

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION THREE

JEREMY LEE SCOTT ROUTH,)	No. ED103274
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Charles County
vs.)	1411-CC00786
)	
STATE OF MISSOURI,)	Honorable Richard K. Zerr
)	
Respondent.)	Filed: July 26, 2016

Jeremy Lee Scott Routh (“Movant”) appeals the judgment denying his Rule 24.035¹ motion for post-conviction relief without an evidentiary hearing. Movant’s sole argument on appeal is that the motion court clearly erred in denying him an evidentiary hearing on his claim sentencing counsel was ineffective for failing to investigate and call his stepsister Stephanie Chandler (“Stepsister”) as a witness at his sentencing hearing. Further, Movant asserts that he had never met or communicated with sentencing counsel in any form until three minutes before the sentencing hearing began and they never had a conversation about any potential witnesses.

REVERSED AND REMANDED FOR AN EVIDENTIARY HEARING.

Division Three holds: The motion and files of this case do not conclusively show Movant is not entitled to relief on his claim that sentencing counsel was ineffective. Rather, statements made by Movant and sentencing counsel during the sentencing hearing support, rather than refute, Movant’s claim that sentencing counsel was ineffective for failing to investigate and call Movant’s Stepsister as a witness at his sentencing hearing. Moreover, Movant has alleged sufficient facts, not refuted by the record, showing, (1) sentencing counsel’s performance in failing to investigate and call his Stepsister as a witness did not conform to the degree of skill and diligence of a reasonably competent attorney; and (2) Movant was prejudiced as a result of counsel’s alleged deficient performance. Therefore, the motion court clearly erred in denying Movant’s claim that sentencing counsel was ineffective without providing him an opportunity to prove his allegations at an evidentiary hearing.

Opinion by: Robert M. Clayton III, P.J.
Lawrence E. Mooney, J., and James M. Dowd, J., concur.

¹ All references to Rules are to Missouri Supreme Court Rules (2016).

Attorney for Appellant: Gwenda Renee' Robinson

Attorney for Respondent: Chris Koster, Colette E. Neuner

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.