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IN THE SUPREME COURT OF MISSOURI

No. SC97633

MISSOURI DEPARTMENT OF CORRECTIONS,

***Appellant*,**

v.

DIMETRIOUS WOODS,

***Respondent*.**

ON APPEAL FROM THE
CIRCUIT COURT OF COLE COUNTY
THE HONORABLE DANIEL R. GREEN, PRESIDING

RESPONDENT'S SUBSTITUTE BRIEF

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STATEMENT OF FACTS

Respondent, Dimetrious Woods, was charged in the Circuit Court of Lafayette County with the Class A felony of trafficking in the second degree in violation of § 195.223 RSMo (2000) in Case No. 07CY-00287. After respondent moved for a change of judge and a change of venue, his case was transferred to the Circuit Court of Clay County, before the Honorable Larry Harman. Upon the advice of counsel, respondent agreed to waive his right to trial by jury and elected to proceed with a bench trial. On October 19, 2007, Judge Harman found respondent guilty as charged. On December 20, 2007, Judge Harman sentenced respondent to twenty-five years imprisonment, after finding that respondent, due to a prior drug-related conviction, was a prior drug offender under § 195.295.3 RSMo (2000). (L.F. 18-19). Respondent's twenty-five year sentence was ordered to run consecutively to a four year sentence that respondent had received for an unrelated offense. (*Id.*).

In September 2007, respondent received his first parole hearing on the unrelated charge. On November 6, 2007, appellant Board of Probation and Parole entered an order granting respondent parole and ordering that he be released on September 18, 2008. (*Id.* 20). On February 8, 2008, after respondent was

sentenced on the drug trafficking charge, appellant issued a new release order, cancelling respondent's release date because it was determined that:

> [Y]ou have been convicted of TC: Trafficking Drugs Second Degree and sentenced as a prior drug offender, in accordance with Section 195.295, you are not eligible for parole release under your current sentence structure. You have been scheduled for conditional release on 10/11/2029.

(*Id.* 21).

In 2014, the General Assembly passed Senate Bill 491, which became effective on January 01, 2017. All drug offenses under Chapter 195 were recodified in new Chapter 579. Although Chapter 579 did not change Mr. Woods' offense or sentence, it eliminated the "flat time" requirement of § 195.295.3 for prior drug offenders. *See* § 579.170 RSMo (2016). This new version of the prior drug offender law still retained enhancement provisions allowing some prior offenders to be sentenced for a higher class of felony. *Id.*

After the repeal of § 195.295's no parole requirement, respondent contacted the Institutional Parole Office on March 13, 2016 seeking to reinstate his parole eligibility. (L.F. 23). Respondent again contacted the office on January 3, 2017, days after the repeal of § 195.295 went into effect. (*Id.* at 25). On January 6, 2017, the office notified respondent that it had not received any guidance from its central office regarding the impact of the repeal of § 195.295 and that at the present time its previous parole calculation would stand. (*Id.*at 26). At this same time,

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respondent contacted the institutional records office concerning this matter and was informed that "changes to the Statutes on 01-01-17 only apply to those crimes committed on or after 01-01-17." (*Id.* 28-29). Respondent also wrote to Missouri Department of Corrections Director, Anne Precythe, who did not respond.

In March of 2017, undersigned counsel spoke with the Missouri Department of Corrections legal counsel, Jay Boresi, by phone concerning respondent's case. At that time, Mr. Boresi informed counsel that the Missouri Department of Corrections was taking the position that the repeal of the prior drug offender law's no parole provisions would not apply retroactively to those prisoners in Missouri who were convicted and sentenced for drug offenses that occurred prior to January 1, 2017.

On May 10, 2017, respondent filed a petition for declaratory judgment in the Circuit Court of Cole County. (L.F. 5-12). In his petition, appellant argued that the repeal of § 195.295, pursuant to Senate Bill 491, applied retroactively. Therefore, he should be deemed eligible for parole on his twenty-five year sentence. (*Id.*).

