Summary of SC98876, *Dustin J. Hefley v. State of Missouri*
Appeal from the Greene County circuit court, Judge Calvin Holden
Argued and submitted April 13, 2021; opinion issued June 29, 2021

Attorneys: Hefley was represented by Samuel Buffaloe of the public defender's office in Columbia, (573) 777-9977. The state was represented by Kristen S. Johnson of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It is provided 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 man who pleaded guilty to driving while intoxicated appeals from the circuit court's judgment rejecting his ineffective assistance of counsel claim for postconviction relief. In a 4-2 decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the judgment and remands the cause. The record establishes the man's guilty plea was not made voluntarily, knowingly, and intelligently in that counsel erred by advising the man he was eligible for a long-term drug program and the man otherwise would not have entered a guilty plea and would have insisted on proceeding to trial.

Judge Patricia Breckenridge concurs in part and dissents in part in a separate opinion. She agrees the circuit court incorrectly focused on the man's open plea, which did not guarantee him placement in a long-term drug program, in overruling the man's postconviction relief motion. She, however, would find the circuit court failed to make the findings of fact necessary to resolve the man's actual ineffective assistance of counsel claim – that he would not have pleaded guilty had he known he was ineligible for a long-term drug program – and would remand the case to the circuit court for more specific factual findings.

Facts: In 2017, Dustin Hefley was charged as a habitual offender with driving while intoxicated and careless and imprudent driving. Hefley pleaded guilty and, at the sentencing hearing, asked to be placed in a long-term drug program pursuant to section 217.362, RSMo. The circuit court sentenced him to nine years in prison but also stated it was going "to sentence [him] under the 217 program of long-term treatment" and that it would be up to the department of corrections whether he would be allowed to participate. Hefley moved for postconviction relief, alleging he received ineffective assistance of counsel because, as a habitual offender, he was not eligible for a long-term drug program under section 217.362. At the hearing on the motion, Hefley's plea counsel testified that he counseled Hefley about long-term drug programs and that Hefley pleaded guilty on counsel's representation that he would argue for placement in such programs. Hefley testified he would not have pleaded guilty had he known he was ineligible for a long-term drug program. Following the hearing, the circuit court denied Hefley postconviction relief, finding Hefley had no reasonable basis to expect he would receive placement in a long-term drug program because his plea was "open" and there were no promises made as to the sentence he would receive. Hefley appeals.

REVERSED and REMANDED.

Court en banc holds: (1) Individuals convicted of dangerous felonies – which include intoxication-related habitual offenders – are not eligible for long-term drug programs under section 217.362, RSMo. Because Hefley has five prior intoxication-related traffic offenses, he is a habitual offender and, therefore, statutorily ineligible for long-term drug programs.

(2) Hefley's plea counsel was ineffective for incorrectly advising Hefley he was eligible for a long-term drug program under section 217.362, RSMo. The circuit court misunderstood Hefley's ineffective assistance of counsel claim and erroneously found Hefley could not be prejudiced by plea counsel's misrepresentations because Hefley entered an open plea and, therefore, was never guaranteed placement in a long-term drug program. Hefley recognized there was no guarantee he would be placed in a long-term drug program, but the record reflects a reasonable belief that he would be eligible for placement based on plea counsel's affirmative misrepresentations regarding his eligibility. Hefley testified had he known he was ineligible for such programs, he would not have pleaded guilty. Accordingly, the record establishes that, but for plea counsel's error, Hefley would not have entered the guilty plea and would have insisted on proceeding to trial.

Separate opinion by Judge Patricia Breckenridge: The author agrees the circuit court's judgment was clearly erroneous because the circuit court misunderstood Hefley's ineffective assistance of counsel claim. She, however, would hold whether Hefley would have pleaded guilty but for trial counsel's misrepresentations is a mixed question of law and fact on which the circuit court failed to make the necessary factual findings. Accordingly, she would reverse the circuit court's judgment and remand the case for more specific factual findings.