

Summary of SC95301, *State ex rel. Ryan W. Amorine v. The Honorable Kelly Parker*

Proceeding originating in the Crawford County circuit court, Judge Kelly Parker
Argued and submitted March 1, 2016; opinion issued May 24, 2016

Attorneys: Amorine was represented by Matthew R. Miller of the public defender's office in Rolla, (573) 368-2260. The state was represented by Caroline M. Coulter of the attorney general's office in Jefferson City, (573) 751-3321, and Dent County Prosecuting Attorney Andrew M. Curley in Salem, (573) 729-3406.

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: An offender whose earned and optimal dates to be discharged from probation both passed without the circuit court acting on a probation violation report seeks a writ prohibiting the circuit court from proceeding with the defendant's case. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri makes its preliminary writ permanent and directs the circuit court to discharge the offender. Under the governing statute, the board of probation and parole notifies the sentencing court of the date when an offender is scheduled to be discharged from probation and, if no action is taken, the offender must be discharged. Here, the circuit court that sentenced the offender exceeded its authority in continuing the offender's probation revocation hearing indefinitely after the date the offender should have been discharged from probation.

Facts: In May 2011, Ryan Amorine pleaded guilty to two charges, and the trial court suspended imposition of sentence and placed him on supervised probation for five years. Special conditions of his probation required him to perform community service and pay court costs. Two probation violation reports were filed, one in June 2013 and the other in May 2014, both alleging Amorine failed to pay his court costs or report community service hours. Amorine admitted to the first set of violations. As to the second set, the circuit court in May 2014 revoked Amorine's probation and, following a September 2014 hearing, extended Amorine's probation for an additional year. In January 2015, the state's board of probation and parole filed a case summary report and a field violation report, both informing the circuit court that Amorine had an earned discharge date in July 2015 and, with continued supervision compliance, an optimal discharge date of April 1, 2015. Both reports noted Amorine still had failed to pay court costs or report community service hours, and one recommended that the court revoke Amorine's probation, suspend execution of sentence, place him on a new term of probation, and require him to pay his court costs and perform community service. The court scheduled a case review in February 2015. At a hearing on that date, only Amorine appeared, and the court continued the case to March 2015 to set a probation revocation hearing. Both Amorine and the state appeared before the court in March, May, June, July and August 2015, and each time the court continued the case. The probation revocation hearing finally was held in September 2015, at which Amorine asserts his attorney made an oral motion to discharge him from probation, arguing the court lacked authority to hold the hearing because Amorine's optimal and earned discharge dates both had passed and the state failed to file a motion to revoke his probation. Amorine states the court overruled his counsel's motion, but no ruling is reflected in the case record. The state moved to revoke Amorine's

probation, and the court continued the case to October. Amorine now asks this Court to make permanent its preliminary writ prohibiting the circuit court from taking further action in his case.

PRELIMINARY WRIT MADE PERMANENT.

Court en banc holds: The circuit court exceeded its authority in continuing Amorine's probation revocation hearing indefinitely after he should have been discharged from probation. The circuit court is directed to discharge Amorine from probation.

(1) Under section 217.703.10, RSMo, the board of probation and parole must notify a sentencing court or prosecuting attorney no fewer than 60 days prior to the date of an offender's final discharge from probation and, if no action is taken, the offender shall be discharged. The circuit court that had sentenced Amorine was notified twice in January 2015 that Amorine had an earned discharge date in July 2015 and, with continued supervision compliance, an optimal discharge date of April 1, 2015. Subsequently, no additional violation reports were filed, and the state did not file a motion to revoke or suspend Amorine's probation. Because Amorine complied with his supervision, he should have been discharged from probation on April 1, 2015.

(2) A court generally has authority to revoke probation only until the probationary term ends. The court can extend its authority beyond the probationary term only when two conditions are met – the court must have manifested its intent to conduct a revocation hearing during the probation term, and the court must make every reasonable effort to notify the probationer and hold the hearing before the term ends. Here, the case record indicates the court attempted to revoke Amorine's probation prior to his discharge date because, during the February 2015 case review, the court continued the case to March 2015 to set a probation revocation hearing. But there is no indication that the state filed a motion to revoke Amorine's probation nor any clear indication that Amorine was notified his probation could be revoked. Regardless, the court did not act to hold a revocation hearing in March 2015 or any of the six additional times the state and Amorine appeared before the court, nor did the court explain why it kept continuing the case.