

**MISSOURI COURT OF APPEALS-WESTERN DISTRICT
DIVISION 2
KAREN KING MITCHELL, PRESIDING JUDGE,
EDWARD R. ARDINI, JR., JUDGE
THOMAS NICHOLS CHAPMAN, JUDGE
APRIL 6, 2022
WILLIAM WOODS UNIVERSITY
FULTON, MISSOURI**

WD84307

Tymon Reed, Appellant,

v.

State of Missouri, Respondent.

Appellant Tymon Reed appeals the judgment of the circuit court denying his amended Rule 29.15 motion for post-conviction relief. Following a jury trial, Reed was convicted of murder in the second-degree and armed criminal action. The evidence at trial established that, on September 19, 2016, J.R. was walking home from school with some friends. While J.R. and his friends were hanging-out by a bench near the intersection of Truman Road and Home Avenue, they encountered Reed and another man. The pair told J.R. and one of his friends that they were looking for Owen Ogo. Ogo had allegedly stolen some marijuana from Reed. Reed testified that he approached J.R. because he recognized him as being present when Reed had purchased marijuana from Ogo. At some point, the conversation turned into a verbal altercation, with J.R. dropping his backpack and “squaring up” as if preparing to fight Reed. No fight occurred, and the group walked down Home Avenue. At some point, J.R. stopped, and Reed pulled out a gun and pointed it toward J.R. J.R. then wrestled Reed for the gun. The gun went off; J.R. ran away; and Reed fired the gun more times in the direction of J.R. as he ran. J.R. died from the gunshot wounds. The State charged Reed with first-degree murder and armed criminal action. At trial, Reed stipulated to the fact that he had shot J.R., but contended that he was not guilty of first-degree murder. The jury found Reed guilty of second-degree murder and armed criminal action. The jury recommended Reed be sentenced to seventeen years for second-degree murder and three years for armed criminal action. At the sentencing hearing, the defense sought to introduce an e-mail from a member of the jury, M.M., asking that Reed receive less than the seventeen years recommended by the jury. Another jury member, S.W., had contacted Reed through his mother. The court declined to accept the e-mail. The court sentenced Reed to the jury's recommended sentence. Reed's post-conviction motion alleged that his trial counsel was ineffective in failing to argue self-defense at trial and to present the testimony of M.M. and S.W. The motion court denied both arguments. The motion court found that the decision to not argue self-defense but rather to argue a lesser-included offense was sound trial strategy. The motion court also found that trial counsel was prohibited from presenting the testimony of the jurors at sentencing by the rule prohibiting jurors testifying to impeach their verdict. This appeal followed.

Appellant's points on appeal:

- (1) The motion court clearly erred in denying Claim 8/9(a) of Tymon Reed's 29.15 amended motion, in violation of Mr. Reed's rights to due process and effective

assistance of counsel, 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 concluded that the testimony of jurors M.M. and S.W. would have been barred by the no-impeachment rule. The no-impeachment rule generally prohibits a party from presenting juror testimony for the purpose of impeaching the jury's verdict. Because the testimony of M.M. and S.W. was not being presented to call into question the jury's sentencing verdict, but instead to support the trial court exercising its statutory authority to reduce the jury's recommended sentence for Mr. Reed, their testimony is not barred by the no-impeachment rule.

- (2) The motion court clearly erred in denying Claim 8/9(b) of Tymon Reed's 29.15 amended motion, in violation of Mr. Reed's rights to due process and effective assistance of counsel, 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 concluded there was no basis to argue imperfect self-defense because self-defense was not argued and trial counsel's strategy was for a lesser-included offense. Self-defense does not have to be presented for counsel to argue that the concept of imperfect self-defense supports a verdict on involuntary manslaughter, arguing for involuntary manslaughter would be arguing for a lesser-included offense of first-degree murder, and a trial counsel's strategy cannot be reasonable when it is based on lack of familiarity with the relevant law. The facts and law in Mr. Reed's case supported an argument for imperfect self-defense to explain to the jury why they should convict Mr. Reed of the submitted lesser-included offense of involuntary manslaughter even though self-defense was not submitted, and trial counsel's failure to make that argument was unreasonable where it was based on a unfamiliarity with imperfect self-defense and where it would have supported the strategy to convince the jury to convict Mr. Reed of a lesser-included offense of first-degree murder. Mr. Reed was prejudiced by trial counsel's failure to argue imperfect self-defense.

