



In the Missouri Court of Appeals Eastern District

DIVISION TWO

MICHAEL EMORY,	)	No. ED104830
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of Warren County
vs.	)	
	)	Honorable Wesley Clay Dalton
STATE OF MISSOURI,	)	
	)	
Respondent.	)	FILED: October 31, 2017

Michael Emory (“Movant”) appeals from the motion court’s judgment denying his Rule 29.15 motion for post-conviction relief. Movant was convicted, following a jury trial, of the class C felony of second-degree domestic assault, in violation of Section 565.073 (RSMo. 2000). Movant was sentenced to seven years’ imprisonment. This Court affirmed his conviction and sentence in State v. Emory, 430 S.W.3d 914 (Mo. App. E.D. 2014). We dismiss the appeal for lack of final judgment.

I. Background

Movant was convicted of domestic assault in the second degree after a jury trial, and the court sentenced him to seven years’ imprisonment. Movant’s conviction was affirmed on appeal, and he timely filed a *pro se* motion pursuant to Supreme Court Rule 29.15. Therein, Movant asserted in section C.2.D that Movant’s trial counsel (“Trial Counsel”) was ineffective in failing to make an objection during closing argument and in failing to introduce letters written by

the victim into evidence. Counsel was appointed and a statement *in lieu* of an amended motion was filed stating no potentially meritorious claims known to counsel or facts in support of Movant's argument were omitted from the *pro se* motion.

Following an evidentiary hearing, the motion court entered a judgment denying the motion for post-conviction relief. In addressing section C.2.D, the motion court did not make any mention of Movant's second claim of ineffective assistance of counsel regarding the failure to introduce evidence of the victim's letters. The motion court's summary of Movant's claim merely noted one of Movant's contentions for ineffective assistance of counsel: "In paragraph C.2.D., [Movant] claims Trial Counsel was ineffective for failing to object during closing argument when the prosecutor argued that the victim was scared for her life." The motion court's corresponding analysis in rejecting section C.2.D exclusively discussed the claim of ineffective assistance of counsel for failure to object during closing argument and did not contain any acknowledgement of the second claim. After denial of his motion for post-conviction relief, Movant filed this appeal.

II. Discussion

Movant alleges two points on appeal. First, he argues the motion court erred in denying his motion for post-conviction relief because the court failed to issue findings of fact and conclusions of law addressing Movant's claim that Trial Counsel was ineffective for failing to introduce into evidence Exhibit 1 – letters to Movant written by the victim. Movant contends that this Court should dismiss the appeal for lack of final judgment because the motion court failed to address every claim in his motion for post-conviction relief.

Second, Movant claims that the motion court erred in denying his motion for post-conviction relief because Trial Counsel's failure to introduce Exhibit 1 denied him of his rights

to effective assistance of counsel and due process of the law as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution, in that the letters would have shown that the victim was not afraid of Movant and that the victim's change in story was not a recent fabrication for trial.

A. Standard of Review

We review the denial of a Rule 29.15 motion for post-conviction relief to determine whether the motion court's findings and conclusions are clearly erroneous. Forrest v. State, 290 S.W.3d 704, 708 (Mo. banc 2009). Findings and conclusions are clearly erroneous if, upon review of the record, we are left with the definite and firm impression that a mistake has been made. Gehrke v. State, 280 S.W.3d 54, 56-57 (Mo. banc 2009).

B. Analysis

Movant claims the motion court erred in denying his motion for post-conviction relief because the motion court's findings of fact and conclusions of law failed to address both claims for ineffective assistance of counsel asserted in section C.2.D of his motion. Consequently, Movant argues this Court should dismiss the appeal for lack of a final judgment.

A final judgment – which disposes of all claims in the motion – is a prerequisite for appeal. Green v. State, 494 S.W.3d 525, 527-33. When a motion court fails to acknowledge, discuss, adjudicate, or dispose of all claims asserted in a post-conviction motion, the judgment is not final and the appeal must be dismissed. Id. at 532-33.

This Court recently dismissed an appeal from the denial of a motion for post-conviction relief for lack of final judgment because the motion court did not mention one of the movant's claims in its judgment. Goetz v. State, 502 S.W.3d 771, 772-73 (Mo. App. E.D. 2016). In Goetz, the movant filed an amended motion for post-conviction relief asserting two claims of

ineffective assistance of counsel; however, the motion court's judgment merely addressed one of the two claims. Id. at 771-72. The Court stressed that the judgment was not final under Rule 74.01(b) because the court adjudicated some, but not all of the claims before it. Id. at 773.

Here, in denying section C.2.D., the court addressed Movant's first claim of ineffective assistance of counsel regarding Trial Counsel's failure to object during closing argument, but did not make any mention to the second claim of ineffective assistance of counsel regarding Trial Counsel's failure to introduce Exhibit 1 into evidence. Without any acknowledgement or reference to the second claim for ineffective assistance of counsel, we cannot say that each of Movant's claims was adequately discussed, disposed of, or adjudicated. While the court did expressly address section C.2.D., the court's analysis of the section only discussed Movant's claim that Trial Counsel was ineffective for failing to object during closing argument when the State argued that the victim was scared for her life. Moreover, all references to the record and case law solely pertained to the failure to object to closing argument claim and failed to make any mention of Movant's second claim for ineffective assistance of counsel.

Although the motion court denied the motion "on all grounds," this Court has limited the application of broad denials to claims specifically addressed in the judgment. Goetz, 502 S.W.3d at 772 (Mo. App. E.D. 2016) ("[B]lanket denials are deemed to refer only to the claims that are actually mentioned in the judgment."). The motion court's broad denial of the motion is therefore insufficient in adjudicating Movant's unaddressed claim.

Because the motion court did not reference, acknowledge, or discuss Movant's second claim of ineffective assistance of counsel, the judgment failed to adjudicate all of Movant's claims. Thus, the judgment is not final and we must dismiss the appeal.

III. Conclusion

The appeal is dismissed.¹



ROY L. RICHTER, Judge

Lisa P. Page, P.J., concurs.
Philip M. Hess, J., concurs.

¹ Because Movant's first point on appeal is dispositive, we need not address his remaining point on appeal.