

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI	)	
	)	
ex. rel.	)	
	)	
TRAVIS JONAS	)	
	)	No. SC97674
Relator,	)	
	)	
v.	)	
	)	
DEAN MINOR, WARDEN,	)	
MOBERLY CORRECTIONAL CENTER	)	
MISSOURI DEPT. OF CORRECTIONS	)	
	)	
Respondent.	)	

PETITION FOR WRIT OF HABEAS CORPUS TO THE
MISSOURI SUPREME COURT

RELATOR'S BRIEF

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INDEX

TABLE OF AUTHORITIES	3
JURISDICTIONAL STATEMENT	4
STATEMENT OF FACTS	5
POINT RELIED ON	7
ARGUMENT	8
CONCLUSION.....	16
CERTIFICATES OF SERVICE AND COMPLIANCE	17
APPENDIX (filed separately).....	18

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Bateman v. Rinehart</i> , 524 S.W.3d 505 (Mo. banc 2013).....	15
<i>State ex rel. Hawley v. Chapman</i> , 567 S.W.3d 197 (Mo. App. W.D. 2018)	7, 10, 14
<i>State ex rel. Hillman v. Beger</i> , 566 S.W.3d 600 (Mo. banc 2019)	7, 11, 13
<i>State ex rel. Jones v. Eighmy</i> , 572 S.W.3d 503 (Mo. banc 2019).....	7, 14
<i>Murrell v. State</i> , 215 S.W.3d 96 (Mo. banc 2007).....	16
<i>State ex rel. Nixon v. James</i> , 73 S.W.3d 623 (Mo. banc 2002)	8
<i>Reuscher v. State</i> , 887 S.W.2d 588 (Mo. banc 1994)	15
 <u>Other Authority</u>	 <u>Page</u>
Missouri Constitution	
Art. I, § 10	7, 8
Art. I, § 12	15
Art. V, §§ 4, 5	4
Missouri Revised Statutes	
§ 217.703.....	7, 8, 9, 10, 11, 13, 14, 15
§ 559.105.....	11, 13
Missouri Supreme Court Rules	
24.035.....	4, 6, 8, 15
29.15.....	15
91.....	4
U.S. Constitution, amend. V and XIV	7, 8

JURISDICTIONAL STATEMENT

Relator moved for Rule 24.035 post-conviction relief in St. Charles County case 1711-CC00772, challenging the St. Charles Circuit Court's authority to revoke his probation in 1111-CR03741-01. After that motion was denied, Relator filed a petition for writ of habeas corpus with the Circuit Court of Randolph County in 18RA-CV00486 on April 18, 2018, challenging his confinement by the Missouri Department of Corrections for the sentence ordered in the underlying St. Charles County criminal case. On January 9, 2019, the Randolph County Circuit Court denied the petition. Relator next sought habeas relief in the Missouri Court of Appeals, Western District, on January 15, 2019, in WD82462. That request was denied January 18, 2019. Relator then filed a writ with this Court on January 29, 2019. Jurisdiction lies in the Supreme Court of Missouri. Mo. Const., Art. V, §§ 4, 5; Rule 91.

STATEMENT OF FACTS

Relator Travis Jonas was sentenced in St. Charles County case no. 1111-CR03741-01 for On July 13, 2012, after having pleaded guilty to identity theft (Ex. 1).¹ Jonas received a seven-year suspended sentence and was placed on five years of supervised probation and ordered to pay restitution to the credit-card company victim (Ex. 2).

Eventually, on November 2, 2015, Jonas tendered his last payment toward restitution to the St. Charles County Prosecuting Attorney's office (Ex. K). Proof of Jonas' payment was forwarded to the Missouri Division of Probation and Parole, which received that proof on November 4, 2015 (Ex. K). At that point, any probation officers reviewing Jonas' case would have learned he had paid off the restitution owed the credit-card company.

Until November 4, 2015, Jonas' time on probation had had its setbacks. On May 22, 2013, the State moved to revoke probation because Jonas failed to pay restitution. (Ex 3). The State withdrew that motion on September 12, 2013 (Ex. 4). Before it was withdrawn, no hearing had been held determining whether Jonas had willfully violated his probation (Ex. 5 [pages 5-6 of 7]). On November 20, 2013, Jonas' probation officer submitted a violation report (Ex. 5 [page 5 of 7]). Jonas was not suspended upon this report, and no hearing was held on it (Ex. 5 [page 5 of 7]). Two citation notices were submitted by Jonas' probation officer in April and November, 2014 (Ex 5. [page 5 of 7]; Ex. 6). These notices were not accompanied by a violation report, and did not trigger motions from the prosecutor to revoke Jonas' probation (Ex. 5 [page 5 of 7]). On June 11, 2015, the State filed another motion to revoke probation (Ex. 5 [page 4 of 7], Ex. 7). As with its 2013 revocation motion, on November 5, 2015, the State withdrew the motion to revoke (Ex. 8). Similar to the first motion, no hearing was held determining whether Jonas had actually violated his probation (Ex. 5 [page 4 of 7]).

