

**IN THE
MISSOURI SUPREME COURT**

NO. SC89589

RANDY BELCHER,

APPELLANT,

VS.

STATE OF MISSOURI,

RESPONDENT.

**APPEAL FROM THE CIRCUIT COURT
OF LIVINGSTON COUNTY, MISSOURI,
THE HONORABLE STEPHEN K. GRIFFIN, CIRCUIT JUDGE**

APPELLANT'S SUBSTITUTE STATEMENT, BRIEF & ARGUMENT

ORAL ARGUMENT REQUESTED

Respectfully submitted,

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JURISDICTIONAL STATEMENT

This is an appeal from the October 12, 2007, judgment of the Circuit Court of Livingston County, Missouri, denying Appellant's §547.035 RSMo. motion for post-conviction DNA testing without findings of fact and conclusions of law. The judgment of the Circuit Court was affirmed by the Missouri Court of Appeals, Western District, on June 30, 2008, in Case No. WD68990. The motion for rehearing and/or transfer to this Court denied by the Western District Court of Appeals on September 2, 2008.

Appellant filed a timely Rule 83.02 Application for Transfer to this Court on or about September 12, 2008. This Court granted transfer on September 30, 2008. Jurisdiction is therefore proper in the Supreme Court. Mo. Const. art. V, sec. 10.

STATEMENT OF FACTS

The Appellant, Randy K. Belcher, originally pled guilty in 1989 to a single count of rape in the Circuit Court of Livingston County, Missouri. Appellant was sentenced to a term of life imprisonment with the possibility of parole after a mandatory minimum of fifteen years.

On May 4, 2006, Appellant filed a post-conviction motion for DNA testing of several pieces of physical and serological evidence in accord with §547.035 RSMo. (2002). (LF at 23-31; Addendum at 1-10.)¹ The evidence consisted largely of several items of clothing seized from the victim and crime scene containing serological evidence, as well as a wash cloth, pillow cases, bed spreads, sheets, towels and other evidence. (Add. at 7; LF at 29.)

The motion properly pleaded that the evidence was still in existence; was secured in relation to a crime; was not previously tested; that identity was an issue; and the evidence will exonerate Appellant if tested. (Add. at 7-9.)

Per order of the Circuit Court, the motion was served on the prosecuting attorney by the Circuit Clerk of Livingston County on June 2, 2006. The State did

¹ All references to the record refer to the record on appeal as it existed and was designated in the Missouri Court of Appeals, Western District in Case No. WD 68990.

not oppose Appellant's motion for post-conviction DNA testing at the Circuit Court level. (LF at 1-2.)

On April 11, 2007, the Circuit Court dismissed the unopposed motion without appointing counsel, conducting the requisite evidentiary hearing, issuing written findings of fact and conclusions of law, nor a signed final judgment. On October 12, 2007, in the only written judgment issued by Circuit Judge Griffin, he stated "[i]n Furtherance of Order dated April 11, 2007, Judgment is hereby entered denying Movant's request for DNA Testing Under §547.035 RSMo." (LF at 38; Add. at 11.)

Appellant took direct appeal to the Missouri Court of Appeals, Western District, in Case No. WD68990. The State did not file a notice of cross appeal. (LF at 1-2.)

In Appellant's brief, albeit inartfully crafted, he advanced a single issue, arguing that Judge Griffin failed to make findings of fact and conclusions of law sufficient to permit meaningful appellate review of the order denying the motion for post-conviction DNA testing. (*See* Appellant's Western District brief, *Id.* at 4-7.) Although the appellate court agreed that circuit courts are mandated to issue findings of fact and conclusions of law sufficient to "allow meaningful appellate review . . . and insufficient findings . . . warrant a remand." (Add. at 13.) The court then went astray and affirmed the judgment of the circuit court, opting to

abandon Appellant's sole issue and address, without jurisdiction, an issue not presented in Appellant's brief, that being that the motion was statutorily deficient because it did not "allege facts under oath," although the motion was signed by Appellant.

This collateral issue was raised for the first time on appeal in the Respondent's responsive brief in the Western District. (*See* Resp. Brief W.D. Ct. App. at 13-14.)

Subsequent to this opinion, which was the first time Appellant was notified that the motion needed to be sworn to under oath, Appellant corrected the deficiency by submitting a signature verification affidavit to the circuit court and the Western District Appellate Court, attesting under the penalties of perjury that the facts contained within the motion for post-conviction DNA testing were true and accurate. Copies of this affidavit are a part of the appellate court file.

