

INDEX TO APPENDIX

- APPENDIX A: DECISION, JUDGMENT AND ORDER OF THE COLE COUNTY CIRCUIT COURT, which was proposed by the Asst Attorney General (after misleading the Court)
- APPENDIX B: ORDER OF THE MISSOURI COURT OF APPEALS, SUMMARILY DENYING PETITION FOR MANDAMUS RELIEF
- APPENDIX C: MANDATE AND JUDGMENT OF MISSOURI SUPREME COURT, Which also summarily denied petition for Mandamus
- APPENDIX D: 2005 LETTER FROM DEPT OF CORRECTIONS VERIFYING THAT THE BOARD WAS CONVERTING CONSECUTIVE SENTENCES TO CONCURRENT, Based on Sec. 558.019.5
- APPENDIX E: IS A COPY OF SAID STATUTE, SECTION 558.019.5
- APPENDIX F: IS MISSOURI CODE OF STATE REGULATIONS GOVERNING PAROLE RELEASE OF SENTENCES THAT TOTAL MORE THAN 45-YEARS, WHETHER CONSECUTIVE OR CONCURRENT, ANY SENTENCE(S) MORE THAN 45-YEARS IS TREATED AS 45-YEARS, UNDER 14 CSR 80-2.010
- APPENDIX G: SHOWS THAT PAROLE IS CALCULATED ON A SINGLE SENTENCE . . . ALONE WITH CONSECUTIVE PAROLE ON THE REMAINING CONSECUTIVE SENTENCES
- G-2: IS A PORTION OF THE WOLFE CASE, WHEREIN THE APPELLATE COURT IS CRITICIZING THE DEPT OF CORRECTIONS' USE (IN USING SECTION 558.019.4(2) 75 YEAR RULE) TO CALCULATE PAROLE ELIGIBILITY ON LIFE SENTENCES
- G-3: IS A CASE SHOWING THAT NO SENTENCE(S) CONSECUTIVE TO A LIFE SENTENCE CAN NULLIFY PAROLE ELIGIBILITY ON A LIFE SENTENCE, THAT ALL THE SENTENCES MUST BE TREATED AS ONE . . . AND THAT NO MANDATORY MINIMUMS CAN BE GREATER THAN THAT OF A LIFE SENTENCE
- G-4: NEWSPAPER CLIPPING OF REGINALD CLEMONS' CASE WHERE HE RECEIVED 5-CONSECUTIVE LIFE SENTENCES, AND WAS GRANTED A 2020 PAROLE HEARING
- G-5: Board's Calculation of petitioner's parole eligibility (or, miscalculation)

APPENDIX A

IN THE CIRCUIT COURT OF COLE COUNTY STATE OF MISSOURI

EARNEST LANGSTON,)
Petitioner,)
v.) 09AC-CC00541-01
MISSOURI BOARD OF PROBATION)
AND PAROLE,)
Respondent.)

DECISION JUDGMENT AND ORDER

Earnest Langston raises statutory, regulatory, and constitutional challenges to the Parole Board's determination of his parole eligibility date. All of these challenges are based misinterpretations of Missouri law. Langston's parole eligibility date has been correctly calculated by aggregating the ineligibility periods on his consecutive sentences, and where applicable giving him the benefit of the 75-year rule of 558.019.4(2). *Wolfe v. Missouri Dept. Of Corrections*, 199 S.W.3d 219 (Mo. App. W.D. 2006); *Edger v. Missouri Bd. of Probation and Parole*, 307 S.W.3d 718 (Mo. App. W.D. 2010). Langston has no entitlement under Missouri law to have his numerous consecutive sentences all treated as a single 30-year sentence or a single 50-year sentence, for purposes of analyzing parole eligibility, and no right to have all his consecutive sentences converted to concurrent sentences.

