

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

OTIS CORNELIOUS

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD79204

DATE: February 7, 2017

Appeal From:

Jackson County Circuit Court
The Honorable Jack R. Grate, Judge

Appellate Judges:

Special Division: Cynthia L. Martin, Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

Attorneys:

Kent E. Gipson, Kansas City, MO, for appellant.

Shaun Mackelprang, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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STATE OF MISSOURI,

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No. WD79204

Jackson County

Before Special Division: Cynthia L. Martin, Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

Otis Cornelious appeals from the denial of a motion for post-conviction relief claiming abandonment of counsel. Cornelious argues that the motion court clearly erred because he was abandoned when retained post-conviction counsel failed to file an amended Rule 29.15 motion, and because retained post-conviction counsel, having served as Cornelious's counsel or direct appeal, had a conflict of interest that impaired the assertion of claims of ineffective assistance of appellate counsel. Essential to both of Cornelious's points on appeal is whether the abandonment doctrine applies to retained counsel in post-conviction proceedings.

AFFIRM.

Special Division holds:

There is no constitutional right to counsel during post-conviction proceedings. In its adoption of Rule 29.15 to create proceedings for those persons seeking post-conviction relief after trial, our Supreme Court elected to create a limited right to counsel for an indigent movant who timely files a *pro se* initial motion. Under Rule 29.15(e), appointed counsel has an obligation to review the claims asserted in the *pro se* motion and then either file an amended motion or a statement indicating that no amended motion is necessary. If appointed counsel either fails to file an amended motion or fails to file an amended motion timely, the abandonment doctrine acts to restore the movant to his original position. Because the abandonment doctrine seeks only to enforce Rule 29.15(e), it follows that a movant cannot claim abandonment based on the actions or inactions of retained counsel when the rule imposes no duty on retained counsel. Thus, the motion court did not err in denying Cornelious's motion for post-conviction relief claiming abandonment of counsel.

Opinion by Cynthia L. Martin, Judge

February 7, 2017

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