On November 3, 2017, Judge Daniel R. Green granted respondent's motion for judgment on the pleadings and his petition for declaratory judgment holding that § 195.295 is not applicable in determining Mr. Woods' parole eligibility. (*Id.* at 38.). The court ordered appellant to apply the existing laws in determining respondent's parole eligibility. (*Id.*). The court entered judgment and appellant

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filed a timely notice of appeal. (*Id.* at 39). Mr. Woods received a parole hearing and was paroled on March 23, 2018. (*Id.*)

ARGUMENT

THE COLE COUNTY CIRCUIT COURT DID NOT ERR IN GRANTING RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS AND HIS PETITION FOR DECLARATORY JUDGMENT BECAUSE THE MISSOURI LEGISLATURE'S REPEAL AND REPLACEMENT OF THE PRIOR DRUG OFFENDER STATUTE, § 195.295 RSMO (2010), EFFECTED ON JANUARY 01, 2017 BY SENATE BILL 491, APPLIES RETROACTIVELY TO RESPONDENT BECAUSE THIS LEGISLATIVE ACT DID NOT ALTER THE OFFENSE FOR WHICH RESPONDENT WAS CONVICTED OR CHANGE HIS SENTENCE.

The Cole County Circuit Court did not err in granting respondent's petition for declaratory judgment because the Missouri Legislature's repeal of the prior drug offender statute applies retroactively to respondent. Under the terms of the now repealed § 195.295 RSMo (2000), offenders convicted of drug trafficking in the second degree under § 195.223 and sentenced under the prior and persistent drug offender sentencing enhancement of § 195.295.3 RSMo (2000) were required to serve their entire sentences without the possibility of parole. However, in 2014, Senate Bill 491 was passed and became law, with an effective date of January 1, 2017. This legislation recodified the prior and persistent drug offender statutes under § § 195.285 – 195.296 and recodified the law under § 579.170 RSMo (2016) (A-22-23). § 579.170 eliminated the "flat time" parole provisions for prior drug

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offenders convicted of trafficking charges under § 195.223, but retained other sentencing enhancement provisions.

In numerous other cases involving similar situations, prevailing law from both the this Court and the Court of Appeals have held that a repeal or amendment of a criminal statute is retroactive unless the statute: (a) reduces or increases the offender's sentence or (b) alters the law creating the offense pursuant to which the offender was convicted. *See State ex rel. Nixon v. Russell*, 129 S.W.3d 867, 870-871 (Mo. banc 2004); *See* also *Irvin v. Kempker*, 152 S.W.3d 358, 361-362 (Mo. App. W.D. 2004).

Neither of these exceptions applies here. The repeal of § 195.295 does not reduce or increase the length of appellant's twenty-five year sentence, and it did not alter the drug trafficking statute, § 195.223, under which appellant was convicted. The repeal of § 195.295, instead, only alters the law regarding appellant's eligibility for parole. Therefore, the *Russell* decision is dispositive.

Appellant argues that § 1.160 RSMo (2010) bars the retroactive application of the repeal of § 195.295. However, this argument overlooks the fact that the elimination of the parole ineligibility provisions of § 195.295 did not alter a substantive law governing respondent's offense or shorten his sentence. Instead, retroactive application of its repeal and replacement would only result in a potential change in the location or circumstances under which respondent would

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serve the remainder of his sentence. Therefore, § 1.160 RSMo does not bar the retroactive application of the repeal of § 195.295.

Appellant argues that the *Russell* line of cases are inapplicable in situations where a statute is completely repealed or amended and recodified in another statutory provision. (App. Br. 10-11). Appellant also argues that this line of cases does not allow retroactive application of legislation altering the "substantive law governing offenses." (*Id.*). The fallacy of appellant's first argument can be easily demonstrated by the following hypothetical situation.

If the Missouri General Assembly decided to repeal the eighty five percent minimum term requirement for dangerous felonies codified under § 558.019.3 RSMo (2010), the elimination of this subsection of the statute would clearly retroactively apply to offenders convicted of dangerous felonies prior to its repeal under *Russell*. If this were to happen, these offenders would be eligible for release on parole if they met the criteria of the other subsections of the same statute, or other applicable parole guidelines because this legislative act would not alter a dangerous offenders' underlying conviction or sentence.

Appellant's second argument is a red herring. Although the recodification of § 195.223 into newly enacted § 579.068 did effect change to the parameters of eligible conduct and punishments for convictions for drug trafficking, Mr. Woods has never contended that he is entitled to any of the changes effected by the repeal

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and recodification of the statute defining the offense for which he was convicted. Instead, as in *Russell* and its progeny, Mr. Woods is merely seeking the benefit of a legislative act distinct from the statute defining the offense that provides him with the opportunity of an earlier release on parole.

