

**Summary of SC92127, Codey L. Smith v. State of Missouri**

Appeal from the Barton County circuit court, Judge James R. Bickel  
Argued and submitted April 4, 2012; opinion issued July 3, 2012

**Attorneys:** The state was represented during arguments by Daniel N. McPherson of the attorney general's office in Jefferson City, (573) 751-3321; and Smith was represented by Mark A. Grothoff of the public defender's office in Columbia, (573) 882-9855.

*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 convicted of first-degree robbery and armed criminal action was granted post-conviction relief in the circuit court, which the state appeals. In a unanimous decision written by Judge William Ray Price Jr., the Supreme Court of Missouri affirms the circuit court's judgment. The circuit court did not clearly err in finding that the man's trial counsel was ineffective for failing to investigate a potential witness. Additionally, there was a reasonable probability that additional testimony could have changed the outcome of the trial.

**Facts:** In August 2006, two men with T-shirts over their faces robbed a gas station in Barton County. Kyle Carroll pleaded guilty to the robbery in September 2007. Codey Smith was convicted of first-degree robbery and armed criminal action as an accomplice to the robbery after Israel Freeland, a former cellmate of Smith's, told police Smith confessed to him. Neither Smith nor Carroll was called to testify at Smith's trial. Smith subsequently filed a motion for post-conviction relief, alleging his counsel was ineffective for not calling Carroll to testify. At the evidentiary hearing on the motion, Freeland recanted his testimony as a lie and Carroll testified that he never was contacted to testify in Smith's trial. Carroll also stated that he would have testified that Smith was not with him at the time of the robbery. Counsel testified that he had used trial strategy in not calling Carroll to testify. The circuit court granted Smith's motion, finding that Carroll's testimony would have aided Smith's case. The state appeals.

**AFFIRMED.**

**Court en banc holds:** The circuit court did not err in finding that Smith's counsel was unable to make a valid strategic decision and that there was a reasonable probability that Carroll's testimony could have changed the outcome of Smith's trial. A defendant is entitled to post-conviction relief if he shows counsel failed to exercise the customary skill and diligence of a reasonably competent attorney under similar circumstances and his counsel's deficient performance prejudiced him. The defendant must show specific acts or omissions of counsel that, in light of all the circumstances, fell outside the wide range of professional competent assistance. Here, the failure of Smith's trial counsel to contact Carroll to determine what his testimony would be and to call Carroll as a witness at trial is an omission by counsel that falls outside the wide range of professional competent assistance.