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The Center for HIV Law and Policy is a national resource and advocacy organization working to advance the rights of people affected by HIV. We combine an online HIV Policy Resource Bank, a creative national advocacy agenda, and case assistance focused on systems and institutions with significant impact on marginalized communities.

FACT SHEET

Missouri v. Johnson

A Fact Sheet and Case Timeline

Updated: September 21, 2017

Recent Developments

On September 21, 2017, Michael Johnson bypassed a new trial and entered a no-contest plea in the St. Charles County Circuit Court in Missouri.

In exchange, he has accepted a sentence of 10 years in state prison. Because Missouri's HIV criminal law hinges liability on whether or not the defendant can prove he disclosed his HIV status prior to sex—a virtual impossibility in most instances—Johnson decided to accept a plea deal that credits him with time served since his arrest nearly four years ago. Under Missouri's law, one of the harshest in the country, Johnson could have faced nearly 100 years in prison if found guilty. He previously had been sentenced to 30 years in prison before the appeals court threw out the original conviction. For more information, read the CHLP news release, *“Michael Johnson Bypasses Trial, Enters No-Contest Plea.”*

Timeline

Not Guilty Plea Entered, May 2017

On May 25, 2017, Michael Johnson pled innocent to the renewed charges against him in the St. Charles County Circuit Court.

Application for Transfer Denied, April 2017

On April 4, 2017, the Missouri Supreme Court denied the State's application for transfer in Michael Johnson's case. This upholds the December 20, 2016, decision by the Missouri Court of Appeals reversing his conviction and remanding the case for a new trial. Johnson's new trial counsel, Eric Selig of Rosenblum Fry P.C., stated that he “is looking forward to fighting for Michael to achieve justice in this case.”

Application for Transfer Filed, February 2017

On February 14, 2017, the State of Missouri filed an application for transfer of Michael Johnson's case to the Missouri Supreme Court, the highest court

in Missouri. The State sought to reverse the December 20 decision by the Missouri Court of Appeals for the Eastern District that overturned Johnson's conviction and remanded the case for retrial.

Motion for Rehearing or Transfer Denied, January 2017

On January 30, 2017, the Missouri Court of Appeals denied the State's motion for reconsideration, rehearing or transfer to the Supreme Court of Missouri.

This essentially means that the Court of Appeals did not find that the State's arguments in the motion for reconsideration had merit. The State can now petition the Missouri Supreme Court directly for a transfer, asking the Supreme Court to reconsider the Court of Appeals' reversal of the conviction.

Earlier in January, attorneys for the State of Missouri filed a motion for rehearing or transfer. The State was contesting the Missouri Court of Appeals' December 20 decision that reversed his conviction. In its opinion, the Court ruled that the State's untimely disclosure of evidence at trial, which the Court characterized as "trial-by-ambush" and in "bad faith," and as an "inexcusable" and "blatant discovery violation" that was fundamentally unfair and intended to disadvantage the defendant.

The State's motion requested:

1. reconsideration by the Missouri Court of Appeals "en banc," or by the entire Court as the decision was originally made by a three-judge panel, or;
2. rehearing by the Missouri Court of Appeals (the same three judges), or;
3. transfer to the Missouri Supreme Court, the highest court in Missouri.

The Missouri Court of Appeals can either grant one of the State's motions, or it can deny all three motions, remanding/sending the case back to the prosecutor/trial court for a new trial as per its decision on December 20, 2016. The State then

can seek what is called transfer directly to the Missouri Supreme Court. The Court of Appeals can also overturn its decision and reinstate the judgment against Michael.

Conviction Reversed, December 2016

On December 20, 2016, the Missouri Court of Appeals, Eastern District, issued a decision reversing the conviction of Michael Johnson and remanded his case for a new trial. This decision is a step towards justice for Johnson. To read CHLP's news release, see: "[*Michael Johnson Conviction Reversed.*](#)"

The Court of Appeals reversed the judgment of the trial court based on the state's failure to comply with Johnson's discovery request, in violation of Rule 25.03, resulting in the untimely introduction of evidence that prevented Johnson from preparing a meaningful defense in the case. In the words of the Court, "the State's violation of Rule 25.03 was knowing and intentional and was part of a trial-by-ambush strategy that this Court does not condone and that Rule 25.03 was specifically designed to avoid."

Johnson's appellate attorney is public defender Samuel Buffaloe.

In the appeal of his conviction, Johnson raised two points. First, that the trial court allowed evidence to be introduced late—the first day of the trial—denying him the fair opportunity to prepare his defense. And second, that his sentence of 30 years for violating Missouri's HIV transmission and exposure statute violated the constitutional prohibition on cruel and unusual punishments.

The court did not address Johnson's second point on appeal relating to the constitutionality of his punishment or the issues CHLP raised in its friend-of-the-court brief.

