

**No. 87074**

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**IN THE  
MISSOURI SUPREME COURT**

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**JESSIE CARTER,**

**Appellant,**

**v.**

**STATE OR MISSOURI,**

**Respondent.**

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**Appeal from the Circuit Court of Maries County, Missouri  
25th Judicial Circuit, Division 1  
The Honorable Douglas E. Long, Jr., Judge**

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**RESPONDENT-S SUBSTITUTE BRIEF**

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**Error! No table of authorities entries found.**

## **JURISDICTIONAL STATEMENT**

This appeal is from the dismissal of appellant's Rule 29.15 motion for post-conviction relief, obtained in the Circuit Court of Maries County, the Honorable Douglas E. Long, Jr., presiding. In that motion, appellant sought to vacate convictions of three counts of murder in the first degree, ' 565.020, RSMo 2000. For those offenses, appellant had been sentenced to serve three life sentences without probation or parole in the Missouri Department of Corrections. This Court granted appellant's application for transfer; thus, this Court has jurisdiction. Article V, ' 10, Missouri Constitution (as amended 1982).

## STATEMENT OF FACTS

Appellant, Jessie Carter, was convicted of three counts of murder in the first degree, ' 565.020, RSMo 2000. *State v. Carter*, 71 S.W.3d 267, 269 (Mo.App. S.D. 2002). On direct, appeal, the Court of Appeals summarized the facts of appellant-s crimes as follows:

on February 1, 1998, Defendant and Christeson, who are cousins, went to the home of Susan Brouk (ASusan@)<sup>1</sup> to implement a plan for them to steal her Bronco and for Christeson to have sex with her. Christeson had previously attempted to introduce himself to Susan, but had been asked to leave her property and he wanted to Ahave his little fun with [her] and knock some crap out of her.@

Defendant and Christeson walked the quarter-mile to Susan-s trailer house, carrying shotguns, knives, shoelaces, nylon rope, and gloves. Once inside, Defendant used the rope and shoelaces to tie up Susan and her two

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<sup>1</sup> Since all of the victims have the same last name, we will refer to them by their first names in this opinion. We mean no disrespect.

children, Adrian and Kyle, ages twelve and nine, respectively. Christeson then instructed Susan to get up and Defendant cut the shoelaces tied around her feet with a knife, which was somewhat larger than a pocketknife and had a dull blade. After Christeson and Susan returned from the bedroom, Susan said, "You had your fun. Now get out." Then Adrian recognized Defendant and said his name out loud. At this, Christeson motioned Defendant into the kitchen and said, "We got to get rid of them."

Christeson and Defendant then loaded Susan, Adrian, and Kyle into the Bronco, as well as several items from the house including the television, stereo, VCR, and a checkbook. They drove to a wooded area near a pond and parked by the driveway that led to the home where Christeson and Defendant lived with their uncle. After Defendant had taken the Brouk family out of the Bronco, Christeson approached Susan, kicked her to the ground, and slashed her throat twice with a bone-cut knife, a knife that Defendant described as having a four to six inch blade, which was two or three inches longer than Defendant's knife.

Christeson then asked Defendant to cut Kyle's throat, but Defendant refused, and Christeson instructed him to retrieve some cinder blocks. When Defendant returned with a block, he noticed Christeson had cut Kyle's throat. Although Defendant testified that he refused to hold Kyle's feet while Christeson held his head under water, Defendant also gave a

statement to the police in which he indicated that he did hold Kyle's feet. As Defendant was retrieving another block, he heard a gunshot and turned to see Christeson aiming at the pond. Christeson then choked and drowned Adrian while Defendant held her feet. Christeson and Defendant then grabbed Susan, who was still alive, but had lost a lot of blood and was grasping for air, and threw her into the pond.

After packing personal items, Defendant and Christeson left in the Bronco, and eventually headed west on Interstate 44 toward Blythe, California. Along the way, they sold some of their and Susan's property, and on at least two occasions, Defendant had the opportunity to speak with law enforcement officials without Christeson hearing, but Defendant never attempted to leave the situation or inform police of what had occurred. Defendant and Christeson were arrested in California on February 9, 1998.

*State v. Carter*, 71 S.W.3d at 269-270 (footnote renumbered).

