

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

SAMUEL CUMMINGS,) ED100849
)
 Appellant,) Appeal from the Circuit Court
) of the City of St. Louis
 v.) 1122-CC09575
)
 STATE OF MISSOURI,) Honorable Philip D. Heagney
)
 Respondent.) Filed: October 14, 2014

Samuel Cummings (Movant) appeals from the motion court’s judgment denying his motion for post-conviction relief under Mo. R. Civ. P. 29.15 (Rule 29.15 Motion) without an evidentiary hearing. Movant alleged his appellate counsel was ineffective due to failure to raise a preserved claim of error on appeal; namely, that the trial court erred in failing to strike Venireperson Pavia for cause. Movant also alleged that his trial counsel was ineffective for failing to strike Venireperson Lomack peremptorily or for cause.

AFFIRMED.

Division Three Holds: Movant’s Rule 29.15 Motion failed to allege facts that, if true, show his appellate counsel was ineffective for failing to raise on appeal a claim that the trial court erred in striking Venireperson Pavia from the jury for cause. Movant’s motion states that his trial counsel exercised a peremptory strike of Venireperson Pavia, but does not allege that the loss of the strike resulted in one or more unqualified jurors deciding his case. Loss of a peremptory strike is a statutorily precluded claim of error. Movant’s second claim, that his trial counsel was ineffective for failing to strike Venireperson Lomack, is refuted by the record in that the entirety of *voir dire* reveals that Venireperson Lomack unequivocally stated she could be fair. Movant was not prejudiced by counsel’s decision not to remove a qualified juror.

Opinion by: Gary M. Gaertner, Jr., J.
 Kurt S. Odenwald, P.J., and Robert G. Dowd, Jr., J., concur.

Attorney for Appellant: Timothy Forneris
 Attorneys for Respondent: Chris Koster and Adam Rowley

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