Summary of SC97881, *Heather Hamilton v. State of Missouri*
Appeal from the Lincoln County circuit court, Judge James Beck
Argued and submitted November 5, 2019; opinion issued April 28, 2020

Attorneys: Hamilton was represented by James Egan of the public defender's office in Columbia, (573) 777-9977. The state was represented by Shaun Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A woman whose probation was revoked appeals the judgment overruling her motion for postconviction relief from the sentences imposed in 2017 against her for felony stealing. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case for resentencing the convictions as misdemeanors rather than felonies. The woman was on probation and had not yet been sentenced at the time this Court held, in *State v. Bazell*, that misdemeanor stealing could not be enhanced to a felony. She was entitled to application of *Bazell* at the time she was sentenced.

Facts: The state charged Heather Hamilton with two felony counts of stealing. In 2012, she pleaded guilty as charged, and the circuit court ordered her to complete a drug court program. The circuit court ultimately suspended imposition of sentence and placed her on five years' probation. In 2017, the circuit court revoked Hamilton's probation and sentenced her to five years in prison for felony stealing. Hamilton sought postconviction relief, arguing the sentences exceeded those authorized by law because, under this Court's 2016 decision in *State v. Bazell*, the misdemeanors could not be enhanced to felonies; therefore, she should have been convicted of only misdemeanors. The circuit court denied relief. Hamilton appeals.

REVERSED AND REMANDED.

Court en banc holds: The circuit court erred in sentencing Hamilton as if her crimes were felonies. At the time this Court decided *Bazell* (holding, under the pre-2017 statutory language, misdemeanor stealing could not be enhanced to a felony), Hamilton was on probation and had not yet been sentenced; therefore, her convictions were not yet final. This Court has held *Bazell* applies prospectively to cases not yet final when *Bazell* was decided. Such prospective application is not limited only to those cases pending on appeal or not yet filed or tried; to be clear, *Bazell* applies to all cases that were not yet final when it was announced – even those already filed, tried or subject to a plea – so long as sentence had not yet been entered when *Bazell* was decided, as well as to cases on direct appeal. Hamilton was entitled to the benefit of *Bazell* at the time sentence was imposed.