The Court of Appeals affirmed appellant's convictions and sentences, *id.* at 267, and, on April 15, 2002, the Court issued its mandate.

On April 28, 2002, appellant apparently sent his *pro se* motion for post-conviction relief to Jackson County (instead of Maries County where he had been sentenced) (see PCR L.F. 22). On June 4, 2002, the Director of Civil Records in the Court Administrator's office of the Circuit Court of Jackson County sent appellant a letter informing him, as follows:

We are in receipt of your Motion to Vacate, Set Aside or Correct the Judgment or Sentence, however, I believe your pleading should be filed in Maries County, as it is captioned. Therefore, we are forwarding your pleading to that county.<sup>[2]</sup>

(PCR L.F. 28). A complete copy of this *pro se* motion has not been included in the legal file, and there is nothing in the record that reveals whether this *pro se* motion was ever received by Maries County.<sup>3</sup>

On June 27, 2002 (as shown by the date on the *forma pauperis* affidavit), appellant apparently prepared a second *pro se* motion (PCR L.F. 3-21).<sup>4</sup> This motion,

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<sup>2</sup> The letter from the director has not been authenticated; respondent relies on it here in an attempt to state the facts as they appear in the record.

<sup>3</sup> The first page of appellant's first *pro se* motion does seem to be in the legal file (see PCR L.F. 27). But it is plain that the *pro se* motion in the legal file is *not* the same *pro se* motion that was first received by Jackson County. The *pro se* motion in the legal file is accompanied by an *forma pauperis* affidavit dated June 27, 2002, well after the June 4 letter from Jackson County.

<sup>4</sup> A comparison of the first pages of the two motions shows that the handwriting on the pages is different (see PCR L.F. 3, 27). Additionally, not all of the information is identical. On the motion eventually filed in Maries County, the second numbered

too, was sent to Jackson County instead of Maries County (see PCR L.F. 3).

On July 8, 2002 (eighty-four days after the Court of Appeal mandate on direct appeal), appellant's second *pro se* motion was stamped as ~~Filed~~ in the Circuit Court of Jackson County (PCR L.F. 3). This file stamp was subsequently crossed out, and the words ~~Filed in error~~ were written over the top of the file stamp (PCR L.F. 3).

On July 17, 2002, ninety-three days after the Court of Appeals mandate, appellant's second *pro se* motion was filed in Maries County, apparently after it was forwarded to Maries County by Jackson County (see PCR L.F. 1, 3). Appellant's *pro se* motion was not signed by appellant (PCR L.F. 20).

On April 23, 2003, appointed counsel filed an amended motion to vacate, set aside, or correct judgment and sentence (PCR L.F. 29). This motion was signed by both counsel and appellant (PCR L.F. 38). On July 6, 2004, the state filed a motion to dismiss appellant's motion due to the untimely filing of appellant's *pro se* motion in the Circuit Court of Maries County (PCR L.F. 39).

On August 16, 2004, the motion court dismissed appellant's Rule 29.15 motion as untimely filed (PCR L.F. 42). On appeal, the Court of Appeals, Southern District, pointed 

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paragraph includes the parenthetical ~~(Address 2)~~ (PCR L.F. 3); however, on the first motion, the corresponding parenthetical states ~~(Address - N/A)~~ (PCR L.F. 27).

out that, in light of this Court's recent opinion in *Nicholson v. State*, 151 S.W.3d 369 (Mo. banc 2004), appellant's motion should have been considered timely filed based upon the filing date stamped by Jackson County. @ *Jessie Carter v. State*, No. SD26541, slip op. at 3 (Mo.App. S.D. June 30, 2005) (included in the Appendix to this brief, A2-A5).

The Court of Appeals reasoned, however, that appellant had, in light of his failing to sign his motion, nevertheless failed to invoke the jurisdiction of the motion court within the time limits of Rule 29.15. *Id.* at 4. The Court of Appeals noted that appellant, by his own admission, apparently knew that his *pro se* motion was unsigned, but that appellant took no steps to promptly correct the omission as allowed by Rule 55.03(a). @ *Id.* The Court pointed out that the unsigned motion was, therefore, a nullity. *Id.* Accordingly, on June 30, 2005, the Court of Appeals dismissed appellant's case. *Id.*

On September 20, 2005, this Court granted appellant's application for transfer.