To read the decision, see: "[*State of Missouri v. Michael L. Johnson, Mo. Ct. of Appeals, E.D., No. ED 103217 \(Dec. 20, 2016\).*](#)"

Friend-of-the-Court Brief Filed, April 2016

Attorney Samuel Buffaloe took Johnson's case on appeal to the Missouri Court of Appeals. In April 2016, in support of the appeal, CHLP and the law firm Gibbons, P.C. drafted a friend-of-the-court brief that addressed the second point, the "cruel and unusual punishment" of Johnson's sentence and also argued that Missouri's criminal HIV law is unconstitutional in that it violates the guarantee of Equal Protection, violates the right to privacy in personal medical information, and violates the Americans with Disabilities Act and constitutional protections against irrational treatment of disabilities such as HIV. Twenty-one national and state HIV, social justice, and LGBT organizations joined this brief; the ACLU of Missouri Foundation served as local counsel.

Avram Frey and Lawrence Lustberg of Gibbons, P.C., and Mayo Schreiber and Catherine Hanssens of CHLP drafted the friend-of-the-court brief.

Anthony Rothert, Legal Director, ACLU of Missouri Foundation, was local counsel for the friend-of-the-court organizations.

For the full brief, including the complete list of endorsing organizations, see: "[Medical, HIV and LGBT Groups Challenge Validity of Missouri's Draconian Criminal HIV Law In Michael Johnson Appeal.](#)"

Trial, May 2015

Michael Johnson's trial was held in May 2015 in St. Charles County court before St. Charles County Circuit Judge Jon Cunningham. Johnson was represented by public defender Heather Donovan. The prosecutor, Philip Groenweghe, played to fears about contagion to the heterosexual community, emphasized stereotypes of homosexuality and his belief that homosexuality was a sin, during jury selection, the trial and sentencing. The jury itself included four white men, seven white women and one black woman, all apparently HIV-negative and straight and most "appeared to be in their fifties or

sixties." For a detailed account of jury selection, trial and sentencing, see, "[A Black Body on Trial.](#)"

The jury found Johnson guilty of one felony count of recklessly transmitting HIV and four counts of exposure or attempted exposure. At the sentencing hearing, they sentenced him to 30 years for the felony conviction, and an additional 30.5 years in total for the four lesser convictions.

In July 2015, Judge Cunningham ruled the sentences could be served concurrently and sentenced Johnson to 30 years in prison. An appeal was filed a few days later. For more detail and reactions to the sentencing, see, "[Missouri Judge's Sentencing of Michael Johnson in HIV 'Exposure' Case Decried As 'Barbaric.'](#)"

Background

Michael Johnson, a young gay Black man living with HIV, has been incarcerated since his arrest in October 2013, on charges that he violated Missouri's antiquated HIV felony law. At the time of his arrest, Johnson was a student and star wrestler at Lindenwood University in St. Charles, a suburb of St. Louis, Missouri.

Johnson was charged with 2 class A felonies and 4 class B felonies based on statements by six complaining witnesses, two of whom have tested positive for HIV. Three of the five complaining witnesses are white, two are African American. Johnson refused to accept any plea bargain. Bail was set at \$100,000 cash.

Under Missouri law a class A felony is punishable by a minimum of 10 years in prison and a maximum of 30 years or life in prison. A class B felony is punishable by a minimum of 5 years in prison and maximum of 15 years.

The Missouri law does not require any proof that Johnson intended to infect anyone, or whether he even thought he might infect someone, only that he knew he was HIV positive and cannot prove that he disclosed that fact when he had sex with another person.

In Missouri—a state where the U.S. Department of Justice found chronic racism in law enforcement’s treatment of African American men—a complicit press portrayed Johnson as a sexual predator. In this case, a young Black gay man living with HIV is being prosecuted for felonies that come with severe penalties based on consensual sex with others who willingly engaged in unprotected sex.

HIV Criminalization

HIV criminal laws largely are based on myths, not medical science. Their enforcement often is informed by homophobia, racism, and the broad discomfort in our society with the sexuality of those outside the mainstream. For the basics on HIV criminalization, see “*Why Are We Putting People in Jail for Having HIV? A Grassroots Guide to HIV Criminalization: Facts, Foolishness, and Solutions.*”

The prosecution of Michael Johnson:

- Reflects decades-old ignorance—and not current science—about the actual risks, routes and real-life realities of HIV transmission;
- Reinforces stereotypes and stigma about HIV and people of color;
- Ignores guidance from the U.S. Department of Justice, and multiple medical and public health agencies that have condemned prosecution under HIV-specific criminal laws;
- Tells people of color and LGBT people that it is not a good idea to get tested for HIV and tells those who do get tested that having sex could make them a felon;
- Will have no proven impact on anyone’s sexual risk-taking or exposure to HIV, or to any other incurable sexually transmitted infection, such as HPV or herpes;
- Is at direct odds with the Missouri Health Department’s investment in HIV prevention initiatives.