

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

David G. Voyles,)	October 6, 2009
)	
Petitioner,)	Cause No. 09SL-CC00658
vs.)	
)	Division 4
Jennifer Sachse,)	
)	
Respondent.)	

Order and Judgment

The parties appeared by counsel on September 4, 2009 for hearing on respondent's motion to dismiss petitioner's petition for writ of habeas corpus pursuant to the escape rule. Petitioner requested 15 days to respond to respondent's motion. Petitioner's response was filed on September 15, 2009 and the case was taken under submission at that time.

Petitioner Voyles entered a plea of guilty on October 24, 2006 to the crime of failure to return leased or rented personal property pursuant Section 578.150 RSMo. This offense is a class A misdemeanor unless the property involved has a value of five hundred dollars or more, in which case the failure to return the leased or rented property is a class C felony. Voyles was charged with and pled guilty to a class C felony in Butler County and was sentenced to five years in the penitentiary. The execution of this sentence was suspended and petitioner was placed on five years probation.

On February 27, 2007 petitioner appeared in Butler County for a probation revocation hearing. Petitioner admitted that he failed to report to his probation officer on one occasion and that he also failed to perform any community service or pay any restitution. He waived his right to a formal hearing. The court entered an order executing the five year sentence previously imposed.

Thereafter petitioner filed for post conviction relief pursuant to Rule 24.035. That matter was also heard in Butler County and the court found that Voyles' counsel at the guilty plea was not ineffective and denied petitioner's motion to vacate, correct, or set aside the judgment.

The denial of relief under Rule 24.035 was affirmed on appeal in an opinion reported at 272 S.W.3d 921 (Mo.App. S.D. 2009). In its opinion affirming the judgment the Southern District made the following observations:

“At the time of Movant’s (Voyles) plea, the prosecuting attorney stated on the record that the value of the television set was \$486 and the Movant paid a \$50 deposit on it at that time.” *Voyles v. State, supra*, at 922

“Evidence of purchase price, age, and condition of the property are all relevant to a determination of its value. (citation omitted). The value in question is the value of the television on the date of the committed offense.” (citation omitted). *Id.* at 924.

“The testimony of plea counsel was that counsel was unable to discuss the case with Movant because he made himself unavailable. Movant entered the plea at the time of the arraignment. Counsel further testified that Movant wanted to plead guilty to get out of jail even though counsel told Movant that discovery was not complete.” *Id.*

Now Voyles seeks release from custody pursuant to his petition for writ of habeas corpus. His petition was filed on February 11, 2009. Petitioner was granted parole by the Missouri Department of Corrections on July 13, 2009. Voyles then absconded from supervision and was arrested on August 13, 2009. Respondent has moved to dismiss Voyles petition on the basis of the ‘escape rule’ because petitioner absconded from supervision and failed to report.

The escape rule is a judicially created doctrine that operates to deny the right of appeal to a defendant who escapes justice. The rule applies to appeals on the merits as well as to motions for post-conviction relief. *Smith v. State*, 174 S.W.2d 74 (Mo.App. E.D. 2005). None of the authorities cited by respondent address the application of the escape rule to petitions for writ of habeas corpus. The right to petition for a writ of habeas corpus is guaranteed by the Missouri and United States Constitutions. The court does not believe respondent has shown that the escape rule is applicable to this action and respondent’s motion to dismiss denied.

In his response to the motion to dismiss, petitioner requested the court to make findings of fact and conclusions of law. This request is inapplicable to this proceeding and was not timely made. Petitioner’s request to issue findings of fact and conclusions of law is denied.

Turning to the merits of petition for writ of habeas corpus, petitioner claims his incarceration constitutes a “manifest injustice.” The standard petitioner must meet is “actual innocence”, and petitioner must show that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. To meet this burden Voyles relies solely on the transcript of the October 24, 2006 guilty plea, specifically the recitation by the prosecuting attorney of what the state’s evidence would show if the case went to trial. As set forth above, the prosecutor, on the record, stated that the value of the television was approximately \$486. No further question, explanation, conversation, or discussion about the value of the television appears on the record by the court or either of the parties.

The court finds the case of *State ex rel. Verweire v. Moore*, 211 S.W.3d 89, (Mo. banc 2006) to be persuasive. In *Verweire* a petition for writ habeas corpus was filed after a plea of guilty. Reviewing the evidence of the plea of guilty, the court found it to be insufficient, and noted: “This case presents the rare situation in which a criminal defendant pled guilty to a crime he did not commit.” *Verweire*, at 90.

“Although in nearly all cases, manifest injustice or miscarriage of justice will require a showing of newly discovered evidence of actual innocence, (*citing Clay v. Domire*, 37 S.W.3d 214, 217 (Mo. banc 2000)), that requirement is not applicable in those rare cases, such as this one, where the court can determine from the face of the record of the guilty plea proceeding that the defendant pleaded guilty to a crime he or she did not commit. After all, the requirement of newly discovered evidence of actual innocence presupposes that the evidence presented at the plea hearing did not establish actual innocence, which in this case it did, as a matter of law.” *Verweire*, at 93.

The transcript of petitioner’s plea of guilty is part of the record and has been reviewed by the court. There is no question that the record of the plea of guilty on October 24, 2006, the only evidence, or information from any source, was that the value of the television that Voyles failed to return was \$486.00. The circuit court of Butler County was without jurisdiction to accept a felony plea of guilty because there was no factual basis on the record made by the prosecuting attorney to support the charges of the information that petitioner had committed the class C felony of failure to return rental property with a value of at least \$500.00.

Therefore, it is the order and judgment of this court, that David G. Voyles’ petition for writ if habeas corpus is granted. Respondent Jennifer Sachse is hereby ordered to release petitioner from custody forthwith.

SO ORDERED:

Thomas J. Prebil
Judge, Division 4

cc: Rosalynn Koch
John D. Hoelzer

Certified copy: respondent Jennifer Sachse