## ARGUMENT

### I.

**The motion court did not clearly err in denying appellant=s Rule 29.15 motion as untimely filed, because while appellant=s *pro se* motion was timely filed in Jackson County, it was not signed by appellant; thus, the motion was a nullity that did not invoke the jurisdiction of the court within the time limits of Rule 29.15.**

Appellant contends that the motion court clearly erred in dismissing his Rule 29.15 motion as untimely filed (App.Sub.Br. 12). Citing *Nicholson v. State*, 151 S.W.3d 369 (Mo. banc 2004), he points out that his motion, although it was filed in the wrong circuit court, was timely filed under the holding of that case (App.Sub.Br. 13-17).

Additionally, appellant argues that his failing to sign his *pro se* motion should not render his motion a nullity (App.Sub.Br. 18-23). He asserts that he tried to promptly correct the deficiency by signing his subsequent amended motion, and he argues that allowing him to correct his deficient *pro se* motion in this fashion is consistent with other steps that the Court has taken to ease the requirements placed upon *pro se* post-conviction movants (App.Sub.Br. 18-23).

#### **A. The Standard of Review**

Appellate review of the denial of a post-conviction motion is limited to a determination of whether the findings of fact and conclusions of law of the motion court are clearly erroneous. *Moss v. State*, 10 S.W.3d 508, 511 (Mo. banc 2000). Findings

and conclusions are clearly erroneous if, after a review of the entire record, the court is left with the definite and firm impression that a mistake has been made. *Id.*

**B. Appellant Failed to Invoke the Court's Jurisdiction Within the Time Limits of Rule 29.15**

As set forth in the Statement of Facts, above, this Court issued its mandate affirming appellant's convictions and sentences on April 15, 2002. Thus, appellant had until July 15, 2002, to file his *pro se* motion pursuant to Rule 29.15.<sup>5</sup> See Rule 29.15(b). Appellant's motion was eventually filed in the circuit court of Maries County on July 17, 2002, ninety-three days after this Court's mandate (PCR L.F. 3).

Under ordinary circumstances, there would be no question that appellant's motion was untimely filed, as the motion court concluded (PCR L.F. 42).<sup>6</sup> But as appellant points

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<sup>5</sup> The ninetieth day was actually July 14; however, July 14 fell on a Sunday, making appellant's *pro se* motion due on July 15.

<sup>6</sup> The motion court's ruling was made on August 16, 2004, well before this Court's decision in *Nicholson v. State*, which was handed down on December 21, 2004.

out (App.Sub.Br. 14-15), his *pro se* motion was received in the Circuit Court of Jackson County and stamped "Filed" on July 8, 2002, just eighty-four days after the direct appeal mandate (PCR L.F. 3).

Thus, under the holding of *Nicholson v. State*, 151 S.W.3d 369, appellant's motion was timely filed in Jackson County and should have been treated as timely filed in Marion County pursuant to ' 476.410, RSMo 2000, and Rule 51.10. Respondent concedes this much (as it did in the Court of Appeals); and, it is notable that the Court of Appeals also concluded that appellant's *pro se* motion was timely filed under the holding of *Nicholson*. See *Jessie Carter v. State*, No. SD 26541, slip op. at 3 (Movant's motion should have been considered timely filed based upon the filing date stamped by Jackson County).

Nevertheless, under the facts of appellant's case, the holding of *Nicholson* should not apply. In *Nicholson*, the movant timely filed his *pro se* motion in the circuit court of the City of St. Louis. *State v. Nicholson*, 151 S.W.3d at 370. The motion should have been filed in the circuit court of Cape Girardeau County, and it did not arrive in Cape Girardeau until after the time for filing had expired. *Id.* But citing ' 476.410, RSMo 2000, and Rule 51.10, this Court held that the motion should have been deemed timely filed in the circuit court of Cape Girardeau; the Court reasoned:

Section 476.410 provides that a court in which a case is filed laying venue in the wrong division or wrong circuit shall transfer the case to the division or circuit in which it could have been brought. The statute gives

the circuit court in which a pleading was erroneously filed Alimited jurisdiction . . . to transfer any case filed in an improper venue to any circuit court otherwise designated by the legislature to hear the particular matter.@ *State ex rel. Director of Revenue v. Gaertner*, 32 S.W.3d 564, 567-68 (Mo. banc 2000). Rule 51.10 requires the court to which an action is transferred to treat the action Aas if it had originated in the receiving court.@ Accordingly, section 476.410 and Rule 51.10 required the circuit court of Cape Girardeau County to treat Nicholson's motion as if it were timely filed on January 6, 2003.

