

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**CLIFFORD E. PORTER,
APPELLANT**

vs.

**STATE OF MISSOURI,
RESPONDENT**

DOCKET NUMBER WD77422

DATE: January 26, 2016

Appeal from:

The Circuit Court of Clay County, Missouri
The Honorable Janet L. Sutton, Judge

Appellate Judges:

Before Division Three: Joseph M. Ellis, P.J., Karen King Mitchell, J. and Gary D. Witt, J.

Attorneys:

Jeannette L. Wolpink, for Appellant

Christine K. Lesicko, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

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Clifford Porter was charged by information with one count of burglary in the first degree, § 569.160, and one count of robbery in the second degree, § 569.030. Appellant entered a plea of guilty to both counts. In exchange for his plea, the State agreed to argue for no more than consecutive sentences of ten years on the two counts. Defense counsel was free to argue for a lesser sentence.

At the sentencing hearing, the State argued for consecutive sentences of ten years, and defense counsel argued for the imposition of concurrent sentences. Ultimately, the trial court sentenced Appellant to consecutive terms of ten years on the burglary count and five years on the robbery count.

Appellant subsequently filed a motion for post-conviction relief under Rule 24.035, contending that plea counsel had been ineffective for convincing him that he would receive a maximum sentence of concurrent terms of ten years on each count. He claimed that, had he known he could receive a total sentence greater than ten years, he would not have pleaded guilty and would have insisted on proceeding to trial.

Following an evidentiary hearing, the motion court entered its findings of fact and conclusions of law denying Appellant's motion. Appellant challenges that determination on appeal.

AFFIRMED.

Division Three holds:

- (1) A mistaken belief about sentencing will only be found to have affected the movant's ability to knowingly enter a guilty plea if (1) the mistake is reasonable and (2) is based upon a positive representation upon which the movant was entitled to rely.

- (2) Plea counsel's testified that he told appellant prior to the plea hearing that he would try to argue for concurrent sentences and that there were a couple of strong arguments to be made. He stated that he told Appellant that he might get concurrent time but that he did not make any promise to Appellant regarding the sentence he would receive. A motion court does not clearly err in denying a claim that the movant was misled about his sentence where the attorney testifies at an evidentiary hearing the alleged misadvice was never given. At most, counsel's statements amounted to a mere prediction regarding what sentence the plea court might impose and could not be deemed sufficient to render the plea involuntary.
- (3) Moreover, even had counsel made an affirmative representation to Appellant regarding his sentence, in light of the clear statements contained in the plea petition and the court's explanation of the sentencing range at the plea hearing, it would not have been reasonable for Appellant to have believed any representation made by counsel that concurrent sentences would be imposed and/or that he was guaranteed not be sentenced to more than ten years imprisonment.

Opinion by Joseph M. Ellis, Judge

Date: January 26, 2016

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