IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

JASON NORMAN,

Respondent,

v.

MISSOURI DEPARTMENT OF CORRECTIONS,

Appellant.

DOCKET NUMBER WD82057

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: April 28, 2020

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge

JUDGES

Division Two: Hardwick, P.J., and Newton and Pfeiffer, JJ. CONCURRING.

ATTORNEYS

Daniel E. Hunt, Jefferson City, MO, Attorney for Respondent.

Eric S. Schmitt, Attorney General, and Andrew J. Crane, Assistant Attorney General, Jefferson City, MO, Attorneys for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JASON NORMAN, Respondent,
v.
MISSOURI DEPARTMENT OF CORRECTIONS, Appellant.

WD82057 **Cole County**

Before Division Two Judges: Lisa White Hardwick, Presiding Judge, and Thomas H. Newton and Mark D. Pfeiffer, Judges

The Missouri Department of Corrections ("MDOC") appeals from the judgment of the Circuit Court of Cole County, Missouri ("circuit court"), granting Mr. Jason Norman's ("Norman") motion for judgment on the pleadings in his declaratory judgment action, in which he requested that the court retroactively apply the repeal of section 195.222 and section 195.296 and declare him parole eligible. MDOC had filed a cross-motion for judgment on the pleadings.

A jury found Norman guilty of one count of the class A felony of trafficking in the first degree by manufacturing or producing ninety grams or more of methamphetamine and one count of the class A felony of trafficking in the second degree. The trial court found Norman was a prior drug offender. Because of the amount of drugs Norman possessed, the circuit court was required to sentence him for a class A felony term to be served without probation or parole. § 195.222.8(2). And because the circuit court found that Norman committed second-degree trafficking as a prior drug offender, the court was required to sentence Norman to a class A felony term to be served without probation or parole. § 195.295.3. The trial court sentenced him on each count to twenty years in the MDOC without probation or parole, to be served concurrently.

The issue raised by Norman's appeal is whether section 1.160 prohibited the retroactive application of the repeal of sections 195.222 and 195.296 to his sentences so as to render him eligible for parole.

REVERSED; JUDGMENT ENTERED IN FAVOR OF MDOC PURSUANT TO RULE 84.14.

Division Two holds:

The Missouri Supreme Court's recent opinions in *Mitchell v. Jones*, No. SC97631, 2020 WL 547402 (Mo. banc Feb. 4, 2020), and *Woods v. Missouri Department of Corrections*, No. SC97633, 2020 WL 548567 (Mo. banc Feb. 4, 2020), govern our disposition of this appeal. In *Mitchell* and *Woods*, the Court considered the applicability of section 1.160, the retroactive effect of the repeal of a statute (§ 195.295) requiring an offender to be sentenced to the authorized

term of imprisonment without probation or parole, and whether parole ineligibility under that section is a condition of an offender's sentence. The Court concluded that section 1.160 is a general savings statute that is limited in scope. The statute authorizes a defendant to move for a reduction of sentence if the penalty for his offense of conviction has been reduced subsequent to the commission of the offense *but before the conviction becomes final*. Accordingly, section 1.160 is inapplicable to sentences in final judgments.

Norman's parole ineligibility was mandated as part of the punishment within the particular statutes designating the permissible penalty for his offenses. Therefore, parole eligibility is part of his sentence. To apply the repeal of sections 195.222 and 195.295 to Norman retroactively would change his sentence. Consequently, the repeal of sections 195.222 and 195.295 can have no effect on Norman's parole eligibility, and he remains ineligible for parole in accordance with the terms of his sentences. Accordingly, the circuit court erred in granting Norman's motion for judgment on the pleadings.

Opinion by: Mark D. Pfeiffer, Judge April 28, 2020

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.