

IN THE
SUPREME COURT OF MISSOURI

HEATHER HAMILTON,)	
)	
Appellant,)	
)	
vs.)	No. SC97881
)	
STATE OF MISSOURI,)	
)	
Respondent.)	

APPEAL TO THE SUPREME COURT OF MISSOURI
FROM THE CIRCUIT COURT OF
LINCOLN COUNTY, MISSOURI
FORTY-FIFTH JUDICIAL CIRCUIT
THE HONORABLE JAMES BECK, JUDGE

APPELLANT’S SUBSTITUTE REPLY BRIEF

James Egan, Mo. Bar No. 52913
Attorney for Appellant
Woodrail Centre
1000 West Nifong
Building 7 Suite 100
Columbia, Missouri 65203
(573) 777-9977, Ext. 318
Fax (573) 777-9974
Email: James.Egan@mspd.mo.gov

INDEX

TABLE OF AUTHORITIES..... 3

JURISDICTIONAL STATEMENT..... 4

STATEMENT OF FACTS..... 5

ARGUMENT..... 6

CONCLUSION 12

CERTIFICATE OF COMPLIANCE 13

TABLE OF AUTHORITIES

	<u>Page</u>
 <u>CASES:</u>	
<i>Bowers v. State</i> , 330 S.W.3d 832 (Mo. App. W.D. 2011)	9
<i>State ex rel. Fite v. Johnson</i> , 530 S.W.3d 508 (Mo. banc 2017).....	6, 7, 8, 9
<i>State ex rel. Osowski v. Purkett</i> , 530 S.W.3d 508 (Mo. banc 2017)	8-9
<i>State ex rel. Windeknecht v. Mesmer</i> , 530 S.W.3d 500 (Mo. banc 2017).....	6, 7, 9
<i>State v. Bazell</i> , 497 S.W.3d 263 (Mo. banc 2016)	passim
<i>State v. Passley</i> , 389 S.W.3d 180 (Mo. App. S.D. 2012).....	7, 10
<i>State v. Pierce</i> , 433 S.W.3d 424 (Mo. banc 2014)	10
<i>State v. Severe</i> , 307 S.W.3d 640 (Mo. banc 2010).....	7, 8, 10
 <u>CONSTITUTIONAL PROVISIONS:</u>	
United States Constitution, Fourteenth Amendment.....	6
Missouri Constitution, Article I, Section 10.....	6
 <u>STATUTES:</u>	
Section 1.160 RSMo. (Cum. Supp. 2005).....	10, 11
Section 558.011 RSMo. (Cum. Supp. 2003).....	6
Section 570.030 RSMo. (Cum. Supp. 2009).....	7, 8, 10, 11
 <u>RULES:</u>	
Rule 24.035.....	7, 8, 9
Rule 84.06.....	13

JURISDICTIONAL STATEMENT

Ms. Hamilton incorporates the jurisdictional statement from her original substitute brief.

STATEMENT OF FACTS

Ms. Hamilton incorporates the statement of facts from her original substitute brief.

ARGUMENT

The motion court clearly erred in denying Ms. Hamilton’s amended motion, in violation of Ms. Hamilton’s right to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, because Ms. Hamilton’s sentence of five years in prison for both of her stealing convictions exceeds the maximum sentence authorized by law, in that, under the holding of *State v. Bazell*, 496 S.W.3d 263 (Mo. banc 2016), Ms. Hamilton’s sentences should not have been enhanced to class C felonies but should have instead remained class A misdemeanors; therefore, under Section 558.011, the maximum possible punishment was one year imprisonment in jail for each count of stealing.