Langston's Due Process Clause, Equal Protection Clause, and Ex Post Facto Clause claims are all without legal merit, as are his claims under Missouri statutes and parole regulations. Langston has not been disadvantaged by the use of

The attorney general typed this decision. All the Judge did was sign off on it, because neither Edgar nor Wolfe use the 75-year calculation

current parole statutes or regulations and he has no liberty interest in the use of earlier versions of the parole statutes or regulations. *See State ex. rel. Cavallaro v. Groose*, 908 S.W.2d 133 (Mo. banc 1995). He fails to set out an Equal Protection Clause claim by alleging that two inmates with life sentences or sentences more than 45 years had parole hearings after 13 years. Langston has many consecutive sentences with statutory or regulatory mandatory-minimum prison terms, and those sentences make his case distinguishable from inmates who become parole eligible after 15 years and therefore receive a hearing after 13 years.

Because all Langston's claims fail as a matter of law and there are no genuinely disputed facts material to that determination summary judgment is granted for the Missouri Board of Probation and Parole.

5/19/12
Date

[Signature]
Circuit Judge

[Redacted]

[Redacted]



**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI EX REL.,)
EARNEST LEE LANGSTON #23783,)
SOUTH CENTRAL CORRECTIONAL) WD84610
CENTER, 255 W. HWY 32)
LICKING, MISSOURI 65542,)
)
Relator,)
v.)
)
MISSOURI BOARD OF)
PROBATION AND PAROLE,)
)
Respondent.)

ORDER

Relator's Petition for Writ of Mandamus with Suggestions in Support filed on June 24, 2021,
is taken up and considered. The Court being fully advised in the premises hereby denies the petition.

Dated this 24th day of June 2021.

Tom Chapman

Thomas N. Chapman
Presiding Judge, Writ Division

Judge Anthony Rex Gabbert concurs

cc: Mr. Eric Schmitt, Esq.
Attorney for Respondent

Mr. Don Phillips
Missouri Board of Probation & Parole

Mr. Earnest Langston #23783
Relator Acting Pro Se



APPENDIX B **APPENDIX B**

In the Supreme Court of Missouri

September Session, 2021

State ex rel. Earnest Lee Langston,

Petitioner,

No. SC99255 MANDAMUS
Cole County Circuit Court No. 09AC-CC00541-01
Western District Court of Appeals No. WD84610

Don Phillips, Chairman, Missouri Board of Probation and Parole,

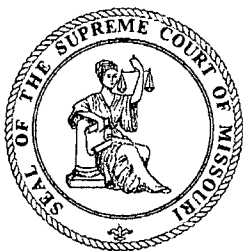
Respondent.

Now at this day, on consideration of the petition for a writ of mandamus herein to the said respondent, it is ordered by the Court here that the said petition be, and the same is hereby denied. Petitioner's request for preliminary order, or service, upon Respondent overruled as moot.

STATE OF MISSOURI-Sct.

I, BETSY AUBUCHON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session thereof, 2021, and on the 5th day of October, 2021, in the above-entitled cause.

*WITNESS my hand and the Seal of the
Supreme Court of Missouri, at my office in
the City of Jefferson, this 5th day of October,
2021.*



Betsy Aubuchon, Clerk

Dei S. Knaebel, Deputy Clerk

APPENDIX C

Appendix C

Supreme Court of Missouri

vs.

MANDATE

JUDGMENT

MATT BLUNT
Governor

LARRY CRAWFORD
Director



2729 Plaza Drive
P. O. Box 236
Jefferson City, MO 65102
Telephone: 573-751-2389
Fax: 573-751-4099
TDD Available

State of Missouri
DEPARTMENT OF CORRECTIONS

Ad Exelleum Conamur - "We Strive Towards Excellence"

January 14, 2005

Mr.
Register No.
Southeast Correctional Center

Mr.

Your letter to the Governor has been forwarded to this office for handling. In that letter you request that your sentences be converted from consecutive to concurrent.

The members of the Board of Probation and Parole carry a heavy responsibility. They are charged with assessing each individual's case and determining if release would best serve the interests of the offender, their victims and Missouri citizens. They also strive to develop a release plan that will provide the offender an opportunity to address substance abuse needs, education, anger management or other issues that may have lead to incarceration.

