

IN THE CIRCUIT COURT OF TEXAS COUNTY, MISSOURI

████████████████████ )  
 )  
 Movant, )  
 )  
 vs. ) Case No. ████████████████████  
 )  
 STATE OF MISSOURI, )  
 )  
 Respondent. )

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

NOW ON THIS \_\_\_\_ day of \_\_\_\_\_, 2016, the Court sustains  
Movant's *Amended Motion under Rule 24.035*, and enters the following findings of fact,  
conclusions of law, and judgment in support thereof:

***Findings of Fact***

Movant was charged by *Indictment* in Texas County Case No. ████████████████████  
with one count of stealing as follows:

The defendant, in violation of Section 570.030, RSMo, committed the class  
C felony of stealing, punishable upon conviction under Sections 558.011  
and 560.011 RSMo, in that on or about October 25, 2013, in the County of  
Texas, State of Missouri, the defendant appropriated numerous tools and a  
1985 10ft trailer of a value of at least five hundred dollars, which was  
owned by ████████████████████, and defendant appropriated such  
property without the consent of ████████████████████ and with the  
purpose to deprive them thereof.

On February 10, 2015, Movant pled guilty to this offense and received a suspended  
imposition of sentence with five years of supervised probation. On September 22, 2015,  
Movant's probation was revoked and a seven-year suspended sentence was imposed with

five years of supervised probation. On January 19, 2016, Movant's probation was once again revoked and his seven-year sentence was executed.

Movant was delivered to the Missouri Department of Corrections on February 2, 2016 and timely filed his *pro se* motion for post-conviction relief under Rule 24.035 on May 12, 2016. The Public Defender was appointed to represent Movant in these post-conviction proceedings on May 26, 2016, and the transcript of Movant's guilty plea and sentencing was filed on August 15, 2016. On October 11, 2016, Public Defender Cinda Eichler timely filed an *Amended Motion under Rule 24.035* on Movant's behalf with a single claim alleging that Movant was denied his right to due process of law because he was convicted of class C felony stealing under Section 570.030.1, RSMo, which was actually a misdemeanor offense under the holding in *State v. Bazell*, and as a result, his seven-year sentence exceeded the maximum term authorized by law for a misdemeanor. The amended motion expressly waived an evidentiary hearing on this claim.

### ***Conclusions of Law***

On August 23, 2016, the Missouri Supreme Court held the following in *State v.*

*Bazell*:

Under section 570.030.1, a person commits the crime of stealing when she appropriates the property or services of another with the purpose to deprive the owner thereof. Section 570.030.3 provides for the enhancement to a class C felony of “any offense in which the value of property or services is an element” if certain conditions are met. The definition of stealing in section 570.030.1 is clear and unambiguous, and it does not include the value of the property or services appropriated as an element of the offense. As a result, enhancement pursuant to section 570.030.3 does not apply ... These offenses must, therefore, be classified as misdemeanors.

*State v. Bazell*, No. SC95318, slip op. at 2 (Mo banc August 23, 2016). Consequently, Movant's conviction of class C felony stealing under Section 570.030.1, RSMo, is actually a misdemeanor offense and his seven-year sentence exceeded the maximum term authorized by law for a misdemeanor. As a result, Movant has been denied his right to due process of law. The motion court is required under *State v. Bazell* to correct Movant's judgment and sentence to reflect a class A misdemeanor conviction and a one-year sentence.

***Judgment***

WHEREFORE, this Court sustains Movant's *Amended Motion under Rule 24.035* and orders that Movant's judgment and sentence in Texas County Case No. [REDACTED] be corrected by the issuance of an *Amended Judgment* reflecting a conviction for class A misdemeanor stealing and a sentence of one-year in the Texas County Jail with credit granted for any time already served in this matter.

SO ORDERED.

\_\_\_\_\_  
JOHN D. BEGER, JUDGE