

No. SC95527

In the
Supreme Court of Missouri

RODNEY CREIGHTON,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

**Appeal from the Circuit Court of the City of St. Louis
Twenty-Second Judicial Circuit
The Honorable Elizabeth Byrne Hogan, Judge**

RESPONDENT'S SUBSTITUTE BRIEF

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STATEMENT OF FACTS

Appellant (Movant), Rodney Creighton, appeals a St. Louis City Circuit Court judgment denying his Rule 29.15 motion for postconviction relief. Defendant's motion sought to set aside his convictions of three counts of first-degree robbery, one count of armed criminal action, and one count of resisting arrest, for which he was sentenced to 25 years in prison.

Movant was charged, as a persistent offender, with four counts of robbery in the first degree (counts I, III, V, and VII), four counts of armed criminal action (counts II, IV, VI, and VIII), and one count of resisting arrest (count IX) for events that took place on January 17, 2009. (L.F. 24-25.) On August 22 and 23, 2011, a jury trial was conducted. (Tr. 28-165.)

Viewed in the light most favorable to the verdict, the evidence at trial showed the following:

At around 1:30 a.m. on January 17, 2010, three women were walking to their cars after leaving a bowling alley in St. Louis. (Tr. 70, 77-78, 85.) As the women approached their car in a parking lot, a man, later identified as Movant, approached them, pointed a silver pistol at one of the women, and demanded her purse. (Tr. 71, 79, 86.) The woman threw her purse on the ground, and Movant demanded that the other two women give him their purses as well. (Tr. 71, 79-80, 86-87.) The women complied, also throwing their purses on the ground. (Tr. 80, 86-87.) Movant took the purses and ran

back across the street where he had come from. (Tr. 72, 87.) The women called the police and reported the incident. (Tr. 72-73.)

Later that same morning, around 2:30 a.m., a man left a banquet hall and got into his car. (Tr. 94.) As the man sat in his car waiting for it to warm up, he was carjacked at gunpoint. (Tr. 94.) The man was able to run back into the banquet center, and he called police. (Tr. 95.)

On January 19, 2010, police discovered the man's car parked on the street, so they began conducting surveillance on it. (Tr. 101-02.) The officers saw Movant get into the car and drive away, so they followed him. (Tr. 102.) The officers then activated their emergency lights and attempted to pull Movant over. (Tr. 102.) Movant fled in the car at a high rate of speed until he lost control of the vehicle approximately three-quarters of a mile down the road. (Tr. 102.) At that point, the officers ordered Movant to exit the car. (Tr. 103.) Movant refused and attempted to restart the vehicle. (Tr. 103.) The officers pulled Movant from the vehicle and put him under arrest. (Tr. 103-04.)

The officers interviewed Movant once they had him in custody. (Tr. 104-05, 108.) Movant told officers that he rented the car from a "white guy" for \$250. (Tr. 111-12.) Movant said he believed that the "white guy" was going to use the money to buy drugs. (Tr. 111-12, 114.) A detective then created a photographic lineup for Movant to look at that included a photo of the man

who was carjacked outside the banquet center. (Tr. 115.) Movant selected the man's photo as the person who allegedly rented him the car. (Tr. 115.)

An officer then placed Movant in a lineup. (Tr. 109.) The three women whose purses were taken in the bowling alley parking lot identified Movant as the robber. (Tr. 81.)

Movant testified at trial and denied robbing the three women. (Tr. 129-31.) Movant testified that he chose the man who was carjacked from the lineup because the police told him that they would release him if he picked anyone from the lineup. (Tr. 131.) Movant also claimed that he did not attempt to flee from police, but that instead he was speeding because he thought he heard a gunshot. (Tr. 132-33.)

The jury found Movant guilty of three counts of first-degree robbery and three counts of armed criminal action for the counts involving the three women (counts I-VI). (L.F. 87-98.) The jury also found Movant guilty of resisting arrest (count IX). (L.F. 103.) The jury acquitted Movant of the robbery and armed criminal action counts related to the man who was carjacked (counts VII and VIII). (L.F. 99-101.)

At a sentencing hearing, the court sentenced Movant to 25 years in prison for each of the three robbery counts, 10 years in prison for each of the three armed criminal action counts, and 7 years for resisting arrest, with all sentences running concurrently. (L.F. 112-28.)

