

SUPREME COURT OF MISSOURI

State ex rel. Gary D. Sampson, Jr. v. The Honorable William E. Hickie

573 S.W.3d 76 (Mo. banc 2019) · No. SC97002 · Decided May 21, 2019

SUMMARY

The Missouri Supreme Court held that the circuit court erred by placing Gary D. Sampson, Jr. on a third term of probation after he successfully completed a 120-day institutional treatment program. The court issued a permanent writ of mandamus directing the circuit court to reinstate Sampson's prior probationary term, while leaving the calculation of earned compliance credits and the question of probation expiration for further determination.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	George W. Draper III
JURISDICTION	Missouri
DECIDED	May 21, 2019
DOCKET	SC97002
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding in mandamus arising from the circuit court's denial of Sampson's motion to be discharged from probation and its setting of a probation violation hearing.
STANDARD OF REVIEW	Denial of a petition for a writ of mandamus is reviewed for abuse of discretion. An abuse of discretion occurs when the circuit court misapplies an applicable statute.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Missouri; precedential.

TOPICS

probation criminal procedure statutory interpretation appellate procedure remedies

PRACTICE AREAS

criminal procedure appellate procedure probation statutory interpretation extraordinary writs

QUESTIONS PRESENTED

1. Whether the circuit court had statutory authority to place Sampson on a new third term of probation after he successfully completed the 120-day institutional treatment program.
2. Whether the circuit court had authority to conduct a probation violation hearing after the probationary term allegedly expired through the application of earned compliance credits.

HOLDINGS

1. After successful completion of the 120-day program, section 559.036.4(3) authorized the circuit court only to release Sampson to continue serving his existing term of probation; it did not authorize the court to impose a new, modified, enlarged, or extended term based on the same violation.
2. The Court did not resolve whether the circuit court had authority to conduct the probation violation hearing because the circuit court's improper imposition of a new probationary term rendered the applicable probation period and earned-compliance-credit calculation uncertain. The circuit court was required first to reinstate Sampson's valid second term so the Board could recalculate the credits and determine whether probation had expired when the court manifested its intent to conduct a revocation hearing.

KEY QUOTATIONS

“once the defendant has successfully completed the program under this subsection, the court shall release the defendant to continue to serve the term of probation, which shall not be modified, enlarged, or extended based on the same incident of violation.”

“Unless both requirements are satisfied, the trial court loses the authority to revoke probation beyond the expiration of its term.”

FACTUAL BACKGROUND

Sampson pleaded guilty to possession of a controlled substance in November 2012 and was placed on a five-year term of probation. After probation was revoked and the execution of a six-year sentence was suspended, he was placed on another five-year term, later violated probation, and was placed in a 120-day institutional treatment program. After Sampson successfully completed the program, the circuit court imposed a new five-year probationary term instead of continuing his existing term. The State later moved to revoke probation, while Sampson argued that earned compliance credits had resulted in his statutory discharge.

PROCEDURAL HISTORY

Sampson pleaded guilty to possession of a controlled substance and received probation. After probation violations, revocation, a six-year sentence with suspended execution, and placement in a 120-day institutional treatment program, the circuit court granted him probation but improperly imposed a new five-year term rather than continuing his existing term. When the State later moved to revoke probation, Sampson moved for discharge, arguing that earned compliance credits had caused his probation to expire. The circuit court denied relief, and Sampson sought mandamus or prohibition; the Supreme Court of Missouri issued a preliminary writ and ultimately ordered a permanent writ of mandamus.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The circuit court must enter an order continuing Sampson's second term of probation after his dismissal from the 120-day institutional treatment program. The Board must then recalculate any earned compliance credits to determine whether Sampson was statutorily discharged when the circuit court manifested its intent to conduct a probation revocation hearing.

CASES CITED

- J.C.W. ex rel. Webb v. Wyciskalla, 275 S.W.3d 249, 254 (Mo. banc 2009)
- U.S. Dep't of Veterans Affairs v. Boresi, 396 S.W.3d 356, 359 (Mo. banc 2013)
- Furlong Cos. v. City of Kansas City, 189 S.W.3d 157, 165-66 (Mo. banc 2000)
- State ex rel. Hodges v. Asel, 460 S.W.3d 926, 927 (Mo. banc 2015)
- State ex rel. Robison v. Lindley-Myers, 551 S.W.3d 468, 471 (Mo. banc 2018)
- State v. Ajak, 543 S.W.3d 43, 52 (Mo. banc 2018)
- State v. Blankenship, 415 S.W.3d 116, 121 (Mo. banc 2013)
- State ex rel. Strauser v. Martinez, 416 S.W.3d 798, 801 (Mo. banc 2014)
- State ex rel. Weaver v. Martinez, 481 S.W.3d 127, 128 (Mo. App. E.D. 2016)
- Miller v. State, 558 S.W.3d 15, 20 (Mo. banc 2018)
- Ban v. State, 554 S.W.3d 541, 545-46 (Mo. App. E.D. 2018)

OPINION

DRAPER III, J.