Statute 558.019 does give the Board the authority to revert consecutive sentences to concurrent sentences. Policy and procedure related to consecutive sentence review has not been established. At this time, the Board is not utilizing the enabling statutory language that allows conversion of consecutive sentences to a concurrent sentence. In the event that policy and procedure is implemented, the offender population will be notified.

Sincerely,

Class X Offender(s)
(558.019 RSMO)

Lisa Jones
LISA JONES
Constituent Services Officer

LJ

Cc: Governor's Office
File No. 175000

APPENDIX D

Appendix D



2. The provisions of **subsections 2 to 5** of this section shall be applicable to all classes of felonies except those set forth in chapter 195, RSMo; and those otherwise excluded in subsection 1 of this section. For the purposes of this section, "prison commitment" means and is the receipt by the department of corrections of a [defendant] **offender** after sentencing. For purposes of this section, prior prison commitments to the department of corrections shall not include commitment to a regimented discipline program established pursuant to section 217.378, RSMo. Other provisions of the law to the contrary notwithstanding, any [defendant] **offender** who has pleaded guilty to or has been found guilty of a felony other than a dangerous felony as defined in section 556.061, RSMo, and is committed to the department of corrections shall be required to serve the following minimum prison terms:

(1) If the [defendant] **offender** has one previous prison commitment to the department of corrections for a felony offense, the minimum prison term which the [defendant] **offender** must serve shall be forty percent of his or her sentence or until the [defendant] **offender** attains seventy years of age, and has served at least [forty] **thirty** percent of the sentence imposed, whichever occurs first;

(2) If the [defendant] **offender** has two previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the [defendant] **offender** must serve shall be fifty percent of his or her sentence or until the [defendant] **offender** attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first;

(3) If the [defendant] **offender** has three or more previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the [defendant] **offender** must serve shall be eighty percent of his or her sentence or until the [defendant] **offender** attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

3. Other provisions of the law to the contrary notwithstanding, any [defendant] **offender** who has pleaded guilty to or has been found guilty of a dangerous felony as defined in section 556.061, RSMo, and is committed to the department of corrections shall be required to serve a minimum prison term of eighty-five percent of the sentence imposed by the court or until the [defendant] **offender** attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

4. For the purpose of determining the minimum prison term to be served, the following calculations shall apply:

(1) A sentence of life shall be calculated to be thirty years;

(2) Any sentence either alone or in the aggregate with other consecutive sentences for crimes committed at or near the same time which is over seventy-five years shall be calculated to be seventy-five years.

5. For purposes of this section, the term "minimum prison term" shall mean time required to be served by the [defendant] **offender** before he or she is eligible for parole, conditional release or other early release by the department of corrections. Except that the board of probation and parole, in the case of consecutive sentences imposed at the same time pursuant to a course of conduct constituting a common scheme or plan, shall be authorized to convert consecutive sentences to concurrent sentences, when the board finds, after hearing with notice to the prosecuting or circuit attorney, that the sum of the terms results in an unreasonably excessive total term, taking into consideration all factors related to the crime or crimes committed and the sentences received by others similarly situated.

APPENDIX E

APPENDIX E

**14 Mo. Code of State Regulations 80-2.010**Missouri Code of State Regulations CurrentnessTitle **14** - Department of CorrectionsDivision **80** - State Board of Probation and ParoleChapter **2** - Parole Consideration and Conditional Release**14 CSR 80-2.010 Parole Eligibility, Hearings, Reviews and Release Dates**

PURPOSE: This rule sets forth factors regarding parole eligibility, the purpose and procedures for parole hearings, and the possible results.

(1) Minimum Parole Eligibility. The following provisions apply to sentences where there is no minimum prison term established by statute requiring more time to be served.

