

No. SC94716

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IN THE  
MISSOURI SUPREME COURT

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STATE OF MISSOURI, ex rel.  
Mark A. Richardson

*Relator,*

v.

THE HONORABLE DANIEL R. GREEN,  
*Respondent.*

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Original Proceeding in Prohibition from the Cole County Circuit Court  
19th Judicial Circuit  
The Honorable Daniel R. Green, Judge

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**RELATOR'S REPLY BRIEF**

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## **JURISDICTIONAL STATEMENT**

This is an original proceeding in prohibition. The relator is seeking a writ of prohibition to bar the Circuit Court Judge from reducing the sentences imposed against Larry Welch. This Court has granted a preliminary writ of prohibition. The Missouri Supreme Court has original jurisdiction. Therefore, jurisdiction lies in the Missouri Supreme Court. MO. CONST. Art. V, § 3.

### POINT RELIED ON

Relator is entitled to an order prohibiting Respondent from reducing the sentence of Welch, because Respondent's actions were outside the jurisdictional authority conferred upon the sentencing court, in that the sentencing court only retains jurisdiction to reduce a sentence if the statutory requirements of section 558.046, RSMo, are satisfied and Welch does not satisfy these requirements because he was convicted of crimes that involved violence or the threat of violence.

*Begay v. United States*, 553 U.S. 137, (2008)

## ARGUMENT

Relator is entitled to an order prohibiting Respondent from reducing the sentence of Welch, because Respondent's actions were outside the jurisdictional authority conferred upon the sentencing court, in that the sentencing court only retains jurisdiction to reduce a sentence if the statutory requirements of section 558.046, RSMo, are satisfied and Welch does not satisfy these requirements because he was convicted of crimes that involved violence or the threat of violence.

### Standard of Review

This is an original proceeding in prohibition. The standard of review for writs of mandamus and prohibition is abuse of discretion, and an abuse of discretion occurs where the circuit court fails to follow applicable statutes. *State ex rel. City of Jennings v. Riley*, 236 S.W.3d 630, 631 (Mo. banc 2007).

### Discussion

Respondent suggests that the holding in *Begay v. United States*, 553 U.S. 137 (2008) impacts on the cases Relator cited discussing the federal language "crime of violence" used for enhancement purposes in the federal sentencing guidelines. Respondent's reliance on *Begay* is misplaced. *Begay* involved a felony DWI, not involuntary manslaughter. Also, *Begay* involved the fifteen year mandatory minimum enhancement for the federal offense of possession of a firearm by a career violent offender. In the opinion in *Begay*, the majority stated: "Finally, we assume that the lower courts were right in concluding that DUI involves conduct that 'presents a serious potential risk of physical injury to another.' § 924(e)(2)(B)(ii). Drunk driving is an

extremely dangerous crime. In the United States in 2006, alcohol-related motor vehicle crashes claimed the lives of more than 17,000 individuals and harmed untold amounts of property. National Highway Traffic Safety Admin., Traffic Safety Facts, 2006 Traffic Safety Annual Assessment—Alcohol-Related Fatalities 1 (No. 810821, Aug. 2007), <http://www-nrd.nhtsa.dot.gov/Pubs/810821.PDF> (as visited Apr. 11, 2008, and available in Clerk of Court's case file). Even so, we find that DUI falls outside the scope of clause (ii). It is simply too unlike the provision's listed examples for us to believe that Congress intended the provision to cover it.” *Begay v. United States*, 553 U.S. 137, 141-142 (2008). Thus, the holding in *Begay* does not support Respondent’s argument.

Respondent’s argument that “all manner of seemingly non-violent conduct transforms into violent crime if injury or damage to property results” misses the mark when discussing the convictions at issue. Convictions for involuntary manslaughter and assault require the element of “caused the death of another” and “caused physical injury to another” respectfully one hundred percent of the time. Relator’s use of the words “no matter how minor, any act, however non-violent” does not in any way accurately describe the crimes for which Welch was convicted.

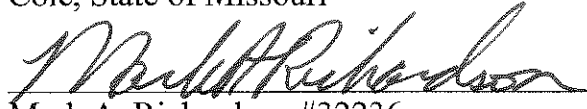
The Court ought to prohibit the sentence reductions by Respondent.

## CONCLUSION

The trial court should be permanently prohibited from reducing the sentences of the defendant Welch.

Respectfully submitted,

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### CERTIFICATE OF COMPLIANCE

I hereby certify:

1. The Relator's Brief, as submitted in the above-styled cause, includes the information required by Rule 55.03.
2. The brief submitted complies with the limitations contained in Supreme Court Rule 84.06(b).
3. The brief was completed using Microsoft Word, in Times New Roman, size 13-point font.
4. As reported by the undersigned's copy of Microsoft Word, the word count is 622.

### CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March, 2015, electronic copies of Relator's Reply Brief were delivered through the Missouri e-Filing System to James D. Barding, attorney for Respondent, at [dogbarking@mchsi.com](mailto:dogbarking@mchsi.com).

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