

IN THE CIRCUIT COURT OF CRAWFORD COUNTY

STATE OF MISSOURI

STATE OF MISSOURI,
Plaintiff,

v.

██████████
Defendant.

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Cause No. ██████████

Division ██████

Judge ██████████

**DEFENDANT'S MOTION FOR DISCHARGE FROM PROBATION FOR
LACK OF JURISDICTION DUE TO
TERMINATION AND EXPIRATION OF HER MISDEMEANOR PROBATION
ON OR ABOUT DECEMBER 7, 2013**

COMES NOW DEFENDANT, by counsel, and moves this Honorable Court for an Order discharging her from probation, on grounds that by virtue of the Missouri Supreme Court's decision in *State v. Bazell*, case number SC95318, 2016 WL 4444392 (Mo. Banc 2016) (State's Motion for Rehearing denied and mandate issued 9/20/2016): (1) The B felony enhancement provision of § 570.030.7 RSMo. 2010 does not apply to Defendant's offense; (2) Defendant's offense must be classified as a misdemeanor; (3) Defendant's probationary term has long ago expired pursuant to the requirements of § 559.016.1(2) RSMo.; and, (4) this Court now lacks jurisdiction to do anything other than discharge Defendant from probation, under the strictures of § 559.036.8., RSMo. *State ex rel. Parrott v. Martinez*, (Mo. App. E.D. 2016) 2016 WL 1230506 (Writ of Prohibition made absolute.)

In support of this motion, Defendant states as follows:

1. On July 28, 2011, Plaintiff herein filed its Information alleging that Defendant committed the Class B Felony of Stealing under the provisions of § 570.030.7 RSMo. 2010, in connection with Defendant's alleged conduct "between July 19, 2010 and November 23, 2010"

whereby she allegedly “appropriated money of a value of at least twenty-five thousand dollars.”

2. On October 5, 2011, Defendant pled guilty, the Court found her guilty, a Sentencing Advisory Report (SAR) was ordered, and sentencing was set for December 6, 2011.

3. On December 6, 2011, pursuant to that guilty plea and upon return of the SAR, the Court suspended the imposition of any sentence against Defendant, and Defendant was placed on probation for a period of five years, purportedly establishing an expiration date of her probation on December 5, 2016. The Court imposed as a special condition of her probation that “Defendant shall make restitution to the victim in the amount of \$150,000.00 payable according to a schedule to be provided by his [sic] probation officer.”

4. Defendant has at all times since December 6, 2011 paid restitution according to the schedule provided by her probation officer.

5. On July 28, 2016, Plaintiff’s Department of Probation and Parole filed an initial violation report against Defendant. Prior thereto, no violation report had ever been filed against Defendant.

6. On August 31, 2016, Plaintiff filed a Motion to Revoke Probation, alleging failure to pay restitution as its sole ground. Prior thereto, no Motion to Revoke Probation has ever been filed against Defendant.

7. No motion to suspend Defendant’s probation has ever been filed and her probation has never been suspended.

8. Defendant’s probation expired by operation of law on or about December 7, 2013, because the Class B felony enhancement provisions of § 570.030.7 RSMo. 2010 does not apply to Defendant’s offense, and her offense must be classified as a single Class A Misdemeanor.

9. § 570.030 RSMo. 2010 was in effect throughout 2010 and 2011 and stated in

pertinent part as follows:

570.030.1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

7. Any offense in which the value of property or services is an element is a class B felony if the value of the property or services equals or exceeds twenty-five thousand dollars.

8. Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor.

(Emphasis added.)

10. The legislature in 2002 unambiguously decided to amend the felony enhancement provisions of § 570.030 to add the requirement that only offenses for which “the value of property or services is an element” may be enhanced to a felony.