(A) Offenders convicted of driving while intoxicated and class C and D drug and nonviolent felony offenses as shown in the *Procedures Governing the Granting of Paroles and Conditional Releases*, Appendix C are eligible for parole after fifteen percent (15%) of the maximum sentence has been served, except where statute would require more time to be served.

(B) Offenders convicted of driving while intoxicated as a persistent, aggravated, or chronic offender and enhanced non-violent class C and D felony offenses under section 558.016, RSMo are eligible for parole after twenty-five percent (25%) of the maximum sentence has been served, except where statute would require more time to be served.

(C) Offenders convicted of class A and B drug and non-violent felony offenses as shown in the *Procedures Governing the Granting of Paroles and Conditional Releases*, Appendix C are eligible for parole after twenty-five percent (25%) of the maximum sentence has been served, except where statute requires more time to be served.

(D) Offenders convicted of violent offenses as shown in the *Procedures Governing the Granting of Paroles and Conditional Releases*, Appendix C, Sexual or Child Abuse (all classes of offenses) are eligible for parole after thirty-three percent (33%) of the maximum sentence has been served, except where statute would require more time to be served.

→ (E) Offenders serving life or multiple concurrent or consecutive life sentences and offenders with sentences totaling forty-five (45) years or more are eligible for parole after a minimum of fifteen (15) years has been served, except where statute would require more time to be served.

(F) For offenders serving multiple life sentences or other sentences concurrent or consecutive to a life sentence the board may, due to the nature and length of the sentence, determine not to set a minimum eligibility date.

(G) The *Procedures Governing the Granting of Paroles and Conditional Releases*--Appendices A-Q (revised April 2006) is hereby incorporated by reference and made part of this rule as published by the Board of Probation and Parole, 1511 Christy Drive, Jefferson City, MO 65101. This rule does not incorporate any subsequent amendments or additions.

(2) Medical Parole.

(A) The board will consider a medical parole under the following conditions:

1. A specific recommendation to the parole board must be made by a correctional center physician responsible for the treatment, care or custody of offenders who have serious physical, mental or emotional problems; and

2. The parole board must determine that the offender will be able to obtain and receive proper

APPENDIX F
APPENDIX F

(C) Parole hearings provide the hearing panel the opportunity to--

1. Review and discuss all available reports, pertinent case history material, and any other material they deem to be relevant. This may include medical, psychological and psychiatric reports, prior record of arrests, convictions and incarcerations, past and present patterns of behavior, and confidential information;
2. Review and discuss institutional adjustment, conduct, and progress as this will reflect upon the offender's attitudes and preparation to resume life in free society;
3. Evaluate the offender in regard to suitability for parole release; and
4. Determine conditions to be accomplished prior to and after release.

(4) Scheduling.

(A) Parole hearings are conducted monthly with offenders at each major institution.

(B) Within ninety (90) days of delivery to the Department of Corrections, a parole hearing will automatically be scheduled for all offenders eligible for parole under state law. The date of the hearing will be based upon a schedule established by the board which takes into account the offense, sentence length, and credit for time served. The offender will receive written notice of the date of hearing approximately forty-five (45) days in advance.

(C) An offender may request that his/her parole hearing be scheduled for a later date. The board will not accept a request for a continuance of less than three (3) months or more than five (5) years.

(D) An offender who has a sentence of less than twenty-four (24) months may waive their right to a personal hearing.

(E) An offender serving an incarceration for a class C, D, or E (published September 2016 and effective January 2017) non-violent offense, excluding DWI and UUW, who has not failed an institutional treatment program and has a sentence length of seven (7) years or less may be allowed to waive their parole hearing.

(5) Hearing Procedure.

(A) The offender will appear before the hearing panel. The hearing panel shall consist of one (1) member of the parole board and two (2) hearing officers appointed by the board.

1. Offenders may have a person of their choice at the hearing. The offender's delegate may offer a statement on behalf of the offender, ask questions, and provide any additional information that may be requested by the hearing panel.

