

**Missouri Court of Appeals, Western District
Special Division
Gary D. Witt, chief judge, presiding
Mark D. Pfeiffer, judge
Cynthia Martin, judge
Timothy J. Flook, special judge
January 25, 2023
William Jewell College
Liberty, Missouri**

WD84685

**Trevon M. Henry, Appellant,
v.
State of Missouri, Respondent.**

Appellant Trevon Henry appeals from the judgment of the Circuit Court of Jackson County denying his Rule 24.035 motion for post-conviction relief. In 2015, when Henry was a juvenile, he was charged with the stabbing death of Tanya Chamberlin. The juvenile court certified him to stand trial as an adult, and he ultimately pleaded guilty to first-degree murder, first-degree robbery, and two counts of armed criminal action. In exchange for pleading guilty, Henry would not be sentenced to life-without-parole. The court sentenced Henry to two life sentences, consecutive to one another, but concurrent with two fifty-year sentences. Henry's post-conviction motion raised several bases for relief, all stemming from the argument that his sentence was illegal because, on the date he committed his offense, the only statutory sentence for first-degree murder committed by a juvenile was life *without* parole. In 2012, the United States Supreme Court held that juvenile defendants could not be subject to mandatory life-without-parole sentences. *Miller v. Alabama*, 567 U.S. 460 (2012). The Missouri legislature did not, however, amend its statutes governing first-degree murder to conform to *Miller* until 2016. Henry argued to the motion court that that his conviction and sentence was illegal. Further, he argued that his attorney was ineffective for failing to understand the state of the law and in negotiating an illegal plea. The motion court denied Henry's motion. This appeal followed.

Appellant's points on appeal:

1. The motion court clearly erred, in violation of Rule 24.035 and Trevon's rights to due process, under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 10, of the Missouri Constitution, when it denied Trevon's claim of mutual mistake resulting in an illegal conviction and sentence, because neither the parties nor the court can agree to the imposition of an illegal conviction and sentence, the court must deny the specific claim raised, and judicial economy cannot be used to justify the failure to correct an illegal conviction and sentence, in that defense counsel, prosecutor, and the plea court were all mistaken as to the legality of the plea agreement, this is not a claim relying on ineffective assistance of counsel, and a court must correct an illegal sentence.

2. The motion court clearly erred, in violation of Rule 24.035 and Trevon's rights to effective assistance of counsel and due process, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10 and 18(a), of the Missouri Constitution, when it denied Trevon's ineffective assistance of counsel claim, because the negotiation of an illegal plea agreement based on a misunderstanding of the law is deficient performance, an illegal plea renders the plea unknowing, involuntary, and unintelligent, prejudice occurs when a defendant would not have pleaded guilty pursuant to the plea agreement, and judicial economy cannot be used to justify the failure to correct an illegal conviction and sentence, in that defense counsel misunderstood the law and negotiated an illegal plea agreement, had defense counsel realized it was an illegal plea agreement he would not have pursued it and advised Trevon to plead guilty to it, and judicial economy cannot justify the failure to correct Trevon's illegal sentence and judgment.
3. The motion court clearly erred, in violation of Rule 24.035 and Trevon's rights to due process, under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 10, of the Missouri Constitution, when it denied Trevon's claim that the plea court erred in accepting the illegal guilty plea, because neither the parties nor the court can agree to the imposition of an illegal conviction and sentence, the court must deny the specific claim raised, and judicial economy cannot be used to justify the failure to correct an illegal conviction and sentence where the plea court improperly accepted an illegal plea, in that the plea court accepted an illegal plea, this is not a claim relying on ineffective assistance of counsel, and a court must correct an illegal sentence.

WD85288

J.H., a Minor, by and through his Natural Mother and Next Friend, Roxanna Louis Meudt-Antele, Appellants,

v.

Jefferson City Public School District, et al., Respondents.

Appellant J.H., a minor, appeals the judgment of the Circuit Court of Cole County sustaining Jefferson City Public School District's ("District") motion for summary judgment. According to the pleadings, J.H. was a student in the District. When he was in seventh grade, he joined a coed wrestling team at one of the District's middle schools. The wrestling team was supervised by three District employees. The Missouri State High School Activities Association and the National Federation of State High School Associations have policies that the coed middle school wrestling team must follow to participate in events. One such policy is that the hair of a wrestler should not extend below the earlobe on the sides and must be above the top of a normal shirt in the back. The rules also require that hair shall not extend below the eyebrows in the front. If a participant's hair exceeds these restrictions, a hairnet or cap is needed. The rule applies to both male and female participants. J.H. alleged that, shortly after joining the team, he started to be routinely harassed about the length of his hair and told that he needed to cut his hair and that his hair was too long for a male. At the same time, female members of the team were allowed to wear a hair cover. Before J.H.'s first wrestling meet, he was told by one of his coaches that he needed to cut his hair for the meet. The coach gave J.H. scissors and told him that he needed to