On November 20, 2012, the Missouri Court of Appeals for the Eastern District affirmed Movant's conviction and sentence. *State v. Creighton*, 386 S.W.3d 206 (Mo. App. E.D. 2012). The Eastern District issued its mandate on December 13, 2012.

On January 17, 2013, Movant timely filed his pro se motion for postconviction relief. (PCR L.F. 2, 3-29.) On March 8, 2013, the motion court notified the Missouri Public Defender's office that Movant had filed a pro se motion and an affidavit of indigence. (PCR L.F. 2.) On May 30, 2013, postconviction counsel entered an appearance and requested 30 additional days to file an amended motion. (PCR L.F. 2, 30-31.) On July 26, 2013, the motion court granted postconviction counsel's request for additional time. (PCR L.F. 2, 33.) On August 28, 2013, postconviction counsel filed an amended motion. (PCR L.F. 2, 34-75.) On August 11, 2014, the motion court denied Movant's postconviction motion without an evidentiary hearing. (PCR L.F. 2, 76-84.)

ARGUMENT

I. This Court should remand this case to the motion court for a inquiry into whether Movant was abandoned by postconviction counsel because Movant's amended postconviction motion was untimely filed.

1. The record pertaining to this claim.

On January 17, 2013, Movant filed a timely pro se Rule 29.15 motion for postconviction relief. (PCR L.F. 2.) On March 8, 2013, the court filed a memorandum, which appeared on the docket sheets, in which it entered the following order: "The Court hereby notifies Scott Thompson Appellate District Defender that Movant Rodney Creighton has filed a post conviction motion. The motion is accompanied by an affidavit of indigency. So ordered. Judge Elizabeth B. Hogan." (PCR L.F. 2.)

Nearly three months later, on May 30, 2013, postconviction counsel entered his appearance and requested an additional 30 days to file his amended motion. (PCR L.F. 2; 30-32.) On July 26, 2013, the motion court granted postconviction counsel's request for an additional 30 days to file the amended motion. (PCR L.F. 2; 33.) Then, on August 28, 2013, postconviction counsel filed an amended motion. (PCR L.F. 2.)

2. Movant's amended postconviction motion was untimely filed.

Rule 29.15(e) states that “[w]hen an indigent movant files a pro se motion, the [circuit] court *shall* cause counsel to be appointed for the movant.” (emphasis added). The date of appointment is important when determining the deadline for filing a Rule 29.15 amended postconviction motion:

If an appeal of the judgment sought to be vacated, set aside, or corrected is taken, the amended motion shall be filed within sixty days of the earlier of: (1) the date both the mandate of the appellate court is issued and counsel is appointed or (2) the date both the mandate of the appellate court is issued and an entry of appearance is filed by any counsel that is not appointed but enters an appearance on behalf of movant. The court may extend the time for filing the amended motion for one additional period not to exceed thirty days.

Rule 29.15(g).

In this case, if the time limit (60 days plus one 30-day extension) did not begin to run until Movant's postconviction counsel entered his appearance, then the amended motion was timely filed on August 28, 2013. If the circuit court's order notifying the public defender's office on March 8, 2013 is considered the appointment of counsel, however, then the amended

motion was untimely filed. If the amended motion was untimely filed, then the case should be remanded back to the motion court for an abandonment inquiry without considering the merits. *See Moore v. State*, 458 S.W.3d 822 (Mo. banc 2015).

Movant argues that the motion court has discretion under Rule 29.15(e) and Section 600.086.3, RSMo “to notify the public defender’s office that a post-conviction movant has filed a post-conviction motion and to permit the public defender’s office to undertake the tasks of determining whether the movant is actually indigent and appointing counsel for those who it determines to be indigent or notifying the motion court that the movant is not indigent and declining to appoint counsel for the movant.” (Movant’s substitute brief at 17-18.) While the public defender’s office does have the authority to determine the indigency of a movant seeking its representation under Section 600.086.3, RSMo, the motion court is still bound to cause counsel to be appointed under Rule 29.15(g). Moreover, the motion court is obligated to enforce the provisions of Rule 29.15, including the mandatory time limits for filing an amended motion. Thus the Amended Administrative Order entered in 2012 that purports to extend the time limits for filing an amended motion under Rule 29.15(g) by notifying the public defender instead of making an appointment is beyond the motion court’s discretion in

complying with the appointment provision of Rule 29.15(e). (*See* Supp. PCR L.F. 1-3; PCR L.F. 2.)