¹ For consistency relator is labeling the exhibits as they were filed. Relator's filed exhibits are numbered, while Respondent's are lettered.

Two-and-a-half months after Jonas paid off the credit-card company restitution, his probation officer filed a January 21, 2016 violation report (Ex. 9). Based on this report, the State filed a motion to revoke probation on February 1, 2016 (Ex. 10). A few days later, on February, 9, 2016, Jonas' probation was suspended (Ex. 11). His probation remained suspended until, eventually, his probation was revoked and his seven-year sentence executed on May 11, 2017 (Ex. 5; Ex. 12).

Jonas sought post-conviction review of his sentence under Rule 24.035, in St. Charles County case no. 1711-CC00772 ("PCR case"). He alleged the sentencing court lacked any authority to revoke probation, because the proper application of the Earned Compliance Credit ("ECC") statute would have required Jonas' discharge before his probation was suspended in February, 2016 (Ex. 13). At an evidentiary hearing on the motion, probation officer Brian McKay testified, establishing that if it was assumed Jonas had satisfied restitution before his discharge date, he had enough earned compliance credit under the ECC statute to entitle him to discharge on May 24, 2015 (Ex. 14, p. 21).

Officer McKay also established that had Probation and Parole been diligent in notifying the plea court and State about Jonas' optimal discharge date 60 days before that date passed, as it had been required to do by statute, Petitioner would have been discharged from probation—at the latest—the first week of January, 2016, and therefore necessarily before the January 21, 2016 field violation report. (Ex. 14, p. 20-21).

Jonas' PCR claim was in the wrong court: Since he was challenging the general authority of the sentencing court to revoke, his argument required the motion court to calculate the proper award of earned compliance credits, and, consequently, the motion court ruled it could not order Rule 24.035 post-conviction relief because subsection 8 of the ECC statute bars such challenges in a post-conviction proceeding (Ex. 15). Thereafter, Jonas sought and was denied habeas relief in Randolph County Circuit Court and again by the Western District of the Missouri Court of Appeals. Jonas subsequently filed a petition for writ of habeas corpus in this Court.

POINT RELIED ON

The trial court erred in revoking Relator's probation and ordering his sentence executed as it was without authority to do so. By application of the Earned Compliance Credit statute, RSMo § 217.703 (Supp. 2013), Relator's probation ended before the State attempted to suspend it to trigger revocation proceedings. In so doing, the trial court deprived Relator of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution, and Article I, Section 10 of the Missouri Constitution. This error was severe enough to have resulted in usurpation of judicial power by the lower court, as well as a miscarriage of justice requiring the issue of an extraordinary writ, and Relator's continued confinement is unlawful.

State ex rel. Hawley v. Chapman, 567 S.W.3d 197 (Mo. App. W.D. 2018)

State ex rel. Hillman v. Beger, 566 S.W.3d 600 (Mo. banc 2019)

State ex rel. Jones v. Eighmy, 572 S.W.3d 503 (Mo. banc 2019)

RSMo § 217.703 (Supp. 2013)

Mo. Const., Art. I, § 10

U.S. Const. amend. V, XIV

ARGUMENT

The trial court erred in revoking Relator's probation and ordering his sentence executed as it was without authority to do so. By application of the Earned Compliance Credit statute, RSMo § 217.703 (Supp. 2013), Relator's probation ended before the State attempted to suspend it to trigger revocation proceedings. In so doing, the trial court deprived Relator of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution, and Article I, Section 10 of the Missouri Constitution. This error was severe enough to have resulted in usurpation of judicial power by the lower court, as well as a miscarriage of justice requiring the issue of an extraordinary writ, and Relator's continued confinement is unlawful.

Standard of Review

Any person restrained of liberty within Missouri may petition for a writ of habeas corpus to inquire into the cause of such restraint. Rule 91.01(b). The consideration of a petition for writ of habeas corpus is limited to determining the facial validity of the confinement. *State ex rel. Nixon v. James*, 73 S.W.3d 623, 624 (Mo. banc 2002). If a claim could have been raised under Rule 24.035 or 29.15 the petitioner must have filed under these rules or risk default.

