

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

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| FRED SILVER, |) | No. ED103060 |
| |) | |
| Movant/Appellant, |) | Appeal from the Circuit Court of |
| |) | the City of St. Louis |
| vs. |) | |
| |) | The Honorable David L. Dowd |
| STATE OF MISSOURI, |) | |
| |) | |
| Respondent. |) | Filed: December 8, 2015 |

Fred Silver (Movant) appeals the judgment of the Circuit Court of the City of St. Louis denying his Rule 29.15 motion for post-conviction relief without an evidentiary hearing. Movant claims that the motion court clearly erred by denying his motion without an evidentiary hearing because he alleged facts not refuted by the record that his trial counsel was ineffective for improperly advising Movant that his sentence would be the same whether he went to trial or pleaded guilty.

REVERSED AND REMANDED.

Division II Holds: The amended motion was untimely filed and the motion court made no independent “abandonment” inquiry. Under *Moore v. State*, 458 S.W.3d 822 (Mo. banc 2015), a remand is necessary for the motion court to independently inquire whether Movant was abandoned.

Opinion by: Philip M. Hess, P.J.
Gary M. Gaertner, Jr., J. and Angela T. Quigless, J. concur.

Attorney for Appellant: John K. Tucci

Attorney for Respondent: Evan J. Buchheim

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| 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. |
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