A. The State’s Analysis is Flawed.

In its brief, the State asserts “that its previous position may not have accurately interpreted [this Court’s] decisions in *Windeknecht* and *Fite*”¹ (State’s Brief, p. 16). The State then argued that this Court’s holding in *State v. Bazell*, 497 S.W.3d 263 (Mo. banc 2016), should not apply to Ms. Hamilton (State’s Brief, p. 17). The State justified its new position on the fact that “Ms. Hamilton pleaded guilty more than four years before *Bazell*

¹ *State ex rel. Windeknecht v. Mesmer*, 530 S.W.3d 500 (Mo. banc 2017); *State ex rel. Fite v. Johnson*, 530 S.W.3d 508 (Mo. banc 2017).

was decided (State’s Brief, p. 17). The State also argued that “a factual basis was established for the class C felony of stealing, and the trial court found that she was guilty of the class C felony” (State’s Brief, p. 17). The State further argued that when she pleaded guilty, “the pre-*Bazell* interpretation of § 570.030 [RSMo. (Cum. Supp. 2009)], as stated in [*State v.*] *Passley*...authorized the felony enhancements listed in § 570.030.3” (State’s Brief, p. 17). Therefore, granting Ms. Hamilton relief would constitute “a retroactive application of *Bazell* to the trial court’s previous finding of guilt” (State’s Brief, pp. 17-18). The State’s analysis is flawed for two reasons.

First, when Ms. Hamilton pleaded guilty on March 26, 2012 (LF 10:1), *State v. Passley*, 389 S.W.3d 180 (Mo. banc 2012), had not yet been decided. *Passley* was handed down on June 7, 2012. Thus, at the time of her plea, there was no judicial interpretation of § 570.030.3. In *State v. Severe*, 307 S.W.3d 640, 643 (Mo. banc 2010), this Court held that the “clear words of the statute govern interpretation.” (internal citation and quotation omitted). In *Bazell*, this Court held that “the language of section 570.030.3 is clear.” *Id.* at 266. Since no interpretation of § 570.030.3 had been issued, and since the clear words of a statute govern interpretation, at the time Ms. Hamilton pleaded guilty, she only pled to two misdemeanors.²

² In *Windeknecht*, one of the petitioners, Josh Holman, made a similar argument in his reply brief. 2017 WL 1807018 at *7. Ms. Hamilton’s case can be distinguished, however, because as this Court held in *Fite*, a Rule 24.035 motion is the “exclusive procedure” for arguing that one’s sentence exceeds the amount allowed by law. *Fite*, 530

Further, the fact that the trial found her guilty of two felonies does not mean Ms. Hamilton has waived the excessive sentence. In *State ex rel. Osowski v. Purkett*, 908 S.W.2d 690 (Mo. banc 1995), the defendant pled guilty to attempted sodomy. The Information erroneously stated that attempted sodomy was a class B felony and the trial court sentenced him to fifteen years. *Id.* However, despite the trial court entering a finding that the defendant was guilty of a class B felony, the defendant was actually only guilty of a class C felony. *Id.* This Court stated that “[t]he record shows on its face that the trial court only had authority to sentence [the defendant] to a term of imprisonment of seven years.” *Id.* This Court rejected the State’s claim that the defendant waived any objection as to the propriety of his sentence. *Id.* at 691. This Court granted the defendant relief and ordered that he be discharged. *Id.*

This Court’s analysis in *Osowski* is applicable to Ms. Hamilton’s case too. As just stated, *supra*, because there was not a judicial interpretation of § 570.030.3 allowing stealing to be enhanced to a felony, and because the “clear words of the statute govern interpretation,”³ the offense of stealing under § 570.030 was only a misdemeanor when Ms. Hamilton entered her guilty plea. Like the case in *Osowski*, the Information erroneously classified the charge as a class C felony and the trial court found Ms. Hamilton guilty of a class C felony. Further, just like the *Osowski* case, the trial court

S.W.3d at 510. Ms. Hamilton *is* seeking relief in a Rule 24.035 motion, whereas Mr. Holman did not.

³ See *Severe*, 307 S.W.3d at 643.

entered a finding that Ms. Hamilton was guilty of two class C felonies, even though she was in fact only guilty of two class A misdemeanors. Finally, just like the defendant in *Osowski*, Ms. Hamilton has not waived the issue of her sentence exceeding the maximum sentence that is allowed by law. Indeed, unlike the defendant in *Osowski*, Ms. Hamilton *has* raised this in a Rule 24.035 motion, which this Court has stated is the “exclusive procedure” that a defendant can utilize to argue that his or her sentence “exceeds the maximum sentence authorized by law.” *Fite*, 530 S.W.3d at 510.