SUPREME COURT OF MISSOURI

en banc

STATE OF MISSOURI ex rel.) Opinion issued May 21, 2019

GARY D. SAMPSON, JR.,)

)

Relator,)

)

v.) No. SC97002

)

THE HONORABLE)

WILLIAM E. HICKLE,)

)

Respondent.)

ORIGINAL PROCEEDING IN MANDAMUS

Gary D. Sampson, Jr. (hereinafter, “Sampson”) filed a petition for a writ of mandamus, requesting his immediate discharge from probation. Sampson argues the circuit court erred in overruling his motion to be discharged from probation and setting the matter for a probation violation hearing because the circuit court lost authority¹ by placing him on a third term of probation. Sampson asserts if his earned compliance credits (hereinafter, “ECC”) were applied properly, he should have been discharged

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Sampson repeatedly claims the circuit court was without jurisdiction to act in this case. However, this Court determined in *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 254 (Mo. banc 2009), there are only two types of jurisdiction—personal and subject matter. The circuit court in this case had both. Sampson’s actual claims are the circuit court exceeded its statutory authority to act. This Court reminds litigants to be mindful of this distinction.

statutorily from probation and the circuit court had no authority to conduct another probation violation hearing because his term of probation had expired.

This Court holds the circuit court erred in placing Sampson on a third term of probation. However, due to the fact Sampson should have still been serving a valid second probationary term, it is unclear whether the circuit court had authority to conduct a probation violation hearing or whether Sampson’s probation expired statutorily. A permanent writ of mandamus is directed to issue ordering the circuit court to reinstate Sampson’s previous probationary term.

Factual and Procedural Background

In November 2012, Sampson pleaded guilty to possession of a controlled substance. Sampson was granted a suspended imposition of sentence and placed on a five-year term of probation.

Sampson’s probation was revoked in November 2013. Sampson was sentenced to a six-year term of imprisonment, but the circuit court suspended the execution of the sentence and placed Sampson on a new five-year term of probation.

In December 2014, Sampson admitted to violating his probation by using controlled substances. The circuit court continued Sampson's term of probation and imposed additional conditions.

Sampson's probation was revoked again in July 2015, and the circuit court ordered his sentence to be executed. Sampson was placed into a 120-day institutional treatment

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program. Pursuant to section 559.115, RSMo Supp. 2013, 2 the circuit court retained jurisdiction for the 120-day period. Following the treatment program, the circuit court granted Sampson probation, effective November 2015, for a term of five years.

In December 2017, the state filed a motion to revoke Sampson's probation.

Sampson filed a motion to be discharged from probation in February 2018, claiming the state's revocation motion was filed after his statutory discharge date. The circuit court overruled Sampson's motion.

Sampson then petitioned this Court for a writ of mandamus or, in the alternative, prohibition, requesting this Court direct the circuit court to discharge him from probation or, alternatively, prohibit the circuit court from holding a probation violation hearing.

This Court issued a preliminary writ of mandamus.

After oral argument in this case, the Board of Probation and Parole (hereinafter, "the Board") issued a letter to the circuit court. The Board informed the circuit court that with the application of ECC, Sampson was discharged statutorily from probation effective August 1, 2018.

Standard of Review

This Court has jurisdiction to issue original remedial writs. Mo. Const. art. V, sec.

4. A writ of mandamus may issue upon proof of a "clear, unequivocal specific right to a thing claimed." U.S. Dep't. of Veterans Affairs v. Boresi, 396 S.W.3d 356, 359 (Mo.

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All statutory references are to RSMo Supp. 2013 unless otherwise indicated. While the

sections regarding probation have been amended multiple times since Sampson was placed on probation, the relevant statutory language regarding revocation has not changed.

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banc 2013) (quoting *Furlong Cos v. City of Kansas City*, 189 S.W.3d 157, 165-66 (Mo. banc 2000)). The denial of a petition for a writ of mandamus is reviewed for an abuse of discretion. *Boresi*, 396 S.W.3d at 359. “When a statutory right is at issue, a court must analyze the statute or statutes under which the relator claims the right.” *State ex rel. Hodges v. Asel*, 460 S.W.3d 926, 927 (Mo. banc 2015). An abuse of discretion occurs when the circuit court misapplies an applicable statute. *State ex rel. Robison v. Lindley-Myers*, 551 S.W.3d 468, 471 (Mo. banc 2018).

The primary rule of statutory interpretation is to effectuate the legislature’s intent through reference to the plain and ordinary meaning of the statutory language. *State v. Ajak*, 543 S.W.3d 43, 52 (Mo. banc 2018). “This Court considers the words used in their plain and ordinary meaning.” *State v. Blankenship*, 415 S.W.3d 116, 121 (Mo. banc 2013).

Analysis

Sampson claims the circuit court erred in overruling his motion to be discharged from probation and setting the matter for a probation violation hearing because the circuit court lost authority by placing him on a third term of probation following his 120-day institutional treatment program. Sampson asserts if his ECC were applied properly, he should have been discharged statutorily from probation and the circuit court had no authority to conduct another probation violation hearing because his term of probation had expired.

