

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

WILLIAM J. BARMETTLER,)	No. ED98568
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Francois County
vs.)	
)	Honorable Sandra Martinez
STATE OF MISSOURI,)	
)	
Respondent.)	FILED: May 28, 2013

William Barmettler (“Barmettler”) appeals from the motion court’s denial, without an evidentiary hearing, of his motion for post-conviction relief. Barmettler was convicted by a jury of one count of statutory sodomy in the first degree, Section 566.062, RSMo. Cum. Supp. (2008) and one count of child molestation in the first degree, Section 566.067, RSMo. Cum. Supp. (2008). This Court affirmed his conviction in *State v. Barmettler*, 347 S.W.3d 171 (Mo. App. E.D. 2011). Barmettler subsequently filed a motion for post-conviction relief arguing that trial and appellate counsel were ineffective in failing to challenge the verdict directors at trial on the ground that they allowed the jury to convict him without reaching a unanimous verdict. Barmettler also alleged trial counsel was ineffective in failing to present an alibi defense at trial.

AFFIRMED.

Division Four holds: Defense counsels’ performance fell below objectively reasonable standards in failing to challenge the erroneous verdict directors despite the presence of an express warning provided by the relevant Missouri Approved Instruction. However, the record provides no basis for concluding that Barmettler was prejudiced by the verdict directors. Therefore, Barmettler is not entitled to post-conviction relief on his claim of ineffective assistance of counsel related to instructional error. We further hold that trial counsel was not ineffective in failing to present a non-meritorious alibi defense at trial. Accordingly, we find no error and affirm the judgment of the motion court denying Barmettler’s motion for post-conviction relief without an evidentiary hearing.

Opinion by: Kurt S. Odenwald, J., Lawrence E. Mooney, P.J., and Patricia L. Cohen, J., Concur.

Attorney for Appellant: Lisa M. Stroup

Attorney for Respondent: Chris Koster and Mary H. Moore

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