



Missouri Court of Appeals

Southern District

Division Two

STATE OF MISSOURI, Ex rel. Michael)
Shawn Hunt,)
)
Relator,)
)
v.)
)
HONORABLE MEGAN SEAY, Circuit)
Judge,)
)
Respondent.)

No. SD36966

Filed: February 23, 2021

ORIGINAL PROCEEDING IN MANDAMUS

(Lynch, J., Burrell, J., and Sheffield, J.)

PERMANENT WRIT IN MANDAMUS ISSUED

PER CURIAM. Michael Shawn Hunt (“Relator”) filed a petition for writ of mandamus asking this Court to vacate an order of the circuit court (“Respondent”) which denied his release on probation. Finding no evidence to support Respondent’s conclusion that probation was not appropriate, the Court hereby issues its permanent writ in mandamus directing Respondent to vacate the order of March 23, 2020, and grant Relator’s release on probation pursuant to section 559.115.3.¹

The facts are not in dispute. Relator was charged with the class D felony of hindering a prosecution in August 2014. The trial court suspended the imposition of his sentence and placed him on three years’ probation in May 2018. That term of probation was

¹ All statutory references are to RSMo 2016, unless stated otherwise.

revoked in December 2019 for a failure to report. Respondent then executed a four-year sentence, but retained jurisdiction for 120 days under section 559.115.3 (commonly known as the shock incarceration program (“SIP”)). On March 3, 2020, the Department of Corrections (“DOC”) issued a “Notice of Statutory Discharge” finding that his participation in the SIP was “acceptable.” The notice stated that, “[u]nless otherwise ordered by the Court, [Relator]’s statutory discharge will be effective 04/03/20.”

On March 23, 2020, Respondent held a hearing pursuant to section 559.115. At the conclusion of the hearing, Respondent found as follows:

At this time [Respondent] is going to find that it would be an abuse of discretion to release [Relator]. The Court is going to Order that [Relator]’s four-year sentence be executed. [Respondent]’s opinion in this situation was that I was hesitant to actually even accept the plea bargain at the time given the severity of his involvement in my opinion with the loss of a life and therefore I do believe that [Relator] would not be a successful candidate on probation. [Relator’s] been on probation that’s the reason he came back before me is that he didn’t successfully complete probation so therefore I’m going to execute his sentence.[²]

Respondent then entered a formal order on March 23, 2020, wherein Respondent found that Relator successfully completed the SIP, but determined that it would be an abuse of discretion to release him under section 559.115.

“The procedural means for challenging the denial of probation is through a writ of mandamus.” *State ex rel. Cullen v. Cardona*, 568 S.W.3d 492, 494 (Mo. App. E.D. 2019).

One seeking mandamus relief must prove a clear and unequivocal right to the thing claimed.

State ex rel. Young v. Wood, 254 S.W.3d 871, 872 (Mo. banc 2008). “This Court reviews a

² As noted above, Respondent executed Relator’s sentence in December 2019, and the only authority Respondent had in March 2020 was to grant or deny probation. “Once judgment and sentencing occur in a criminal proceeding, the trial court has exhausted its jurisdiction. It can take no further action in that case except when otherwise expressly provided by statute or rule.” *State ex rel. Mertens v. Brown*, 198 S.W.3d 616, 618 (Mo. banc 2006). And, although Respondent found that it would be an abuse of discretion to grant probation, the abuse of discretion standard has been likened to a finding that probation would not be appropriate. *State ex rel. Nixon v. Russell*, 129 S.W.3d 867, 871 (Mo. banc 2004) (abuse of discretion under section 217.362, RSMo 2000, found similar to appropriate finding under section 558.016, RSMo Supp. 2003).

writ of mandamus for an abuse of discretion . . . if the respondent's actions are wrong as a matter of law, then he or she has abused any discretion he or she may have had, and mandamus is appropriate.” *State ex rel. Valentine v. Orr*, 366 S.W.3d 534, 538 (Mo. banc 2012) (citations omitted). “We must defer to the lower court’s factual findings where they are supported by competent and substantial evidence, but we review legal questions de novo.” *State ex rel. Upshaw v. Cardona*, 606 S.W.3d 228, 230 (Mo. App. E.D. 2020).

Under section 559.115.3, the trial court is “required” to release an offender on probation if he or she successfully completes the program absent a finding that probation would not be appropriate. *State ex rel. Mertens v. Brown*, 198 S.W.3d 616, 618 (Mo. banc 2006); *see also* section 559.115.3 (offender “shall be released on probation” absent the proper finding). A trial court’s “determination that probation was not appropriate must be supported by evidence.” *Cullen*, 568 S.W.3d at 495 (discussing identical language in section 217.362); *see also Upshaw*, 606 S.W.3d at 230-31 (holding that a finding that probation would not be appropriate under section 217.362 must be supported by competent evidence in the record).

Here, Respondent has failed to point to evidence in the record that would justify a finding that probation would not be appropriate in Relator’s case. Relator was assigned to the SIP and DOC advised Respondent of Relator’s successful completion. Although Relator was given a statutory discharge date, Respondent revoked his release due to second thoughts regarding Relator’s involvement in a serious crime and his unsuccessful completion of a prior probationary term.

“Pre-sentencing evidence does not, by itself, make [Relator] unfit for probation.” *State ex rel. Beggs v. Dormire*, 91 S.W.3d 605, 607 (Mo. banc 2002) (eight prior

convictions, one may have been a violent offense, and numerous failures to appear). “In making its determination whether an offender is fit or unfit for probation, a court may look to evidence concerning the offender’s conduct prior to sentencing. However, it may not base its decision exclusively upon that evidence.” *State ex rel. Dane v. State*, 115 S.W.3d 876, 878 (Mo. App. W.D. 2003). The only rationale Respondent provides constitutes pre-sentencing evidence (nature of the crime and prior probation) which, standing alone, is insufficient as a matter of law to support a finding that probation would not be appropriate under section 559.115.3.³

Accordingly, the Court hereby issues its permanent writ in mandamus directing Respondent to vacate the order of March 23, 2020, and grant Relator’s release on probation pursuant to section 559.115.3.

³ In her suggestions in opposition, Respondent makes a belated argument that substantial evidence exists because Relator (in the DOC assessment) stated he was unaware of the accident, denied involvement therein, and claimed the police believed he was trying to lie for the actual perpetrator of the crime. However, as Respondent acknowledges, Relator pled guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). “An *Alford* plea allows the court to accept a guilty plea from a defendant, while the defendant maintains his innocence.” *State v. Williams*, 937 S.W.2d 330, 333 (Mo. App. E.D. 1996). Such a guilty plea “eliminates any showing of remorse or taking of responsibility by the appellant.” *Id.* at 334. Relator’s alleged lack of remorse and/or refusal to accept responsibility were pre-sentencing factors that cannot constitute sufficient competent evidence standing alone to justify a finding that probation was not appropriate.