Argument

By the time Jonas' probation officer attempted to suspend his probation on January 21, 2016 Jonas had both earned enough compliance credits against his probation, and had paid off his restitution, to entitle him discharge from probation. What is more, Jonas' right to discharge was independent of whether or not his probation officer diligently provided the trial court and the prosecutor the 60-day notice of Jonas' discharge date the ECC statute required her to make.

A. Relator Earned Enough Compliance Credits

Missouri's Earned Compliance Credit (ECC) statute applies to identity theft. RSMo § 217.703.1(2)². The ECC statute instructs that a defendant's original court-ordered term of probation will be reduced ("credited") by 30 days for each full calendar month the defendant served in compliance with the conditions of probation. RSMo § 217.703.2. "Compliance" means "the absence of an initial violation report submitted by the probation or parole officer during a calendar month, or a motion to revoke or motion to suspend filed by a prosecuting or circuit attorney, against the offender." RSMo § 217.703.4.

For offenders beginning probation before September 1, 2012, compliance credits began accruing on October 1, 2012. RSMo § 217.703.3. Jonas thus began accruing compliance credit toward his probation on October 1, 2012.

With regard to the computation of time, the ECC statute provides:

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, and shall be suspended pending the outcome of a hearing, if a hearing is held. 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. All earned credits shall be rescinded if the court or board revokes the probation or parole or the court places the offender in a department program under subsection 4 of section 559.036. Earned 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, and shall begin to accrue on the first day of the next calendar month following the lifting of the suspension.

RSMo § 217.703.5.

The ECC statute specifies a probationer "shall" be discharged from probation if the (1) time served in custody, (2) time served on probation, and (3) earned compliance

² All statutory citations are to the 2013 Supplement.

credits satisfy the total term of probation, and the probationer has completed at least two years of probation. RSMo § 217.703.7.

Since Jonas was ordered to serve a five-year term of probation, his custody time, time served on probation, and earned compliance credit had to equal five years (or 1,825 days) before he could be discharged. By April, 2015, Jonas had earned enough compliance credits. Breaking down the years spent on probation:

- 2012 yielded 263 days: 173 days served on probation and 90 days ECC. The 90 days are for the least three months of 2012, as no violation reports or motions to revoke were filed in those months (and recalling pre-September 1, 2012 probationers began earning ECC on October 1, 2012).
- 2013 yielded 665 days: 365 days probation and 300 days ECC. The 30-day increment for May was unearned because the State filed a motion to revoke, later withdrawn, that month; the 30-day increment for November was unearned because of the submission of a field violation report that month.
- 2014 yielded 725 days: 365 days probation, 360 days ECC.³
- By the end of 2014, Jonas had 1,653 days to measure against the 1,825 days of his probation period, leaving 172 days (1,825-1,653) to go in 2015. As there were no violation reports or motions to revoke in the first three months of 2015, Jonas earned another 90 days of ECC for those months, that, when added to the 90 days served on probation during those months, exceeded 172 days by eight days.

³ In the 2013 version of the ECC statute (applicable to Jonas' case), the submission of a violation report or a motion to revoke or suspend probation were events listed as barring compliance credit, but a "notice of citation" was not listed. RSMo § 217.703.4, 5 (Supp. 2013). In 2018, the Legislature amended the ECC statute to include a notice of citation as an event which would bar compliance credit for the calendar month in which it was filed. RSMo § 217.703.4 (Supp. 2018). Because the Legislature's amendment adding citations to subsection four cannot have been a useless act, the two citation reports submitted to the circuit clerk in 2014 do not bar Jonas' earned compliance credits for the months in which they were filed. *See State ex rel. Hawley v. Chapman*, 567 S.W.3d 197, 204 n. 5 (Mo. App. W.D. 2018).

Thus, Jonas became eligible for discharge in April, 2015, well before January 21, 2016, *conditioned on the payment of his restitution*. January 21, 2016 is the date on which the field violation report was filed which triggered revocation proceedings.

B. Relator paid his restitution

Although a probationer may stand eligible for early discharge from probation by application of ECC, no early discharge may happen unless restitution is paid. RSMo § 559.105.2; *State ex rel. Hillman v. Beger*, 566 S.W.3d 600, 608 (Mo. banc 2019). Here, Jonas fully paid restitution by November 2, 2015, and thus Section 559.105 did not bar his discharge from probation after that date.

