

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

COMPLETE TITLE OF CASE

NICHOLAS WALLAR,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD75103

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 23, 2013

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Jack R. Grate, Jr., Judge

JUDGES

Division Two: Newton, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

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Attorney for Appellant,

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Attorneys for Respondent.



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

NICHOLAS WALLAR,)
)
) **Appellant,**)
v.) **OPINION FILED:**
) **July 23, 2013**
STATE OF MISSOURI,)
)
) **Respondent.**)

WD75103

Jackson County

Before Division Two Judges: Thomas H. Newton, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

Nicholas Wallar appeals the denial, following an evidentiary hearing, of his Rule 24.035 motion for post-conviction relief. In his motion, Wallar claimed that he should be discharged from his convictions due to an alleged systemic failure of the Jackson County Prosecuting Attorney's Office to comply with the disclosure obligations of Rule 25.03. The motion court rejected Wallar's claim, finding that it had been waived by the entry of his guilty pleas, that Wallar failed to plausibly demonstrate materiality of the information sought, and that Wallar's testimony indicating that, if the State had not violated the discovery rule, he would have proceeded to trial, was not credible.

AFFIRMED.

Division Two holds:

- 1) Claims involving an alleged disclosure violation are cognizable in a Rule 24.035 proceeding, but only if the allegation is based upon *Brady v. Maryland* and could not have been raised at any point before the Rule 24.035 motion.
- 2) Under *U.S. v. Ruiz*, even *Brady* claims are not cognizable if the undisclosed information was impeachment evidence only.

- 3) The remedies provided by the post-conviction rules are not to serve as sanctions for discovery violations.
- 4) Here, the alleged disclosure violation involved primarily impeachment evidence and rendered the claim not cognizable.
- 5) To the extent the undisclosed evidence was exculpatory, Wallar wholly failed to demonstrate any prejudice from the nondisclosure; thus, he is not entitled to post-conviction relief.

Opinion by: Karen King Mitchell, Judge

July 23, 2013

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