IN THE
SUPREME COURT OF MISSOURI

CHARLES M. RYAN,	)	
	)	
Appellant,	)	
	)	
v.	)	No. SC96599
	)	
	)	
STATE OF MISSOURI,	)	
	)	
Respondent.		

APPEAL TO THE SUPREME COURT OF MISSOURI
FROM THE CIRCUIT COURT OF ST. FRANCOIS COUNTY
TWENTY-FOURTH JUDICIAL CIRCUIT
THE HONORABLE TIMOTHY W. INMAN, JUDGE

APPELLANT'S SUBSTITUTE BRIEF AND ARGUMENT

Gwenda Reneé Robinson
Missouri Bar No. 43213
District Defender, Office B/Area 68
1010 Market Street, Suite 1100
St. Louis, Missouri 63101
314.340.7662 (telephone)
314.340.7685 (facsimile)
Gwenda.Robinson@mspd.mo.gov

ATTORNEY FOR APPELLANT

INDEX

TABLE OF AUTHORITIES

Statutes

Constitutions

Rules

JURISDICTIONAL STATEMENT

On September 21, 2012, in St. Francois County Cause No. 12SF-CR00116-01, Appellant Charles M. Ryan pled guilty to the class B felony of manufacturing methamphetamine in violation of § 195.211, RSMo Cum. Supp. 2010. On that same date, the court imposed a 15-year sentence, suspended execution of that sentence, and placed Mr. Ryan on a five-year term of supervised probation. On April 20, 2015, the court revoked Mr. Ryan's probation and ordered the previously imposed consecutive 15-year sentence executed. On information and belief, authorities delivered Mr. Ryan to the department of corrections to begin serving his sentence on April 24, 2015.

Mr. Ryan timely filed his *pro se* Rule 24.035 motion on June 22, 2015. His *pro se* Rule 24.035 motion included claims that counsel failed to explain consecutive sentences and predicted a harsh sentence if he went to trial.

The motion court appointed counsel to represent Mr. Ryan in St. Francois County Cause No. 15SF-CC00124 on June 22, 2017. Counsel entered an appearance and requested an additional 30 days to file Mr. Ryan's amended motion. The court reporter filed the guilty plea and sentencing transcript on August 27, 2015. Counsel timely filed Mr. Ryan's amended motion and request for evidentiary hearing on October 26, 2015.

On November 6, 2015, the motion court entered findings of fact, conclusions of law, and judgment denying Mr. Ryan's Rule 24.035 motion without an evidentiary hearing. On December 8, 2015, Mr. Ryan timely filed his notice of appeal.

On October 5, 2017, this Court sustained the State's application for transfer, and transferred this case to this Court. Consequently, this Court has jurisdiction over Mr. Ryan's appeal. Mo. Const., Art. V, § 10 (as amended 1982); Rule 83.04.

STATEMENT OF FACTS

In St. Francois County Cause No. 12SF-CR00116-01, the State charged Appellant Charles M. Ryan, by information, with one count of the class A felony of manufacturing a controlled substance, methamphetamine, within 2000 feet of an elementary school (L.F. 29-30). On September 21, 2012, the State filed its amended information, amending the charge to the class B felony of manufacturing methamphetamine (L.F. 31-32). In exchange for Mr. Ryan's plea on September 21, 2012, the State agreed to recommend the suspended execution of a consecutive 15-year sentence, and the imposition of a five-year term of supervised probation (Group GP Tr. 34).[1] The State also filed a memorandum of *nolle prosequi* in a separate Associate Circuit Court case (Group GP Tr. 35).

---

[1] The sentence would be served consecutive to the 15-year sentence in St. Francois County Cause No. 10SF-CR00540-01 that Mr. Ryan was serving at the time of his plea (Group GP Tr. 34; L.F. 14-15). Later, execution of that 15-year sentence was suspended due to Mr. Ryan's completion of the long-term drug treatment program and on or about October 23, 2012, Mr. Ryan was released on probation (Group GP Tr. 40; L.F. 5).

On September 21, 2012, Mr. Ryan appeared in person and with plea counsel, Daris Almond, before the plea court to enter his plea pursuant to the plea agreement (Group GP Tr. 4, 34-35). In the courtroom with Mr. Ryan on the day of his plea were six other criminal defendants and their attorneys (Group GP Tr. 2-5). The seven defendants were sworn by the clerk (Group GP Tr. 6).

