# MISSOURI COURT OF APPEALS
# WESTERN DISTRICT

**STATE OF MISSOURI, ex rel. JESSICA J. JONES, GENTRY COUNTY PROSECUTING ATTORNEY,**

**Relator,**

**v.**

**THE HONORABLE ROGER PROKES, JUDGE OF THE CIRCUIT COURT OF GENTRY COUNTY, MISSOURI, DIVISION 1,**

**Respondent.**

---

DOCKET NUMBER WD84255

**Date: April 27, 2021**

---

Appeal from:
Gentry County Circuit Court
The Honorable Roger M. Prokes, Judge

---

Appellate Judges:
Writ Division: Lisa White Hardwick, Presiding Judge, Alok Ahuja and W. Douglas Thomson, Judges

---

Attorneys:
Susan R. Rinne, Maryville; Kathryn M. Merwald, Kansas City, for Respondent.
Jessica J. Jones, Albany for relator

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

**STATE OF MISSOURI, ex rel. JESSICA J. JONES, GENTRY COUNTY PROSECUTING ATTORNEY, Relator,**

**v.**

**THE HONORABLE ROGER PROKES, JUDGE OF THE CIRCUIT COURT OF GENTRY COUNTY, MISSOURI, DIVISION 1, Respondent.**

WD84255 Gentry County

Before Writ Division Judges: Lisa White Hardwick, Presiding Judge, Alok Ahuja and W. Douglas Thomson, Judges

In 2016, Michael Wood was convicted of driving while intoxicated and driving with a suspended or revoked license. Wood was placed on five years' supervised probation. A condition of his probation was that he "shall attend an aftercare program focusing on substance abuse."

In March 2018, Wood gave his probation officer attendance sheets from Alcoholics Anonymous ("AA") and Narcotics Anonymous ("NA") programs, showing that he had attended AA and NA meetings on sixteen different occasions in 2017 and 2018.

The State alleges that the attendance sheets were falsified. It charged Wood with sixteen counts of forgery, and two counts of tampering with a judicial officer (for attempting to influence his probation officer by deception with the falsified attendance sheets).

The circuit court excluded testimony from Wood's probation officer, and the attendance sheets Wood provided to her, on the basis that the communications and information were protected from disclosure by the probation-officer privilege statutes, §§ 549.500 and 559.125, RSMo. The prosecuting attorney filed this writ proceeding to challenge the circuit court's exclusion order. This Court issued a preliminary writ of mandamus, and scheduled full briefing and argument.

**PRELIMINARY WRIT OF MANDAMUS MADE PERMANENT.**

**Writ Division holds:**

The privilege recognized in §§ 549.500 and 559.125, RSMo, can be harmonized with the forgery and tampering-with-a-judicial-officer statutes, and meaningful effect can be given to all of the relevant statutes, by excluding from the probation-officer privilege those communications or information which *themselves* constitute the commission of a criminal offense. To hold that §§ 549.500 and 559.125, RSMo, create an absolute privilege surrounding all communications between a probation officer and an offender, and all information learned by a probation officer, would immunize from prosecution many acts which the legislature intended to prohibit when it enacted the forgery and tampering-with-a-judicial-officer statutes. It would be an absurd and unreasonable result to interpret the privilege statutes to give an offender license to attempt to deceive, harass, threaten, or bribe his or her probation officer with impunity. Missouri's courts have recognized in other contexts (with respect to the marital communications and attorney-client privileges) that statutory privileges cannot be invoked to shield criminal activity from prosecution. The exception we recognize applies only where an offender's communication with, or provision of information to, a probation officer constitutes a criminal act in itself.

**Opinion by: Alok Ahuja, Judge** April 27, 2021

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