

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

BERNICE M. STARRY

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD71557

DATE: August 31, 2010

Appeal From:

Miller County Circuit Court
The Honorable G. Stanley Moore, Judge

Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt,
Judges

Attorneys:

Craig A. Johnston, Columbia, MO, for appellant.

Shaun J. Mackelprang and Dora A. Fichter, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

BERNICE M. STARRY,

APPELLANT,

v.

STATE OF MISSOURI,

RESPONDENT.

No. WD71557

Miller County

Before Division Three Judges: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt, Judges

On October 22, 2001, Bernice M. Starry pled guilty in Miller County Circuit Court to the class C felony of possession of a controlled substance (more than thirty five grams of marijuana),. Pursuant to her guilty plea, the circuit court sentenced Starry to five years in the Missouri Department of Corrections, with execution of the sentence suspended, and she was placed on five years of probation.

On October 17, 2006, a probation violation hearing was held, which eventually led the circuit court on April 16, 2007, to extend Starry's probation for one year. On November 6, 2007, the circuit court issued a warrant for Starry's arrest, and on June 17, 2008, the Court revoked her probation and ordered Starry to serve her prison sentence.

Starry filed a motion for post-conviction relief on October 22, 2008. The motion court issued its Findings of Fact, Conclusions of Law, and Judgment on September 16, 2009, which denied Starry's post-conviction relief motion.

REVERSED AND REMANDED.

Division Three holds:

In her sole Point on appeal, Starry argues that the circuit court erred in denying her post-conviction relief motion because her probation expired on October 21, 2007, before the probation violation and warrant were filed on November 6, 2007. We agree.

Section 559.016 makes clear that the maximum time Starry could be placed on probation was six years. Authority to revoke probation normally ends when the probationary period expires. Starry was placed on a five year term of probation on October 22, 2001. Even when assuming that the circuit court properly extended her probation for an additional year, Starry's probation expired on October 21, 2007. Thereafter, the circuit court did not have statutory authority over Starry to revoke her probation.

For all of these reasons, we conclude that the motion court's judgment, which denied Starry's post-conviction relief motion, was clearly erroneous. The motion court's denial of Starry's claim is reversed, and the cause is remanded with instructions to enter an order vacating the judgment revoking her probation and discharging Starry from incarceration.

Opinion by: Gary D. Witt, Judge

August 31, 2010

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