

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DONALD W. PRESTON,)	No. ED93727
)	
Appellant,)	Appeal from the Circuit Court
)	of Lincoln County
vs.)	
)	Honorable Ronald R. McKenzie
STATE OF MISSOURI,)	
)	
Respondent.)	FILED: August 31, 2010

Donald Preston appeals from the motion court’s judgment denying his Rule 29.15 motion for post-conviction relief in which Preston argued that the jury selection procedures employed by the Circuit Court in Lincoln County required a reversal of his conviction and new trial.

Preston argues on appeal that the motion court clearly erred in denying his amended motion for lack of prejudice because the Lincoln County jury selection procedures, which permitted qualified jurors to decline jury service by agreeing to pay \$50 and perform six hours of community service, substantially failed to comply with the declared policy of Sections 494.400 through 494.505.

REVERSED and REMANDED FOR A NEW TRIAL

Division Four Holds: Because the opt-out practice for qualified jurors in Lincoln County constituted a fundamental and systemic failure to comply with Missouri’s statutory jury selection requirements, State v. Anderson, 79 S.W.3d 420, 431 n.4 (Mo. banc 2002), we hold the motion court’s judgment to be clearly erroneous. We reverse and remand for a new trial.

Opinion by: Kurt S. Odenwald, P.J. Robert G. Dowd, Jr., J. and Nannette A. Baker, J., concur.

Attorney for Appellant: Mark A. Grothoff

Attorneys for Respondent: Chris Koster and James B. Farnsworth

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.