The second reason the State’s analysis is flawed is because even assuming, *arguendo*, that this Court rejects Ms. Hamilton’s argument, *supra*, the State’s analysis ignored the argument Ms. Hamilton made in her original substitute brief. Namely, that this Court’s holding in *Windeknecht* that *Bazell* only applies forward except for cases pending on appeal meant that *Bazell* applied to active cases not yet disposed (Appellant’s Substitute Brief, pp. 13-14). As Ms. Hamilton stated in her original substitute brief, “[i]n a case involving the suspended imposition of sentence, there is an active criminal proceeding which is suspended.” *Bowers v. State*, 330 S.W.3d 832, 834 (Mo. App. W.D. 2011) (citation omitted) (Appellant’s Substitute Brief, pp. 13-14). Since Ms. Hamilton’s case was not finally adjudicated until several months *after* this Court’s holding in *Bazell*, application of the holding from *Bazell* to Ms. Hamilton’s case was a prospective application, not a retroactive one (Appellant’s Substitute Brief, p. 14).

Moreover, when Ms. Hamilton received a suspended imposition of sentence (SIS), not only had there been no sentence imposed, but also no *conviction* either. Thus, not only was Ms. Hamilton sentenced several months after *Bazell* was decided, she was

also *convicted* several months after *Bazell* was decided as well. Imposing a misdemeanor *conviction* and sentence after *Bazell* has been decided would clearly be a forward application of this Court’s holding in *Bazell*, regardless of how long the case has been pending.

B. Section 1.160 is not Applicable in This Case.

In its brief, the State argued that § 1.160 RSMo. (Cum. Supp. 2005) supports its argument that Ms. Hamilton should not receive the benefit of this Court’s holding in *Bazell* (State’s Brief, p. 18). This argument fails for two reasons. First, § 1.160 does not apply to changes in case law but to changes in *statutes*. Section 1.160 states:

No offense committed and no fine, penalty or forfeiture incurred, or prosecution commenced or pending previous to or at the time when any *statutory provision* is repealed or amended, shall be affected by the repeal or the amendment, but the trial and punishment of all such offenses, and the recovery of the fines, penalties or forfeitures shall be had, in all respects, as if the provision had not been repealed or amended, except that all such proceedings shall be conducted according to existing procedural laws.

(emphasis added).

Second, if § 1.160 applied, “the law that existed at the time of the offense” is what would be relevant (State’s Brief, p. 18, citing *State v. Pierce*, 433 S.W.3d 424, 427, n. 1 (Mo. banc 2014)). As Ms. Hamilton argued, *supra*, her plea of guilty occurred *before Passley* was decided. Since no interpretation of § 570.030.3 had been issued, and since the “clear words of the statute govern interpretation,”⁴ at the time Ms. Hamilton pleaded

⁴ See *Severe*, 307 S.W.3d at 643.

guilty, the law that existed was that stealing under § 570.030.3 could only be a misdemeanor. Thus, even if § 1.160 applied, Ms. Hamilton would still be entitled to relief under this Court's holding in *Bazell*.

CONCLUSION

The State failed to address Ms. Hamilton’s arguments and its analysis in explaining why it changed its position is not convincing. The motion court clearly erred in denying Ms. Hamilton relief. This Court should reverse the motion court’s judgment and remand this case to allow the motion court to enter a conviction and sentence on two misdemeanors.

Respectfully submitted,

/s/ James Egan

James Egan Mo. Bar No. 52913
Attorney for Appellant
Woodrail Centre
1000 W. Nifong, Building 7, Suite 100
Columbia, MO 65203
(573) 777-9977, Ext. 318
Fax (573) 777-9974
Email: James.Egan@mspd.mo.gov

Certificate of Compliance

I, James Egan, 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, Office 2010, in Times New Roman size 13 point font. Excluding the cover page, the signature block, and this certificate of compliance, the brief contains 1, 666 words, which does not exceed the 7, 750 words allowed for an appellant’s reply brief.

/s/ James Egan

James Egan