Appellant thereafter filed a motion for rehearing or alternatively for transfer to the Supreme Court, which the Western District denied on September 2, 2008.

Appellant next filed a timely application for transfer to the Missouri Supreme Court on or around September 13, 2008. This Court granted Appellant's application for transfer on September 30, 2008. This appeal and supplemental brief follows:

POINTS AND AUTHORITIES

I. APPELLANT WAS DENIED DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND HIS STATUTORY RIGHTS PURSUANT TO §547.035 R.S.Mo. BECAUSE THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF APPELLANT’S MOTION FOR DNA TESTING ON THE GROUNDS THAT THE MOTION WAS NOT VERIFIED BY APPELLANT AT THE TIME OF FILING OF THE MOTION, AND FOR THE FURTHER REASON THAT NEITHER THE MOTION COURT OR THE APPELLATE COURT PERMITTED HIM TO CURE ANY DEFECT IN VERIFICATION OF THE MOTION THROUGH SUBMISSION OF A SUPPLEMENTAL AFFIDAVIT.

Glover v. State, 225 S.W.3d 425 (Mo. 2007)

Weeks v. State, 140 S.W.3d 39 (Mo. 2004)

White v. State, 873 S.W.2d 590, 594 (Mo. banc 1994)

II. APPELLANT WAS DENIED DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND HIS STATUTORY RIGHTS PURSUANT TO §547.035 R.S.Mo. BECAUSE THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF APPELLANT'S MOTION FOR DNA TESTING FOR THE REASON THAT THE MOTION COURT DENIED APPELLANT RELIEF WITHOUT ISSUING FINDINGS OF FACT AND CONCLUSIONS OF LAW SUFFICIENT TO PERMIT MEANINGFUL APPELLATE REVIEW.

Clayton v. State, 164 S.W.3d 111 (Mo. App. 2005)

Crews v. State, 7 S.W.3d 563 (Mo. App. E.D. 1999)

Weeks v. State, 140 S.W.3d 39 (Mo. 2004)

ARGUMENT

I. APPELLANT WAS DENIED DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND HIS STATUTORY RIGHTS PURSUANT TO §547.035 R.S.Mo. BECAUSE THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF APPELLANT’S MOTION FOR DNA TESTING ON THE GROUNDS THAT THE MOTION WAS NOT VERIFIED BY APPELLANT AT THE TIME OF FILING OF THE MOTION, AND FOR THE FURTHER REASON THAT NEITHER THE MOTION COURT OR THE APPELLATE COURT PERMITTED HIM TO CURE ANY DEFECT IN VERIFICATION OF THE MOTION THROUGH SUBMISSION OF A SUPPLEMENTAL AFFIDAVIT.

A. Standard of review

Although §547.035.1 RSMo. does not specifically set out a standard of review, it provides that a motion for DNA testing is a PCR motion governed by the Rules of Civil Procedure insofar as applicable. Rule 29.15 and 24.035 set out the applicable standards of review for other post-conviction relief motions. Thus, this Court will therefore apply the standard of review set out therein to its review of denial of a post-conviction motion for DNA testing under §547.035 RSMo. *Weeks v. State*, 140 S.W.3d 39, 43-44 (Mo. 2004). A motion court’s denial of a post-

conviction motion is reviewed for clearly erroneous findings of fact and conclusions of law. *Id.* at 44. “[F]indings [of fact] and conclusions [of law] are clearly erroneous only if, after a review of the entire record, the appellate court is left with a definite and firm impression that a mistake has been made.” *Id.*

B. Failure of the Movant to attach an affidavit to a post-conviction DNA testing motion at the time it is filed should not automatically result in its denial.

On May 4, 2006, Appellant filed a post-conviction motion for DNA testing of several pieces of physical and serological evidence in accord with §547.035 RSMo. (2002). (LF at 23-31; Add. at 1-10.) The evidence consisted largely of several items of clothing seized from the victim and crime scene containing serological evidence, as well as a wash cloth, pillow cases, bed spreads, sheets, towels and other evidence. (Add at 7; LF at 29.)

