

**Summary of SC92927, *Sheena Eastburn v. State of Missouri***

Appeal from the McDonald County circuit court, Judge Timothy W. Perigo  
Argued and submitted April 30, 2013; opinion issued June 25, 2013

**Attorneys:** Eastburn was represented by Kent E. Gipson of the Law Office of Kent Gipson LLC in Kansas City, (816) 363-4400, and C.R. Rhoades, a sole practitioner in Neosho, (417) 451-6271. The state was represented by Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321, and McDonald County Prosecuting Attorney Jonathan G. Pierce of Pineville, (417) 223-4142.

The Missouri Association of Criminal Defense Lawyers, which filed a brief as a friend of the Court, was represented by Molly E. Carney of Chapman & Cutler LLC in Chicago, (312) 845-3438, and John William Simon of Constitutional Advocacy LLC in St. Louis, (314) 645-1776.

*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 woman convicted of murder and sentenced to life imprisonment appeals the circuit court's denial of post-conviction relief sought about 13 years after she first was denied post-conviction relief. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri affirms the circuit court's judgment. The woman's claims essentially are for ineffective assistance of post-conviction counsel, not abandonment of post-conviction counsel. As such, the circuit court properly declined to address the merits of her untimely motion.

**Facts:** A jury convicted Sheena Eastburn, at the time a juvenile, of first-degree murder, and she was sentenced to life in prison without eligibility for probation or parole. Ultimately, in a consolidated opinion, the court of appeals affirmed Eastburn's conviction and affirmed the denial of post-conviction relief. About 13 years later, Eastburn filed a motion to reopen her post-conviction relief proceeding, claiming that she had been abandoned by counsel in her prior post-conviction proceeding and that her conviction should be vacated to correct a manifest injustice. The circuit court decided it would hold an evidentiary hearing about Eastburn's motion and then determine whether it had jurisdiction over the substance of the matter. The court denied Eastburn relief, noting her motion to "reopen" actually was a "successive" motion prohibited by Rule 29.15. Eastburn appeals.

**AFFIRMED.**

**Court en banc holds:** The circuit court did not clearly err in overruling Eastburn's motion. The time limits for filing a motion pursuant to Rule 29.15 are mandatory. While there is no provision to allow late filings in post-conviction relief cases, this Court has recognized a late filing may be accepted when a movant has been abandoned by post-conviction counsel. Abandonment occurs when post-conviction counsel fails to file an amended motion, depriving the movant of meaningful review of the claims; when post-conviction counsel files an untimely amended motion; or when post-conviction counsel's overt action prevents the movant from filing a timely

original motion. Here, Eastburn admits there was a timely filed Rule 29.15 motion following her conviction and sentencing, and her present motion more appropriately is characterized as a claim of ineffective assistance of post-conviction counsel. Because Eastburn was not abandoned, the circuit court properly declined to address the merits of her untimely motion for post-conviction relief. Further, although the parties referred to Eastburn's motion as one to "reopen" her post-conviction proceedings, this nomenclature does not exist in the Court's rules and should not be used in the future.