This Court and this state's appellate courts have consistently held that statutes changing parole eligibility to the benefit of the prisoner are retroactive.[1] *See, e.g., Jones v. Fife*, 207 S.W.3d 614 (Mo. banc 2006); *Dudley v. Agniel*, 207 S.W.3d 617 (Mo. banc 2006); *Talley v. Mo. Dep't of Corrections*, 210 S.W.3d 212, 216 (Mo. App. W.D. 2006) (holding that *Russell* and subsequent case law "makes it clear that any changes in the law with regard to the minimum prison term can be retroactively applied" to previously convicted offenders); *Carlyle v. Mo. Dep't of Corrections*, 184 S.W.3d 76, 79 (Mo. App. W.D. 2005); *Bantle v. Dwyer*, 195 S.W.3d 428, 432 (Mo. App. S.D. 2006); *Ridinger v. Mo Bd. of Prob. & Parole*, 189 S.W.3d 658, 663 (Mo. App. W.D. 2006); *Nieuwendaal v. Mo. Dep't of Corrections*, 181 S.W.3d 153, 154-155 (Mo. App. W.D. 2005) (finding § 559.115.7, a parole eligibility statute, is procedural and applies retroactively); *Irvin v. Kempker*, 152 S.W.3d 358, 362 (Mo. App. W.D. 2004); *Powell v. Mo. Dep't of Corrections*, 152 S.W.3d 363, 366 (Mo. App. W.D. 2004).

[1] A change in a statute adversely affecting a prisoner's parole status could not be applied retroactively without running afoul of the *ex post facto* clause of the Constitution. *See State v. Lawhorn*, 762 S.W.2d 820, 824-826 (Mo. banc 1988).

In *Jones*, after recognizing that § 1.160 did not apply, this Court held that the rationale of the *Russell* case was controlling. 207 S.W.3d at 615. As a result, because the more favorable parole eligibility provisions of § 559.115.7 and § 217.362.5 Cum. Supp. (2004) did not alter a substantive law governing Jones' offense or shorten his sentence, the prisoner was entitled to their benefit. Instead, the retroactive application of these statutes would only result in a potential change in the location or the circumstances under which Jones would serve the remainder of his sentence. Therefore, § 1.160 did not bar retroactive application of the parole eligibility provisions of § 559.115.7 and § 217.362.5. 207 S.W.3d at 616.

While this appeal was pending before the court below, the Court of Appeals issued its opinion in *Fields v. Missouri Dept. of Corrections*, 559 S.W.3d 12 (Mo. App. W.D. 2018). In *Fields*, a prisoner, acting *pro se* [2], appealed from the Circuit court's denial of his declaratory judgment action that contended that the repeal of the mandatory minimum provision that required prisoners serve eighty-five percent of their sentences for involuntary (vehicular) manslaughter under § 565.024 RSMo Cum. Supp. (2008), was retroactively applicable to him under this Court's decision in *Russell*. The Court of Appeals rejected Fields' argument by noting that this legislative action totally repealed the prior involuntary manslaughter law and

[2] Unfortunately, Mr. Fields failed to file a timely application for transfer after rehearing was denied, and the mandate issued in *Fields* before this case was argued in the court below.

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reclassified it from a "B" to a "C" felony and also changed the culpable mental state. *Id.* at 17. Alternatively, the Court in *Fields* held that retroactive application of this repeal was barred by § 1.160. *Id.* at 17-19. In this case, *Fields* was the primary authority relied upon by the Court of Appeals' majority in reaching its decision in this appeal.

Because the *Fields* decision cannot be reconciled with this Court's decision in *Russell* and its progeny, this Court should overrule that decision in this appeal. *Fields* is an aberration, in light of the fact that, in the wake of the *Russell* decision, Missouri courts have consistently held that convicts must receive the benefits of new statutory enactments and amendments that relaxed requirements for parole eligibility.

The *Fields* decision rests upon a fundamental misreading of this Court's decision in *Russell*. Both the panel in *Fields* and appellant in his brief cite *Russell* as supporting the formulation of a two part test for applying § 1.160 to new legislation concerning parole eligibility. *Fields*, 559 S.W.3d at 17-18; (App. Br. 10-11). However, no such test was articulated by this Court in the *Russell* opinion. Instead, as Judge Ahuja noted in his dissent in this appeal, the actual holding in *Russell* and, in subsequent cases, is simply that "statutory amendments relaxing the requirements for parole eligibility apply to previously convicted offenders." *Woods v. Mo. Dept. of Corrections*, WD81266, (Ahuja, J., dissenting), slip. op. at 9.