Additionally, the motion meticulously pleaded, in accord with §547.035 RSMo. (2000), that: (1) there is evidence upon which DNA testing could be conducted; (2) that the evidence sought to be tested was secured in relation to a crime; (3) that the evidence was not previously tested, in that the crime occurred prior to the development of technology for the testing; (4) that identity was an issue as Appellant has always proclaimed his innocence to the rape in question; and (5) the reasonable probability exists that Appellant would be exonerated and

not convicted if the exculpatory results had been obtained through the requested DNA testing. (Add at 7-9.) §547.035 RSMo. (2000); *see also Clayton v. State*, 164 S.W.3d 111 (Mo. App. 2005); *Weeks v. State*, 140 S.W.3d 39 (Mo. 2004). When submitted, Appellant signed the motion, but the motion lacked any representation of a verification or attestation to the facts under oath.

Per order of the circuit court, the motion was served on the State by the Livingston County Court Clerk on June 2, 2006. The State did not oppose Appellant's motion for post-conviction DNA testing at the Circuit Court level. (LF at 1-2.)

On April 11, 2007, the Circuit Court, in an unsigned docket entry, purported to dismiss the unopposed motion without appointing counsel, conducting the requisite evidentiary hearing, issuing written findings of fact or conclusions of law, or issuing a signed final judgment. As a matter of law, this initial docket entry failed to constitute a judgment or even an order of the Circuit Court and was void *ab initio*. *See, City of St. Louis v. Joseph Hughes*, 950 S.W.2d 850 (Mo. 1997) (holding that “[a] judgment is entered when a writing signed by the judge and denominated ‘judgment’ is filed.”).

On October 12, 2007, in the only written judgment issued by Circuit Judge Griffin, he stated, “[i]n Furtherance of Order dated April 11, 2007, Judgment is hereby entered denying Movant's Request for DNA Testing Under §547.035

RSMo.” (LF at 38; Add. at 11.) Judge Griffin did not expressly state that he was dismissing the motion for any verification defect nor deficiency in the form of the pleading. *Id.*

The Movant appealed to the Missouri Court of Appeals, Western District, in Case No. WD68990. The State did not file a notice of cross appeal. (LF at 1-2.) In fact, the State advance any claims whatsoever, including any claim that the motion was deficient for not being attested to under oath.

Appellant’s brief, albeit inartfully crafted, advanced a single issue, arguing that Judge Griffin failed to make findings of fact and conclusions of law sufficient to permit meaningful appellate review of the order denying the motion for post-conviction DNA testing, warranting a remand to the Circuit Court. (*See* Appellant’s Western District Brief; *Id.* at 4-7.)

Although the appellate court agreed that circuit courts are mandated to issue findings of fact and conclusions of law sufficient to “allow meaningful appellate review . . . and insufficient findings . . . warrant a remand.” (Add. at 13; *citing Clayton v. State*, 164 S.W.3d 111, 115 (Mo. App. 2005) the Court affirmed the judgment of the circuit court, opting to abandon Appellant’s sole issue and address, an issue not presented in Appellant’s brief, that being that the motion was statutorily deficient because it did not allege facts under oath although the motion was signed by Appellant. (Add. at 12-13.)

The issue that compelled the court of appeals to affirm the motion court's decision was raised for the first time by the Respondent on appeal. It is axiomatic that claims which have not been presented to the motion court cannot be raised for the first time on appeal. *Rhodes v. State*, 157 S.W.3d 309, 314 (Mo. App. S.D. 2005) *citing*, *Dean v. State*, 950 S.W.2d 873, 877 (Mo. App. W.D. 1997). The appellate court ignored this fundamental tenet of law, where permitting a cross appeal without jurisdiction. *Id.*

Simply put, the court of appeals side-stepped the question of what a judge is required to do when confronted with the DNA motion in favor of holding that an impoverished, incarcerated, uneducated, *pro se* litigant failed to swear that the facts he painstakingly included in his motion were true.

C. This Court has provided clear guidance to motion courts and the courts of appeals in this state on this issue before; any defect in verification can be cured during the pendency of the motion.

