

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

TRACY MCKEE,)	No. ED94203
)	
Appellant,)	Appeal from the Circuit Court
)	of the City of Saint Louis
v.)	Case No. 0922-CC01292
)	
STATE OF MISSOURI,)	Honorable John J. Riley
)	
Respondent.)	Filed: February 1, 2011

Tracy McKee (McKee) appeals from that part of the motion court’s judgment denying, without an evidentiary hearing, his amended motion under Rule 29.15¹ to Vacate, Set Aside, or Correct Judgment and Sentence and Request for Evidentiary Hearing.

AFFIRMED.

Division Five Holds: The trial court did not clearly err in denying without an evidentiary hearing McKee’s request for post-conviction relief, because McKee failed to allege facts, not refuted by the record, supporting acquittal for first-degree tampering and conviction for second-degree tampering, and thus we do not deem trial counsel ineffective for failing to request the lesser included instruction. Rule 29.15(h); Williams v. State, 168 S.W.3d 433, 439 (Mo. banc 2005); Hill v. State, 181 S.W.3d 611, 620 (Mo. App. W.D. 2006).

Opinion by: Gary M. Gaertner, Jr., P.J.
Mary K. Hoff, J., and Patricia L. Cohen, J. concur.

Attorneys for Appellant: Gwenda Renee’ Robinson

Attorneys for Respondent: Chris Koster
Mary H. Moore

**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.**

¹ All rule references are to Mo. R. Crim. P. 2010, unless otherwise indicated.