Then, the court advised them, "The reason you are up here in a group like this is to, quite frankly, save a great deal of time, because in every case before I can accept a plea of guilty I need to advise the defendants of their legal rights and ask a number of questions" (Group GP Tr. 6). The court advised the group of seven of their rights *en masse* and questioned them *en masse*" (Group GP Tr. 6). The court started with Darryl Laws first, and then moved "straight on down the line in order" to David Dunham, Amos Hendrix, Jason Lohrum, Charles Ryan, Nicholas White, and Lucas McFarland (Group GP Tr. 6). Neither Mr. Ryan nor any other defendant or attorney objected to the plea procedure (Group GP Tr. 7).

At the plea, Mr. Ryan indicated that he understood the charges (Group GP Tr. 8). He acknowledged that plea counsel had represented him on the charges and stated that plea counsel had discussed his case with him ten times for a total of "[m]aybe four hours" (Group GP Tr. 9-10).

The court asked Mr. Ryan and the other defendants, as a group, if counsel had investigated their cases to their full satisfaction and interviewed all their witnesses (Group GP Tr. 11). All of the defendants answered either "Yes, sir" or "Yes, Your Honor" (Group GP Tr. 11). They each answered in turn that they knew of no witnesses whom they wanted interviewed that their attorneys failed to interview (Group GP Tr. 11). They also each indicated they had no alibi witnesses to their knowledge (Group GP Tr. 12).

When asked, as a group, if their attorneys had done all the things they had requested, they responded "Yes" (Group GP Tr. 12). When asked, as a group, if their attorneys had refused to do anything that they thought should be done, they responded "No, Your Honor" or "No, sir," one right behind the other (Group GP Tr. 12).

Mr. Ryan acknowledged that he had made a confession or incriminating statements to law enforcement officers in his case, and that he had made his confession or statement freely and voluntary after being advised of his *Miranda* rights (Group GP Tr. 13). When asked, along with the other six defendants, if he thought he had sufficient opportunity to discuss the case, whether his attorney had discussed and explained all defenses, and if he was fully satisfied with

counsel's advice, Mr. Ryan said, "Yes," in the same manner as the other defendants did (Group GP Tr. 14). He and the other defendants indicated they had no complaints with their attorneys' handling of their cases (Group GP Tr. 15). Mr. Ryan and the other defendants indicated they were entering pleas to the State's charges (Group GP Tr. 15-18).

The plea court asked Mr. Ryan and the other defendants if they understood their right to a speedy and public trial and the rights that they would have at trial that they would waive by entry of their pleas (Group GP Tr. 18-21). Each indicated that they did by responding, "Yes," or "I do," with the majority adding the honorific suffixes of "Your Honor" or "Sir" (Group GP Tr. 18-19). They also each indicated that understanding those rights, they still wished to plead guilty (Group GP Tr. 19, 21-22, 48-49).

The plea court read the charge to Mr. Ryan and asked if he understood and admitted all of the essential elements of the charge (Group GP Tr. 26). Mr. Ryan indicated he did (Group GP Tr. 26).

The plea court advised Mr. Ryan of the range of punishment and asked if he understood the range of punishment, as well as the plea agreement (Group GP Tr. 29, 34-35). Mr. Ryan indicated that he understood and that he had no questions about the plea agreement (Group GP Tr. 29, 35). He further indicated

that other than the plea agreement, no promises had been made to induce his plea and that no one had told him about any special deals not mentioned on record (Group GP Tr. 37, 49).

When the plea court asked Mr. Ryan and the other defendants if any threats or pressure of any kind had been exerted to get them to plead guilty, the defendants, including Mr. Ryan, responded either "No, Your Honor" or "No, sir" in turn (Group GP Tr. 30).

The plea court asked the attorneys if they had given the defendants any advice about the collateral consequences of their pleas, such as advice on the effect of the pleas on the defendants' parole eligibility, driving privileges, or "those kinds of things" (Group GP Tr. 38). Plea counsel stated that he had not made any representations as to how long Mr. Ryan would serve in the department of corrections if he violated probation on his two St. Francois County cases, Cause No. 10SF-CR00540-01 and Cause No. 12SF-CR00116-01 (Group GP Tr. 40). Plea counsel, however, noted, "I [sic] would be a very, very long time. And that's about all" (Group GP Tr. 40-41). When the plea court asked Mr. Ryan if plea counsel had "discussed that" with him, Mr. Ryan responded, "Yes, sir" (Group GP Tr. 41).