2. Other inmates may not be present at the hearing.

(B) In accordance with section 595.209, RSMo the Department of Corrections, Victims Services Unit shall notify victims of identified offenses, or upon the written request of the victim of any other offense, of their right to be present at the parole hearing of the offender. Any victim or person representing the victim who attends a parole consideration hearing may provide information to the hearing panel in reference to the board's deliberation regarding parole release.

1. The victim or person representing the victim who attends a hearing may be accompanied by one (1) other person.

2. The victim or person representing the victim who attends a hearing may give testimony in the presence of the offender or to the hearing panel without the offender being present.

3. The victim or person representing the victim may call or write the parole board rather than attend the hearing.

4. The victim or person representing the victim may have a personal meeting with a board member at the board's central office in Jefferson City.

5. The victim or person representing the victim will be notified of the results of any parole hearing if they indicate a desire to be notified.

(C) The parole board, upon written request of the judge, the prosecuting attorney, or a representative of law enforcement from the jurisdiction in which the crime was committed, shall provide notice prior to the parole hearing for any offender. The judge, prosecuting attorney, a representative from law enforcement, or a combination of them, may attend the hearing and provide information to the hearing panel in reference to the board's deliberation regarding parole release. Notification of the hearing results will be provided upon request.

(D) The hearing panel shall limit or exclude any irrelevant or repetitious statement.

(E) The interview will be recorded.

(F) The hearing shall not be open to the public and the records of all hearings shall be treated as confidential and shall not be opened to inspection by the offender concerned, the offender's delegate, or any other unauthorized persons (sections 217.670 and 549.500, RSMo).

(G) The inmate who waives a personal appearance before the hearing panel shall have his/her case considered by the board in absentia.

(H) An offender who is serving a concurrent Missouri sentence while confined in another state or federal correctional center is under the same rules governing the granting of parole and conditional release as an offender who is serving his/her sentence in a Missouri institution, except that a personal hearing before the board shall not be required. The board will consider these cases in absentia.

(6) Hearing Results.

(A) After the hearing, a number of different kinds of investigation reports may be requested, including field investigations, institutional investigations, medical evaluations, psychological or psychiatric evaluations, or a combination of these.

(B) A decision will be reached as soon as possible and the offender will receive a written notice as soon as the notice can be prepared and delivered.

(C) The offender may be scheduled for a reconsideration hearing.

1. The purpose of a reconsideration hearing shall be to consider the offender's case and any significant developments or changes in the offender's status that may have occurred subsequent to the previous hearing.

2. Reconsideration hearings shall be conducted every one (1) to five (5) years at the board's discretion until a release date has been established.

(D) A release date may be set, either by parole or conditional release.

1. Parole will apply to the sentence the offender is currently serving and consecutive paroles will be granted to apply to consecutive sentences.

2. The setting of a release date does not automatically entitle the offender to be released on that

APPENDIX G

Appendix G

of the sentence imposed, whichever occurs first. Section 558.019.4(1) explicitly provides that in determining the minimum prison term to be served, a life sentence shall be calculated to be thirty years. Eighty-five percent of thirty years is 25.5 years. Eighty-five percent of his ten-year sentence is 8.5 years. Thus, the circuit court correctly determined that Wolfe's minimum prison term prior to parole eligibility should be calculated as thirty-four years (25.5 years plus 8.5 years).

MDOC concedes that section 558.019.4(1) [**9] requires that, for purposes of determining the mandatory minimum prison term to be served, a life sentence is considered to be thirty years; therefore, Wolfe becomes "theoretically" parole eligible on the life sentence after eighty-five percent of that sentence, or 25.5 years. However, because MDOC interprets a life sentence that is coupled with a ten-year consecutive sentence to be more than seventy-five years, MDOC argues that section 558.019.4(2) applies in this instance. That section provides that "[a]ny sentence either alone or in the aggregate with other consecutive sentences for crimes committed at or near the same time which is over seventy-five years shall be calculated to be seventy-five years." As a matter of law, asserts MDOC, Wolfe's two sentences are aggregated into a single seventy-five-year sentence under subparagraph (2). Under this method of calculation, MDOC argues, Wolfe's mandatory minimum prison term will be completed on Wolfe's seventieth birthday. *

