Summary of SC99591, *Wesley Hatmon v. State of Missouri*
Appeal from the Dallas County circuit court, Judge Lisa Carter Henderson
Argued and submitted October 25, 2022; opinion issued March 21, 2023

Attorneys: Hatmon was represented by Rosemary E. Percival of the public defender's office in Kansas City, (816) 889-7699. The state was represented by Evan J. Buchheim 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: An offender appeals from a judgment denying postconviction relief. In a unanimous decision written by Chief Justice Paul C. Wilson, the Supreme Court of Missouri vacates the circuit court's judgment and remands (sends back) the case. Because the circuit court denied relief without consideration of when the offender was delivered to the department of corrections for purposes of determining if his *pro se* motion was timely, the Court is left with the impression a mistake has been made. The law-of-the-case doctrine does not preclude the circuit court from determining the motion's timeliness on remand.

Facts: Wesley Hatmon pleaded guilty in 2014 to two separate instances of driving while intoxicated in two separate counties, The Laclede County court sentenced Hatmon to four years in prison, suspended execution of that sentence and placed him on probation pending his successful completion of a 120-day "shock treatment" program in the department of corrections. Then the Dallas County court sentenced Hatmon to seven years in prison to run consecutively to the sentence in the Laclede County case; suspended the execution of its sentence and placed Hatmon on five years' probation. As part of his probation, he was to serve 60 days' shock detention concurrent with incarceration in the Laclede County case. Hatmon was delivered immediately to the department of corrections to begin serving his shock incarceration on the Laclede County case. A written judgment was not entered in the Dallas County case until 2016, when Hatmon's probation in the Dallas County case was revoked and his sentence executed. He was delivered again to the department of corrections in November 2016 to begin serving his seven-year sentence in the Dallas County case. Hatmon did not receive any credit toward his Dallas County sentence for the 120 days' shock incarceration he previously had served in the Laclede County case. In April 2017, Hatmon filed a *pro se* motion for postconviction relief challenging his conviction in the Dallas County case. Appointed counsel failed to file an amended postconviction motion within the time allowed. Without conducting an inquiry to determine if Hatmon's counsel had abandoned him, the circuit court held an evidentiary hearing on the claims in Hatmon's amended motion and denied relief. The court of appeals remanded the case for the circuit court to determine whether appointed counsel abandoned Hatmon. On remand, the circuit court orally pronounced Hatmon had been abandoned, but in its written judgment, the court concluded Hatmon had not been abandoned because the merits of the amended motion had been considered and rejected after an evidentiary hearing. Hatmon appeals. For the first time on appeal, the state asserts Hatmon's original *pro se* motion was untimely because, when he served his shock incarceration in the Laclede County case in 2014, he was also delivered to the department for purposes of the Dallas County case.

VACATED AND REMANDED.

Court en banc holds: (1) Because the circuit court determined Hatmon's *pro se* motion was timely without any argument, briefing or reference to whether Hatmon ever was delivered to the department of corrections in 2014 on the Dallas County case, this Court is left with the definite and firm impression a mistake has been made. At the time of Hatmon's convictions in 2014, an offender had 180 days from the date he or she was delivered to the department of corrections in which to file a *pro se* postconviction relief motion. If Hatmon's delivery to the department in 2014 was a delivery to serve shock incarceration for the Dallas County case as well as the Laclede County case, then his 2017 *pro se* motion was filed long after the 180-day deadline and must be dismissed as untimely. On the other hand, if Hatmon's first delivery to the department of corrections for the Dallas County case was in 2016, when he began to serve his seven-year sentence, then his *pro se* motion was timely.

(2) The law-of-the-case doctrine does not preclude the circuit court from considering on remand the timeliness of Hatmon's *pro se* motion, given the circumstances in this case. Ordinarily, this doctrine precludes relitigation, on remand and subsequent appeal, of a previous holding in a case. Appellate courts, however, have discretion in applying the doctrine when there is a mistake, a manifest injustice or an intervening change of law. The deadline for filing a *pro se* motion for postconviction relief is mandatory and cannot be waived. The mandatory time limit imposed by the postconviction relief rules, therefore, outweighs the law-of-the-case doctrine.