A cursory review of the Western District's opinion in this matter illustrates that it either completely ignored the *stare decisis* of this Court or it was so focused on the hypertechnical terminology it was imploring that it lost sight of, or it misinterpreted its prior decision in *State v. Waters*, 221 S.W.3d 416, 419 (Mo. App. W.D. 2006), when defining what it considered a "statutorily deficient" motion. For example, the appellate court held in pertinent part:

Here the initial motion was defective because it did not “allege facts under oath” as required by statute. The motion was signed by movant and nothing more . . . While this court has never examined the phrase “must allege facts under oath,” we take it to require more than the mere signature of the movant. (footnote omitted). Missouri statutes provide notary publics with the power to administer oaths. See §486.250(2). The power is also extended to every “judge, justice and clerk thereof, notaries public, certified court reporters and certified shorthand reporters” in certain circumstances. §492.010. Here, the record does not indicate that Belcher swore any facts to any of these statutorily designated persons. (footnote omitted). Because Belcher neglected to allege any facts under oath, his initial 547.035 motion was defective and ineffective. Therefore, we need not remand for additional findings of fact and conclusions of law.

(Add at 13-14.) Although it is somewhat unclear, it appears that the Western District has gone to great lengths to castigate Appellant for not seeking out a “judge, justice and clerk thereof, notaries public, certified court reporter and certified shorthand reporter” to administer an oath prior to signing the motion. *Id.*

Obviously, a prisoner is restricted access to such officials, with the exception of the extremely limited availability of a notary, who does not administer oaths in prison.

The above scenario notwithstanding, the Western District has overlooked the precedent on this topic. In *Glover v. State*, 225 S.W.3d 425 (Mo. 2007), this Court held that, when originally adopted, Rule 29.15 required the movant to verify the motion and any amended motion. Rule 26.15(b), (d) and (f) (1988). The verification request was an essential element of the PCR motion. Any unsigned, unverified motion failed to invoke the motion court's jurisdiction to grant relief. *Kilgore v. State*, 791 S.W.2d 393, 395 (Mo. banc 1990).

Gradually, through court rulings and amendments to the Rule, the consequences of failing to sign a post-conviction motion have become less severe. *White v. State*, 873 S.W.2d 590, 594 (Mo. banc 1994) (signature of the movant is sufficient to meet verification requirement); *Tooley v. State*, 20 S.W.3d 519-20 (Mo. banc 2000) (holding Rule 55.03(a) applies to Rule 29.15 motions and that the case should not have been dismissed before the time for filing an amended motion had expired); *Wallingford*, 131 S.W.3d 791, 782 (Mo. 2004) (Rule 55.03 permits prompt correction of signature omission in Rule 29.15 motion even after time to file an amended motion had expired.)

In our case, Appellant did sign the motion, but admittedly it was not attested to in writing, under oath. That is all that was required under *White v. State*, 873 S.W.2d 590, 594 (Mo. banc 1994).

By contrast, if we examine the facts of *State v. Waters*, 221 S.W.3d 416, 419 (Mo. App. W.D. 2006), relied upon by the appellate court, it's clear that it doesn't stand for the proposition that an unverified motion is statutorily deficient warranting dismissal. In fact, in *Waters*, supra, the court opined that "Waters motion was deficient because he did not allege facts to satisfy the elements required by Missouri's post-conviction DNA testing statute. Specifically, because identity was not an issue at trial, he is not entitled to a post-conviction DNA test under §547.035. Furthermore, although the motion court's findings of fact and conclusions of law are insufficient for review, we do not remand because the post-conviction motion was invalid pursuant to §547.035." *Waters*, supra at 419. Hence, *Waters* is distinguishable.

In our case, Appellant specifically set forth that identity was at issue and that he did not rape the victim. His motion was not defective, and *Waters* had no applicability to the facts of our case. *Id.*

Additionally, when the Western District pointed out that Appellant failed to sign the motion under oath, he corrected the error in the circuit court and the court of appeals. Under these circumstances, the Western District decision starkly

conflicts with this Court's decisions in *Wallingford*, 131 S.W.3d 791 (Mo. 2004), and *Glover v. State*, 225 S.W.3d 425 (Mo. en banc 2007).

In *Wallingford*, supra, the defendant failed to sign the verification of the post-conviction motion, but he did sign the motion. *Id.* at 781. This Court held that, since Wallingford “promptly corrected the omission of verification signature, he did all that is required under Rule 55.03.” *Id.*

In *Glover*, supra, this Court overruled the holding of *Wallingford*, supra, and the requirements of Rule 55.03, holding that if the defect in the motion “was first found on appeal, the movant could file a properly signed motion in the trial court with notice to the appellate court.” That’s exactly what was done in our case. When advised, he filed a verification affidavit with the circuit court and notified the court of appeals.