WD84352

Terrance L. Wynn, Appellant,

v.

State of Missouri, Respondent.

Appellant Terrance Wynn appeals the judgment of the circuit court of Cole County denying his Rule 24.035 motion for post-conviction relief. Wynn was charged with first-degree murder, first-degree robbery, and two counts of armed criminal action. On the morning Wynn was set to go to trial, the State extended a plea offer to Wynn whereby he would plead guilty to second-degree murder, first-degree robbery, and one count of armed criminal action. Wynn's trial counsel requested that his client be given a few days to consider the offer. The trial court refused the request stating that Wynn would need to either proceed to trial or plead guilty that day. The court would, however, allow Wynn until sentencing to consider whether to plead open or to take the State's binding plea offer. Wynn agreed to plead guilty. During the plea hearing, Wynn's trial counsel realized that, despite his belief that Wynn would be pleading guilty to felony murder--a killing that resulted from the perpetration or attempted perpetration of a felony--the State's

amended information charged Wynn with conventional second-degree murder--Wynn acted purposefully to cause serious physical injury. Wynn's trial counsel had informed his client that he would be pleading guilty to felony murder. Realizing the mistake, Wynn's trial counsel asked the State to amend the information, but the State declined the amendment. Despite this, Wynn continued to agree to plea guilty. Wynn chose to agree to the State's binding plea offer and was sentenced to life imprisonment for second-degree murder, three years' imprisonment for armed criminal action, and ten years' imprisonment for first-degree robbery. The written judgment, however, reflects that he was sentenced to "99 years" for second-degree murder. In his Rule 24.035 motion, Wynn alleges that his trial counsel was ineffective for failing to fully investigate and evaluate whether Wynn's cognitive and mental defects prevented him from being able to knowingly, intelligently, and voluntarily plead guilty. Following an evidentiary hearing, the motion court denied Wynn's motion. This appeal followed.

Appellant's points on appeal:

- (1) The motion court clearly erred in overruling claims 8(A) and 8(B)7 in Terrace Wynn's amended motion under Rule 24.035, in violation of his right to due process of law and to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution and Article I, Section 10 and 18(a) of the Missouri Constitution, in that trial counsel was ineffective for failing to investigate Mr. Wynn's mental health and cognitive issues where a factual basis indicated Mr. Wynn's questionable mental condition and Mr. Wynn was prejudiced by his counsel's deficient performance because there was a reasonable probability he was not competent to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him at the time of the plea hearing.
- (2) The trial court committed a clerical error by denoting the length of Mr. Wynn's sentence for murder in the second degree in its written judgment as "99 Years," in violation of his right to due process of law under the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the 99-year sentence recited in the written judgment is materially different from the trial court's oral pronouncement of Mr. Wynn's sentence as a "life imprisonment." This Court should remand this matter to the trial court and order the trial court to correct this clerical error in the written judgment by a *nunc pro tunc* order.

WD84843

State of Missouri, Appellant,

v.

Tessie Sierra Sherree Nash (Reed), Respondent.

Appellant State of Missouri appeals the judgment of the circuit court dismissing the felony information charging Tessie Nash with the class D felony of stealing a credit device. The State alleged in its felony information that Nash was housesitting for C.R., and, during that time, Nash took a check from a checkbook belonging to C.R. Nash then made out that check for \$250 payable

to Keegan Grunby who cashed the check at his bank. The State alleged that Grunby then gave the \$250 back to Nash. The State charged Nash with felony stealing of a credit device. Nash moved to dismiss the charge because the use of the word “credit” in the term “credit device” necessarily excluded any device that did not create a debtor-creditor relationship. The court granted Nash’s motion, finding that a check cannot be a “credit device.” This appeal followed.

Appellant’s points on appeal:

- (1) The Circuit Court erred in dismissing the charge of felony stealing of a credit device by stealing a check on the grounds that the state cannot prove that Respondent stole a “credit device” as that term is defined in § 570.010(5), RSMo and used in § 570.030.5(3)(C), RSMo, because checks satisfy the elements of a “credit device” as set forth by the legislature in that checks are both a “writing” and purport to evidence an undertaking to pay for property or services, thereby satisfying the statutory elements of a “credit device.”
- (2) The Circuit Court erred in dismissing the charge of felony stealing of a credit device by stealing a check on the grounds that the offense of passing a bad check excludes checks from falling within the definition of a credit device because it arbitrarily excluded checks from the definition of the term credit device in that under the plain language of § 570.010, RSMo, checks fall within the definition of the terms check, credit device, property, and writing.
- (3) The Circuit Court erred in dismissing the charge of felony stealing of a credit device by stealing a check on the grounds that the felony of passing a bad check as an alternative to the felony of stealing a credit device excludes a check from the definition of a credit device for the purposes of § 570.030, RSMo, because the existence of a charge does not preclude the existence of an alternate charge in that the prosecuting attorney has discretion in selecting which charge(s) to pursue.

