

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
RESPONDENT
vs.**

**JAMES McFARLAND,
APPELLANT**

DOCKET NUMBER WD69754

DATE: JULY 28, 2009

Appeal from:

Adair County Circuit Court
The Honorable Russell E. Steele, Judge

Appellate Judges:

Division Two: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Attorneys:

Shaun J. Mackelprang, for Respondent

Melinda L. Pendergraph, for Appellant

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

STATE OF MISSOURI, RESPONDENT

v.

JAMES McFARLAND, APPELLANT

WD69754

Adair County, Missouri

Before Division Two Judges: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

James McFarland appeals the judgment of the trial court in which he was found guilty of second degree murder and armed criminal action but was found not guilty of first degree murder. After representing Mr. McFarland on the charges, Mr. McFarland's attorney left the public defender's office and began working for the local prosecutor. Because the prosecutor raised the charge to first degree murder after Mr. McFarland's former attorney began working in the prosecutor's office, Mr. McFarland alleges that the prosecutor's decision was tainted by a conflict of interest. Thus, Mr. McFarland filed motions to preclude the death penalty and to substitute a second degree murder charge for the indictment charging him with first degree murder, and the trial court denied both motions. Mr. McFarland appeals.

AFFIRMED.

Division Two holds:

Where the prosecutor's office withdrew from the case prior to trial and no one from the office continued to participate in the prosecution of the case after withdrawal, Mr. McFarland failed to demonstrate that he was prejudiced or that he was entitled to a remedy beyond the disqualification of the prosecutor's office.

Opinion by: Victor C. Howard, Presiding Judge

Date: July 28, 2009

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