Mr. Ryan and the other defendants indicated they were pleading guilty because they were, in fact, guilty and admitted committing the charged offenses (Group GP Tr. 42). When asked what he had done to cause the filing of charges against him, Mr. Ryan stated that he "[m]anufactured methamphetamine and possessed chemicals to manufacture methamphetamine" knowing that methamphetamine is an illegal controlled substance (Group GP Tr. 44). Mr. Ryan waived a sentencing assessment report (Group GP Tr. 50).

The plea court accepted Mr. Ryan's plea and followed the plea agreement (Group GP Tr. 51, 54). The plea court imposed a consecutive 15-year sentence, but suspended execution of the sentence and placed Mr. Ryan on five years of supervised probation with special conditions (Group GP Tr. 54).

Approximately two-and-a-half years later, on April 20, 2015, the court revoked Mr. Ryan's probation and ordered his 15-year sentence executed (L.F. 27-28). On information and belief, authorities delivered Mr. Ryan to the department of corrections to begin serving his sentence on April 24, 2015 (L.F. 41).

Mr. Ryan timely filed his *pro se* Rule 24.035 motion on June 22, 2015 (L.F. 41-46). His *pro se* Rule 24.035 motion included claims that counsel failed to

explain consecutive sentences and predicted a harsh sentence if he went to trial (L.F. 42).

The motion court appointed counsel to represent Mr. Ryan in St. Francois County Cause No. 15SF-CC00124 on June 22, 2017 (L.F. 47). Counsel entered an appearance and requested an additional 30 days to file Mr. Ryan's amended motion (L.F. 48-50). The court reporter filed the guilty plea and sentencing transcript on August 27, 2015 (L.F. 28). Counsel timely filed Mr. Ryan's amended motion and request for evidentiary hearing on October 26, 2015 (L.F. 51-64).

In his amended motion, Mr. Ryan alleged that counsel was ineffective for inducing his unknowing, unintelligent, and involuntary guilty plea by informing Mr. Ryan of a change in the State's plea offer only minutes before his plea, failing to meet with Mr. Ryan and discuss the facts of his case before his plea, and informing Mr. Ryan that he would likely receive a very harsh sentence if he did not accept the State's plea offer (L.F. 53, 55-57).

Specifically, Mr. Ryan pled that he would adduce testimony and evidence of the following facts: Mr. Ryan's mother, Gaye Ryan, hired plea counsel to represent him on the charges (L.F. 55). Plea counsel never set up a call with him to discuss his case, but Mr. Ryan's mother exclusively spoke with plea counsel and relayed plea counsel's messages to Mr. Ryan (L.F. 55-56). Before the day Mr.

Ryan appeared in court, Mr. Ryan learned from his mother that plea counsel was indicating that Mr. Ryan would receive a sentence that would be served concurrently with his 15-year sentence in Cause No. 10SF-CR00540-01 (L.F. 56). Because Mr. Ryan understood that he would receive concurrent sentencing and because he had no information about his case (i.e., no charging document, discovery, etc.), he gave his case little thought and expected that plea counsel would discuss the case with him at some point prior to court (L.F. 56).

About five or six weeks after Mr. Ryan learned of the charges in this case, he was brought to the prison in Bonne Terre (L.F. 56). He was there for several days, waiting for his court date, but plea counsel never visited him to discuss his case or any different plea agreement expectation (L.F. 56).

Instead, plea counsel first spoke to Mr. Ryan on the morning of his court date, only minutes before Mr. Ryan would enter his plea, while Mr. Ryan was seated in a jury box with other defendants (L.F. 56). At that time, plea counsel informed Mr. Ryan that the State would not agree to a concurrent sentence, but would, instead, offer probation with a *consecutive* 15-year back-up sentence (L.F. 56-57) [Emphasis added.].

Mr. Ryan, who had neither substantively discussed the charges or the facts with counsel, nor reviewed any of the discovery, had only a matter of minutes to

accept or reject the State's plea offer (L.F. 57). Plea counsel told Mr. Ryan that if he did not accept the State's offer, he would likely receive a very harsh, or maximum, sentence (L.F. 57).