In another twist to its argument, MDOC asserts that Wolfe cannot serve eighty-five percent of his ten-year sentence, as he must under section 558.019.3, until [**10] that sentence begins to run. MDOC contends, until a prisoner dies, a life sentence is not completed, thus his second sentence will never begin. *

We will not interpret section 558.019 to permit an unreasonable result. See Carroll v. Mo. Bd. of Prob. & Parole, 113 S.W.3d 654, 658 (Mo.App. W.D. 2003). As previously discussed, section 558.019.4(1) clearly establishes that for the purpose of determining the minimum prison term to be served, a life sentence shall be calculated to be thirty years. MDOC's argument that the provision applicable here is that Wolfe's sentences, in the aggregate, are over seventy-five years and thus should be calculated as seventy-five years is nonsensical in light of the clear language of section 558.019.4(1). *

The judgment of the circuit court is affirmed.

Victor C. Howard, Chief Judge

Breckenridge and Hardwick, JJ., concur.

APPENDIX G-2

Footnotes

17

All statutory references are to RSMo 2000.



FOOTNOTES

⁶ Atkins, like Major, was charged under the old law. The old law allowed parole after service of twenty years. Atkins, 303 S.C. at 219, 399 S.E.2d at 763.

Adopting the reasoning of the Atkins' Court, it follows that ^{HN9} if a consecutive life sentence could not nullify parole eligibility on a parolable life sentence, then a five-year consecutive sentence cannot either.

The question now becomes what is ^{HN10} the efficacy of a consecutive sentence? The answer is two fold. First, following the guidance of Mims, the time is aggregated and parole eligibility is calculated on the aggregated sentence. Secondly, if the consecutive sentence is a non-parolable offense then its sentence must be served and credited first against the aggregated sentence. This is necessary to give effect to the legislative grant of parole eligibility on the parole-eligible offense. ⁷

FOOTNOTES

⁷ The argument that this approach is contrary to prior practice was made in part by the dissent in Atkins to no avail.

Considering the above discussion, [***17**] the meaning of "consecutive" needs further attention. ^{HN11} Because this term is not defined in our code of laws, we must employ the rules of statutory construction to ascertain and effectuate the intent of the General Assembly. See Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003) ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature."); Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (stating the words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand a statute's operation); Lee v. Thermal Eng'g Corp., 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002) ("Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.").

^{HN12} "Consecutive" means sentences run successively and the service of the sentence cannot run at the same time as the other sentences. See Black's Law Dictionary 304 (6th ed. 1990) (noting that "consecutive" means successive, succeeding one another in regular order, to follow in uninterrupted succession); Webster's [***18**] Concise Dictionary 150 (2003) ("Following in uninterrupted succession; successive."); see generally R.P.D., Annotation, When Sentences Imposed by the Same Court Run Concurrently or Consecutively; and Definiteness of Direction with Respect Thereto, 70 A.L.R. 1511 (1931 & Supp. 2008) (outlining cases and discussing question of whether sentences on different counts or different offenses were intended to be served concurrently or consecutively and whether the sentence or sentences were sufficiently definite for the purpose intended).

Thus, ^{HN13} a notation that a sentence is "consecutive," for sentencing purposes, does not necessarily delineate that the particular sentence has to run last. It merely indicates that all the sentences are to run successively, and not to run at the same time. See Atkins, 303 S.C. at 219, 399 S.E.2d at 763 (noting that "for purposes of parole eligibility, consecutive sentences should be treated as one general sentence by aggregating the periods imposed in each sentence"). Therefore, despite the fact that the weapons sentence was the last one imposed and it was denoted as "consecutive" there was no indication that the weapons sentence was to be the last sentence to [***19**] be served. See Tilley, 334 S.C. at 28-29, 511

Appendix 9-3

**Additional material
from this filing is
available in the
Clerk's Office.**