“The time limits for filing a post-conviction motion are mandatory.” *Stanley v. State*, 420 S.W.3d 532, 539 (Mo. banc 2014). Although “[c]ourts ‘are solicitous’ of post-conviction claims that present a genuine injustice,” that “policy . . . must be balanced against the policy of ‘bringing finality to the criminal process.’” *Dorris v. State*, 360 S.W.3d 260, 267 (Mo. banc 2012) (quoting *White v. State*, 939 S.W.2d 887, 893 (Mo. banc 1997)). When the time limits are disregarded, “finality would be undermined and scarce public resources will be expended to ‘investigate vague and often illusory claims, followed by unwarranted courtroom hearings.” *Id.* “The time limits in [the postconviction rules] ‘serve the legitimate end of avoiding delay in the processing of prisoner’s claims and prevent the litigation of stale claims.” *Id.* at 267 (quoting *Swofford v. State*, 323 S.W.3d 60, 64 (Mo. App. E.D. 2010)).

One of these postconviction time limits involves the filing of the amended postconviction motion, and one of the triggering events to determine the deadline for filing this motion is the appointment of counsel for indigent movants. As stated above, under Rule 29.15(e), courts “shall” cause counsel to be appointed for indigent postconviction movants. In addition, under 18 CSR 10-2.010(1)(F), the public defender’s office “shall” represent any eligible person “[f]or whom . . . any law of this state requires the appointment of

counsel[.]” “Generally the word ‘shall’ connotes a mandatory duty.” *Dorris*, 360 S.W.3d at 267 (quoting *State ex rel. Blue Springs v. Rice*, 853 S.W.2d 918, 920 (Mo. banc 1993)). This Court has held that “the effective date of appointment of counsel is the date on which the office of the public defender is designated rather than the date of counsel’s entry of appearance.” *Stanley*, 420 S.W.3d at 540 (quoting *White*, 813 S.W.2d at 864).

The circuit court was under a mandatory duty to appoint counsel when it received a postconviction motion accompanied by an affidavit of indigency. The public defender’s office was also under a mandatory duty to represent movant, if he qualified as indigent, because the law governing postconviction claims “require[s] the appointment of counsel[.]” See 18 CSR 10-2.010(1)(F); Section 547.360.1(5), RSMo. There was no allegation here that Movant did not qualify as indigent. Therefore, the order notifying the public defender’s office of Movant’s motion in this case was the legal equivalent of designating that office as appointed counsel for Movant. If the order notifying the public defender is not considered an appointment, then it is unclear when appointment actually took place, which frustrates the mandatory time limits of Rule 29.15.

Further, the date of postconviction counsel’s entry of appearance cannot be the date when the mandatory time limits began to run in this case. Rule 29.15(g) allows such an entry to be the start of the time limits when “an

entry of appearance is filed by any counsel that is not appointed but enters an appearance on behalf of movant.” Here, postconviction counsel had to be appointed by the court. Therefore, if the notification date is not considered the date of appointment of counsel, then the record is insufficient to determine when the mandatory time limits began to run. If the record is insufficient to make such a determination, this case should still be remanded to the motion court for an abandonment inquiry. *See Austin v. State*, 484 S.W.3d 830, 833 (Mo. App. E.D. 2016).

Movant relies on *Laub v. State*, 481 S.W.3d 579 (Mo. App. S.D. 2015), to support his argument that the motion court’s notification was not an appointment. In *Laub*, the motion court similarly notified the public defender’s office that the movant had filed a pro se motion:

Per our prior efforts to assist the Public Defender’s Office in managing case overload, this is notice that [Movant] has filed a pro se motion under Rule [29.15], copy is included. I am not appointing the Public Defender’s office at this time, but ask that you assign an attorney as soon as possible, in order to file any amended motion.