*Id.* at 370-371.

But *Nicholson* simply applied the statute and rule to allow review of a motion that had been filed in the wrong court. The Court *did not* otherwise make any exception for failing to invoke the jurisdiction of the court within the time limits of Rule 29.15. See *id.* at 371 (AAppling Rule 51.10 does not conflict with the Rule 29.15 filing periods because it simply allows review of a motion filed within the Rule 29.15 filing periods but filed in an incorrect court. A Rule 29.15 motion, whether filed in a proper or an improper court, is still considered untimely if filed after the filing period expired.@). In other words, the decision in *Nicholson* was premised upon the timely filing of a motion that otherwise met the requirements of Rule 29.15 (and thereby invoked the jurisdiction of the circuit court).

In appellant's case, however, appellant's *pro se* motion was not signed (PCR L.F.

20); thus, regardless of when and where it was filed, it did not invoke the jurisdiction of the circuit court. An unsigned motion for post conviction relief is a nullity and does not invoke the circuit court's jurisdiction. @ *Blanton v. State*, 159 S.W.3d 870 (Mo.App. W.D. 2005) (citing *Tooley v. State*, 20 S.W.3d 519, 520 (Mo. banc 2000); and *Malone v. State*, 798 S.W.2d 149, 151 (Mo. banc 1990)). Thus, unlike the movant in *Nicholson* B where the movant filed an otherwise proper motion in the wrong court *within* the time limits of Rule 29.15 B appellant *did not* invoke the circuit court's jurisdiction within the time limits of Rule 29.15. Accordingly, while the rule announced in *Nicholson* would apply to render appellant's motion timely filed, it does not change the fact that appellant's *pro se* motion was a nullity that did not invoke the court's jurisdiction within the time limits of Rule 29.15.

The signature requirement, despite the easing of other requirements under Rule 29.15, remains necessary to invoke the Court's jurisdiction. As this Court stated in *Tooley*:

The signature requirement is not a hollow, meaningless technicality. It constitutes a certificate that the filing is not for any improper purpose and is well grounded in fact and primarily has the objective of the elimination from the court system of groundless actions. Requiring a signature also makes certain the party actually assents to the filing of the action on his or her behalf.

*The movant's signature remains as a mandatory element for jurisdiction to attach.* Tooley's failure to sign his motion rendered it a nullity. The motion court's jurisdiction was not invoked at the time the motion was dismissed.

*State v. Tooley*, 20 S.W.3d at 520.<sup>7</sup> Accordingly, while appellant may have timely filed his *pro se* motion, he otherwise failed to invoke the circuit court's jurisdiction.

Moreover, this is not a case in which appellant either sought to correct the omission of his signature within the original time limits of Rule 29.15, see *Tooley v. State*, 20 S.W.3d at 520, or promptly corrected the deficiency when it was brought to his attention, see *Wallingford v. State*, 131 S.W.3d 781, 781-782 (Mo. banc 2004). See generally *Blanton v. State*, 159 S.W.3d at 871. To the contrary, appellant has never sought to correct his deficient *pro se* motion.

In *Wallingford v. State*, for example, four days after the deadline for filing his

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<sup>7</sup> It is notable that the *pro se* motion that bears the Jackson County file stamp is written in handwriting that differs from the handwriting on the first page of appellant's first *pro se* motion (see PCR L.F. 3, 27). Appellant's handwriting on the first *pro se* motion more closely matches his notarized signature on the *forma pauperis* affidavit, indicating that appellant did not fill out the unsigned *pro se* motion that bears the Jackson County file stamp (see PCR L.F. 21, 27).

amended motion, the movant moved to correct the omission of his signature from the *pro se* motion, alleging that he had inadvertently forgotten to sign the motion. *Wallingford v. State*, 131 S.W.3d at 781. Then, one month later, the movant filed a signed ADeclaration@ for the original motion and a AMotion to Accept Movant-s Declaration Pursuant to *Tooley v. State.*@ *Id.* These actions were sufficient to show that the movant in that case had sought to promptly correct the omission. But no such actions were taken in the case at bar.