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The Court of Appeals in *Fields* also cited this Court's decision in *State v. Sumlin*, 820 S.W.2d 487, 490 (Mo. banc 1991) as authority for its view that only new legislative provisions, rather than repealed or amended provisions, are outside the scope of § 1.160. 559 S.W.3d at 17. The passage from *Sumlin* cited by *Fields* in support of this position makes no such distinction. In addressing the issue of whether a prisoner was entitled to have his sentence reduced under subsection two of § 1.160 that was repealed in 2005, this Court in *Sumlin* rejected the state's argument that the Court should draw a distinction between new statutes and repeals and amendments. 820 S.W.2d at 490. As Judge Benton noted: "The General Assembly typically repeals old provisions and enacts new provisions when it is in actuality amending the old provisions. A close look at the act indicates it to be a comprehensive alteration of Missouri's drug laws that divided the many offenses previously contained in § 195.020 (1986) among several new sections." *Id.*, *See also Whardo v. State*, 859 S.W.2d 138, 140 (Mo. banc 1993) (rejecting state's argument to overturn *Sumlin* and differentiate repeals from new laws in applying § 1.160.). S.B. 491 effected a similar restructuring of Missouri's drug laws.

The second prong of this test articulated by the Court in *Fields* also finds no support in the actual text of the *Russell* decision. 129 S.W.3d at 870-871. There is nothing in the passages cited by *Fields* from the *Russell* decision to support its view that a statutory repeal or amendment cannot be retroactive under § 1.160 if it

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“affects the prosecution, penalty, or punishment of the offense at issue.” 559 S.W.3d at 17. It appears, instead, that this standard was gleaned from some of the statutory language of § 1.160.

In *Russell*, this Court also relied on its previous 1972 decision in *McCauley v. State*, 486 S.W.2d 419 (1972) in determining that changes in parole laws are retroactive and beyond the reach of § 1.160. 129 S.W.3d at 870. The *McCauley* decision also conflicts with the aspect of the *Fields* decision that a beneficial statutory change in parole eligibility affects the penalty or punishment.

In *McCauley*, the Court determined that McCauley’s seven year sentence with judicial parole that was imposed after his two year sentence of imprisonment was set aside, was a more severe sentence for purposes of determining whether this subsequent sentence violated due process under *North Carolina v. Pearce*, 395 U.S. 711 (1970). 486 S.W.2d at 422. As this Court stated: “it is clear that the sentence is the penalty—the confinement for a period of time or the fine—and does not include as part of its definition such conditional orders as the Court makes for amelioration of the punishment—probation or parole…The Court holds that probation or parole is not part of the sentence imposed upon a defendant.” *Id.* at 423.

Even if this Court declines to explicitly overrule the *Fields* decision, Mr. Woods can still prevail in this appeal because the facts the court confronted in

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Fields are clearly distinguishable from the circumstances surrounding the repeal of the prior drug offender law. In this case, there is no retroactivity bar under § 1.160 because the repeal of § 195.295 did not involve a change to the substantive law governing appellant's offense.

This Court held in *Russell* that § 1.160 only "applies to retroactive applications of substantive laws governing offenses." 129 S.W.3d at 870. This Court has distinguished the "substantive law governing the offense" from statutes which specify criminal sentences and from statutes which specify parole eligibility. *Jones*, 207 S.W.3d at 616 (new enactments "do not alter a substantive law governing Jones' offense *or* shorten his sentence") (emphasis added); *Russell*, 129 S.W.3d at 870 (new statutory enactment "does not shorten [the defendant's] sentence, *nor* does it alter the law creating the offense") (emphasis added). Therefore, the "substantive law governing the offense" is defined as the statute which actually specifies the substantive elements of the offense and the corresponding classification of that offense.

Here, Mr. Woods was, and still stands, convicted of drug trafficking in the second degree. The elements of this offense are set forth in § 195.223.2. The only impact of § 195.295 was to specify that "if the court finds the defendant is a prior drug offender" then the defendant's sentence "shall be served without probation or parole." This separate statute cannot "create the offense" of second degree drug

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trafficking because it does not affect all offenders convicted of second degree drug trafficking. It only applies to prior drug offenders. Thus, § 195.295 clearly does not create the offense of second degree drug trafficking.