Id. at 582 (alterations in original). The Southern District found that the Rule 29.15(e) time limits began to run on the date counsel entered his appearance for the movant, not on the date of this letter, because “the record reveals that

there was no appointment of counsel for Movant by the motion court before [postconviction counsel] entered his appearance on Movant's behalf[.]” *Id.* at 583. The Southern District further stated that construing the notification as an appointment would be unfair:

While, as a general proposition, it may be considered a best practice for the motion court to routinely appoint counsel immediately after an indigent movant files a *pro se* motion, here the motion court articulated in its April 11 letter a reasonable basis to temporarily delay making such an appointment. To now construe that well-reasoned, expressed delay in making an appointment as an implicit appointment of the Public Defender would be disingenuously unfair to Movant and to the Public Defender.

Id. at 584.

Laub was incorrectly decided because there is nothing unfair about adhering to the mandatory time limits set out in the Supreme Court Rules. The Southern District's holding in *Laub* frustrates the strict time limits for the filing of amended motions by allowing public defenders to unilaterally and arbitrarily extend the deadline for filing an amended motion based on when they decide to file an entry of appearance. While it is understandable that the motion court might want to assist the public defender's office in

“managing case overload,” such assistance is not within the purview of Rule 29.15. “A motion court has no authority to extend this time limit for filing an amended motion.” *Stanley*, 420 S.W.3d at 541.

This Court has previously held that the deadlines imposed by the postconviction rules cannot be artificially extended. In *Stanley*, this Court held that the public defender’s office could not extend the deadline for filing an amended motion “by withdrawing and replacing lawyers to reestablish when the limitations period begins running for amended motions, and neither can the circuit court by giving counsel permission to withdraw and ‘reappointing’ another lawyer.” *Id.* at 541.

Finally, if the circuit courts are allowed to “notify” the public defender’s office, and if the public defender’s office is allowed to arbitrarily decide when to enter an appearance to start the mandatory filing dates, Missouri would run the risk that its postconviction judgments would be subject to federal habeas review on the ground that its postconviction deadlines are not “firmly established” or “regularly followed.” *See Oglesby v. Bowersox*, 592 F.3d 922 (8th Cir. 2010) (holding that the defendant’s federal habeas claim was defaulted for failure to comply with the “firmly established” and “regularly followed” time limits regarding the filing of amended postconviction motions).

This Court should find that the motion court’s notice to the public defender’s office that Movant had filed a pro se motion and an affidavit of

indigency was a de facto appointment of the public defender's office. Such a finding would cause Movant's amended motion to be untimely filed. Therefore, this Court should remand this case back to the motion court for an abandonment inquiry pursuant to *Moore v. State*, 458 S.W.3d 822 (Mo. banc 2015).

II. The motion court did not clearly err in denying, without an evidentiary hearing, Movant's claim of ineffective assistance of counsel for failing to request a mistrial or the removal of juror 510, Pearlie Turner, because the record conclusively refutes that juror 510 intentionally failed to disclose familiarity with Movant and Movant was not prejudiced by any unintentional nondisclosure. [Responds to Movant's Point I.]

1. The record pertaining to this claim.

In his amended postconviction motion, Defendant alleged that trial counsel was ineffective for "failing to seek a mistrial, or in the alternative, removal of Juror 510, Pearlie Turner for intentional nondisclosure." (PCR L.F. 36.)

During voir dire, the prosecutor asked the venire panel whether anyone knew Movant. (Tr. 28.) No one responded. (Tr. 28.) Then, when the jury went to deliberate, the jury foreman told the deputy that one of the jurors, juror 510, Pearlie Turner, told him she might know Movant. (Tr. 162.) The court brought juror Turner in to question her about her familiarity with Movant, but determined that any knowledge the juror might have of Movant would not affect her deliberations:

THE COURT: Ms. Turner, I understand you feel you may know the defendant.

JUROR TURNER: I think I have seen him somewhere.

THE COURT: Do you have any idea where you might have seen him?

JUROR TURNER: Not really, no.

THE COURT: So you can't put a name to him?

JUROR TURNER: No. No.

THE COURT: Or a place to him?

JUROR TURNER: I can't even really think where I've seen him at, but his face do look familiar to me, but I don't know where I've seen him at.

THE COURT: Okay. And is there anything about your thinking you may have seen him before that gives you any fear or prejudice against him, fear of him or prejudice against him? In other words, you know, have you formed any impression of him before you came into this courtroom in terms of his believability or his character? Is that a no?

JUROR TURNER: That's a no.

THE COURT: Okay. And is there anything about your thinking you might have seen him before that would get in the way of your giving either party a fair trial in this case?

