

Summary of SC94277, Charles K. Moore v. State of Missouri

Appeal from the St. Francois County circuit court, Judge Sandra Martinez
Argued and submitted November 13, 2014; opinion issued April 14, 2015

Attorneys: Moore was represented by Jessica M. Hathaway of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by 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 appeals the circuit court's judgment denying him post-conviction relief for alleged ineffective assistance of his trial counsel. In a decision written by Judge Patricia Breckenridge and joined by four judges, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. Because the man's appointed counsel failed to file an amended motion for post-conviction relief in a timely manner, the circuit court had a duty to investigate whether counsel abandoned the man. The court did not do so, nor did it adjudicate all the claims the man raised in his pro se motion. The case is remanded for an independent inquiry into whether appointed counsel abandoned the man and for further proceedings consistent with the outcome of that inquiry.

Judge Zel M. Fischer concurs, writing separately to emphasize the important role deadlines play in the presentation and resolution of post-conviction claims and the duty the circuit courts and appeals court have in enforcing those mandatory time limits.

Judge Paul C. Wilson dissents. He would affirm the circuit court's judgment, holding that, although the man's amended motion was untimely, nothing will be gained by remanding his case to see whether – at most – he was entitled to a determination he already has received. The author would find that the circuit court did not clearly err in rejecting the claims in the man's amended motion because the man failed to allege facts sufficient to show that his counsel was ineffective or that he was prejudiced as a result and that, although the circuit court did not address specifically the claims the man raised in his pro se motion, they are deficient on their face and, on remand, the circuit court will have no option but to deny them without a hearing.

Facts: A jury convicted Charles Moore in 2010 of second-degree assault of a probation and parole officer for kicking a chair at the officer and walking toward the officer with a clenched fist, and the trial court sentenced him to prison. After the court of appeals affirmed the trial court's judgment, Moore timely filed a pro se motion for post-conviction relief, and the court appointed counsel to represent him. Ninety-one days later, counsel filed an amended motion alleging two claims of ineffective assistance of trial counsel. The circuit court overruled the motion without an evidentiary hearing, finding that trial counsel withdrew Moore's motion for a change of judge in Moore's presence and with his consent in open court and that Moore failed to allege prejudice sufficient to trigger relief. Moore appeals.

REVERSED AND REMANDED.

Court en banc holds: Because Moore’s appointed counsel untimely filed Moore’s amended post-conviction relief motion, the circuit court erred in not fulfilling its duty to undertake an independent inquiry to determine if the untimely filing constituted abandonment of Moore. Under Rule 29.15(g), Moore’s amended motion was due in August 2012, and the record does not show that counsel sought or that the court granted an extension. As such, the amended motion – filed in September 2012 – was untimely. When an amended motion is filed untimely, the record creates a presumption that counsel failed to comply with Rule 29.15(e), and the circuit court is required to make an independent inquiry to determine whether the movant was abandoned. If the court finds the movant has not been abandoned, the court should not permit the amended motion to be filed and should adjudicate the movant’s pro se motion. But if the court determines the movant was abandoned by appointed counsel’s untimely filing of an amended motion, the court must permit the untimely filing. When the court fails to conduct the requisite independent inquiry, this Court will remand the case to the circuit court, which is the appropriate forum to conduct such an inquiry. The result of the inquiry determines which motion – the initial pro se motion or the amended motion – the court should adjudicate. The circuit court did not make an independent inquiry into whether Moore was abandoned. Nor did the court reference all of Moore’s claims raised in his pro se motion or adjudicate them with written findings of fact and conclusions of law as required by rule 29.15(j), requiring remand of Moore’s case because he has not received all the process justice requires. The case is remanded for an independent inquiry into whether appointed counsel abandoned Moore and for further proceedings consistent with the outcome of that inquiry.

Concurring opinion by Judge Fischer: The author writes separately to emphasize that post-conviction deadlines play such an important role in the orderly presentation and resolution of post-conviction claims that the state cannot waive them, and the circuit courts and appeals court have a duty to enforce the mandatory time limits even if the state does not raise the issue.

Dissenting opinion by Judge Wilson: The author would hold that, although Moore’s amended motion was not filed on time, there is nothing to be gained by remanding his case to see whether – at most – Moore was entitled to a determination he already has received. If the court determines Moore was abandoned, the only relief to which Moore is entitled is to have the circuit court permit the filing of the amended motion and rule on it – the same ruling the court made in December 2012. Conversely, if the court determines Moore was not abandoned, it must rule only on the claims in his pro se motion – which were incorporated in his amended motion and were rejected in the court’s December 2012 ruling. The best Moore can hope for on remand is to get what he already received more than two years ago, and then he will have to wait another year or two before an appellate court decides whether that ruling was not clearly erroneous. If the circuit court’s ruling on the merits of Moore’s amended motion was correct, further delay cannot be justified, and if it was not correct and Moore is entitled to relief, further delay cannot be tolerated. Accordingly, the author would reach that question, as instructed by Rule 84.14. The author would find the circuit court did not clearly err in overruling the claims in Moore’s amended motion, as he failed to allege facts showing that his counsel was ineffective or that he suffered actual prejudice as a result. As to the two claims Moore raised in his pro se motion, although the circuit court did not address them specifically, these claims are deficient on their face, and, on remand, the circuit court would have no option but to deny them without a hearing. As such, the author would affirm the circuit court’s judgment.