IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

TRAVIS S. MIDGYETT,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD74731

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: December 4, 2012

APPEAL FROM

The Circuit Court of Boone County, Missouri The Honorable Jodie C. Asel, Judge

JUDGES

Division Four: Welsh, C.J., Pfeiffer, J., and Daniels, Sp.J.

CONCURRING.

ATTORNEYS

Benjamin J. Gray Kirksville, MO

Attorney for Appellant,

Chris Koster, Attorney General Jennifer A. Rodenwald, Assistant Attorney General Jefferson City, MO

Attorneys for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

TRAVIS S. MIDGYETT,)	
)	
	Appellant,)	
v.)	OPINION FILED:
)	December 4, 2012
STATE OF MISSOURI,)	,
)	
	Respondent.)	

WD74731 Boone County

Before Division Four Judges: James Edward Welsh, Chief Judge, Mark D. Pfeiffer,

Judge, and Deborah Daniels, Special Judge

Travis Midgyett appeals the Circuit Court of Boone County's ("motion court's") denial of his motion for post-conviction relief pursuant to Rule 29.15. Midgyett was convicted, after a jury trial, of attempted robbery in the first degree and of murder in the second degree. Midgyett argues that the motion court erred in finding that his trial counsel ("Counsel") was not constitutionally ineffective for failing to present alibi evidence that Midgyett claims would have changed the outcome of the case. Midgyett also claims that the motion court erred in not considering the aggregate effect of Counsel's alleged trial errors.

AFFIRMED.

Division Four holds:

The court finds no error in Counsel's failure to call the "alibi" witness at Midgyett's second criminal trial even though Counsel promised the testimony of the witness in his opening statement. During the State's case in chief, a co-defendant testified that he was guilty of committing the robbery and murder acting with Midgyett, and Counsel found the co-defendant's testimony to have been unexpectedly well received by the jury. After the co-defendant's testimony, Counsel determined that he would be better off not presenting the promised alibi witness, because the witness would connect Midgyett to the co-defendant, whom, in Counsel's estimation, the jury believed to have been guilty of the robbery and murder. Counsel's decision not to call the promised witness was a considered matter of trial strategy.

The court also need not consider any aggregate or cumulative effect of Counsel's alleged trial errors. Even if it were proper to consider the cumulative effect of trial errors, in this case Midgyett alleged only one act of Counsel that could even arguably be considered a legitimate error, and it, standing alone, was not prejudicial to Midgyett's case.

Opinion by: Mark D. Pfeiffer, Judge December 4, 2012

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.