JUROR TURNER: No. No.

THE COURT: Okay. Counsel, follow-up questions?

[Prosecutor:] I have none, Your Honor.

[Defense counsel:] I don't have any, Your Honor.

THE COURT: Ms. Turner, I don't see a problem with your continuing to serve on this jury. If you have any concerns or worries, tell me about them now.

JUROR TURNER: I know, but – I don't know. It's just – I don't.

THE COURT: Okay. Well, thank you for bringing that to our attention. Would you mind going back up and deliberating?

JUROR TURNER: I will.

THE COURT: Thank you so much.

(Tr. 163-64.)

In its conclusions of law and order denying Movant's postconviction motion, the motion court found that Movant's claim was refuted by the record:

The Court finds this claim is without merit as movant has not alleged any facts that would support a finding that a mistrial would have been granted or an alternate juror should have substituted. The fact a person may have seen somebody else at some unknown place does not mean the person "knows" that

other person such that a response to the question asked during voir dire would have been necessary.

(PCR L.F. 82.)

2. Standard of review

Appellate review of a judgment overruling a Rule 29.15 postconviction motion is limited to whether the motion court's findings and conclusions were "clearly erroneous." *Johnson v. State*, 333 S.W.3d 459, 463 (Mo. banc 2011); Rule 29.15(k). "The motion court's findings and conclusions are clearly erroneous only if, after reviewing the entire record, the appellate court is left with the definite and firm impression that a mistake has been made." *Midgyett v. State*, 392 S.W.3d 8, 12 (Mo. App. W.D. 2012) (quoting *Krider v. State*, 44 S.W.3d 850, 856 (Mo. App. W.D. 2001)).

In order to establish ineffective assistance of counsel, the movant must show that (1) counsel's performance was so deficient that it fell below an objective standard of reasonable competence, and that (2) counsel's deficient performance prejudiced the movant's defense. *Strickland v. Washington*, 466 U.S. 668, 694 (1984). There is a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of professional judgment. *Id.* at 689-90. To show prejudice, the movant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694.

In order to be entitled to an evidentiary hearing, the movant must allege facts, not conclusions, warranting relief; the facts alleged must raise matters not refuted by the record; and the matters about which the movant complains must have resulted in prejudice. *Morrow v. State*, 21 S.W.3d 819, 822-23 (Mo. banc 2000).

3. Movant is not entitled to any relief.

Movant alleges that trial counsel was ineffective for failing to ask for a mistrial or the removal of juror 510, Pearlie Turner, from the jury for intentional nondisclosure. (Movant's substitute brief at 23.) This allegation, however, is without merit because juror Turner did not commit intentional nondisclosure, and Movant was not prejudiced by her participation on the jury.

“Intentional nondisclosure occurs: (1) where there exists no reasonable inability to comprehend the information solicited by the question asked of the prospective juror, and (2) where it develops that the prospective juror actually remembers the experience or that it was of such significance that his purported forgetfulness is unreasonable.” *State v. Lane*, 415 S.W.3d 740, 755 (Mo. App. S.D. 2013) (internal quotations omitted). “Unintentional non-disclosure involves an insignificant or remote experience, misunderstanding the question, or disconnected information.” *Id.* (quoting *State v. Johnson*, 284 S.W.3d 561, 569 (Mo. banc 2009)).

The record in the instant case refutes Movant's claim that his plea counsel should have sought a mistrial or the removal of juror Turner for intentional nondisclosure because juror Turner's failure to disclose that she might have seen Movant somewhere was unintentional and insignificant. Juror Turner reported to the trial court that she thought she had seen Movant somewhere before, but that she did not know his name and could not remember where she might have seen him. (Tr. 163-65.) Juror Turner's inability to recall Movant's name or anything significant about her alleged meeting of him shows that this meeting, if it even happened, was so insignificant and remote that, at most, it amounts to an unintentional nondisclosure. Therefore, Movant's trial counsel was not ineffective for failing to seek a mistrial on the basis that juror Turner made an intentional nondisclosure.

