

**Summary of SC93555, *State of Missouri v. Kartez Hardin***

Appeal from the St. Louis County circuit court, Judge Angela Turner Quigless  
Argued and submitted November 14, 2013; opinion issued April 29, 2014

**Attorneys:** Hardin was represented by Jessica M. Hathaway of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Timothy A. Blackwell 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 man appeals his convictions for forcible rape, aggravated stalking and violating a protective order. In a unanimous decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the judgment. The man's 50-year sentence for forcible rape is authorized by the plain language of the relevant statute. Further, his convictions for aggravated stalking and for five violations of a protective order do not violate double jeopardy.

**Facts:** Kartez Hardin's wife obtained an order of protection against him in November 2010 after repeated instances of domestic violence. He was served with notice of the protective order but, the next month, abducted his wife and her son and raped her. After he was arrested, Hardin violated the protective order five times by calling or writing to his wife from jail. The state charged Hardin with offenses including one count of forcible rape, one count of aggravated stalking and five counts of violating a protective order. He was convicted of all these charges and was sentenced to prison, including a 50-year sentence for forcible rape. Hardin appeals.

**AFFIRMED.**

**Court en banc holds:** (1) The plain language of the relevant statute authorizes Hardin's 50-year sentence for forcible rape. This statute provides that the authorized imprisonment for forcible rape is "life imprisonment or a term of years not less than five years." The use of the disjunctive term "or" to connect the two authorized terms of punishments indicates the legislature's intent that courts may sentence defendants to either life in prison or an unlimited term of years not fewer than five years. Had the legislature intended to authorize a sentence of a limited term of years – such as a sentence of not fewer than 10 years and not more than 30 years – it could have done so and has in other statutes. "Life imprisonment" and an unlimited term of years are not identical and, by statute, are calculated differently for purposes of parole. To the extent that certain decisions of the court of appeals suggest that the sentencing statute for forcible rape does not authorize a sentence of an unlimited term of years, they no longer should be followed.

(2) Hardin's convictions for aggravated stalking and for five violations of a protective order do not violate double jeopardy. The federal double jeopardy clause protects defendants against multiple punishments for the same offense. Double jeopardy analysis regarding multiple punishments – as occurred in Hardin's case – is limited to determining whether the legislature intended cumulative punishments. The statutes defining the offenses of aggravated stalking and of violating a protective order are silent as to whether the legislature intended cumulative

punishments. In the absence of an offense-specific indication of legislative intent, a more general statute expresses the legislature's intent to impose cumulative punishments unless the offenses at issue fall into one of the statute's exceptions, such as when one offense is "included" in another. Neither aggravated stalking nor violating a protective order is denominated a lesser degree of the other, and neither offense consists of an attempt to commit the other. The offenses also do not meet the statutory elements for determining whether one is a lesser-included offense of the other. Violating a protective order is not "included" in the offense of aggravated stalking. Aggravated stalking requires proof of a course of conduct composed of two or more acts, while a protective order violation may be proved by a single act. A protective order violation, on the other hand, requires proof that the defendant's act violated an existing order of protection, while aggravated stalking may be proved without demonstrating a protective order violation.