MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

ERICK EDWARD GARCIA,

Appellant

v.

STATE OF MISSOURI.

Respondent

DOCKET NUMBER WD69671

DATE: December 15, 2009

Appeal From:

Circuit Court of Cole County, MO
The Honorable Richard G. Callahan, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Victor C. Howard, and James Edward Welsh, JJ.

Attorneys:

Nancy A. McKerrow, Columbia, MO — Counsel for Appellant,

Attorneys:

Shaun J. Mackelprang, Jefferson City, MO — Counsel for Respondent.
Chris Koster, Jefferson City, MO — Counsel for Respondent.
John M. Reeves, Jefferson City, MO — Counsel for Respondent.

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

ERICK EDWARD GARCIA, Appellant, v.
STATE OF MISSOURI, Respondent

WD69671 **Cole County**

Before Division Two Judges: Ellis, P.J., Howard, and Welsh, JJ.

Erick Edward Garcia appeals the circuit court's dismissal of his Rule 24.035 motion as untimely. Garcia contends that his pro se motion was filed within the 180 day time period required for initiating an action under Rule 24.035(b).

REVERSED and REMANDED.

Division Two holds:

Although the circuit court's factual findings were not clearly erroneous, the legal conclusion it reached was clearly erroneous. Garcia's pro se motion was filed with the circuit court on April 17, 2006, which was within the 180 day time period required for initiating an action under Rule 24.035(b). The clerk's office merely made a mistake in returning all of the file-stamped copies including the original to Garcia and in failing to open a case for Garcia. Thus, when Garcia filed his amended motion on December 26, 2007, the clerk's office perpetuated the error by opening a file for the first time and treating the amended motion as the start of the litigation. Therefore, to the extent that the circuit court's judgment concluded that it had to dismiss Garcia's Rule 24.035 motion because it was untimely filed, such legal conclusion was clearly erroneous.

Opinion by: James Edward Welsh, Judge December 15, 2009

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