

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

COMPLETE TITLE OF CASE

CARLIS A. SCOTT,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD75861

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 26, 2013

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Shane T. Alexander, Judge

JUDGES

Division Three: Mitchell, P.J., and Hardwick, J., CONCURRING.
Witt, J., DISSENTING in separate opinion.

ATTORNEYS

Susan L. Hogan, Appellate Defender
Kansas City, MO

Attorney for Appellant,

Chris Koster, Attorney General
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Jefferson City, MO

Attorneys for Respondent.



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

CARLIS A. SCOTT,)
)
) **Appellant,**)
v.) **OPINION FILED:**
) **November 26, 2013**
STATE OF MISSOURI,)
)
) **Respondent.**)

WD75861

Clay County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Gary D. Witt, Judges

Movant Carlis Scott appeals the motion court's denial of his Rule 24.035 motion for post-conviction relief without an evidentiary hearing. He claims that plea counsel misadvised him as to the amount of credit he would receive towards his sentence, that he reasonably relied on counsel's erroneous advice, and that he would not have pled guilty but for counsel's erroneous advice. Because we find that the record does not conclusively refute Scott's claims, we reverse and remand for an evidentiary hearing.

REVERSED AND REMANDED.

Majority Opinion holds:

1. A guilty plea can be rendered involuntary if the defendant entered it based upon a mistaken belief about his sentence upon which he was entitled to rely.
2. If comments made to the defendant by the court are sufficient to disabuse him of any mistaken beliefs regarding his sentence, he is not entitled to relief.
3. Here, the record does not conclusively refute Scott's claim that his counsel advised him he would receive four years' credit for time served. Furthermore, the trial court's comments may have reinforced, rather than dispelled, Scott's alleged belief. Thus, Scott is entitled to an evidentiary hearing on his claim.

Majority Opinion by: Karen King Mitchell, Presiding Judge

November 26, 2013

Dissenting Opinion holds:

The dissent would find that the record below clearly refutes the allegations in Mr. Scott’s motion, and would affirm the denial of an evidentiary hearing and the denial of Mr. Scott’s motion for relief.

The plea court carefully covered the fact that Mr. Scott was “going to get credit for every day you’ve already served *in this case*” (emphasis added). The plea court went even further to explain that the court doesn’t control how credit for time served is calculated because that determination is within the purview of the Department of Corrections. The plea court then carefully confirmed with Mr. Scott that no one had given him any promises, assurances or advice as to when he may be eligible for probation or parole and that no one had the ability to make such promises or assurances. The plea court specifically informed him that any such advice, promises or assurances would be “nothing more than guess work because *you might have to serve every day of whatever sentence you get in this case*” (emphasis added).

Even if his attorney gave him erroneous advice regarding the credit he may receive for time served, the trial court thoroughly disabused him of any reasonable reliance on that advice. Because the record clearly and conclusively refutes the allegations in Mr. Scott’s motion, the dissent would affirm the denial of an evidentiary hearing.

Dissenting Opinion by: Gary D. Witt, Judge

November 26, 2013

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