

**OPINION SUMMARY**

**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

THOMAS A. WASHINGTON,	)	No. ED99702
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Honorable Margaret M. Neill
STATE OF MISSOURI,	)	
	)	
Respondent.	)	FILED: December 17, 2013

Thomas Washington (“Washington”) appeals from the judgment of the motion court denying his motion for post-conviction relief under Rule 29.15 without an evidentiary hearing. Washington was convicted of attempted statutory sodomy after a bench trial. This Court affirmed Washington’s conviction on direct appeal in State v. Washington, 352 S.W.3d 421 (Mo. App. E.D. 2011). Washington filed a motion for post-conviction relief alleging that his trial counsel was ineffective for failing to introduce evidence of his substantial cognitive limitations to support his motion to suppress statements, and for failing to provide the trial court with sufficient mitigation evidence during Washington’s sentencing hearing. The motion court found both claims lacked merit and denied Washington’s motion.

REVERSED AND REMANDED IN PART, AFFIRMED IN PART.

Division III Holds: Because Washington alleged facts not refuted by the record that his trial counsel failed to introduce evidence or argue Washington’s limited mental functions and ability with the motion to suppress statements, Washington was entitled to an evidentiary hearing on this claim. The motion court clearly erred when it denied Washington an evidentiary hearing on his motion for post-conviction relief relating to the motion to suppress statements. We reverse and remand for an evidentiary hearing on this issue. We affirm the judgment of the motion court in all other respects.

Opinion by: Kurt S. Odenwald, J., Mary K. Hoff, P.J., and Angela T. Quigless, J., Concur.

Attorney for Appellants: Amanda P. Faerber

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.**