11. Prior to the above 2002 amendments, § 570.030 stated:

570.030. 1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

3. Stealing is a class C felony if:

(1) The value of the property or services appropriated is seven hundred fifty dollars or more; or

(2) The actor physically takes the property appropriated from the person of the victim; or

(3) The property appropriated consists of:

(a) Any motor vehicle, watercraft or aircraft; or

(b) Any will or unrecorded deed affecting real property; or

(c) Any credit card or letter of credit; or

(d) Any firearms; or

(e) A United States national flag designed, intended and used for display on buildings or stationary flagstaffs in the open; or

(f) Any original copy of an act, bill or resolution, introduced or acted upon by the legislature of the State of Missouri; or

(g) Any pleading, notice, judgment or any other record or entry of any court of this state, any other state or of the United States; or

(h) Any book of registration or list of voters required by chapter 115, RSMo; or

- (i) Any animal of the species of horse, mule, ass, cattle, swine, sheep, or goat; or
- (j) Live fish raised for commercial sale with a value of seventy-five dollars; or
- (k) Any controlled substance as defined by section 195.010, RSMo; or
- (l) Ammonium nitrate.

4. If an actor appropriates any material with a value less than one hundred fifty dollars in violation of this section with the intent to use such material to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues, then such violation is a class D felony. The theft of any amount of anhydrous ammonia or liquid nitrogen, or any attempt to steal any amount of anhydrous ammonia or liquid nitrogen, is a class C felony. The theft of any amount of anhydrous ammonia by appropriation of a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank or field applicator is a class A felony.

6. Any person with a prior conviction of paragraph (i) of subdivision (3) of subsection 3 of this section and who violates the provisions of paragraph (i) of subdivision (3) of subsection 3 of this section when the value of the animal or animals stolen exceeds three thousand dollars is guilty of a class B felony.

7. Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor.

12. The § 570.030.7 RSMo. 2010 Class B felony enhancement provision, by its own terms, only applies if the offense is one “in which the value of property or services is an element.”

13. Stealing has at all times pertinent hereto been defined in § 570.030.1 as “appropriat[ing] property or services of another with the purpose to deprive him or her thereof, either without his consent or by means of deceit or coercion.”

14. In the unanimous, *per curiam*, opinion of the Missouri Supreme Court, the value of property or services appropriated is not an element of the offense of stealing. *State v. Bazell*, case number SC95318, 2016 WL 4444392 (Mo. Banc 2016) (State’s Motion for Rehearing denied and mandate issued 9/20/2016) (Explicitly overruling *State v Passley*, 389 S.W.3d 180

(*Mo.App. 2012*) on the point.)

15. As a result, § 570.030.7 RSMo. 2010 does not apply here. Defendant's offense must be classified as a Class A misdemeanor, as required by § 570.030.8 RSMo. 2010. (*Bazell, id.*)

16. Probation in any misdemeanor case terminates and is not subject to revocation after two years, under the provisions of § 559.016.1, which states:

559.016.1. Unless terminated as provided in section 559.036 or modified under section 217.703, the terms during which each probation shall remain conditional and be subject to revocation are:
(1) A term of years not less than one year and not to exceed five years for a felony;
(2) **A term not less than six months and not to exceed two years for a misdemeanor;**

(Emphasis added.)

17. Under the strictures of § 559.036 RSMo.,

7. The prosecuting or circuit attorney may file a motion to revoke probation or at any time **during the term of probation....**

8. The power of the court to revoke probation shall extend **for the duration of the term of probation....**

(Emphasis added.)

18. Because Defendant's misdemeanor probation expired and terminated two (2) years after it was imposed, which is to say on or about December 7, 2013: (1) the State's August 31, 2016 probation revocation motion is untimely; (2) the Court is without power to revoke Defendant's probation; (3) the Court is required to order the final discharge of Defendant from probation; and (4) the Court is without jurisdiction to do anything else under Section 559.036.8. RSMo. *State ex rel. Parrott v. Martinez, (Mo. App. E.D. 2016) 2016 WL 1230506 (Writ of Prohibition made absolute.)*

WHEREFORE, Defendant prays the Court will enter its Order discharging Defendant from probation and will grant to her such other and further relief as may be just and proper in the circumstances.

Respectfully submitted,

/s/Frank K. Carlson

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Certificate of Service

I hereby certify that on this 23rd day of September, 2016, an electronic copy of the foregoing was sent through the Missouri e-Filing system to counsel of record.

/s/Frank K. Carlson

Frank K. Carlson, MBE# 27840