Mr. Ryan stated that he felt pressured to enter a guilty plea (L.F. 57). Up until the day he appeared in court, he had believed that his plea agreement would be for concurrent sentencing (L.F. 57). When counsel at the last minute informed him of a consecutive sentence, he was taken by surprise (L.F. 57). That – together with the fact that counsel had not substantively discussed the facts underlying his case, had given Mr. Ryan only a matter of minutes to decide about entering a guilty plea, and had informed Mr. Ryan of the harsh sentence that would follow a rejected plea agreement – led Mr. Ryan to feel pressure to enter a guilty plea (L.F. 57). Mr. Ryan pled that had plea counsel not pressured him, he would not have entered a guilty plea and would have taken his case to trial (L.F. 58).

In his amended motion, Mr. Ryan additionally pled that "[a] reasonably competent attorney would have met with and discussed the underlying facts of his client's case prior to negotiating a plea agreement" (L.F. 58). He pled that "[a] reasonably competent attorney would not inform his client that he would obtain a concurrent sentence, and then on the day of court inform the client that the

previously expected sentence had changed" (L.F. 58). He also pled that "[a] reasonably competent attorney would give his client more than a few minutes to consider a plea offer, particularly – as here – where the evidence would show that counsel never spoke with [Mr. Ryan] prior to the day he was brought before the judge" (L.F. 58).

Lastly, Mr. Ryan pled that because he was pressured into entering a plea based on the foregoing, his guilty plea was unknowing, unintelligent, and involuntary (L.F. 59). Mr. Ryan requested an evidentiary hearing on his pleadings (L.F. 59, 63).

On November 6, 2015, the motion court entered findings of fact, conclusions of law, and judgment denying Mr. Ryan's Rule 24.035 motion without an evidentiary hearing (L.F. 65-69). The motion court found that the record refutes Mr. Ryan's claims and that Mr. Ryan is entitled to no relief (L.F. 67-69). The motion court found:

> Throughout the record of Movant's guilty plea he unequivocally assured the Court he was satisfied with the efforts of his attorney. He denied at that time he was dissatisfied with counsel's efforts, or that he needed more time to confer with counsel, and he denied under oath

he was coerced or pressured into pleading guilty.

(L.F. 68).

On December 8, 2015, Mr. Ryan timely filed his notice of appeal (L.F. 71-73). This appeal follows (L.F. 71-73). Mr. Ryan will cite additional facts as necessary in the argument portion of his brief.

POINT

The motion court erred in denying Mr. Ryan's Rule 24.035 motion because he pled facts, not conclusions, which the record does not conclusively refute and that entitle him to relief on his claim that plea counsel was ineffective for inducing his unknowing, unintelligent, and involuntary plea by unreasonably pressuring and misleading him in the final minutes before his plea by only then informing him of a change in the plea offer and indicating that he would receive a harsh sentence if he did not accept the offer in the next few minutes. The record of Mr. Ryan's responses to the plea court's inquiries at his plea does not conclusively refute the claim because Mr. Ryan gave his responses as part of a "group plea" – a procedure that may impact the voluntariness of the defendant's plea and may lead the defendant to "parrot" the responses of other defendants speaking before him. The motion court's ruling and plea counsel's ineffectiveness violated Mr. Ryan's rights to due process of law, to persist in his plea of not guilty, against self-incrimination, to a jury trial, and to effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 18(a), 19, and 22(a) of the Missouri Constitution. This Court must reverse the motion court's judgment and vacate Mr. Ryan's plea and sentence, or remand for an evidentiary hearing.

Shackleford v. State, 51 S.W.3d 125 (Mo. App. W.D. 2001);

Roberts v. State, 276 S.W.3d 833 (Mo. banc 2009);

Bearden v. State, ED104464, 2017 WL 2644068 (Mo. App. E.D. June 20, 2017);

Miller v. State, ED103323, 2016 WL 2339049 (Mo. App. E.D. May 3, 2016);

U.S. Const., Amend. V, VI, & XIV;

Mo. Const., Art. I, §§ 10, 18(a), 19, & 22(a);

Rule 24.035.