C. Relator's right to discharge was independent of the officer's notice

Probation officers are directed by the ECC statute to give notice “[n]o less than sixty days before the date of final discharge” to the sentencing court and prosecuting attorney of a probationer’s impending discharge from probation due to ECC. RSMo § 217.703.10. If no action on the notice is taken by the sentencing court or the prosecuting attorney, the probationer “shall be discharged.” *Id.*

Here, according to Respondent, Jonas’ probation officer attempted to give the prosecutor and the trial court the requisite 60-day notice by reporting in her field violation report, filed January 21, 2016, that Jonas had enough ECC credits, and had paid his restitution, to give him an earned discharge date of March 15, 2016 (Ex. E; Resp’t Answer 8).⁴

⁴ In fact, this field violation report did not quite give 60 days’ notice, because March 15, 2016 was only 54 days after January 21, 2016 (2016 being a leap year), the day the report was filed. It appears March 15, 2016 was the date picked by the probation officer as Jonas’ discharge date because she prepared that violation report on January 15, 2016 (“Date Created: 1-15-16”), which *is* 60 days earlier than March 15, 2016 (Ex. E).

It wasn't the right notice, and it wasn't timely. The St. Charles County Prosecuting Attorney's witness at the PCR evidentiary hearing, Probation Officer McKay, established that Jonas' probation officer had not given timely notice:

Q [By St. Charles County Asst. Pros. Atty. Dulany Harms] ...I think you represented to me this morning off the record that maybe last week you went back and re-reviewed the file, correct?

A [Officer McKay] That is correct.

Q And when you re-reviewed it, did you come up with a different determination that had [Jonas' probation officer] given credit for earned compliance credit on November the 5th or 6th of 2015, that Mr. Jonas would have been or could have been discharged from probation, let's say, then end of the first week of January of 2016?

A That is correct.

Q That would be approximately three weeks before the State filed its motion—next motion to revoke probation and ultimately—which ultimately led to his sentence being executed.

A That is correct.

Q And as you sit here today, it would be your testimony that had [Jonas' probation officer] done that, let's say, immediately after the previous motion to revoke had been withdrawn by the state on November the 5th of 2015, Mr. Jonas would have discharged some time in the first week of January 2016?

A Yes, barring any action taken by the Court after we provided them with their 60-day summary report.

Q Well, that's one of the questions I had. I don't—when did we get a 60-day report—was there ever a 60-day report done?

A There was not.
(Ex. 15, pages 13-14).

Whether the probation officer supervising Jonas was merely neglectful or acted with officious unkindness in waiting until January 15, 2016 to begin preparing a field violation report which would advise the trial court, on January 21, that Jonas had enough ECC credits, and had paid his restitution, to give him an earned discharge date “60” days later (well, from January 15), makes no difference. Jonas had paid his restitution on November 2, the State withdrew its motion to revoke on November 5. Consequently, the safety holding back the automatic command of the ECC statute—the restitution statute, § 559.105—was unlocked.

That automatic command follows naturally: “[O]nce the combination of time served in custody, if applicable, time served on probation,...and earned compliance credits satisfy the total term of probation...the...sentencing court **shall** order final discharge of the offender, so long as the offender has completed at least two years of his probation[.]” RSMo § 217.703.7. As indicated in section A, above, Jonas’ time served on probation and ECC time entitled him to final, immediate discharge on November 5, 2015. Subsection 7 required the trial court to discharge him.

This Court has found Subsection 7 unambiguous. *Hillman*, 566 S.W.3d at 605. Its plain language does not include any requirement that the probationer wait upon his probation officer to send in a case summary report before becoming entitled to discharge. Undaunted, in its answer Respondent attempts to graft into subsection 7 the 60-day notice instruction the Legislature listed in subsection 10, effectively making that notice a condition precedent to a probationer’s discharge. But if the Legislature had intended to additionally limit a probationer’s right ECC discharge, it would have done so by including in subsection 7 such language as “and so long as the sentencing court and the prosecuting attorney have received at least 60 days’ notice of the impending discharge” or similar language, since both subsections were drafted at the same time. It didn’t.

What is more, Respondent’s argument would effectively gift probation officers discretion in awarding ECC, by permitting such officers to delay giving notice of an

impending discharge for any reason. Yet the Legislature reserved no discretion for probation officers on the award of ECC—their role is ministerial. *See, e.g., State ex rel. Jones v. Eighmy*, 572 S.W.3d 503, 507 (Mo. banc 2019) (“The requirements for the award of ECCs are not discretionary.”).

Respondent’s argument is flawed for a third reason. The plain and ordinary meaning of subsection 10 references a date already certain, “the date of final discharge,” from which the timing of the probation officer’s duties are measured. RSMo § 217.703.10. Nothing in the plain and ordinary meaning of that language licenses an interpretation that “the date of final discharge” may move around simply because the probation officer failed to give notice, or gave notice of the wrong date.