WD84739

Liana Maccoll (formerly known as Liana M. Bradford), Appellant,

v.

Missouri State Highway Patrol and Boone County, Missouri Sheriff, Respondents.

Appellant Liana Maccoll appeals from the judgment of the circuit court granting summary judgment in favor of the Missouri State Highway Patrol and Boone County, Missouri Sheriff (collectively, “Respondents”) on Maccoll’s petition to be removed from Missouri’s sex offender registry. In 1995, Maccoll plead guilty to a single charge of class A misdemeanor sexual misconduct. In 1994, the federal government passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (“Jacob Wetterling Act”) which required states to adopt sex offender registration programs. Missouri passed the Sexual Offenders Registration Act (“SORA”), effective January 1, 1995. On July 27, 2006, the federal government passed the Sex Offender Registration and Notification Act (“SORNA”). Maccoll alleges that in approximately 2000, she was erroneously advised by personnel in the office of the Boone County

Sheriff that she was required to register as a sexual offender under SORA. Maccoll has continually registered since 2000. Maccoll filed her petition seeking to be removed from any obligation to register as a sex offender under SORA or SORNA. Maccoll also sought a declaratory judgment that she had no prior or current obligation to register under either SORA or SORNA. Both sides filed motions for summary judgment. The circuit court entered judgment in favor of the Respondents, finding that Maccoll was required to register under the Jacob Wetterling Act at the time of her guilty plea in 1995. The court found that because she had been required to register under the federal law, beginning with the 2000 amendments to SORA, Maccoll was required to register in Missouri. The circuit court also found that she was not entitled to retroactively request a reduction of her 15-year federal obligation to register under SORNA and that, because she had been required to register under federal law, she was not entitled to be removed from the registry. This appeal followed.

Appellant's points on appeal:

- (1) The trial court erred in granting the Respondents' motion for summary judgment and denying the Appellant's motion for summary judgment because the trial court erroneously interpreted the Jacob Wetterling act as imposing upon Appellant an independent and separate obligation to register as a sex offender in that the Wetterling act only imposed upon the states an obligation to enact a sex offender registration law satisfying the criteria specified in that act and was not intended to and does not create a federal obligation for any person to so register, but said statute was cited by the trial court in its judgment as among the reasons for its ruling against appellant.
- (2) The trial court erred in granting the Respondents' motion for summary judgment and denying the Appellant's motion for summary judgment because the trial court's conclusion that Appellant was required to register under the Missouri Sex Offender Registration Act ("SORA") beginning with the 2000 amendments to that law was erroneous as a matter of law in that applying SORA to Appellant would violate Article I, § 13 of Missouri's Constitution, Appellant would have been a "Tier I" offender under SORA, and the trial court's judgment has the effect of converting the misdemeanor to which Appellant pled guilty into the equivalent of a felony.
- (3) The trial court erred in granting the Respondents' motion for summary judgment and denying the Appellant's Motion for Summary Judgment because of its erroneous conclusion that Appellant is a person who "has been or is required to register under federal law," i.e., under SORNA, and was required to register under the Missouri Sex Offender Registration Act ("SORA") for that reason in that appellant had a "clean record" under SORNA for more than 10 years prior to the effective date of SORNA and thus Appellant was not required to register under SORNA.
- (4) The trial court erred in granting the Respondent's motion for summary judgment and in denying the Appellant's motion for summary judgment because it erroneously found that because Appellant failed to seek a separate "allowance" of a reduction in SORNA's required registration period from 15 years down to

10 years at some time in the past, that Appellant's failure to do so forecloses her from seeking that "allowance" in this proceeding, and in its holding that Appellant is "not entitled as a matter of law to retroactively request a reduction of the 15-year federal obligation to register under SORNA" in that such construction disregards the express language of 34 USCA § 20915(b)(1) and denies to Appellant the relief to which she is entitled.