

**Summary of SC90000, *State ex rel. Anthony Zinna v. Troy Steele, Warden***

Original habeas proceeding originating in the St. Francois County circuit court, Judge Sandy Martinez

Argued and submitted Oct. 28, 2009; opinion issued Jan. 12, 2010

**Attorneys:** Zinna was represented by John E. Cozean and Shaun D. Hanschen of Blanton, Rice, Nickell, Cozean & Collins LLC in Sikeston, (573) 471-1000; and the state was represented by Caroline M. Coulter and Stephen D. Hawke of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the 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:** A prisoner claims he is entitled to be released from prison because he has finished serving his sentence. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri grants relief and orders the prisoner released from this sentence. If a trial court does not state whether a sentence is to run concurrently with or consecutively to other sentences during the oral pronouncement of sentence in the presence of the prisoner, then the sentence is concurrent by operation of law. Here, the trial court erred in entering a written judgment making the sentence consecutive when the court had not stated in its oral pronouncement that it would be consecutive. The prisoner is excused from not having raised his claim via appeal or post-conviction motion because the trial court acted outside of its authority in entering a sentence beyond that authorized by law.

**Facts:** In March 2003, Anthony Zinna appeared before a trial court for a guilty plea and sentencing hearing. At the time of the plea hearing, Zinna was serving several other sentences, the last of which was scheduled to expire in 2007. At the time of pronouncing sentence, the court sentenced Zinna to five years in prison but did not state whether the sentence was to run concurrently with or consecutively to Zinna's prior sentences. Later, and outside of Zinna's presence, the court entered a written judgment that made the sentence consecutive. Zinna did not appeal or file a post-conviction motion challenging his sentence but now seeks release by seeking this Court's writ of habeas corpus.

**DISCHARGED FROM SENTENCE.**

**Court en banc holds:** (1) The trial court erred in entering a written judgment stating that the sentence was consecutive. Rule 29.09 provides that the sentencing court "when pronouncing sentence, shall state whether the sentence shall run consecutively to or concurrently with sentences on one or more offenses for which the defendant has been previously sentenced. If the Court fails to do so at the time of pronouncing the sentences, the respective sentences shall run concurrently." Therefore, Rule 29.09 establishes a

bright-line rule that when a trial court orally pronounces sentence without stating whether the sentence is concurrent or consecutive, the sentence becomes concurrent by operation of law. There is no need to review the context of the sentencing hearing to discern the court's intent because, under Rule 29.09, the failure to state whether a sentence is concurrent or consecutive is unambiguous – silence equals a concurrent sentence. This bright-line application of Rule 29.09 is consistent with the long-standing application in Missouri courts. Here, it is undisputed that the trial court was silent as to whether the sentence was concurrent or consecutive when pronouncing sentence, so under Rule 29.09, Zinna's five-year sentence was concurrent to his prior sentences. Because more than five years have elapsed since Zinna began serving the sentence, he is ordered released from further service on this sentence.

(2) Ordinarily, claims such as Zinna's are required to be raised on appeal or by a post-conviction motion. A showing that a court imposed a sentence longer than that allowed by law, however, long has been recognized as one of a very limited number of circumstances in which the failure to raise a claim by appeal or post-conviction motion does not bar subsequent habeas relief. Zinna is entitled to such relief here.