

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
RESPONDENT
vs.**

**LANE M. VOGT,
APPELLANT**

DOCKET NUMBER WD70378

DATE: DECEMBER 15, 2009

Appeal from:

Lafayette County Circuit Court
The Honorable Hugh C. Harvey, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Victor C. Howard and Cynthia L. Martin, JJ.

Attorneys:

Shaun J. Mackelprang, for Respondent

Kent E. Gipson, for Appellant

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

STATE OF MISSOURI, RESPONDENT

v.

LANE M. VOGT, APPELLANT

WD70378

Lafayette County, Missouri

Before Division Two Judges: Joseph M. Ellis, P.J., Victor C. Howard and Cynthia L. Martin, JJ.

After pleading guilty to the offenses of trafficking drugs in the second degree, possession of a controlled substance, and receiving stolen property, Lane Vogt filed a Rule 29.07(d) motion to withdraw his guilty plea. In the motion, Vogt argued that his convictions were secured in violation of his Fourth Amendment rights and that he received ineffective assistance of counsel when his attorneys failed to advise him of a possible Fourth Amendment defense. The trial court found that Vogt's claims were of the type normally included in a Rule 24.035 motion and that Vogt could not use Rule 29.07 to evade the time limits established for filing a Rule 24.035 motion. Therefore, the trial court dismissed Vogt's motion for lack of jurisdiction. Vogt appeals.

AFFIRMED.

Division Two holds:

Where the essence of Vogt's claims was that his counsel failed to discover and properly evaluate facts to enable him to recognize and resolve a violation of his constitutional rights, Vogt's claims fell within those contemplated by Rule 24.035. Therefore, Vogt was required to pursue his claims by habeas corpus rather than by Rule 29.07(d).

Opinion by: Victor C. Howard, Judge

December 15, 2009

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