Thus, for the Western District to rely on *Waters*, supra, for the denial of Appellant’s appeal, when the defect has been cured, clearly conflicts with this Court’s holdings in *Glover*, supra. This Court should therefore reverse the decision of the Western District.

II. APPELLANT WAS DENIED DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND HIS STATUTORY RIGHTS PURSUANT TO §547.035 R.S.Mo. BECAUSE THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF APPELLANT’S MOTION FOR DNA TESTING FOR THE REASON THAT THE MOTION COURT DENIED APPELLANT RELIEF WITHOUT ISSUING FINDINGS OF FACT AND CONCLUSIONS OF LAW SUFFICIENT TO PERMIT MEANINGFUL APPELLATE REVIEW.

A. Standard of review

Although §547.035.1 RSMo. does not specifically set out a standard of review, it provides that a motion for DNA testing is a post-conviction motion governed by the Rules of Civil Procedure insofar as applicable. Supreme Court Rules 29.15 and 24.035 set out the applicable standards of review for other post-conviction relief motions. Thus, this Court will therefore apply the standard of review set out therein to its review of denial of a post-conviction motion for DNA testing under §547.035 RSMo. *Weeks v. State*, 140 S.W.3d 39, 43-44 (Mo. 2004). A motion court’s denial of a post-conviction motion is reviewed for clearly erroneous findings of fact and conclusions of law. *Id.* at 44. “[F]indings [of fact] and conclusions [of law] are clearly erroneous only if, after a review of the entire

record, the appellate court is left with a definite and firm impression that a mistake has been made.” *Id.*

B. The trial court’s findings of fact and conclusions of law were not sufficiently specific to allow meaningful appellate review.

On May 4, 2006, Appellant filed a post-conviction motion for DNA testing of several pieces of physical and serological evidence in accord with §547.035 RSMo. (2002). (LF at 23-31; Add. at 1-101.) The evidence consisted largely of several items of clothing seized from the victim and crime scene containing serological evidence, as well as a wash cloth, pillow cases, bed spreads, sheets, towels and other evidence. (Add. at 7; LF at 29.)

Additionally, the motion meticulously pleaded, in accord with §547.035 RSMo. (2000), that: (1) there is evidence upon which DNA testing could be conducted; (2) that the evidence sought to be tested was secured in relation to a crime; (3) that the evidence was not previously tested, in that the crime occurred prior to the development of technology for the testing; (4) that identity was an issue as Appellant has always proclaimed his innocence to the rape in question; and (5) the reasonable probability exists that Appellant would be exonerated and not convicted if the exculpatory results had been obtained through the requested DNA testing. (Add at 7-9.) §547.035 RSMo. (2000); *Weeks v. State*, 140 S.W.3d 39 (Mo. 2004).

On April 11, 2007, the Circuit Court, in an unsigned docket entry, dismissed the unopposed motion without appointing counsel, conducting the requisite evidentiary hearing, issuing written findings of fact or conclusions of law, or even a signed final judgment. Specifically, the docket entry read: “The Court in this date was provided a copy of the file and Motion for DNA Testing Pursuant to §547.035 RSMo., which was filed on May 4, 2006. The Court has reviewed the complete file, including transcripts related thereto. The Court finds that the entire file and records of the case conclusively show that the Defendant/Movant is not entitled to relief. Therefore, Defendant/Movant’s Motion for DNA Testing pursuant to §547.035 RSMo. is hereby denied and overruled.” (LF at 1-2.)

As a matter of law, this initial docket entry failed to constitute a judgment or even an order of the circuit court and was void on its face as it was not signed. See, *City of St. Louis v. Joseph Hughes*, 950 S.W.2d 850 (Mo. 1977) (holding that “[a] judgment is entered when a writing signed by the judge and denominated ‘judgment’ is filed.”). This was the position advanced by Chief Judge Victor C. Howard, of the Missouri Court of Appeals, Western District, in an order of August 21, 2007.

On October 2, 2007, in the only written judgment issued by Circuit Judge Griffin, he stated “[i]n Furtherance of Order dated April 11, 2007, Judgment is hereby entered denying Movant’s request for DNA Testing Under §547.035

RSMo.” (LF at 38; Add. at 11.) This judgment was similarly insufficient to permit meaningful appellate review.

