

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

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| DANIEL PAUL AUSTIN, |) | No. ED102486 |
| |) | |
| Appellant, |) | Appeal from the Circuit Court |
| |) | of the City of St. Louis |
| vs. |) | |
| |) | Honorable Elizabeth Hogan |
| STATE OF MISSOURI, |) | |
| |) | |
| Respondent. |) | FILED: February 9, 2016 |

Daniel Austin (“Austin”) appeals the motion court’s judgment denying his Rule 24.035 motion for post-conviction relief without an evidentiary hearing. On appeal, Moore v. State, 458 S.W.3d 822 (Mo. banc 2015), compels us to examine the timeliness of Austin’s amended post-conviction motion. If Austin’s amended motion was untimely, the motion court must then make an independent inquiry into whether the movant was abandoned by counsel.

REVERSED AND REMANDED.

DIVISION FOUR HOLDS: We cannot determine from the record on appeal whether Austin’s amended motion was timely filed by appointed counsel. Nor can we determine from the record if the motion court made an independent inquiry as to whether the amended motion was timely filed and if Austin was abandoned by appointed counsel. We reverse and remand this matter to the motion court to determine the timeliness of the amended motion and the issue of abandonment.

Opinion by: Kurt S. Odenwald, Judge
Amburg, C.J., concur.

Sherri B. Sullivan, P.J., and Lisa Van

Attorney for Appellant: Maleaner Harvey

Attorney for Respondent: Chris Koster and Shaun J. Mackelprang

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.