



**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI ex rel. JOSHUA D. HAWLEY,)	
)	
Relator,)	
)	
v.)	WD80811
)	
THE HONORABLE DOUG THOMSON, Associate Circuit Judge of Nodaway County,)	FILED: JANUARY 23, 2018
)	
And)	
)	
Elaine Wilson, Circuit Clerk Nodaway County Circuit Court,)	
)	
Respondents.)	

Original Proceedings on Petitions for Writ of Certiorari

**Before Writ Division: Anthony Rex Gabbert, P.J., Alok Ahuja, J., and Cynthia L. Martin,
J.**

Habeas Petitioner Christopher Comstock was convicted prior to January 1, 2017 of the class C felony of stealing and was sentenced accordingly. Under the version of § 570.030, RSMo applicable at the time of Habeas Petitioner’s conviction, stealing was generally classified as a class A misdemeanor. However, Habeas Petitioner’s stealing offense was enhanced to a class C felony, because his offense involved property valued at more than \$500, which was understood to subject the offense to enhancement under § 570.030.3(1), RSMo.

In *State v. Bazell*, 497 S.W.3d 263 (Mo. banc 2016), the Missouri Supreme Court held that the circumstances listed in the pre-2017 version of § 570.030.3, RSMo could not be employed to enhance a stealing conviction from a class A misdemeanor to a class C felony. *Id.* at 266-67. In *State v. Smith*, 522 S.W.3d 221 (Mo. banc 2017), the Court specifically held that, following *Bazell*, a stealing offense could not be enhanced to a class C felony by operation of § 570.030.3(1), RSMo based on the value of the property at issue. 522 S.W.3d at 230.

Following the *Bazell* decision, Habeas Petitioner filed a petition for writ of habeas corpus, arguing that his stealing offense had been unlawfully enhanced to a felony, and that his conviction, sentence, and continued incarceration were accordingly illegal. The circuit court granted relief to the Habeas Petitioner, vacating Petitioner's felony conviction and sentence.

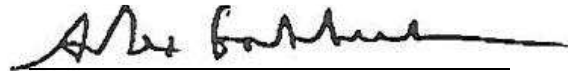
The State thereafter filed a petition for writ of certiorari in this Court on June 5, 2017, seeking our review of the circuit court's decision. We issued a preliminary writ of certiorari on June 6, 2017 and then stayed further proceedings pending the Missouri Supreme Court's decision in similar cases involving the availability of habeas relief under *Bazell*.

A writ of certiorari is "available to correct [habeas] judgments that are in excess or an abuse of jurisdiction, and that are not otherwise reviewable by appeal." *State ex rel. Nixon v. Sprick*, 59 S.W.3d 515, 518 (Mo. banc 2001) (citation omitted). In a certiorari proceeding, "we assess whether the habeas court exceeded its authority or abused its discretion in issuing the writ of habeas corpus." *State ex rel. Koster v. Oxenhandler*, 491 S.W.3d 576, 589 (Mo. App. W.D. 2016) (footnote omitted). We may "either quash the writ [of habeas corpus] or uphold the actions of the habeas court." *State ex rel. Koster v. Jackson*, 301 S.W.3d 586, 589 (Mo. App. W.D. 2010) (citation omitted).

Here, after the circuit court granted relief to Habeas Petitioner, the Missouri Supreme Court held that "the *Bazell* holding only applies forward, except those cases pending on direct appeal." *State ex rel. Windeknecht v. Mesmer*, No. SC96159, 2017 WL 4479200, at *3 (Mo. banc Oct. 5, 2017). *Windeknecht* held that offenders seeking habeas relief "received a sentence that was

authorized by a different interpretation of section 570.030 without objection and should not receive the benefit of retroactive application of this Court's decision in *Bazell*." *Id.*

In light of the Missouri Supreme Court's decision in *Windeknecht*, we dissolve the stay of proceedings previously entered. Under *Windeknecht*, Habeas Petitioner is not entitled to habeas relief based on the *Bazell* decision, and the circuit court abused its discretion in granting such relief. We accordingly quash the writ of habeas corpus issued by the circuit court.

A handwritten signature in black ink, appearing to read "Anthony Rex Gabbert", written over a horizontal line.

Anthony Rex Gabbert, Judge

All concur.