

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

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**COMPLETE TITLE OF CASE**

DEREK MASTERS,

Appellant,

v.

GEORGE LOMBARDI, DIRECTOR, DEPARTMENT OF CORRECTIONS,

Respondent.

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**DOCKET NUMBER WD78232**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** October 6, 2015

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**APPEAL FROM**

The Circuit Court of Cole County, Missouri  
The Honorable Daniel R. Green, Judge

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**JUDGES**

Division Three: Mitchell, P.J., and Hardwick and Gabbert, JJ.

CONCURRING.

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**ATTORNEYS**

Scott Thompson, Assistant Public Defender  
St. Louis, MO

Attorney for Appellant,

Chris Koster, Attorney General  
Michael J. Spillane, Assistant Attorney General  
Jefferson City, MO

Attorneys for Respondent.

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

**DEREK MASTERS,** )  
 )  
 ) **Appellant,** )  
**v.** ) **OPINION FILED:**  
 ) **October 6, 2015**  
**GEORGE LOMBARDI, DIRECTOR,** )  
**DEPARTMENT OF CORRECTIONS,** )  
 )  
 ) **Respondent.** )

**WD78232**

**Cole County**

**Before Division Three Judges:** Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Anthony Rex Gabbert, Judges

Derek Masters appeals the trial court’s grant of the Department of Corrections’s motion for judgment on the pleadings on his petition for declaratory judgment. Masters sought a declaration that he was entitled to a sentence under § 559.115 (120-day shock incarceration, recommended by the court) and that the Department misinterpreted the statute in determining that Masters was ineligible for the sentence.

**REVERSED AND REMANDED.**

**Division Three holds:**

1. The plain language of § 558.019 indicates that it does not override the court’s power to grant an offender probation upon successful completion of a 120-day program under § 559.115.
2. Offenses involving “a statutory prohibition against either probation or parole,” under § 558.019.8, does not refer to all offenses containing simple limitations on the grant of probation or parole. Nor does it mean only those offenses for which probation or parole are wholly unavailable.

3. Rather, it means offenses subject to a prohibition on either probation or parole arising from a statute other than § 558.019.
4. Because first-degree assault (the crime Masters was convicted of) does not have a prohibition on probation or parole outside of § 558.019, the trial court erred in granting the Department's motion for judgment on the pleadings.

**Opinion by: Karen King Mitchell, Presiding Judge**

October 6, 2015

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.