

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

ROMELL BATES, Appellant,	)	No. ED100153
	)	
vs.	)	Appeal from the Circuit Court
	)	of St. Louis County
STATE OF MISSOURI, Respondent.	)	Filed: February 25, 2014

Romell Bates appeals the judgment of the motion court denying his Rule 24.035 motion for post-conviction relief without an evidentiary hearing. Bates argues that his guilty pleas to charges of unlawful use of a weapon for firing a gun into a dwelling house and assault in the first degree had no factual basis, violated his right to be free from double jeopardy and were involuntary due to ineffective assistance of counsel.

AFFIRMED.

Division Two holds: There is no clear error in the motion court's findings and conclusions on Bates's claims. The record refutes Bates's claim that his convictions were not supported by a factual basis or violated his right to be free from double jeopardy because they were based on a single shot fired into a dwelling house and at the victim of the assault. The crime of unlawful use of a weapon for firing into a dwelling house and the crime of assault in the first degree have different elements and therefore are separate offenses even when based on one gunshot. There was a sufficient factual basis to support his guilty pleas for each offense. The record also refutes Bates's claim that counsel's advice suggesting that he would receive a lesser sentence than was imposed rendered his plea involuntary. Finally, the record refutes his claim that counsel was ineffective for failing to call two witnesses and introduce other evidence he claims would have caused the court to impose a more lenient sentence. Bates is not entitled to an evidentiary hearing on any of his claims.

Opinion by: Robert G. Dowd, Jr., J  
Lawrence E. Mooney, P.J. and Sherri B. Sullivan, J., concur.

Attorney for Appellant: Lisa M. Stroup

Attorneys for Respondent: Andrew C. Hooper

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