

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

CLIFFORD W. PEARSON

Respondent

v.

STATE OF MISSOURI

Appellant

DOCKET NUMBER **WD68719**

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: January 13, 2009

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Kenneth P. Dean, II, Judge

Appellate Judges:

Division Four: Thomas H. Newton, C.J., James M. Smart, Jr. and James E. Welsh, JJ.

Attorneys:

Jamie P. Rasmussen, Jefferson City, MO

Counsel for Appellant

Attorneys:

Susan L. Hogan, Kansas City, MO

Counsel for Respondent.

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

CLIFFORD W. PEARSON, Respondent, v.
STATE OF MISSOURI, Appellant

WD68719

Jackson County

Before Division Four Judges: Thomas H. Newton, C.J., James M. Smart, Jr. and
James E. Welsh, JJ.

Pearson was convicted of first-degree murder. During voir dire, venireperson Rice indicated he might have a subconscious bias against presuming a defendant's innocence because the police had never treated him unfairly. However, Rice subsequently stated that he could extend the presumption of innocence to a defendant and that if he could not, he would not take the required oath. Pearson's counsel moved to strike several jurors but did not challenge Rice, who subsequently served on the jury. Post-trial, Pearson alleged ineffective assistance of counsel based on trial counsel's failure to challenge Rice's empaneling. The circuit court found that Pearson did not meet his burden for an ineffective assistance of counsel claim but held that our decision in *James v. State*, 222 S.W.3d 302 (Mo. App. W.D. 2007) nonetheless required granting Pearson's motion. The State appeals.

REVERSED.

Division Four holds:

In order to claim ineffective assistance of counsel, Pearson was required to show his trial counsel's performance fell below the standards of a reasonably competent attorney and that such performance prejudiced him. On appeal, the State argues that Pearson did not meet this burden and additionally argues that *James v. State* failed to correctly apply the presumption of counsel's effectiveness. In *James*, the presumption of counsel's effectiveness was overcome because of the magnitude of the threat to the defendant's right to a fair trial: a venireperson admitted significant bias and was not rehabilitated, yet counsel failed to challenge the empaneling of that juror or to articulate a reasonable strategy for failing to do so. In Pearson's case, counsel was not ineffective for failing to challenge Rice because Rice was qualified to serve on the jury. Unqualified jurors are those whose views would substantially impair their ability to perform in accord with the court's instructions and their oath. Rice stated unequivocally that he could follow the law and support the presumption of innocence. Consequently, we cannot conclude that counsel's failure to challenge Rice was incompetent or that it rendered the trial result unreliable.

Opinion by: Thomas H. Newton, C. J.

Dated: January 13, 2009

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