



**In the Missouri Court of Appeals
Eastern District**

WRIT DIVISION THREE

STATE EX REL. ERNIE L.	)	No. ED109270
WILLIAMSON,	)	
RELATOR,	)	
	)	Writ of Mandamus
vs.	)	
	)	JEFFERSON COUNTY
	)	CIRCUIT COURT
HON. TROY A. CARDONA,	)	Cause No. 15JE-CR03150-01
RESPONDENT.	)	
	)	Filed: December 15, 2020

Ernie Williamson (“Relator”) seeks a writ of mandamus compelling the Honorable Troy A. Cardona (“Respondent”) to release Relator from the Missouri Department of Corrections and place him on probation because he successfully completed the long-term substance abuse treatment program pursuant to Section 217.362. The State has filed suggestions in support; Respondent has not filed a response. In the interest of justice as permitted by Rule 84.24(e) and (i), this Court dispenses with a preliminary order, answer, further briefing and oral argument and issues a peremptory writ of mandamus.

Relator pled guilty to drug trafficking, completed the 120-day “shock” drug treatment program and was placed on probation. Relator’s probation was later revoked, and Respondent sentenced him to 20 years in the Missouri Department of Corrections under Section 217.362, which allows a nonviolent offender to be released on probation

upon successful completion of a long-term drug treatment program, during which time the execution of the offender's sentence is suspended. Relator entered the long-term treatment program on May 16, 2018. On May 3, 2019, the Missouri Department of Corrections Board of Probation and Parole submitted an investigation report outlining Relator's assessment and program participation. The report stated that Relator successfully completed the requirements of the long-term treatment program, noting that he had one conduct violation during the program and two other conduct violations several months prior to his entry in the drug treatment program. The Board recommended a release date of June 29, 2019.

On June 11, 2019, Respondent denied Relator's release and ordered execution of Relator's 20-year sentence. Respondent found that Relator "stole property of another while in the treatment program and two other violations before entry into the program," which Respondent found demonstrated "a clear inability to follow conditions of probation supervision and to release him would be an abuse of discretion in believing otherwise." Respondent did not cite any other evidence to support his conclusion that Relator was unfit for probation. Relator subsequently filed the present petition for writ of mandamus. The State of Missouri, by and through the prosecuting attorney of Jefferson County, agrees that the relief sought by Relator should be granted. We agree.

The denial of probation is properly challenged via a writ of mandamus. *State ex rel. Cullen v. Cardona*, 568 S.W.3d 492, 494 (Mo. App. E.D. 2019). Mandamus is appropriate when a court has exceeded its jurisdiction or authority and where no remedy exists through appeal. *Id.* "While mandamus does not ordinarily lie to control a lower court's exercise of discretion, if the court's action is incorrect as a matter of law, then it

has abused any discretion it may have had, and mandamus is appropriate.” *State ex rel. Upshaw v. Cardona*, 606 S.W.3d 228, 230 (Mo. App. E.D. 2020) (internal quotation marks, brackets and citations omitted).

The final decision to release an offender to probation after completion of the long-term drug treatment program under Section 217.362 lies within the discretion of the trial court. *Id.* at 231. But that decision *must* be supported by substantial competent evidence on the record demonstrating that probation is not appropriate. *Id.*; *see also Cullen*, 568 S.W.3d at 495. Here, Respondent denied probation based on Relator’s one conduct violation during the treatment program and two pre-program conduct violations. Respondent did not hold an evidentiary hearing regarding these violations and was not required to under the applicable version of Section 217.362.3. *See Upshaw*, 606 S.W.3d at 231; *see also Cullen*, 568 S.W.3d at 495. But, as a result, there is limited information in the record about these violations. In fact, the *only* information about these conduct violations in the record before Respondent was a line-item recitation of the violations, with no further description, set out in the Board’s report:

Location	Date	Violation	Disposition	Imposed Mo/Day	Sus Day
OCC	09/26/2018	TAKE PROPERTY WITHOUT CONSENT	LIVING AREA RESTRICTION REFER TO PRO. REV. COMMITTEE	0/30 0/0	0
ERDCC	03/29/2018	TRANSF. PROP. BETWEEN OFFENDE[sic]	LIVING AREA RESTRICTION	0/10	0
ERDCC	03/24/2018	FAIL TO COMPLY WITH AN ORDER	ACTIVITY RESTRICTION	0/10	0

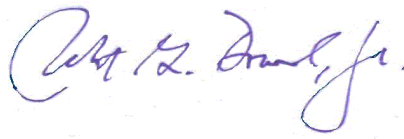
The Board's narrative in the report added only that after the "theft" violation, his program time was extended by 30 days and thereafter Relator "demonstrated an ability to self correct behaviors related to failing to abide by rules."¹

From the scant information regarding the two pre-program violations, it is impossible to determine whether they are relevant to the appropriateness of probation. *See Upshaw*, 606 S.W.3d at 231. Nor does the single self-corrected conduct violation during the program, without more, suffice as a basis to deny probation. *See Cullen*, 568 S.W.3d at 495. This summary notation of Relator's violations--with *no* information regarding Relator's conduct that led to them or the impact that conduct had on his potential success on probation--is not substantial competent evidence supporting Respondent's conclusion that probation was inappropriate for Relator. *See Upshaw*, 606 S.W.3d at 231-232; *see also Cullen*, 568 S.W.3d at 495. As we recently admonished Respondent in *Upshaw*, a trial court's concerns about conduct violations listed in an offender's report should be addressed at an evidentiary hearing--even though a hearing is not required--where, as here, the report "does not clearly delineate facts upon which the trial court can rely to find probation inappropriate." 606 S.W.3d at 232 n. 5.

Respondent's refusal to place Relator on probation upon his successful completion of the long-term treatment program was unsupported by substantial competent evidence and was an abuse of discretion. The petition for writ of mandamus is granted, and a

¹ Relator has filed, as exhibits to his petition for writ of mandamus, the Department of Corrections conduct violation report and disciplinary action report regarding the "theft," neither of which appear to have been filed in the trial court. According to the correctional officer who reported this incident, Relator and another offender were observed "sharing a bag of sausage that was stolen from food service."

peremptory writ of mandamus is hereby issued directing Respondent to enter an order placing Relator on probation pursuant to Section 217.362.

A handwritten signature in blue ink, reading "Robert G. Dowd, Jr.", is positioned above a horizontal line.

ROBERT G. DOWD, JR., Chief Judge

Michael E. Gardner, J. and
Robin Ransom, J., concur.