MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BERNARD WILLIAMS, Petitioner,
v.
DORIS FALKENRATH, WARDEN,
JEFFERSON CITY CORRECTIONAL CENTER, Respondent.

DOCKET NUMBER WD86437

DATE: September 26, 2023

Appeal From:

Jackson County Circuit Court

Appellate Judges:

Writ Division: Janet Sutton, Presiding Judge, Alok Ahuja, Judge, and Edward R. Ardini, Jr., Judge

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Attorneys:

Damien S. B. DeLoyola,, for Petitioner,

Andrew Crane, Stephen D. Hawke, Jefferson City, for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN RE: BERNARD WILLIAMS, Petitioner,
v.
DORIS FALKENRATH, WARDEN,
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WD86437 Jackson County

Before Division Writ Judges: Janet Sutton, Presiding Judge, Alok Ahuja, Judge, and Edward R. Ardini, Jr., Judge

In 1989, Bernard Williams was convicted of two counts of forcible rape, once count of forcible sodomy, and one count of stealing, for offenses which he committed in Kansas City in May 1988. Williams was sentenced as a Class X offender, meaning that he would have to serve 80 percent of his sentences before becoming eligible for parole consideration. Williams was found to be a Class X offender under § 558.019, RSMo Cum. Supp. 1988 – a statute which only became effective after Williams' crimes. Under the statutes in effect at the time of Williams' offenses, he was not eligible for Class X offender status.

Williams did not argue in his direct appeal, or in post-conviction relief proceedings, that he was erroneously classified as a Class X offender based on statutes post-dating his offenses. He *has* raised the issue previously in multiple *pro se* habeas corpus petitions in the circuit court and in this Court, each of which was denied.

PETITION FOR WRIT OF HABEAS CORPUS GRANTED.

Writ Division holds:

Williams' claim is procedurally defaulted, because he could have raised the claim in his direct appeal, or in post-conviction relief proceedings, but failed to do so. Williams' claim – that he is being erroneously denied parole eligibility until he has served 80 percent of his sentence – alleges a "sentencing defect" which can be considered in a habeas corpus petition despite Williams' procedural defaults.

The fact that Williams has unsuccessfully raised the same issue in prior habeas corpus petitions is no bar to relief. Missouri does not categorically prohibit successive habeas petitions. Consideration of the merits of Williams'

claim is justified, despite the denial of his earlier petitions, given that – as the Warden admits – he is presently serving a legally erroneous sentence, which denies him parole consideration until approximately 2040.

On the merits, a post-offense statutory amendment restricting parole eligibility could not be applied to Williams' earlier offenses, under the prohibitions on *ex post facto* laws found in both the United States and Missouri constitutions.

The petition for writ of habeas corpus is granted, and the 1989 judgment reflecting Williams' convictions is modified to remove his designation as a Class X offender

Opinion by: Alok Ahuja, Judge September 26, 2023

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