

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

PAULA McCULLOUGH,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD78344

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: January 26, 2016

APPEAL FROM

The Circuit Court of Vernon County, Missouri
The Honorable James R. Bickel, Judge

JUDGES

Division II: Martin, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Mark A. Grothoff, Assistant Public Defender
Columbia, MO

Attorney for Appellant,

Chris Koster, Attorney General
Robert J. (Jeff) Bartholomew, Assistant Attorney General
Jefferson City, MO

Attorneys for Respondent.



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

PAULA McCULLOUGH,)
)
Appellant,)
v.) **OPINION FILED:**
) **January 26, 2016**
STATE OF MISSOURI,)
)
Respondent.)

WD78344

Vernon County

Before Division II Judges: Cynthia L. Martin, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

Paula McCullough appeals the judgment of the Circuit Court of Vernon County, Missouri, denying her motion for post-conviction relief pursuant to Rule 29.15 following an evidentiary hearing. On appeal, McCullough claims that the motion court erred in ruling against her on the claims in her amended Rule 29.15 motion.

REVERSED AND REMANDED.

Division II holds:

In this case, McCullough’s pro se Rule 29.15 motion was timely filed. After receiving the pro se motion, the motion court appointed post-conviction counsel and granted a thirty-day extension in which to file an amended Rule 29.15 motion. Appointed counsel did not file McCullough’s amended motion within the time period allowed but filed an untimely amended motion. Although the motion court did not make any findings as to whether McCullough had been abandoned by her appointed post-conviction counsel, the motion court considered the claims in the untimely filed amended motion and denied them. It did not consider all of the claims in McCullough’s pro se motion. When a motion court does not conduct the required inquiry into whether a movant was abandoned by her post-conviction counsel, and thus whether the amended motion should be considered rather than the pro se motion, appellate courts remand the matter for the motion court to conduct such inquiry, and this matter is so remanded.

Opinion by: Mark D. Pfeiffer, Judge

January 26, 2016

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