Prior case law from this Court interpreting the now repealed subsection two of § 1.160 also supports this position. This repealed section contained the phrase "the law creating the offense." In considering whether a prisoner was entitled to have his sentence reduced under this subsection, the Court held that prisoners were not entitled to a reduction of their sentences under § 1.160.2 based on amendments to statutes that did not change the law creating the offense. *State ex rel. Nixon v. Kelly*, S.W.3d 513, 518 (Mo. banc 2001). These cases interpreting § 1.160.2 RSMo (2000) bolster the position that laws addressing parole eligibility for a particular crime or class of crimes are not part of the "law creating the offense."

Second, the facts presented in appellant's case are readily distinguishable from those at issue in *Fields*. In *Fields*, the minimum-term provision appeared in the same statute as the one which specified the elements of the offense under which the defendant was convicted and in the same subsection that specified the classification of the offense. As a result, the Court in *Fields* noted its decision was limited to the question of whether § 1.160's retroactivity bar applies where the relaxed parole eligibility provisions are within the statute defining the offense. 559 S.W.3d at 18-19.

In this case, however, the sentencing enhancement provision of § 195.295 was not located within § 195.223, the statute which specified the elements of the offense of second degree drug trafficking. Therefore, unlike *Fields*, the statutory amendment at issue here only affected the parole eligibility statute and did not in any way affect the offense for which appellant was convicted and sentenced. Therefore, *Fields* is not controlling under the facts presented here and § 1.160 does not bar the retroactive application of § 195.295 under *Russell*.

Both the panel majority in the Court of Appeals below and the panel in *Fields* relied upon the Supreme Court's decision in *Warden v. Marrero*, 417 U.S. 653 (1974), where the Supreme Court held that the repeal of a parole restriction in a federal drug law was not retroactive under the federal savings clause statute. *Id.* at 657-658. *Marrero* is not binding or even persuasive authority for a number of reasons. First, this Court declined to follow *Marrero* in a similar situation because the federal savings clause differed from § 1.160. *Gallup v. Mo. Dept. of Corrections*, 753 S.W.2d 435, 436 (Mo. banc 1987).

Second, *Marrero* is not binding authority upon this Court or any state court because it involved the court's interpretation of a federal statute and is not a constitutional command. Since *Marrero* is not a decision of constitutional dimension, state courts are not bound to follow it. *See Martin v. Hunter's Lessee*, 1 Wheat 304, 340-341, 344, 4 L. Ed. 97 (1816).

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It is axiomatic that it is the sole duty of the state courts to interpret state statutes and the federal courts must normally defer to those determinations. *See United States v. Simpson*, 520 F.3d 531, 535-536 (6th Cir. 2008). Even in cases of constitutional dimension, state courts are free to craft more expansive definitions of retroactivity than the federal courts require. *See Danforth v. Minnesota*, 552 U.S. 264, 280-281(2008); *State v. Whitfield*, 107 S.W.3d 253, 269 (Mo. banc 2003).

Finally, it is important to note that *Marrero* was legislatively overturned by Congress less than five months after it issued. *See Herrera v. United States*, 507 F.2d 143, 144-145, n.1 & 2 (5th Cir. 1975). This legislative rebuke of the *Marrero* decision vindicated the position of the three dissenting justices in *Marrero* and the nearly unanimous views of all of the lower federal courts that the federal savings clause statute did not apply to preclude retroactive application of the repeal of the no parole provision of this federal drug law and it was the clear intent of Congress to make this law retroactively applicable to prisoners sentenced before its repeal. *Marrero,* 417 U.S. at 664-672 (Blackmun, J. dissenting).

As noted earlier, the opinion of the court of appeals below also erroneously limited the holding in *Russell* to situations where a new statutory provision, rather than a statutory repeal or amendment, alters parole eligibility to the benefit of a prisoner. This finding is inconsistent the *Sumlin* decision and other decisions

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issued both by this Court and the Court of Appeals, after *Russell*, that applied the holding in that case to repeals and amendments to existing statutes.

Both *Jones* and *Dudley* involved legislation which had the effect of amending § 559.115.7's definition of a prison commitment by excluding participation in a 120 day program from the definition which reduced the mandatory minimum sentence those prisoners were required to serve under § 558.019 RSMo (2000). 207 S.W.3d at 615-616. The Court of Appeals also applied *Russell* in addressing the same issue in *Carlyle*. 184 S.W.3d at 78-80.

