

COMPLETE TITLE OF CASE:

**STATE OF MISSOURI, RESPONDENT,
v.
KENNETH ISON, APPELLANT.**

DOCKET NUMBER WD68739

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 18, 2008

Appeal From:

LAFAYETTE COUNTY CIRCUIT COURT
THE HONORABLE DENNIS ALLEN ROLF, JUDGE

Appellate Judges:

Division Three: Joseph M. Ellis, Presiding Judge, Ronald R. Holliger and Joseph P. Dandurand,
Judges

Attorneys:

Scott C. Hamilton, Lexington, MO, for appellant.

Jeremiah W. (Jay) Nixon, Attorney General, Jefferson City, MO., Shaun Mackelprang and
Joshua N. Corman, Office of Attorney General, Jefferson City, MO., for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,

v.

KENNETH ISON, APPELLANT.

No. WD 68739

Lafayette County

Before Division Three Judges: Joseph M. Ellis, Presiding Judge, Ronald R. Holliger and Joseph P. Dandurand, Judges

In 1997, Kenneth Ison pleaded guilty to sodomy and received a seven year sentence with execution suspended. He completed probation and was discharged in 2002. Four years later, he filed a motion to withdraw his guilty plea under rule 29.07, claiming that the victim, his then minor daughter, recanted her allegations. The trial court dismissed his motion as untimely.

REVERSED AND REMANDED.

Division Three holds:

In cases where execution of sentence is suspended, Rule 29.07 allows for withdrawal of a guilty plea upon a showing of “manifest injustice.” The filing of Ison’s rule 29.07 motion was not simply an attempt to bypass the time limits of rule 24.035, but rather an independent basis for withdraw of a guilty plea. The motion was not untimely and was erroneously dismissed.

Opinion by: Ronald R. Holliger, Judge

Date: November 18, 2008

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