ARGUMENT

The motion court erred in denying Mr. Ryan's Rule 24.035 motion because he pled facts, not conclusions, which the record does not conclusively refute and that entitle him to relief on his claim that plea counsel was ineffective for inducing his unknowing, unintelligent, and involuntary plea by unreasonably pressuring and misleading him in the final minutes before his plea by only then informing him of a change in the plea offer and indicating that he would receive a harsh sentence if he did not accept the offer in the next few minutes. The record of Mr. Ryan's responses to the plea court's inquiries at his plea does not conclusively refute the claim because Mr. Ryan gave his responses as part of a "group plea" – a procedure that may impact the voluntariness of the defendant's plea and may lead the defendant to "parrot" the responses of other defendants speaking before him. The motion court's ruling and plea counsel's ineffectiveness violated Mr. Ryan's rights to due process of law, to persist in his plea of not guilty, against self-incrimination, to a jury trial, and to effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 18(a), 19, and 22(a) of the Missouri Constitution. This Court must reverse the motion court's judgment and vacate Mr. Ryan's plea and sentence, or remand for an evidentiary hearing.

Preservation of the Error

This assignment of error is preserved for appellate review because Mr. Ryan included it in his amended motion (L.F. 53-59). *See, e.g., Comstock v. State*, 68 S.W.3d 561, 565 (Mo. App. W.D. 2001) (holding Rule 24.035 post-conviction claim was unpreserved for appellate review because it was not included in *pro se* and amended motions); *see also Gooden v. State*, 846 S.W.2d 214, 217 (Mo. App. S.D. 1993) (same).

Standard of Review

Appellate review of a judgment entered under Rule 24.035 "is limited to a determination of whether the motion court's findings of fact and conclusions of law are clearly erroneous." *Price v. State*, 422 S.W.3d 292, 294 (Mo. banc 2014); Rule 24.035(k). Findings and conclusions are clearly erroneous if, after a review of the entire record, the court is left with the definite and firm impression that a mistake has been made. *Webb v. State*, 334 S.W.3d 126, 128 (Mo. banc 2011).

Relevant Law

The Sixth Amendment to the United States Constitution establishes the fundamental right to counsel, which extends to state defendants through the due process clause of the Fourteenth Amendment. *Gideon v. Wainwright*, 372 U.S. 335, 340 (1963). To fulfill its role of assuring a fair trial, the right to counsel must be

the right to "effective" assistance of counsel. *Kimmelman v. Morrison*, 477 U.S. 365, 377 (1986).

After a guilty plea, this Court's review is limited to a determination of whether the underlying plea was knowing and voluntary, and counsel's ineffectiveness is only relevant to the extent it affects the voluntariness of the defendant's plea. *Wilkins v. State*, 802 S.W.2d 491, 497 (Mo. banc 1991); *Ervin v. State*, 423 S.W.3d 789, 792-93 (Mo. App. E.D. 2013). A guilty plea must be entered voluntarily and intelligently to be a valid waiver of rights. *Brady v. United States*, 397 U.S. 742, 748 (1970); *Reynolds v. State*, 994 S.W.2d 944, 946 (Mo. banc 1999). A plea of guilty must not only be a voluntary expression of the defendant's choice, it must be a knowing and intelligent act done with sufficient awareness of the relevant circumstances and likely consequences of the act." *State v. Hunter*, 840 S.W.2d 850, 861 (Mo. banc 1992).

To be entitled to relief on a claim of ineffective assistance of counsel after a guilty plea, the movant must show that counsel's performance did not conform to the degree of skill, care and diligence of a reasonably competent attorney, and that as a result, he was prejudiced. *DePriest v. State*, 510 S.W.3d 331, 338 (Mo. banc 2017); *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Prejudice, after a guilty plea, is shown if plea counsel's ineffectiveness affected the voluntariness of the movant's plea. *Braxton v. State*, 271 S.W.3d 600, 602 (Mo. App. S.D. 2007). The movant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Kline v. State*, 704 S.W.2d 721, 722-23 (Mo. App. S.D. 1986).

Argument

The motion court erred in denying Mr. Ryan's Rule 24.035 motion because he pled facts, not conclusions, which the record does not conclusively refute and that entitle him to relief on his claim. In his amended motion, Mr. Ryan claimed that counsel was ineffective for inducing his unknowing, unintelligent, and involuntary guilty plea by informing him of a change in the State's plea offer only minutes before his plea, and informing him that he would likely receive a very harsh sentence if he did not accept the State's plea offer (L.F. 53, 55-57).

