

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

MEGAL COLE,	)	No. ED92649
	)	
Movant/Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
	)	
v.	)	Cause Number 08SL-CC01230
	)	
STATE OF MISSOURI,	)	Honorable Larry Kendrick
	)	
Respondent.	)	Filed: February 9, 2010

Megal Cole (Movant) appeals from the motion court's judgment denying, without an evidentiary hearing, his Amended Motion under Rule 29.15<sup>1</sup> to Vacate, Set Aside or Correct Judgment and Sentence and Request for Evidentiary Hearing.

AFFIRMED.

Division Four Holds: The motion court did not clearly err in denying Movant's motion for post-conviction relief without a hearing because Movant failed to allege facts that, if proven, would entitle him to relief, and the record conclusively refutes Movant's claim that: 1) his counsel refused to allow him to testify at trial, as the record clearly demonstrates Movant knowingly and voluntarily waived his right to testify; and 2) his counsel was ineffective for failing to object to witness testimony of illegal drug use, in that any objection would have been meritless because the testimony fit within the exception to the general rule of inadmissibility for evidence of uncharged crimes that are part of the circumstances or sequence of events surrounding the charged offense.

Opinion by: Gary M. Gaertner, Jr., J.  
Kurt S. Odenwald, P.J., and George W. Draper III, J. concur.

Attorneys for Appellant: Jessica M. Hathaway

Attorneys for Respondent: Chris Koster and John W. Grantham

**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.**

<sup>1</sup> All rule references are to Mo. R. Crim. P. 2008, unless otherwise indicated.