Finally, even if a probation officer’s notice is a condition precedent to discharge, such notice is a ministerial act requiring the officer to exercise some level of diligence in performing it. Because Jonas had already earned enough ECC to entitle him to discharge the instant he finished paying restitution, the officer’s diligence should have required filing notice of Jonas’ impending discharge nearly simultaneously after the State’s Motion to Revoke was withdrawn. Instead, the “notice” (in the form of a field violation report) came 77 days after November 5, 2015. Yet it is that peculiar lack of diligence by his probation officer that now operates to put Jonas in prison. This is not due process.

The suspension order (and the revocation order) were unauthorized orders, and Jonas’ right to ECC discharge did not depend on his probation officer’s failure to diligently give notice of his right to discharge.

D. Relator may seek release through a writ of habeas corpus

Respondent claims Section 217.703.8 bars ECC review in this habeas corpus proceeding (Resp’t Answer 11). Respondent admits the Missouri Court of Appeals has held that subsection 9 does not apply to habeas corpus since the General Assembly cannot restrict habeas relief. *Id.* (citing *State ex rel. Hawley v. Chapman*, 567 S.W.3d 197, 205 (Mo. App. W.D. 2018)). This Court should not overrule *Chapman*.

Subsection 8 provides “The award or rescission of any credits earned under this section shall not be subject to appeal or any motion for postconviction relief.” RSMo § 217.703.8. The problem for Respondent: this is not an appeal, nor a post-conviction relief case, but a writ, and there is no ambiguity about the meanings of “appeal” and “postconviction relief.”

Interpreting “motion for postconviction relief” to include habeas corpus contradicts separate meanings of these terms in the body of Missouri law and ignores the establishment of post-conviction relief and habeas corpus as distinct remedies. For instance, while under Article I, § 12 of the Missouri Constitution, habeas corpus is established as constitutional right, courts reviewing Rules 24.035 and 29.15 post-conviction claims frequently hold “[t]here is no constitutional right to a state post-conviction proceeding.” *Reuscher v. State*, 887 S.W.2d 588, 590 (Mo. banc 1994). Habeas Corpus is codified by statute in Chapter 532, whereas post-conviction relief is codified in Chapter 547. Finally habeas corpus is governed by Supreme Court Rule 91, while post-conviction relief is governed by Rules 24.035 and 29.15.

Additional absurdity is suggested by the Respondent’s overbroad interpretation of “post-conviction relief”: If this term must bar habeas relief, because such relief comes after conviction, “post-conviction relief” logically also bar appeals (which also follow conviction), yet “appeals” is listed as an additional category barred by that subsection. Such an interpretation makes “appeals” improperly superfluous. *See Bateman v. Rinehart*, 524 S.W.3d 505, 511 (Mo. banc 2013) (“This Court must presume every word, sentence or clause in a statute has effect, and the legislature did not insert superfluous language”).

Furthermore, Article I, § 12 of the Missouri Constitution expressly declares “That privilege of the writ of habeas corpus shall never be suspended.” Interpreting “motion for post-conviction relief” to include habeas corpus would effectively suspend habeas corpus for probationers whose probation-expiration claims involving low-level felonies (and thus subject to the ECC statute), while allowing the habeas remedy to remain for probationers whose convictions were for more severe non-ECC felonies. If a statutory provision can

be interpreted in two ways, one constitutional and the other unconstitutional, the constitutional construction shall be adopted. *Murrell v. State*, 215 S.W.3d 96, 102 (Mo. banc 2007).

In sum, the incorrect calculation of ECC, upon which the determination of the lawfulness of the trial court's authority to revoke probation relies, may be challenged in a writ of habeas corpus proceeding.

CONCLUSION

Wherefore, for the foregoing reasons, Relator Travis Jonas respectfully requests that this Honorable Court make its preliminary writ permanent and order the Missouri Department of Corrections to release Relator from its custody forthwith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kevin B. Gau, hereby certify that on this 19th day of December, 2019, a true and complete copy of the foregoing was sent to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102, Patrick.Logan@ago.mo.gov, via the Missouri e-filing system.

/s/ Kevin B. Gau

Kevin B. Gau

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. This brief was prepared with Microsoft Word for Windows, uses Times New Roman 13 point font, and does not exceed the word and page limits for a brief in this court. The word-processing software identified that this brief contains 4,014 words, and 17 pages including the cover page, signature blocks, and certificates of service and compliance. It is in searchable PDF form.

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