Mr. Ryan's claim stated a sufficient basis for relief. A decision to plead guilty is not voluntary unless the defendant exercised free will in making that decision, and made the choice without physical or psychological coercion. *State v. Shafer*, 969 S.W.2d 719, 731 (Mo. banc 1998). "If the accused has been misled or induced to plead guilty by fraud, mistake, misapprehension, fear, coercion, or

promises, the defendant should be permitted to withdraw his guilty plea." *Hampton v. State*, 877 S.W.2d 250, 252 (Mo. App. W.D. 1994); *Tillock v. State*, 711 S.W.2d 203, 205 (Mo. App. S.D. 1986).

Mr. Ryan sufficiently pled his claim of ineffectiveness under *Strickland* when he asserted in his amended motion that plea counsel induced his guilty plea with coercive advice, what plea counsel did, and that he would not have pled guilty but for plea counsel's actions (L.F. 77). *See*, *e.g.*, *Collins v. State*, 335 S.W.3d 595, 597 (Mo. App. E.D. 2011) (holding movant satisfied the requirement that he plead facts, not conclusions, that if true would entitle him to relief by alleging an affirmative act of plea counsel and that he would not have pled guilty but for plea counsel's act).

In his amended motion, Mr. Ryan additionally pled that "[a] reasonably competent attorney would have met with and discussed the underlying facts of his client's case prior to negotiating a plea agreement" (L.F. 58). He pled that "[a] reasonably competent attorney would not inform his client that he would obtain a concurrent sentence, and then on the day of court inform the client that the previously expected sentence had changed" (L.F. 58). He also pled that "[a] reasonably competent attorney would give his client more than a few minutes to consider a plea offer, particularly – as here – where the evidence would show

that counsel never spoke with [Mr. Ryan] prior to the day he was brought before the judge" (L.F. 58). Lastly, Mr. Ryan pled that because he was pressured into entering a plea based on the foregoing, his guilty plea was unknowing, unintelligent, and involuntary (L.F. 59).

The record does not conclusively refute Mr. Ryan's claim that counsel induced his involuntary plea by pressuring and misleading him as alleged. To justify the denial of an ineffective assistance of counsel claim, the record must be "specific enough to refute conclusively the movant's allegation." *State v. Driver*, 912 S.W.2d 52, 56 (Mo. banc 1995); *Van v. State*, 918 S.W.2d 921, 923 (Mo. App. S.D. 1996).

In denying Mr. Ryan's claim, the motion court relied on Mr. Ryan's on-the-record responses to the plea court's routine inquiries whether he was satisfied with counsel's assistance and if he had been threatened or pressured into pleading guilty (L.F. 68). Mr. Ryan's general statements of satisfaction with counsel, however, do not conclusively refute his specific claim of ineffective assistance of counsel. *See Price v. State*, 171 S.W.3d 154, 157 (Mo. App. E.D. 2005) (citing *Lomax v. State*, 163 S.W.3d 561, 594 (Mo. App. E.D. 2005) and *Royston v. State*, 948 S.W.2d 454, 458 (Mo. App. W.D. 1997)).

Additionally, a negative response to a routine inquiry regarding whether any promises or threats had been made to induce a guilty plea is too general to encompass all possible statements by counsel to his client. *Shackleford v. State*, 51 S.W.3d 125, 128 (Mo. App. W.D. 2001).

Here, although Mr. Ryan responded "no" to the plea court's inquiry whether threats or pressure had caused him to plead guilty, Mr. Ryan's negative response to such a routine inquiry is too general to conclusively refute Mr. Ryan's specific allegations that counsel informed him of a change in the plea offer at the eleventh hour and told him that he had to accept the offer in a matter of minutes or receive a harsh sentence.

The statements attributed to counsel are so far afield from what are commonly understood to be "threats" that it is unlikely that the court's general inquiry about "threats," in particular, would have called the statements to mind or that Mr. Ryan would have understood the word, "threats," to refer to them. Rather, given that the statements were made by counsel in the context of the attorney-client relationship, Mr. Ryan would reasonably have construed them to be either an expression of opinion or a prediction about sentence, or more aptly, legal advice on his options, rather than true threats. The statements did not fall within the definition of what is commonly understood to be threats because they

were not expressions of intent by the maker of the statement – plea counsel – to commit an act, sometimes illegal, against a person – here, Mr. Ryan – to cause him harm, commonly physical.

