



**In the Missouri Court of Appeals
Eastern District
DIVISION TWO**

JESSIE LEE BRILEY,)	No. ED94274
)	
Appellant,)	Appeal from the Circuit Court of
)	St. Charles County
vs.)	
)	Honorable Lucy Decker Rauch
STATE OF MISSOURI,)	
)	Cause No. 0911-CV04098
Respondent.)	
)	Filed: September 14, 2010
)	

OPINION

Before Glenn A. Norton, P.J., Kathianne Knaup Crane, J., and George W. Draper III, J.

PER CURIAM

Jesse Lee Briley (hereinafter, “Movant”) pleaded guilty to second-degree assault, Section 565.060 RSMo (Cum. Supp. 2007). Movant was sentenced to ten years’ imprisonment. Movant now appeals from the judgment denying his Rule 24.035 motion for post-conviction relief without an evidentiary hearing. Movant raises two points on appeal alleging: (1) the motion court erred in denying his post-conviction motion because his plea counsel failed to advocate for a more favorable sentencing disposition; and (2) his plea counsel failed to advise him that he would be required to serve a mandatory minimum sentence before being eligible for parole.

We have reviewed the briefs of the parties and the record on appeal with respect to Movant's allegations of error. We find no error of law in the issues presented on appeal. No jurisprudential purpose would be served by a written opinion. The parties have been furnished with a memorandum opinion for their information only, setting forth the facts and reasons for this order.

However, in its response to Movant's appeal, the State remarked in a footnote to its statement of facts that the written sentence and oral pronouncement of judgment are inconsistent. This Court's independent review of the record on appeal revealed the trial court orally sentenced Movant to seven years' imprisonment, but the written judgment reflected a ten year sentence. Rule 30.20 authorizes this Court to review "plain errors affecting substantial rights...when the court finds that manifest injustice or miscarriage of justice has resulted therefrom." It is within the Court's discretion to review an unpreserved point for plain error. State v. Tisius, 92 S.W.3d 751, 767 (Mo. banc 2002).

"Generally, the written sentence and judgment should reflect the trial court's oral pronouncement of sentence before the defendant." Rupert v. State, 250 S.W.3d 442, 448 (Mo. App. E.D. 2008). "[I]f there is a material discrepancy between the oral pronouncement of the trial court's judgment and sentence and the written entry of judgment, the oral pronouncement controls." State v. Johnson, 220 S.W.3d 377, 384 (Mo. App. E.D. 2007). Since the oral pronouncement of sentence and the written sentence and judgment are inconsistent, this Court will correct the judgment and sentence to reflect the trial court's oral pronouncement of a seven year sentence. Rule 30.23.

The judgment of the trial court is affirmed as modified. Rule 84.16(b).