

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

JARRID BERRY, Appellant,) No. ED95082
) Appeal from the Circuit Court of
vs.) the City of St. Louis
) Honorable Lisa S. Van Amburg
STATE OF MISSOURI, Respondent.) Filed: March 1, 2011

Jarrid Berry (hereinafter, “Movant”) appeals the denial of his Rule 24.035 post-conviction motion without an evidentiary hearing. Movant pleaded guilty to one count of first degree robbery, Section 569.020 RSMo (2000),¹ two counts of armed criminal action, Section 571.015, and one count of attempted first degree robbery, Section 564.011. Movant was sentenced to a total term of twelve years’ imprisonment, to run concurrently. Movant subsequently filed a timely motion for post-conviction relief pursuant to Rule 24.035, which the motion court denied without a hearing. In his sole point on appeal, Movant claims he received ineffective assistance of counsel when defense counsel advised him to reject the plea bargain offer of ten years’ imprisonment on an amended charge of second degree robbery, thereby causing the offer to be rescinded, and forcing Movant to enter a blind plea to first degree robbery which resulted in a sentence of twelve years’ imprisonment. Movant argues he was prejudiced because had defense counsel accurately conveyed to him the benefits of the proposed ten-year sentence on the amended charge, he would have accepted the State’s offer and pleaded guilty under that agreement.

AFFIRMED.

Division II Holds: The motion court did not clearly err in denying Movant’s Rule 24.035 motion without an evidentiary hearing because Movant failed to present facts not refuted by the record that defense counsel rendered ineffective assistance of counsel by advising him to reject the State’s original plea offer in light of the absence of one of the victims. Since we find defense counsel was not ineffective, we need not resolve Movant’s prejudice argument.

Opinion by: George W. Draper III, Judge
Glenn A. Norton, P.J. and Kathianne Knaupe Crane, J., concur.

Attorney for Appellant: Brocca L. Smith

Attorney for Respondent: Shaun J. Mackelprang

¹ All statutory references are to RSMo (2000) unless otherwise indicated.

**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.**