The statement about the harsh sentence Mr. Ryan would receive upon rejection of his plea was more an expression of opinion, a prediction, or an advisement about what other actors – the prosecution and the court – would do if the other actors' conditions were not met and as such, not so much a "threat" that Mr. Ryan was obliged to disclose in response to the plea court's inquiry.

The same is true of counsel's statement informing Mr. Ryan of a change in the plea offer at the very last minute. That statement was, likewise, an advisement informing Mr. Ryan of an option and of the very short time in which he had to exercise it, and not a "threat" in the traditional sense of the word.

Under the circumstances, that Mr. Ryan disclosed no "threats" in response to the plea court's inquiry about "threats" does not mean that counsel did not provide legally ineffective coercive advice, that counsel timely advised Mr. Ryan of the change in the plea offer, or that counsel did not tell Mr. Ryan that he would receive a harsh sentence if he did not accept the offer in a matter of minutes.

Mr. Ryan anticipates that Respondent may argue that the plea court asked Mr. Ryan on record about both "threats" and "pressure of any kind" in the same question, and that Mr. Ryan's failure to disclose "threats," "pressure of any kind," or the statements attributed to counsel in his amended motion in response to the question refutes Mr. Ryan's claim. Mr. Ryan must concede that the content and timing of the statements attributed to counsel were, in fact, coercive and pressured him to enter his plea and that he did not disclose those statements in response to the plea court's inquiry. But he asks this Court to consider the circumstances of his plea and the record as a whole.

In evaluating Mr. Ryan's claim that he was coerced or pressured to plead guilty in the minutes before the plea, this Court should recognize "that the animating psychological state in such circumstances involves just that – pressure, or a compulsion . . . [that] has brought one to do something which one does not wish to do." *See* Appellant's Brief (ED103745), p. 17. To expect perfect, full and complete, and unreserved responses by the defendant in such a psychological state is not reasonable. *Id*.

"The state of a man's mind, like most other issues of fact, is decided on the basis of reasonable inferences drawn from the known surrounding facts and circumstances." *State v. Rose*, 440 S.W.2d 441, 445 (Mo. 1969) (citing *United States*

ex rel. McGrath v. LaVallee, 319 F.2d 308, 315 (2d Cir. 1963) (concurring and dissenting opinion); and *United States v. Tateo*, 214 F.Supp. 560, 565 (S.D.N.Y. 1963)).

"When a defendant experiences a last-minute burst of pressure to plead guilty, it is reasonable to assume that that pressure might affect his answers to the plea court's inquiries at the plea." *See* Appellant's Brief (ED103745), p. 18. Mr. Ryan pled in his amended motion that counsel's informing him of the difference in the plea offer mere minutes before the plea and counsel's pressure to plead guilty robbed him of his confidence in the plea. *Id*.; *see also* (L.F. 57). He was not sure of himself or what the correct course of action should be, and he did not have enough time to think about it. *Id*.

The record further reflects that the plea court utilized a group plea procedure in questioning Mr. Ryan about the voluntariness of that plea. Rules 24.02(b) and (c) require the plea court to address the defendant personally in open court, to inform the defendant of certain rights, to determine that he understands those rights, and to determine that the plea is voluntary and not the result of force or threats or promises, apart from a plea agreement, before accepting a plea of guilty.

The use of group pleas – the practice of addressing multiple defendants simultaneously at the same plea hearing – to comply with these rules has been repeatedly criticized. *Wright v. State*, 411 S.W.3d 381, 387 (Mo. App. E.D. 2013). In 2006, the Court of Appeals first called the practice of accepting group guilty pleas "far from ideal," and stated that it "should be discontinued." *Guynes v. State*, 191 S.W.3d 80, 83 n.2 (Mo. App. E.D. 2006). The Court of Appeals reiterated this sentiment in *Elverum v. State*, 232 S.W.3d 710, 712 n. 4 (Mo. App. E.D. 2007) in 2007 and in 2008 in *Castor v. State* 245 S.W.3d 909, 915 n. 8 (Mo. App. E.D. 2008).

In 2009, in *Roberts v. State*, 276 S.W.3d 833, 837 (Mo. banc 2009), this Court declined to deem the practice automatically invalid or impermissible, but denounced the use of group pleas by stating that they "are not preferred procedure and should be used sparingly."

