

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

MICHAEL W. PETTRY,)	No. ED95664
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable John F. Kintz
STATE OF MISSOURI,)	
)	
Respondent.)	FILED: July 19, 2011

Michael Pettry (Pettry) appeals from the motion court's denial of his Rule 24.035¹ motion without an evidentiary hearing. Pettry claims the motion court erred when it denied his post-conviction claims that his plea counsel was ineffective for promising him if he pleaded guilty to one count of driving while intoxicated, chronic offender, he would be sentenced to an alcohol treatment program and 120-day shock incarceration. Additionally, Pettry claims his plea counsel led him to believe he would be required to serve only 15% or 20% of his five-year sentence with the Missouri Department of Corrections if he pleaded guilty. Accordingly, Pettry claims the motion court erred in denying his post-conviction claim because his guilty plea was not voluntarily, knowingly and intelligently made.

JUDGMENT VACATED; CAUSE REMANDED WITH DIRECTIONS TO DISMISS MOTION.

Division Four holds: Pettry is barred from proceeding with his motion for post-conviction relief because he failed to timely file his *pro se* motion as required by Rule 24.035. Neither the motion court's review of the motion on the merits, nor the State's failure to challenge Pettry's motion as untimely served before the motion court waives the procedural bar.

Opinion by: Kurt S. Odenwald, P.J.
Robert G. Dowd, Jr., J. and Keith M. Sutherland, Sp. J., Concur.

Attorney for Appellant: Maleaner Harvey

Attorney for Respondent: Chris Koster and 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. Rules Civ. P. 2010.