

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

ANTONIO ONATE,

Appellant.

DOCKET NUMBER WD73778

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 7, 2013

APPEAL FROM

The Circuit Court of Andrew County, Missouri
The Honorable Patrick K. Robb, Judge

JUDGES

Division Two: Ahuja, P.J., and Mitchell and Witt, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
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Attorneys for Respondent,

Phillip R. Gibson
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Attorney for Appellant.



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

STATE OF MISSOURI,)
)
) **Respondent,**)
v.) **OPINION FILED:**
) **May 7, 2013**
ANTONIO ONATE,)
)
) **Appellant.**)

WD73778

Andrew County

Before Division Two Judges: Alok Ahuja, Presiding Judge, and Karen King Mitchell and Gary D. Witt, Judges

Antonio Onate appeals the denial of a “Motion for New Trial” that he filed following his convictions and sentences, entered upon guilty pleas, for felonious restraint and second-degree (felony) murder. Finding no authority for a “Motion for New Trial” following a guilty plea, the plea court considered Onate’s motion as either a Rule 29.07(d) motion to withdraw the guilty pleas or a Rule 24.035 motion for post-conviction relief, and, thereafter, denied the motion on its merits. Onate appeals.

AFFIRMED.

Division Two holds:

- (1) There is no legal authority for a “motion for new trial” following a guilty plea.
- (2) Onate’s motion could not be recast as a Rule 29.07(d) motion to withdraw his guilty pleas because it was filed post-sentencing and post-remand to the Department of Corrections and it raised a claim exclusively within the province of Rule 24.035.
- (3) Onate’s motion could not be recast as a Rule 24.035 motion for post-conviction relief without first filing a separate civil action and appointing new counsel.

(4) Though the court should have simply denied Onate’s “Motion for New Trial” on the basis that it lacked any legal support, rather than converting it and ruling on the merits, we affirm the denial under the principle that the court reached the correct result, even though it was for an erroneous reason.

Opinion by: Karen King Mitchell, Judge

May 7, 2013

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