In addition, even if counsel did err, Movant did not plead any facts that show he was prejudiced. As stated above, to show prejudice, the movant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. In his amended postconviction motion, Movant alleged that he was prejudiced because "[t]here was no mistrial. Instead, Movant had his fate decided by someone who knew him, but did not disclose that fact when asked about it." (PCR L.F. 44-45.) These allegations are not facts that show

prejudice. Instead, it is clear from the record that juror Turner did not know Movant and that, even if she had seen him somewhere, she was not biased against him in any way.

Therefore, the motion court did not clearly err in denying Movant's postconviction claim.

III. The motion court did not clearly err in declining to review Movant's attached pro se claims because Movant's claims were not sufficiently pleaded in the amended motion. [Responds to Movant's Point II.]

Movant claims that the motion court erred in failing to review the claims raised in his pro se motion, a copy of which was attached to the amended motion. (Movant's substitute brief at 28.) The motion court did not clearly err, however, because Movant's pro se claims were not adequately presented to the motion court in the amended motion, and Rule 29.15(g) does not allow material to be incorporated by reference to a previously filed motion.

The motion court stated in its conclusions of law and order that it attempted to review Movant's pro se claims, but they were "not sufficiently legible for the Court to even attempt to address them." (PCR L.F. 82.) The court found that "if there was any possible merit to the claims, counsel would have properly presented them to the court." (PCR L.F. 82.)

This Court has held that failure to comply with the form requirements of Rule 29.15 mandates dismissal. In *State v. Owsley*, 959 S.W.2d 789, 798 (Mo. banc 1997), the movant complained that the trial court erred when it dismissed his amended Rule 29.15 motion by ordering that "movant's amended motion for relief is overruled in its entirety as it does not comply

with the conciseness requirement of Supreme Court Rule 29.15.” *Id.* This Court upheld the motion court’s dismissal, stating that “Rule 29.15, taken as a whole, clearly requires any and all requests for relief under the Rule to conform substantially to Form 40.” *Id.* This Court further stated, “because of the special purpose of a Rule 29.15 motion—to achieve finality in criminal proceedings—exceptions should be disfavored.” *Id.* Similarly, here, the motion court’s finding that Movant’s pro se claims were not properly presented should be upheld because exceptions to Rule 29.15 should be disfavored. Movant failed to sufficiently allege the facts and claims of his pro se motion in his amended motion.

Further, Movant argues that the motion court could have looked to the original pro se motion if the one attached to the amended motion was illegible. (Movant’s substitute brief at 28-29.) But the amended motion is the final pleading, and it must include all claims presented to the motion court. *Leach v. State*, 14 S.W.3d 668, 670-71 (Mo. App. E.D. 2000). The purpose of the amended motion is to ensure that the motion court does not have to search for documents that are not immediately at hand. *Id.*; *Reynolds v. State*, 994 S.W.2d 944, 945 (Mo. banc 1999). While Movant could physically attach the pro se motion for consideration by the motion court, “the better practice is for counsel to include the claims from movant’s earlier pro se motions within the body and text of counsel’s amended motion.” *Reynolds*,

994 S.W.2d at 946.¹ The motion court was not required to search the record for a legible copy of Movant’s pro se motion. Rule 29.15(g) specifically states that “[t]he amended motion shall not incorporate by reference material contained in any previously filed motion.” In addition, “[a]llegations in a *pro se* motion that are not included in a subsequently filed amended motion are not for consideration.” *Wills v. State*, 321 S.W.3d 375, 386 (Mo. App. W.D. 2010) (quoting *Self v. State*, 14 S.W.3d 223, 226 (Mo. App. S.D. 2000)). By submitting his pro se claims as an illegible attachment to the amended motion, Movant has failed to sufficiently plead them for the motion court’s review.

Therefore, the motion court did not clearly err in declining to review claims that were not clearly presented in the amended motion.

¹ The upcoming amendments to Missouri Supreme Court Rule 29.15 remove the ability for postconviction counsel to attach a pro se motion to the amended motion. *See* Missouri Supreme Court Order dated May 31, 2016.

CONCLUSION

Movant's amended postconviction motion was untimely filed, so this Court should remand this case to the motion court for an abandonment inquiry. Alternatively, the motion court did not clearly err, and its judgment denying Defendant's motion for postconviction relief should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06(b) in that it contains 5130 words excluding the cover, certificate of service, certificate required by Rule 84.06(c), signature block, and appendix.

2. That a copy of this brief was sent through the eFiling system on Monday, June 27, 2016, to:

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