

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

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**COMPLETE TITLE OF CASE**

DARRELL MILLER,

Appellant,

v.

MISSOURI DEPARTMENT OF CORRECTIONS,

Respondent.

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**DOCKET NUMBER WD72699**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** April 5, 2011

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**APPEAL FROM**

The Circuit Court of DeKalb County, Missouri  
The Honorable Warren L. McElwain, Judge

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**JUDGES**

Division I: Pfeiffer, P.J., and Newton and Ahuja, JJ.

CONCURRING.

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**ATTORNEYS**

Kent E. Gipson and Reed L. Wycuff  
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Attorneys for Appellant,

Chris Koster, Attorney General  
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Jefferson City, MO

Attorneys for Respondent.

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## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

DARRELL MILLER, )  
)  
) Appellant, )  
)  
v. ) OPINION FILED:  
) April 5, 2011  
)  
MISSOURI DEPARTMENT OF )  
CORRECTIONS, )  
)  
) Respondent. )

WD72699

DeKalb County

**Before Division I Judges:** Mark D. Pfeiffer, Presiding Judge, and  
Thomas H. Newton and Alok Ahuja, Judges

Darrell Miller appeals the dismissal of his petition for declaratory judgment requesting additional credit for time served in custody prior to the commencement of his fifteen-year prison term, contending that the Missouri Department of Corrections improperly calculated and credited time served in custody. On appeal, Miller argues that he is entitled to credit under section 558.031.1 for the time spent in custody between February 17, 2007, and December 7, 2007, because that custodial time related to violations of his probation conditions on his fifteen-year prison sentence.

**AFFIRMED.**

### **DIVISION I HOLDS:**

The triggering event to determine section 558.031.1 “in custody” sentencing credit is the *commencement of the sentence*, not the date of sentencing. For time in custody to be “related to” an offense, there must be some right to be free from custody absent the subsequent offense. The offense for which Miller received the fifteen-year prison sentence was not the “subsequent offense” that returned him to custody – that “subsequent offense” was Miller’s arrest on a *parole* violation warrant for an unrelated offense. Miller was correctly precluded from receiving credit towards his fifteen-year prison sentence for time he served without eligibility for release under the parole violation warrant he was arrested for on February 17, 2007, and for which he remained

in custody without eligibility for release up to and including the date his fifteen-year prison sentence commenced on December 7, 2007.

**OPINION BY:** Mark D. Pfeiffer, Presiding Judge

April 5, 2011

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