

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ROBERT T. BAIN,  
APPELLANT**

**vs.**

**STATE OF MISSOURI,  
RESPONDENT**

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DOCKET NUMBER WD75325

DATE: August 27, 2013

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Appeal from:

The Circuit Court of Saline County, Missouri  
The Honorable Dennis A. Rolf, Judge

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Appellate Judges:

Division One: Victor C. Howard, P.J., Joseph M. Ellis and Anthony Rex Gabbert, JJ.

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Attorneys:

Gary E. Brotherton, for Appellant

Shaun Mackelprang, for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ROBERT T. BAIN, APPELLANT**

**v.**

**STATE OF MISSOURI, RESPONDENT**

WD75325

Saline County, Missouri

Before Division One Judges: Victor C. Howard, Joseph M. Ellis and Anthony Rex Gabbert, JJ.

Robert Bain appeals from the denial without an evidentiary hearing of his motion to re-open his Rule 24.035 claim for post-conviction relief. In his motion, Appellant asserted that he had been abandoned by post-conviction counsel in that counsel failed to conduct a sufficient investigation of the case before filing a statement in lieu of an amended motion.

**AFFIRMED.**

**Division One holds:**

(1) The motion court did not clearly err in determining that Appellant failed to assert a cognizable claim of abandonment of post-conviction counsel. Appellant did not assert that counsel was aware of a need to file an amended post-conviction motion or that there was any issue related to timeliness. Furthermore, under the facts admitted by Appellant in his motion to reopen, counsel could certainly not be deemed to have taken no action with respect to the filing of an amended motion. Appellant acknowledged that, prior to filing the statement in lieu of an amended motion, counsel had reviewed his *pro se* motion, his answers to the post-conviction questionnaire she had sent to him, plea counsel's files, relevant court documents, and transcripts from the guilty plea, sentencing, and probation hearings. Appellant further acknowledged that counsel had spoken with him about his post-conviction relief case over the phone. While attempting to frame his claim in terms of abandonment, Appellant alleged nothing more than ineffective assistance of post-conviction counsel, and such claims are categorically unreviewable.

Opinion by Joseph M. Ellis, Judge

Date: August 27, 2013

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