cut his own hair within thirty seconds or the coach would cut it for him. J.H. began slowly cutting his hair. After a timer for thirty seconds ran out, J.H. attempted to run out of the locker room and the coach instructed J.H.'s teammates to grab him and hold him down. J.H. was held over a trash can by teammates while a coach forcibly cut his hair. J.H. alleges that since the incident he has been harassed by peers and other district employees. J.H. filed suit against the Respondents. Count eight of J.H.'s petition alleged the District and one of his coaches violated the Missouri Human Rights Act. The circuit court granted the District's motion for summary judgment as to count eight, the judgment was certified for immediate appeal, and this appeal followed.

Appellant's point on appeal:

1. The trial court erred in granting Respondent's motion for summary judgment because the petition stated a claim for which relief can be granted in that the Missouri Human Rights Act prohibits discrimination in public accommodation and genuine issues of material fact exist as to whether boy and girl wrestlers on a coed middle school wrestling team were provided equal treatment under the same rules, thereby, disadvantaging and discriminating against boys because of their gender.

WD84851

State of Missouri, Respondent,

v.

David Scott Nowicki, Appellant.

Appellant David Nowicki appeals the judgment of the Circuit Court of Saline County, following a jury trial, convicting him of one count of driving while intoxicated. The facts as alleged at trial established that on March 21, 2019, Nowicki was operating his motor vehicle on Interstate 70 while under the influence of a drug. The information charged Nowicki has a chronic offender because he had four prior convictions for various offenses. The morning of trial, the State offered five exhibits into evidence to prove that Nowicki qualified as a chronic offender. Following a trial, a jury found Nowicki guilty of driving while intoxicated, and the Court sentenced Nowicki as a chronic offender to five years' imprisonment. This appeal followed.

Appellant's point on appeal:

1. The trial court erred in finding Mr. Nowicki was a chronic offender, because this violated Mr. Nowicki's right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that there was insufficient evidence to prove beyond a reasonable doubt that three out of the four prior convictions listed in Exhibits 1-5 constituted an intoxication related traffic offense, where the State failed to prove Mr. Nowicki was "driving" during his 1986, 1990, and 1994 convictions as that term was used in section 577.001, RSMo, in 2019; the State presented no facts regarding these past convictions, the State failed to prove the language of the municipal ordinance for Mr. Nowicki's 1986 conviction, and the relevant

statutes for Mr. Nowicki's convictions in 1990 and 1994 allowed for convictions based on merely being in "actual physical control" of the vehicle.

WD85350

Cassandra Cox, Appellant,

v.

Callaway County Sheriff's Department, et al., Respondents.

Appellant Cassandra Cox appeals the judgment of the Circuit Court of Callaway County granting summary judgment in favor of the Respondents. As alleged in the pleadings, on February 26, 2016, an officer with the Fulton Police Department responded to a McDonald's following a report that a car had run over a curb and struck a pole. The officer found Cox asleep in the driver's seat of that car. Cox was placed under arrest. A search of her car uncovered marijuana, suspected methamphetamine, and drug paraphernalia. After having her blood drawn at the hospital and an evaluation by the Fulton Police Department, Cox was delivered to the Callaway County Jail. Cox alleged that she was suffering from a mental illness and that, at the time of her medical intake, she was distraught, crying and, according to an officer, behaving bizarrely. The pleadings alleged that the officer knew that she was intoxicated on methamphetamine. Cox allegedly indicated that she "wanted to die" and refused a mid-day meal. She also refused a second meal in the evening. Over the next two days, Cox made requests to correctional officers for assistance and to go to rehab. She was exhibiting abnormal behavior, was crying, hysterical, and pale. On the morning of February 28, 2016, Cox was screaming that she was in pain. She collapsed and lost consciousness. It was later determined that Cox had a cardiac event. Cox alleged that the jail and its officers failed to follow proper procedures to provide necessary medical care and that failure resulted in her suffering a cardiac event. Cox brought suit against the Sheriff's Department and various officers. The circuit court ultimately granted the defendant's summary judgment based on official immunity. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in granting summary judgement for the individual defendants on the grounds that they were shielded by official immunity because Appellant presented substantial evidence that the individual defendants violated ministerial duties and thus official immunity does not apply.
2. The trial court erred in granting summary judgement for the defendants on the grounds that the defendant's conduct was not the proximate cause of Cassandra Cox's injury because plaintiff presented expert testimony and factual evidence which proves proximate causation.
3. The trial court erred in granting summary judgement for the defendant Callaway County on the grounds that Callaway County is shielded by sovereign immunity because there is an issue of fact as to if defendant waived sovereign immunity by purchasing liability insurance.