

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY
DIVISION FOUR

WILLIAM S. MILLER,)	No. ED102641
)	
Movant/Appellant,)	Appeal from the Circuit Court of
)	the City of St. Louis
vs.)	
)	
STATE OF MISSOURI,)	Honorable John F. Garvey, Jr.
)	
Respondent.)	Filed: December 22, 2015

William Miller appeals the judgment of the circuit court denying, without an evidentiary hearing, his Rule 29.15 motion for post-conviction relief. Miller was convicted of two separate counts of second-degree domestic assault after he punched and kicked his girlfriend with his hands and feet, left the room to retrieve a chair, and then hit her with the chair. Miller claims that his trial counsel was ineffective for failing to object to the two separate convictions as a violation of the double jeopardy clause of the Fifth Amendment.

Miller's counsel filed his amended motion on its due date, but the court clerk rejected the motion for failure to submit the motion and corresponding request for an evidentiary hearing as separate documents in the court's electronic filing system. Counsel re-filed them as separate documents out of time three days later.

AFFIRMED.

DIVISION ONE HOLDS: (1) There was no legal basis for the clerk to reject Miller's amended motion with his request for evidentiary hearing incorporated therein. Miller's motion was timely filed as of the date received in the electronic filing system. (2) The motion court did not err in denying Miller's motion on the merits. When a defendant has time to reconsider his actions and a separate *mens rea* is newly formed, each assault separated by time constitutes a separate offense. Miller committed two separate offenses when he first punched and kicked the victim, interrupted the assault to retrieve a chair from another room, and then with renewed intent returned to hit the victim with the chair. Consequently, Miller's convictions on both counts did not violate the double jeopardy clause, so any objection by counsel would have been unavailing, and counsel is not ineffective for failing to make non-meritorious objections.

Opinion by: Lisa Van Amburg, Chief Judge
Sherri B. Sullivan, P.J. and Kurt S. Odenwald, J., concur.

Attorney for Appellant: Gwenda R. Robinson

Attorney for Respondent: Robert J. Bartholomew, Jr.

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
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