Sampson presents two issues in his sole point on appeal for this Court’s consideration. First, this Court must determine whether the circuit court had authority to

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place Sampson in a 120-day institutional treatment program and subsequently place him

on a third term of probation. Second, this Court must determine whether the circuit court had the authority to conduct a probation violation hearing.

Third Term of Probation

The duration of a defendant's probation and the circuit court's power to revoke probation is governed by section 559.036. *State ex rel. Strauser v. Martinez*, 416 S.W.3d 798, 801 (Mo. banc 2014). A circuit court has the authority to revoke a defendant's probation once if the probationary terms are violated. *State ex rel. Weaver v. Martinez*, 481 S.W.3d 127, 128 (Mo. App. E.D. 2016); section 559.036.5.

Pursuant to section 559.036.4(1), "if a continuation, modification, enlargement or extension [of probation] is not appropriate under this section, the [circuit] court shall order placement of the offender in one of the department of corrections' one hundred twenty-day programs...." The circuit court imposed a new term of probation in November 2013 and extended Sampson's probation in December 2014. In July 2015, the circuit court determined Sampson met all further criteria for placement in a 120-day institutional treatment program as contemplated by section 559.036.4. Accordingly, the circuit court properly placed Sampson in a 120-day institutional treatment program pursuant to section 559.036.4 and section 559.115.

Sampson successfully completed his 120-day institutional treatment program.

"[O]nce the defendant has successfully completed the program under this subsection, the court shall release the defendant to continue to serve the term of probation, which shall
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not be modified, enlarged, or extended based on the same incident of violation." Section 559.036.4(3) (emphasis added).

When Sampson was released from his 120-day institutional treatment program, the circuit court entered a new five-year term of probation. This action was erroneous. Statutorily, the circuit court is authorized only to continue the existing term of probation. *Id.* It may not modify, enlarge or extend the previously imposed term of probation. *Id.*

When Sampson was released from his 120-day institutional treatment program, he should have resumed serving his second term of probation, which was imposed in November 2013 and extended in December 2014.

Authority to Conduct a Probation Violation Hearing

Section 559.036.8 governs the circuit court's authority to revoke probation. Once a defendant's probation ends, the circuit court's authority to revoke probation also ends. *Id.*; *Strauser*, 416 S.W.3d at 801.

However, in certain circumstances, the circuit court's authority to revoke probation may extend beyond the expiration of the probationary term when two conditions are met. *Id.* First, there must be an "affirmative manifestation of an intent to conduct a revocation hearing" before the end of the probationary period. Section 556.036.8. Second, the circuit court must have made "every reasonable effort... to notify the probationer and to conduct the hearing prior to the expiration of the period." *Id.* "Unless both requirements are satisfied, the trial court loses the authority to revoke probation beyond the expiration of its term." *Miller v. State*, 558 S.W.3d 15, 20 (Mo. banc 2018).

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To ascertain whether the circuit court manifested its intent to conduct a revocation hearing within the probationary period, it must be determined when the probationary period is set to expire. "While [s]ection 559.036 defines the circuit court's authority to revoke probation, [s]ection 217.703 governs the awarding of [ECC], which will reduce the period of probation." *Ban v. State*, 554 S.W.3d 541, 545 (Mo. App. E.D. 2018). ECC are awarded to probationers who comply with the conditions of their supervision by the Board. *Id.* at 545; section 217.703.1. "A person is considered to be 'in compliance' when there is the absence of an initial violation report submitted by a probation or parole officer during the calendar month, or the absence of a motion to revoke or motion to suspend filed by the prosecuting or circuit attorney." *Id.* at 545;

section 217.703.4. “All [ECC] shall be rescinded if the court or board revokes the probation or parole or the court places the offender in a department program under subsection 4 of section 559.036.” Section 217.703.5. The awarding or rescinding of any ECC “shall not be subject to appeal or any motion for postconviction relief.” Section 217.703.8; Ban 554 S.W.3d at 546.

Sampson asserts he earned enough ECC to be discharged statutorily from probation prior to the circuit court’s manifestation of an intent to conduct a probation revocation hearing. While it is clear the circuit court erroneously imposed a new term of probation following Sampson’s release from the 120-day program, it is not clear whether Sampson’s properly imposed second term of probation has expired. Because the circuit court improperly awarded him a new probationary term following his 120-day

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institutional treatment program, any report issued by the Board relying upon the circuit court’s determination would be invalid.

Conclusion

The circuit court erroneously imposed a new term of probation for Sampson following his successful completion of the 120-day institutional treatment program.

Accordingly, a permanent writ of mandamus is directed to issue ordering the circuit court to enter an order continuing Sampson’s second term of probation after he was dismissed from the 120-day institutional treatment program. 3

GEORGE W. DRAPER III, JUDGE

All concur.

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Based upon the correct continuation of Sampson’s probation, the Board will be able to recalculate any ECC for use in determining whether Sampson was discharged statutorily when the circuit court manifested its intent to conduct a probation revocation hearing.

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