

IN THE CIRCUIT COURT OF LIVINGSTON COUNTY, MISSOURI
FORTY-THIRD CIRCUIT COURT
CHILlicoTHE

)
State of Missouri ex rel. Sandra)
Hemme,)
)
Petitioner,)
)
v.)
)
Chris McBee, Warden, Chillicothe)
Correctional Center,)
)
Respondent.)

Case No. 23LV-CC00008

NOTICE OF DENIAL OF WRIT AND EMERGENCY MOTION
FOR STATUS CONFERENCE

Comes now Petitioner, by counsel, and notifies this Court that the Missouri Supreme Court has this day denied Respondent's Petition for Writ of Prohibition and Motion to Stay this Court's July 9, 2024, Order releasing Ms. Hemme on her own recognizance, and moves this Court for an emergency conference on the status of this Court's never-stayed Order releasing Ms. Hemme. For her motion, Petitioner states:

1. Respondent in this matter has filed motions and petitions in the Court of Appeals and the Missouri Supreme Court attempting to prevent or delay Ms. Hemme's release that was ordered by this Court on July 9, 2024.
2. The Court of Appeals, Western District, on July 8, 2024, sustained Ms. Hemme's motion for release and directed this Court to comply with Rule 91.14 and set

reasonable conditions for release.

3. On July 9, 2024, Respondent filed a motion asking the Court of Appeals to reconsider its Order of July 8.

4. Also on July 9, this Court having been fully advised on the matter during previous briefing by the parties herein, ordered Ms. Hemme released on her own recognizance, and setting conditions with which Ms. Hemme and her family are fully prepared to comply.

5. Respondent's Motion to Reconsider was based on two arguments:

a. Respondent's motion argued that this Court lacked jurisdiction to release

Ms. Hemme while Respondent's Petition for Certiorari was pending. This argument was rejected when the Court of Appeals denied Respondent's Motion for Stay and to Deny Ms. Hemme's Motion for Release.

b. For the first time, Respondent argued, contrary to precedent binding on this

Court and the Court of Appeals, that the Court lacked jurisdiction to order Ms. Hemme released because she had not yet begun serving two-year and

ten-year sentences imposed in 1984 and 1996, respectively, and ordered to be served consecutively to Ms. Hemme's life sentence. Respondent did not call the Court's attention to the controlling decision in *Burlew v. Mo.*

Department of Corrections, 340 S.W.3d 259, 263 (Mo. App. W.D. 2011), holding that where one conviction and sentence in a consecutive sequence is later vacated, the other sentences in the sequence should be recalculated

to run *as if the vacated sentence had never existed.*” Quoting *Calvin v. Missouri Department of Corrections*, 277 S.W. 3d 282, 288 (Mo. App. W.D. 2009) (court’s emphasis).

6. On July 10, 2024, the Missouri Court of Appeals denied Respondent’s Motion to Reconsider.

7. Notwithstanding the Order of the Court of Appeals denying his motion to motion to reconsider, Respondent advised Warden McBee to disobey this Court’s order releasing Ms. Hemme.

8. On July 10, 2024, Respondent filed in the Missouri Supreme Court a Petition for Writ of Prohibition or in the Alternative for Mandamus, and a Motion to Stay, directed to this Court and the Missouri Court of Appeals, Western District, seeking to prohibit Ms. Hemme’s release. Respondent’s petition and motion in the Supreme Court were a rehash of arguments previously presented to and rejected by this Court and the Court of Appeals, Western District.

9. Briefing on Respondents’ Supreme Court petition and motion for stay was completed at 5:00 p.m. on July 17, 2024.

10. On July 18, 2024, the Missouri Supreme Court denied Respondent’s Petition and Motion to Stay and issued its Mandate, finally and completely disposing of the same.

11. Counsel for Ms. Hemme asked Andrew Clarke, counsel for Respondent, if he intended to notify Respondent Warden Chris McBee of the Supreme Court’s ruling and to release Ms. Hemme. Mr. Clarke responded that he would instead ask this Court to

reconsider its July 9, 2014 Order releasing Ms. Hemme.

12. Nothing in Respondent's various petitions and motions in the appellate courts in this matter addresses any issue relevant to Missouri Rule 91.14, which provides that "If the person for whose relief a writ of habeas corpus has been issued is charged with a bailable offense, the court in which the answer is to be filed *shall set conditions of release* pursuant to Rule 33."

13. Notwithstanding this Court's Order of July 9, 2024, Ms. Hemme remains incarcerated in the custody of Warden Chris McBee at Chillicothe Correctional Center, 3151 Litton Road, Chillicothe, MO, 64601.

14. Ms. Hemme's father, who is over ninety years old, is hospitalized with kidney failure and this day was moved to palliative care. He wants only to see his daughter free in his lifetime, just as Ms. Hemme wants nothing more than to be at her father's bedside at this time. Further delay of this Court's release order, in effect since July 9, will cause Ms. Hemme and her family irreparable harm and emotional distress.

15. Respondent, on the other hand, may file a motion at any time to modify the conditions which this Court has placed on Ms. Hemme's release. Ms. Hemme need not be in physical custody to be present by counsel and respond to any argument the Respondent might make in support of changing or adding conditions to Ms. Hemme's release.

16. Respondent has identified no risk of harm or irreparable injury that will result from enforcement of this Court's Order.

17. Counsel for Ms. Hemme respectfully suggest that further disregard by Respondent Warden Chris McBee of this Court’s order releasing Ms. Hemme is inappropriate and wholly without legal justification.

18. Counsel further respectfully suggest that this Court’s power to release Ms. Hemme is not subject to honest debate, given the quick, unequivocal rejection of Respondent’s arguments by the Missouri Court of Appeals and the Missouri Supreme Court.

19. Venue over Ms. Hemme’s Petition for Writ of Habeas Corpus lies in Livingston County so that this Court has the personal jurisdiction necessary to “order[] the respondent to bring ‘the body of the person so detained or imprisoned, together with the time and cause of such imprisonment and detention, before the court or judge, without delay, to do and receive what shall then and there be considered concerning the person imprisoned or detained.’” *State ex rel. Hawley v. Midkiff*, 543 S.W.3d 604, 607 (Mo. banc 2018), quoting Section 532.080, RSMo 2000. This Court should enter whatever order it deems necessary and appropriate to “effectuate a change in the offender's imprisonment or detention as directed by the court.” *Id.* Respondent’s continued disregard of the lawful order of this Court exemplifies the reason that this Court is entrusted with jurisdiction to enter whatever order is needed to compel Warden McBee to comply with the Order of this Court.

WHEREFORE, Petitioner provides this Court Notice that the Missouri Supreme Court has denied Respondent’s objections to this Court’s Order releasing Ms. Hemme,

and prays this Court to hold an emergency status conference at the earliest possible time, direct Respondent to comply with this Court's Order releasing Ms. Hemme, and enter such further Order as the Court deems necessary and appropriate.

Respectfully submitted,

/s/ Sean D. O'Brien

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CERTIFICATE REGARDING SERVICE

I hereby certify that it is my belief and understanding that counsel for Respondent, Andrew Crane, is a participant in the Court's e-filing program and that separate service of the foregoing document and proposed order granting the same is not required beyond the Notification of Electronic Filing to be forwarded on July 18, 2024, upon the filing of the foregoing document.

/s/Sean D. O'Brien

SEAN D. O'BRIEN
Counsel for Petitioner