Appellant appealed the denial of the motion to the Missouri Court of Appeals, Western District, in Case No. WD68990. Appellant therein advanced a single issue, the circuit court failed to make findings of fact and conclusions of law sufficient to permit meaningful appellate review of the order, therefore requiring remand to the circuit court.

C. Specific findings of fact and conclusions of law are, and should be, required of motion courts when considering motions for post-conviction DNA testing.

The appellate court agreed that circuit courts are mandated to issue findings of fact and conclusions of law sufficient to “allow meaningful appellate review . . . and insufficient findings . . . warrant a remand.” (Add. at 13.), citing *Clayton v. State*, 164 S.W.3d 111, 115 (Mo. App. 2005). After mentioning the issue, the appellate court then left it unresolved, holding that the failure of Appellant to verify the motion gave the motion court sufficient grounds to justify the denial of the motion.

This Court has previously announced that a circuit judge denying a motion for post-conviction DNA testing shall “issue findings of fact and conclusions of law whether or not a hearing is held.” §547.035.8 RSMo. (2000). *Weeks v. State*,

140 S.W.3d 39, 43-44 (Mo. 2004). The Eastern District of the Missouri Court of Appeals has interpreted the Weeks decision to mean that findings of fact and conclusions of law are required when Rule 24.035 or 29.15 motions are denied. *Clayton v. State*, 164 S.W.3d 111, 115 (Mo. App. E.D. 2005).

The findings of fact and conclusions of law must allow meaningful appellate review. *Crews v. State*, 7 S.W.3d 563, 567 (Mo. App. E.D. 1999). Absent findings explaining the motion court's actions, no reviewing court can discern the reasons for the motion court's decision, and the appellate court is left with merely conclusory statements and nothing to review. Courts are not permitted to supplement the record by implication from the motion court's ruling. *Clayton*, 164 S.W.3d at 115.

As a matter of law, the construction of statutes is not to be hypertechnical, but instead to be reasonable and logical and give meaning to the statutes. *Lewis v. Gibbons*, 80 S.W.3d 461, 465 (Mo. 2002). The primary rule of statutory construction is to ascertain the intent of the legislature from the language used to give effect to the intent, if possible, and to consider the words in their plain language and ordinary meaning. *Lewis*, supra, at 465 (citing, *Wolfe Shoe Co. v. Director of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988)). Construction of statutes should avoid unreasonable or absurd results. *Murray v. Highway and Transportation Commission*, 37 S.W.3d 228, 233 (Mo. banc 2001).

A cursory review of §547.035.8 RSMo. clearly dictates a court's duty to issue findings of fact and conclusions of law. There is no ambiguity in §547.035.8 and its language is mandatory. *See Clayton, supra*, at 116. It appears that the trial court, as well as multiple other circuit courts are misinterpreting §547.035 and issuing findings and conclusions which merely restate the language of the statute and fail to contain specific findings of fact or conclusions of law which permit meaningful appellate review of its decisions

Appellant acknowledges that prior cases have held “there is no exact formula that a motion court need follow in providing findings of fact and conclusion of a motion in a post-conviction proceeding, but to be sufficient, they must permit review of the judgment.” *See, Gilliland v. State*, 882 S.W.2d 322, 326 (Mo. App. S.D. 1994). But Appellant respectfully urges this Court to set exacting guidelines for circuit courts to follow. This may help cure the common misinterpretation of §547.035.8, and forestall the use of boilerplate judgments that simply mirror the language of the statute.

This Court can take judicial notice of the fact that persons convicted of serious offenses have been released both in Missouri and throughout the nation because post-conviction DNA testing proved that they were factually innocent beyond refutation. A motion that has the ability to result in a person's release from prison or even Death Row deserves careful appellate review. That review is

impossible when the motion court offers only a conclusory denial. The element of §547.035 that the Movant failed to satisfy and the facts present in the “motion, files and records of the case” that persuaded the motion court that Movant failed in his or her proof should be basic requirements of an order denying such an important motion.

CONCLUSION

WHEREFORE, Appellant prays this Court to reverse the judgment of the circuit court and remand for specific findings of fact and conclusions of law, and for such other and further relief as the Court deems just.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 4985 words, excluding the cover and this certification, as determined by Microsoft Word 2007 software; and,
2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and,
3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were delivered this 2nd day of April, 2009, to:

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APPENDIX

“Judgment” of Circuit Court of Livingston County , 10/12/2007	A-1
§ 547.035 R.S.Mo. (2001)	A-2