

Summary of SC90807, *Ricky Cheyenne Ross v. State of Missouri*

Appeal from the Greene County circuit court, Judge Michael J. Cordonnier
Argued and submitted January 11, 2011; opinion issued April 26, 2011

Attorneys: Ross was represented by Craig A. Johnston of the public defender's office in Columbia, (573) 882-9855; and the state was represented by Daniel N. McPherson of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals the denial of post-conviction relief. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the circuit court's judgment. By failing to bring his claim challenging the constitutional validity of the statute under which he was convicted at the earliest opportunity – and before pleading guilty – he waived the claim, and this Court will not address its merits.

Facts: The state charged Ricky Ross as a prior and persistent offender with one count of second-degree statutory rape pursuant to section 566.034, RSMo 2000. One day before trial was to begin, Ross pleaded guilty as charged and was sentenced to 10 years in prison. He subsequently sought post-conviction relief pursuant to Rule 24.035, alleging, in part, that the statute under which he was convicted was unconstitutional because the bill through which it was enacted in 1994 – Senate Bill No. 693 – was adopted in violation of article III, section 23 of the Missouri Constitution, which prohibits bills from containing multiple subjects. The circuit court overruled Ross' motion following an evidentiary hearing. Ross appeals.

AFFIRMED.

Court en banc holds: The circuit court did not clearly err in overruling Ross' motion for post-conviction relief. He was required to raise his constitutional claim at the earliest opportunity – and prior to pleading guilty – but he did not, thereby waiving this claim. As such, this Court will not address the merits of his challenge to the validity of the statute.