

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**RASHAUN GRAVES,
APPELLANT
vs.**

**STATE OF MISSOURI,
RESPONDENT**

DOCKET NUMBER WD74282

DATE: June 29, 2012

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Ann Mesle, Judge

Appellate Judges:

Division One: Joseph M. Ellis, P.J., James E. Welsh and Alok Ahuja, JJ.

Attorneys:

Ruth Sanders, for Appellant

Jennifer A. Wideman, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

RASHAUN GRAVES, APPELLANT

v.

STATE OF MISSOURI, RESPONDENT

WD74282

Jackson County, Missouri

Before Division One Judges: Joseph M. Ellis, P.J., James E. Welsh and Alok Ahuja, JJ.

Rashaun Graves appeals from the denial of his Rule 29.15 motion for post-conviction relief following an evidentiary hearing. Appellant filed his motion after his conviction and sentences were affirmed by this Court on appeal and our mandate issued on August 18, 2010. Appellant's Rule 29.15 motion was file stamped on November 23, 2010. The word "FILED" was crossed-out, and the word "Received" was handwritten above it. In addition to filing an amended motion, appointed counsel pleaded facts that would establish that the *pro se* motion was not untimely filed and asked to be allowed to present evidence to that effect. The motion court declined to hear evidence on the timeliness of the motion and heard and denied the motion on its merits.

REVERSED AND REMANDED.

Division One holds:

- (1) If a post-conviction motion is not timely filed, it must be dismissed, as neither the motion court nor this Court has any authority to address the merits of the post-conviction claims.
- (2) Because the motion court denied Appellant the opportunity to present evidence related to the timeliness of his motion, the decision must be reversed and the case remanded for an evidentiary hearing, a factual determination of whether the motion was timely filed, and for any further proceedings.

Opinion by: Joseph M. Ellis, Judge

Date: June 29, 2012

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