

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

BERNARDO O. COSTA, APPELLANT,

v.

ARTHUR E. ALLEN, RESPONDENT.

DOCKET NUMBER WD71055

DATE: June 8, 2010

Appeal From:

BOONE COUNTY CIRCUIT COURT

THE HONORABLE CLIFFORD EUGENE HAMILTON JR., JUDGE

Appellate Judges:

Division One: Lisa White Hardwick, P.J., James M. Smart, Jr., and Alok Ahuja, JJ.

Attorneys:

Appellant acting pro se.

Shaun Mackelprang and Kathleen Robertson, Jefferson City, MO, **for respondent.**

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

BERNARDO O. COSTA, APPELLANT

v.

ARTHUR E. ALLEN, RESPONDENT

WD71055

Boone County

Before Division One Judges: Lisa White Hardwick, P.J., James M. Smart, Jr., and Alok Ahuja, JJ.

Bernardo Costa was convicted of the first-degree statutory rape of his daughter. He subsequently brought a civil action for legal malpractice against Arthur E. Allen, the public defender who represented him in his Rule 29.15 proceeding. Costa asserts in his petition that he was erroneously convicted of the statutory rape of his daughter. He alleges that witnesses were lying, that his daughter was coached, and that there was a scheme to convict him propagated by the foster family with whom his daughter spent time. Defendant Allen moved to dismiss the amended complaint, contending that Costa failed to state a claim for relief. The trial court granted the motion, dismissing the case with prejudice. Costa appeals.

AFFIRMED.

Division One holds:

Public policy does not allow a collateral attack of a valid extant criminal conviction. The judgment conclusively binds the defendant and precludes his assertion of a collateral claim as to which his actual innocence is an essential element.

Opinion by James M. Smart, Jr., Judge

June 8, 2010

Concurring Opinion by Judge Alok Ahuja.

The author concurs in the result in a separate opinion which concludes that the dismissal of Costa's Petition was justified because it failed to adequately allege that Costa would have achieved post-conviction relief but for Defendant Allen's alleged negligence, and also failed to allege that Costa would have achieved an acquittal or any other more favorable outcome at the new trial he alleges that Allen negligently failed to secure.

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