

Summary of SC91613, *Lester F. Krupp Jr. v. State of Missouri*

Appeal from the St. Louis County circuit court, Judge Colleen Dolan
Argued and submitted Oct. 18, 2011; opinion issued Dec. 6, 2011

Attorneys: Krupp was represented by Scott Thompson of the public defender's office in St. Louis, (314) 340-7662, and the state was represented by Jayne T. Woods and Shaun J. Mackelprang 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 who waived his rights to seek post-conviction relief as part of a plea agreement appeals the circuit court's overruling of his motion for such relief. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case with instructions for the circuit court to dismiss the motion. The record from the sentencing hearing refutes the man's claims that his attorney rendered ineffective assistance and clearly demonstrates that he entered into the plea agreement knowingly, voluntarily and intelligently.

Judge Cynthia L. Martin, a judge on the Missouri Court of Appeals, Western District, sat in this case by special designation to fill a then-vacancy on the Court (from before the appointment of Judge George W. Draper III).

Facts: Lester Krupp Jr. was convicted by a jury of six counts of criminal conduct. Before sentencing, Krupp and the state entered into an agreement by which Krupp would plead guilty to two additional counts and waive his rights to appeal and to seek post-conviction relief for any of the counts in exchange for the state recommending that Krupp be sentenced to a combined total of 15 years in prison for all counts. At the sentencing hearing, the circuit court questioned Krupp about the terms of the agreement and the circumstances under which he entered into it. He told the court that he had no complaints or criticisms about his attorney, that he was satisfied with his attorney's service, that his attorney fully advised him about all his legal rights and the possible consequences of his plea bargain, and that he was entering into the agreement knowingly, voluntarily and intelligently. Satisfied with Krupp's answers, the court entered its judgment in accordance with the plea agreement. Krupp subsequently sought post-conviction relief, alleging ineffective assistance of counsel. The circuit court overruled Krupp's motion for relief on the merits, without a hearing. Krupp appeals.

VACATED AND REMANDED WITH DIRECTIONS.

Court en banc holds: The circuit court erred in ruling on Krupp's motion on the merits rather than dismissing it. After Krupp waived his rights to seek post-conviction relief, the advisory committee adopted an opinion that it may be a potential conflict of interest for defense attorneys to advise their clients to waive the clients' rights to seek post-conviction relief alleging ineffective assistance of counsel. Krupp alleges that his waiver of his post-conviction rights could not be knowing, voluntary and intelligent. To prevail on such a claim, he would have to

plead and prove his attorney had an actual conflict of interest, where something was done or foregone that was advantageous to the attorney and detrimental to Krupp. Here, Krupp's agreement with the state was in exchange for a reduced sentence (he could have faced a maximum of 50 years in prison rather than the 15-year sentence he received as part of the plea bargain). In addition, Krupp's own testimony on the record at the sentencing hearing refutes his claims that his attorney rendered ineffective assistance. Further, the record clearly demonstrates that Krupp properly was informed of his rights and that he entered into the plea agreement knowingly, voluntarily and intelligently. Accordingly, the circuit court's judgment is vacated, and the case is remanded with instructions that the circuit court dismiss Krupp's motion for post-conviction relief.