In *Talley*, the same Court of Appeals also applied *Russell* to a statutory amendment that removed armed criminal action from the list of dangerous felonies set forth under § 556.061.8. The 1994 statutory amendment at issue in *Talley* removed the requirement that persons convicted of armed criminal action serve a minimum of eighty percent of their sentence. 210 S.W.3d at 215-216 (holding "any changes in the law with regard to the minimum prison term" are retroactive under *Russell*). Therefore, it is clear that *Russell* is applicable to the repeal or amendment of previously existing statutes, not just new statutory provisions.

Although it is probably not necessary for this Court to delve into this issue, there is yet another basis for affirming the Circuit Court's decision that Mr. Woods is entitled to the benefit of the repeal of § 195.295.3. Both the Southern District and Western District Court of Appeals have held that a statutory amendment which

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relaxed parole requirements is procedural rather than substantive. *Bantle*, 195 S.W.3d at 433-434*; Niewendaal*, 181 S.W.3d at 155.

It is beyond dispute that the Missouri Legislature intended and succeeded in removing an unwise and unproductive law from the criminal code. In fact, two of the leading sponsors of this repeal of the prior drug offender law have publicly stated that they intended this provision to apply to all prior drug offenders whether or not they were convicted before or after 2017. *See* Tony Messenger, *A Judge Set Former Drug Dealer Free, but the Missouri Supreme Court Might Lock Him Up Again*, St. Louis Post Dispatch (Jan. 13, 2019).

In reviewing issues of statutory construction and legislative intent, Judge Blackmar noted, in his concurring opinion in *Sumlin*, that the Missouri General Assembly in amending statutes, must be deemed to have been aware of the provisions of § 1.160 and the this Court's prior decisions interpreting its scope. *Sumlin*, 820 S.W.2d at 494 (Blackmar, J., concurring); *See also State ex rel. Heartland Title v. Harrell*, 500 S.W.3d 239, 243 (Mo. banc 2016) (noting that General Assembly is presumed to know the law, including this Court's prior decisions, in enacting statutes).

In this case, it must be assumed that the legislators who enacted S.B. 491 were fully aware of this Court's *Russell* decision and subsequent cases interpreting § 1.160 that have consistently held that new legislation relaxing parole

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requirements are retroactive. If legislature had intended its repeal of the prior drug offender statute to be prospective only, it could have included a provision in this statutory amendment to express this intent. *See Stone v. Mo. Dept. of Corrections*, 313 S.W.3d 158, 160-161 (Mo. App. W.D. 2010).

Even if there is uncertainty as to whether the parole eligibility provision of § 195.295 falls within the ambit of § 1.160, the rule of lenity requires that any ambiguity be resolved in Mr. Wood's favor. *See e.g., State v. Graham*, 204 S.W.3d 655, 656 (Mo. banc 2006). ("If statutory language is subject to more than one reasonable interpretation, then the statute is ambiguous."). In such situations, the rule of lenity resolves "doubts in the enforcement of a penal code against the imposition of a harsher punishment." *State v. Liberty*, 370 S.W.3d 537, 549 (Mo. banc 2012) (quoting *Bell v. United States*, 349 U.S. 81, 83 (1955). And, as noted above, the application of the rule of lenity here would be entirely consistent with the clear intent of this legislation.

Sections 558.019 and 559.115.7, that were at issue in *Jones*, and § 195.295 serve nearly identical purposes. Both statutes established mandatory minimum parole eligibility requirements for prisoners with prior convictions. The repeal of § 195.295 neither repeals nor amends any previously existing statute defining appellant's crime or alters his term of imprisonment. This repeal did not lengthen or shorten appellant's sentence. Mr. Woods will still serve a twenty-five year

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sentence for his crime under § 195.223. Accordingly, *Russell* and its progeny required the Circuit Court to order appellant to apply the repeal of § 195.295 retroactively to allow Mr. Woods to be paroled under current law.

CONCLUSION

For all the foregoing reasons, this Court should affirm the Circuit Court's judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That respondent's brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 4,426 words.

2. That on the 14th day of March, 2019, respondent's brief was electronically filed on case.net; and

3. That by electronically filing respondent's brief, a copy will automatically be sent to all counsel of record.

4. That a true and correct copy was delivered via email to Andrew.Crane@ago.mo.gov.

/s/ Kent E. Gipson/Taylor L. Rickard
/s/ Daniel E. Hunt
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