



**In the Missouri Court of Appeals
Eastern District**

WRIT DIVISION ONE

STATE OF MISSOURI, ex rel.)	No. ED103888
JESSICA A. WEAVER,)	
)	Writ of Prohibition
Relator,)	
)	
vs.)	Cause NO: 09SF-CR01918-01
)	
HONORABLE SANDY MARTINEZ,)	
Circuit Judge, Division 1, Twenty-Fourth)	
Judicial Circuit,)	
)	
Respondent.)	Filed: February 2, 2016

OPINION

Relator Jessica Weaver (Relator) seeks a writ of prohibition against the Honorable Sandy Martinez (Respondent) to prohibit Respondent from conducting a probation revocation hearing to determine whether Relator violated a third term of probation. Relator asserts that the trial court had no authority to place her on a third term of probation because Missouri law permits only two. Respondent did not file a response. The facts and law are clear. In the interest of justice and as permitted by Rule 84.24, we dispense with a preliminary order and oral argument and issue our permanent writ of prohibition.

In 2011, Relator pleaded guilty to two counts of the class B felony of sale of a controlled substance. She was sentenced to two concurrent prison terms of 12 years.

Execution of those sentences was suspended, and Relator was placed on probation for five years.

In March 2012, Relator's probation was revoked and her sentences were executed under §559.115, meaning that Relator was placed in an institutional treatment program.

In June 2012, Relator was released from the program and placed on a second term of probation for five years.

In April 2013, Relator's probation was revoked again, and her sentences were executed under §217.362 contemplating a long-treatment drug program. However, in June 2013, it was discovered that Relator did not qualify for that program, so the trial court again executed Relator's sentences pursuant to §559.115 for her return to an institutional treatment program.

In October 2013, Relator was released from the program, and the trial court placed her on a third term of probation. In 2015, Relator filed a motion for discharge from probation, asserting that Missouri law authorizes only two terms of probation. Respondent denied that motion in November 2015 and ordered Relator to appear for a probation violation hearing.

Under §559.036.5 and established Missouri precedent, a court may impose a new term of probation only once. State ex rel. Moyer v. Calhoun, 22 S.W.3d 250, 252 (Mo. App. E.D. 2000). "If the court again revokes probation, it has no authority under this or any other statute to impose a third period of probation." Id. When a court has no authority to impose a third term of probation, it likewise has no authority to conduct a hearing to adjudicate whether Relator violated that probation. Id. Accord State ex rel. Heberlie v. Martinez, 128 S.W.3d 616 (Mo. App. E.D. 2004).

Accordingly, we grant Relator's petition and issue a permanent writ of prohibition. Respondent is prohibited from conducting probation revocation proceedings against Relator and directed to enter an order discharging Relator from probation.

A handwritten signature in cursive script, appearing to read "Lisa J. Van Amburg".

Lisa Van Amburg, Chief Judge

Sherril B. Sullivan, J., and
Kurt Odenwald, J., concur.