

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

TRAVIS M. STANLEY, Appellant,	)	No. ED97795
	)	Appeal from the Circuit Court of
vs.	)	Perry County
	)	Honorable Benjamin F. Lewis
STATE OF MISSOURI, Respondent.	)	Filed: December 4, 2012

Travis Stanley (Movant) appeals the judgment of the Circuit Court of Perry County denying without an evidentiary hearing his Rule 24.035 motion for post-conviction relief. Movant claims the motion court clearly erred in denying his claims that: (1) plea counsel provided ineffective assistance because she induced Movant to plead guilty by convincing him the court would accept the State's recommended sentence; and (2) the motion court failed to inform Movant that he could not withdraw his guilty plea if the court rejected the State's recommendation.

REVERSED AND REMANDED.

Division Four Holds: Movant first asserted in an untimely second amended Rule 24.035 motion his claim that the plea court failed to advise him, as required by Rule 24.02(d)(2), that he would not be permitted to withdraw his guilty plea if the court deviated from the State's recommended sentence. Because the record does not show whether an exception to the Rule 24.035 timeliness requirements applies in this case, we remand for the motion court to determine whether the untimely filing was justified. If the motion court finds that the untimely filing of the second amended motion was justified, the court must allow Movant to withdraw his plea because the record does not establish that Movant understood that he would not be permitted to withdraw his plea if the court exceeded the State's recommendation. In regard to Movant's claim that plea counsel was ineffective because she convinced him the court would accept the State's recommended sentence, we hold that Movant failed to raise this claim before the motion court and that, even if we were to consider this claim, it is refuted by the record.

Opinion by: Patricia L. Cohen, J.

Lawrence E. Mooney, P.J., and Kurt S. Odenwald, J., concur.

Attorney for Appellant: Edward S. Thompson

Attorney for Respondent: Karen L. Kramer

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.
