

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE STYLE OF THE CASE:

FREDERICK SPENCER,

Appellant,

v.

STATE OF MISSOURI, et al,

Respondent.

**DOCKET NUMBER WD72100
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

Date: December 28, 2010

Appeal from:
Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:
Division Two: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

Attorneys:
Frederick Spencer, Pro Se, Bowling Green, MO, for appellant.
Emily A. Dodge, Esq., Jefferson City, MO and John L. McMullin, III, Esq., St. Louis, MO, for
respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

FREDERICK SPENCER

Appellant,

v.

STATE OF MISSOURI, et al,

Respondent.

WD72100

Cole County

Before Division Two Judges: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

Dr. Frederick Spencer is currently incarcerated based on his convictions for forcible rape and forcible sodomy. He appeals the Cole County Circuit Court's judgment dismissing his petition for declaratory relief with prejudice. Although he makes multiple arguments, Spencer's primary claim is that the Missouri Sex Offender Program ("MoSOP") violates his Fifth Amendment privilege against self incrimination, by requiring that he admit to commission of the offenses of which he was convicted as a condition of successful completion of the program. Spencer alleges that he was terminated from the program because of his refusal to admit his guilt, and that he was denied eligibility for parole, conditional release, and good-time credits against his sentence as a result of his failure to complete the program.

AFFIRMED.

Division Two holds:

Under *McKune v. Lile*, 536 U.S. 24 (2002), the consequences imposed on a convicted sex offender for failure to admit guilt as part of a rehabilitative sex-offender treatment program do not violate the Fifth Amendment privilege against self-incrimination where "the adverse consequences an inmate faces for not participating are related to the program objectives and do not constitute atypical and significant hardships in relation to the ordinary incidents of prison life." *Id.* at 38. That standard is satisfied here. As the Supreme Court recognized in *McKune*, successful completion of sex-offender treatment programs like the MoSOP is recognized to serve the legitimate penological objective of reducing sex offenders' risk of recidivism, and admission of guilt is an essential component of such programs. Moreover, eligibility for conditional release and the award of good-time credits are discretionary with the Department of Corrections and the Board of Probation and Parole, and the denial of such benefits to Spencer therefore does not

constitute an "atypical and significant hardship in relation to the ordinary incidents of prison life."

Denying Spencer discretionary early release does not violate the *ex post facto* clause either. Spencer's total prison sentence has not been altered by the actions he challenges; moreover, the policies adopted by the Department of Corrections and the Board of Probation and Parole to implement the legislative directive that convicted sex offenders complete a treatment program do not themselves constitute "laws" subject to *ex post facto* limitations.

Finally, Spencer was not prejudiced by the trial court's refusal to permit him, after judgment, to amend his petition, where he does not identify any facts he would have alleged by way of an amended petition which would have cured the legal deficiencies in the claims he originally asserted.

Opinion by: Alok Ahuja, Judge

December 28, 2010

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