# MISSOURI COURT OF APPEALS
# WESTERN DISTRICT

**STATE OF MISSOURI, ex rel. ERIC S. SCHMITT,**

**Relator,**

**v.**

**THE HONORABLE KEVIN CRANE, CIRCUIT JUDGE OF CALLAWAY COUNTY, and MEGAN MORSE, CIRCUIT CLERK, CALLAWAY COUNTY CIRCUIT COURT,**

**Respondents.**

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DOCKET NUMBER WD84866

**Date: December 28, 2021**

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Appeal from:
Callaway County Circuit Court
The Honorable Kevin Crane, Judge

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Appellate Judges:
Writ Division: Alok Ahuja, P.J., Mark D. Pfeiffer, and W. Douglas Thomson, J.J.

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Attorneys:
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Tyler P. Coyle, Columbia for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

**STATE OF MISSOURI, ex rel. ERIC S. SCHMITT, Relator,**
**v.**
**THE HONORABLE KEVIN CRANE, CIRCUIT JUDGE OF CALLAWAY COUNTY, and MEGAN MORSE, CIRCUIT CLERK, CALLAWAY COUNTY CIRCUIT COURT, Respondents.**

WD84866 Callaway County

Before Writ Division Judges: Alok Ahuja, P.J., Mark D. Pfeiffer, and W. Douglas Thomson, J.J.

In 1974 and 1978, Michael Isreal was convicted of felonies in Missouri, and sentenced to prison terms totaling 30 years. Isreal escaped from Missouri custody in 1978. He fled to California. In December 1979, Isreal pleaded guilty to murder in California. He was given a sentence of 25 years to life, to be served concurrently to his Missouri sentences.

Beginning in 1980, California authorities repeatedly communicated with employees of the Department of Corrections ("DOC"), offering to return Isreal to Missouri so that he could resume service of his Missouri sentences (to which his California sentence was concurrent). DOC officials steadfastly refused to accept Isreal's return, stating that they would accept custody of Isreal only after he had fully served his California sentence, or was paroled by California authorities. Isreal commenced multiple legal proceedings in state and federal courts in Missouri and California, seeking to compel DOC to accept his return; Isreal failed to obtain relief.

Isreal was granted parole on his California sentence in 2019, after serving approximately forty years. He was returned to DOC custody on March 13, 2020. At that time, DOC calculated Isreal's mandatory release date to be May 31, 2038 (when Isreal would be eighty years old). DOC made this calculation by refusing to give Isreal credit for the period from his escape from Missouri custody in June 1978, through the date of his return to DOC custody in March 2020.

Isreal commenced a habeas corpus proceeding in Callaway County, contending that he had entirely served his Missouri sentences, and was entitled to be discharged. The circuit court granted habeas relief. The State thereafter filed a petition for writ of certiorari in this Court asking that we review the circuit court's judgment.

**THIS COURT REFUSES TO QUASH THE RECORD OF THE CIRCUIT COURT'S HABEAS PROCEEDING.**

**Writ Division holds:**

The State contends that the running of Isreal's Missouri sentences was suspended from the time of his escape, until his return to Missouri custody. We disagree. Although § 558.031.4, RSMo 1978, provides that a sentence is suspended following an offender's escape, that statute became effective on January 1, 1979, *after* Isreal's underlying offenses, *after* his convictions and sentencings, and *after* his escape. At the relevant time, no such statute existed. We presume the General Assembly's enactment of § 558.031.4, RSMo 1978, was intended to change existing law. Moreover, at the relevant time, § 544.160, RSMo 1969, contemplated that an escapee's underlying sentence could expire while the offender was at large – plainly reflecting that the sentence would *not* generally be suspended by the offender's escape.

Even if the escape-suspends-sentence principle found in § 558.031.4, RSMo 1978, were in effect at the relevant time, it would not support denying Isreal credit for the entire four decades while he was incarcerated in California. Under § 216.245, RSMo 1969 (now codified at § 217.395, RSMo 2016), DOC was required to "take all proper measures" to reapprehend escapees. The escape-suspends-sentence principle found in § 558.031.4, RSMo 1978, must be interpreted in light of the DOC's duty under § 216.245, RSMo 1969 to diligently attempt to reapprehend escapees. In this case, DOC failed to discharge its obligation to exercise "all proper measures" to reapprehend Isreal, since it repeatedly refused California's offers to return him to Missouri custody.

The DOC is charged with *executing* sentences imposed by the courts, not with *imposing* sentence in the first instance. In this case, allowing DOC to decide, on an *ad hoc* basis, not to accept Isreal's return would essentially give it the unilateral right to dictate when the running of his sentence would resume, and therefore the total length of his sentence. DOC did not have the authority to arbitrarily decide whether Isreal's Missouri and California sentences would be served concurrently or consecutively. The circuit court correctly held that Isreal's Missouri sentences expired while he was incarcerated in California, and that he was entitled to be immediately discharged from Missouri custody.

Opinion by: Alok Ahuja, Judge December 28, 2021

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