from probation regardless of whether that date was October 1, 2017, December 20, 2017, or March 20, 2018. Moreover, Respondent did not make every reasonable effort to have a hearing before Relator's discharge date, regardless of what date is used, for despite knowing Relator was in the Barry County Jail, neither Respondent nor the State made any effort to bring him to Taney County even though a hearing was set for September 28, 2017. Respondent's probation has expired and he should be discharged from probation.

Respectfully Submitted,

/s/ James Egan

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CERTIFICATE OF COMPLIANCE

I, James Egan, hereby certify as follows:

The attached brief complies with the limitations contained in this Court's Rule 84.06. The brief was completed using Microsoft Word, Office 2010, in Times New Roman size 13 point font. Excluding the cover page, signature block, this certification, and the certificate of service, this brief contains 4,936 words, which does not exceed the 7,750 words allowed for a Relator's reply brief.

/s/ James Egan
_____
James Egan

CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify, that on this 22nd day of January, 2019, true and correct copies of the foregoing brief and Appendix were emailed to the Hon. Tony Williams, Circuit Judge, 46th Judicial Circuit, Taney County Judicial Center, 266 Main Street, Forsyth, Missouri 65653; Phone: 417-546-7230; Fax: 417-546-6133; E-Mail: Tony.Williams@courts.mo.gov; and, Mr. Thomas Kondro at the Taney County Prosecutor's Office, Taney County Judicial Center, 266 Main Street, Forsyth, Missouri 65653; Phone: 417-546-7260: Fax: 417-546-2376; E-mail: ThomasK@co.taney.mo.us.

/s/ James Egan

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James Egan