

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**TERRANCE ROBINSON,
APPELLANT**

vs.

**STATE OF MISSOURI,
RESPONDENT**

DOCKET NUMBER WD75283

DATE: JANUARY 21, 2014

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Charles H. McKenzie, Judge

Appellate Judges:

Division Two: Mark D. Pfeiffer, P.J., Joseph M. Ellis and Victor C. Howard, JJ.

Attorneys:

Terrance Robinson, Appellant Pro-se

Karen L. Kramer, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

TERRANCE ROBINSON, APPELLANT

v.

STATE OF MISSOURI, RESPONDENT

WD75283

Before Division Two Judges: Mark D. Pfeiffer, Joseph M. Ellis and Victor C. Howard, JJ.

In 2008, Appellant was convicted of four counts of first-degree murder and four counts of armed criminal action. We affirmed his conviction and sentence on direct appeal. On November 30, 2010, Appellant timely filed his *pro se* Rule 29.15 motion for post-conviction relief. The motion court subsequently appointed the Public Defender's Office to represent Appellant in his post-conviction relief proceedings and granted Appellant's appointed counsel an additional thirty days in which to file an amended motion on Appellant's behalf. On June 27, 2011, Appellant's appointed counsel filed a timely amended post-conviction relief motion. Appellant, however, requested his appointed counsel withdraw from the case. The motion court granted Appellant's request, and Appellant proceeded in the case *pro se*. On October 20, 2011, Appellant filed a motion entitled "Supplemental Motion to Vacate, Set Aside, or Correct Judgment and Sentence." The sole ground alleged in Appellant's supplemental motion was that the trial court lacked jurisdiction in his underlying criminal case because of the improper filing, return, and service of his grand jury indictment.

Prior to the evidentiary hearing, the State filed a motion to dismiss Appellant's supplemental motion as untimely. The motion court, however, heard the claims alleged in Appellant's supplemental motion on the merits. The motion court subsequently denied Appellant's supplemental motion for post-conviction relief, finding that the claim alleged therein was known to Appellant prior to trial and should have been raised at trial or on direct appeal.

Appellant now appeals from the denial of his supplemental motion. In doing so, Appellant contends that the motion court erred in denying his supplemental motion for post-conviction relief because the trial court lacked jurisdiction over his underlying criminal case in that the indictment was not properly served, returned, or filed. The State avers, however, that we cannot consider Appellant's contentions on appeal because he raised such issues for the first time in an untimely supplemental motion.

VACATED IN PART AND REMANDED.

Division Two holds:

1. The trial court erred in reviewing the merits of the grounds for relief raised in Appellant's supplemental post-conviction relief motion because Appellant's supplemental motion was untimely in that it was filed 115 days beyond the permissible post-conviction relief filing period. Therefore, because a court cannot review the merits of any claims asserted for the first time in an untimely post-conviction relief pleading, the motion court should not have reviewed the merits of the claims raised in Appellant's supplemental motion for post-conviction relief.

Opinion by Joseph M. Ellis, Judge

Date: January 21, 2014

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