Courts of Appeal later noted that the practice inescapably impacts and impinges upon the voluntariness of the defendant's plea. *Bearden v. State*, ED104464, 2017 WL 2644068, at * 3 (Mo. App. E.D. June 20, 2017); *Miller v. State*, ED103323, 2016 WL 2339049, at *4 (Mo. App. E.D. May 3, 2016). Notably, the use of the practice presents inherent risks that the defendants will be confused or simply parrot the answers of other defendants without fully understanding the

court's inquiries, the court's advisements, or the plea proceedings themselves. *See Wright*, 411 S.W.3d at 388.

The use of the practice presents a similar risk of confusion of the court. Multiple defendants, different attorneys, serial answers, and serial factual scenarios may make it difficult for the court to keep track. It may frustrate the court's mandatory determinations of the accuracy and factual basis for each plea, as well as the court's assessment of each defendant's desire to plead guilty and understanding of his or her rights.

Despite these risks, this Court's admonition in *Roberts* was repeatedly ignored by the same judge who is the plea court in this case. *Wright*, 411 S.W.3d at 388 (Richter, P.J., concurring); *Snow v. State*, 461 S.W.3d 25, 30 n. 3 (Mo. App. E.D. 2015). On the day of Mr. Ryan's plea, there were six other criminal defendants in the courtroom who were also pleading guilty while their attorneys stood aside (Group GP Tr. 2-5). The procedure raised the unanswered question whether Mr. Ryan's plea was knowing and voluntary "or the result of his parroting the answers of the other defendants as the judge "moved down the line."

Because Mr. Ryan's plea was accepted as part of a group plea—a process that can impinge on the voluntariness of a guilty plea—this Court should find

that Mr. Ryan's claim of ineffectiveness is not conclusively refuted by the record. *See*, *e.g.*, *Miller*, *supra*, *4 (finding group plea record failed to conclusively show movant was entitled to no relief). "In fact, in circumstances such as the instant matter, wherein the motion court judge [i.e., the Honorable Timothy W. Inman] differs from the plea court judge [i.e., the Honorable Kenneth W. Pratte], an evidentiary hearing is evermore indispensable." *Id*.

For the foregoing reasons, the motion court erred in denying Mr. Ryan's Rule 24.035 motion. The motion court's ruling and plea counsel's ineffectiveness violated Mr. Ryan's rights to due process of law, to persist in his plea of not guilty, against self-incrimination, to a jury trial, and to effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 18(a), 19, and 22(a) of the Missouri Constitution. This Court must reverse the motion court's judgment and vacate Mr. Ryan's plea and sentence, or remand for an evidentiary hearing.

CONCLUSION

WHEREFORE, based on his argument in Point I of his brief, Appellant Charles M. Ryan respectfully requests that this Court reverse the motion court's judgment and vacate Mr. Ryan's plea and sentence, or in the alternative, remand for an evidentiary hearing.

Respectfully submitted,

/s/ Gwenda Reneé Robinson
Gwenda Reneé Robinson, Mo. Bar #43213
District Defender, Office B/Area 68
1010 Market Street, Suite 1100
St. Louis, Missouri 63101
314.340.7662 (telephone)
314.340.7685 (facsimile)
Gwenda.Robinson@mspd.mo.gov

ATTORNEY FOR APPELLANT

CERTIFICATES OF SERVICE AND COMPLIANCE

Pursuant to Missouri Supreme Court Rules 84.06(g) and 83.08(c), I certify that a copy of this brief was served via the Court's electronic filing system to Shaun Mackelprang of the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102 at Shaun.Mackelprang@ago.mo.gov on Wednesday, October 25, 2017. In addition, pursuant to Missouri Supreme Court Rule 84.06(c), I certify that this brief includes the information required by Rule 55.03 and that it complies with the word count limitations of Rule 84.06(b). This brief was prepared with Microsoft Word for Windows, using Book Antiqua 13-point font. The word-processing software identified that this brief contains 6478 words.

/s/ Gwenda Reneé Robinson
Gwenda Reneé Robinson, Mo. Bar #43213
District Defender, Office B/Area 68
1010 Market Street, Suite 1100
St. Louis, Missouri 63101
314.340.7662 (telephone)
314.340.7685 (facsimile)
Gwenda.Robinson@mspd.mo.gov

ATTORNEY FOR APPELLANT