Indeed, here, while appellant later signed the amended motion (Rule 29.15(g) states that an amended motion Ashall be signed by movant or counsel@), he made no attempt to correct his original *pro se* motion. He did not seek to correct the motion, did not explain why there was no signature, did not file any type of declaration, or otherwise act to correct the deficiency. Instead, while appellant now expressly acknowledges that he was aware of the deficiency in the *pro se* motion at the time of the filing of his amended motion, appellant argues that he Abelieved [he] had corrected it@by signing his amended motion (App.Sub.Br. 18-19). But this Court should reject appellant-s argument.

A proceeding under Rule 29.15 is commenced by the timely filing of a Rule 29.15 motion. The motion must be in proper form, and it must be signed to invoke the jurisdiction of the court. *See State v. Tooley*, 20 S.W.3d at 520. On the other hand, an unsigned motion is a nullity that does not invoke the jurisdiction of the court. *See Blanton v. State*, 159 S.W.3d 870. Thus, except in cases where the *pro se* motion itself is

promptly corrected, any attempt to proceed under Rule 29.15 by filing an amended motion is merely an attempt to proceed on a nullity. But this is legally impossible, and it is contrary to good practice and should not be allowed (especially since the circuit courts jurisdiction has not actually been invoked). Instead, a movant who realizes that his *pro se* motion is unsigned should be expected to follow the provisions of Rule 55.03(a) and promptly correct the omission.

Such a rule, it should be noted, will not place any undue burden upon *pro se* litigants who are incarcerated and who are not always well versed in the intricacies of the law. For, while an incarcerated person seeking post-conviction relief must prepare and file his or her [*pro se*] motion only with such help as he can obtain within the prison walls or the prison system, see *Nicholson v. State*, 151 S.W.3d 369, a post-conviction litigant will ordinarily have the assistance of an attorney as did movant in this case both in reviewing the *pro se* motion and filing an amended motion (unless the post-conviction litigant elects to proceed *pro se*). Thus, if the signature requirement has been overlooked by a *pro se* litigant, counsel can then take appropriate steps to correct the original pleading. There is, therefore, no compelling reason to further relax the signature requirement beyond what Rule 55.03(a) and this Court's decision in *Wallingford* already allow.<sup>8</sup>

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<sup>8</sup> In relaxing the verification requirements of Rule 29.15, for example, this Court observed that defendants who are incarcerated frequently complain that they have

In sum, because appellant's *pro se* motion never invoked the jurisdiction of the circuit court within the time limits of Rule 29.15, and because appellant did not promptly correct his *pro se* motion to comply with the signature requirement, the motion court did

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difficulty arranging for a notary public to verify their post-conviction motions so that they can be timely filed.@ *State v. White*, 873 S.W.2d 590, 594 (Mo. banc 1994). Here, no similar hurdle impedes a post-conviction litigant's ability to sign the *pro se* motion. And, as set forth above, counsel can take whatever steps are necessary to correct a missing signature.

not clearly err in denying appellant's motion as untimely filed.<sup>9</sup> This point should be denied.

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<sup>9</sup> While it is apparent that the motion court dismissed appellant's motion solely because it was filed ninety-three days after this Court's mandate, this court should not reverse if the motion court reached the right result, even if it was for the wrong reason. *Walker v. State*, 34 S.W.3d 297, 301 n. 5 (Mo.App. S.D. 2000). Additionally, jurisdictional bars can be raised for the first time on appeal. *See Malone v. State*, 798 S.W.2d at 151.

## CONCLUSION

In view of the foregoing, respondent submits that the denial of appellant's Rule 29.15 motion should be affirmed.

Respectfully submitted,

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## **APPENDIX**

## CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 3,842 words, excluding the cover, this certification, the signature block, and the appendix, as determined by WordPerfect 9 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, this \_\_\_\_\_ day of November 2005,

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