

Summary of SC91652, *Jesse V. Dorris v. State of Missouri*

Appeal from the Mississippi County circuit court, Judge T. Lynn Brown
consolidated with

SC91713, *Jose Luis Lopez-McCurdy Jr. v. State of Missouri*

Appeal from the Dent County circuit court, Judge William C. Seay
consolidated with

SC91767, *Louis Hill v. State of Missouri*

Appeal from the Iron County circuit court, Judge Kelly W. Parker

All three cases argued separately and submitted Sept. 27, 2011; consolidated for opinion issued
Jan. 17, 2012

Attorneys: In SC91652, Dorris was represented by Gwenda R. Robinson of the public defender's office in St. Louis, (314) 340-7662, and the state was represented by James B. Farnsworth of the attorney general's office in Jefferson City, (573) 751-3321. In SC91712, Lopez-McCurdy was represented by Mark A. Grothoff of the public defender's office in Columbia, (573) 882-9855, and the state was represented by Evan J. Buchheim of the attorney general's office in Jefferson City, (573) 751-3321. In SC91767, Hill was represented by Rosalynn Koch of the public defender's office in Columbia, (573) 882-9855, and the state was represented by Robert J. (Jeff) Bartholomew Jr. 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: Three men convicted of felonies appeal the circuit courts' judgments overruling their motions for post-conviction relief, following evidentiary hearings, on the merits. Two of them – Jesse Dorris and Jose Lopez-McCurdy Jr. – filed their motions outside the time limits mandated by the rule. The third – Louis Hill – alleges that he filed his motion on time but that the circuit court lost it and misfiled it late. In a 7-0 decision written by Judge William Ray Price Jr., the Supreme Court of Missouri holds that the time limits for filing motions for post-conviction relief are mandatory and that failure to comply with these limits results in a complete waiver of the right to seek such relief. Accordingly, because Dorris and Lopez-McCurdy filed their motions outside the time limits, the Court remands (sends back) their cases to the circuit courts to be dismissed. Because Hill alleges he filed his motion on time, but the circuit court failed to give him an opportunity to present evidence as to when he filed his motion, the judgment in his case is vacated and the case is remanded for the circuit court to determine whether Hill filed his motion timely and then proceed accordingly.

Judge Robert M. Clayton III – a judge on the Missouri Court of Appeals, Eastern 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: These cases have been consolidated for opinion because each presents the same issue. In each case, after the defendant was convicted, the trial court advised the defendant of his right to seek post-conviction relief and also advised of the time limits for seeking such relief.

Because Jesse Dorris and Jose Lopez-McCurdy appealed their convictions, they had 90 days after the court of appeals filed its mandate affirming their convictions to file their motions for post-conviction relief under Rule 29.15(b). Dorris filed his motion 15 days late; Lopez-McCurdy filed his motion six days late. In both cases, the circuit courts nonetheless held evidentiary hearings and ruled on the merits of the motions, denying relief. Both men appeal.

Because Hill pleaded guilty and did not appeal his judgment and sentence, he had 180 days from the date he was delivered to the custody of the department of corrections to file his motion for post-conviction relief under Rule 24.035(b). He claims that his girlfriend delivered his motion to the court on time but that the court lost his motion and did not file it until two years after he arrived at the department of corrections. The court held a hearing but, because the state dropped its objection to the timeliness of Hill's motion before the hearing, Hill did not present evidence in response to the timeliness issue. The court overruled his motion for relief. Hill appeals.

SC91652, *Jesse V. Dorris*, REMANDED WITH DIRECTIONS; SC91713, *Jose Luis Lopez-McCurdy, Jr.*, REMANDED WITH DIRECTIONS; SC91767, *Louis Hill*, VACATED AND REMANDED.

Court en banc holds: (1) A person seeking post-conviction relief must do so within the time limits established in the rules, and the state may not waive these time limits. The court of appeals has split as to whether the state can waive the time limits for filing a motion for post-conviction relief under Rule 29.15 (which applies when a person is convicted of a felony following trial) or Rule 24.035 (which applies when a person is convicted of a felony after entering a guilty plea). The eastern district has held that a circuit court must raise and enforce the time limits in these rules even if the state did not raise the issue of timeliness and that the state could not waive the requirement that the motion be filed timely. *Swofford v. State*, 323 S.W.3d 60 (Mo. App. E.D. 2010). The western district, on the other hand, has held that the untimely filing of a motion under these rules is an issue the state may waive by failing to raise it in the circuit court and that, if not raised in the circuit court, the state may not raise on appeal. *Snyder v. State*, 334 S.W.3d 735 (Mo. App. W.D. 2011). In so holding, the western district equated the time limits in Rules 29.15 and 24.035 to the affirmative defense that arises when a party files a pleading outside a statute of limitations and saw no reason to treat the time limits imposed by the rules differently from those established by statute. Post-conviction relief rules, however, are not akin to statutes of limitation, as the language used in these rules is different from the language of other rules or statutes that set time limits. Both Rules 29.15(b) and 24.035(b) state that a motion for post-conviction relief "shall" be filed within the time period specified and that the failure to file timely results in a "complete waiver" of any right to proceed on the motion. When a statute or rule provides what results will follow a failure to comply with its terms, it is mandatory and must be obeyed. The phrase "complete waiver" here establishes a total, absolute relinquishment of a legal right. It is the court's duty to enforce the mandatory time limits and resulting complete waiver in Rules 29.15 and 24.035 – even if the state does not raise the issue, as the state cannot waive the other party's noncompliance with the time limits. Further, because these rules create a procedure for a post-conviction relief system that, at least in part, is concerned with preserving the finality of judgment, the state may not waive the requirement that persons filing for such relief do so timely.

(2) When a motion for post-conviction relief is filed out of time, the circuit court has no authority to consider the motion on its merits. Because Dorris and Lopez-McCurdy filed their motions outside the mandatory time limits, they completely waived their post-conviction relief claims. As such, the circuit courts should have dismissed the motions. On remand, they are directed to do so. Because Hill alleged the court misfiled his motion, the circuit court erred in not giving him an opportunity to present evidence as to when his motion was filed. Its judgment, therefore, is vacated, and the case is remanded. On remand, the court shall determine whether Hill filed his motion timely and proceed accordingly.