

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 REPLY BRIEF

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.....	3
JURISDICTIONAL STATEMENT.....	4
STATEMENT OF FACTS.....	4
REPLY ARGUMENT	5-9
CONCLUSION.....	10
CERTIFICATE OF SERVICE AND COMPLIANCE	11

TABLE OF AUTHORITIES

<i>Boykin v. Alabama</i> , 395 U.S. 238 (1969).....	6-7
<i>Brady v. United States</i> , 397 U.S. 742 (1970)	6-7
<i>Miller v. State</i> , ED103323, 2016 WL 2339049 (Mo. App. E.D. May 3, 2016)	6
<i>Roberts v. State</i> , 276 S.W.3d 833 (Mo. banc 2009)	7
<i>Routt v. State</i> , 493 S.W.3d 904 (Mo. App. E.D. 2016)	5
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	6

JURISDICTIONAL STATEMENT

Appellant Charles Ryan adopts the jurisdictional statement set out in Appellant's Substitute Brief, Statement and Argument, filed on October 25, 2017, in this Court.

STATEMENT OF FACTS

Appellant Charles Ryan adopts the statement of facts set out in Appellant's Substitute Brief, Statement and Argument, filed on October 25, 2017, in this Court. Appellant Charles Ryan (Ryan) will cite to the appellate record as follows: Legal File, "(L.F.)"; Appellant's Substitute Brief, "(App. Br.)"; and, Respondent's Brief, "(Resp. Br.)."

REPLY ARGUMENT

In its brief, Respondent took each of Mr. Ryan's amended motion allegations in isolation, and devoted several pages to discussion of how, and in what way, the record of Mr. Ryan's responses to the plea court's inquiry at the plea refuted each amended motion allegation (Resp. Br. 18-27). Respondent overlooked, however, that on post-conviction, this Court's review of the record is not selective, but entails review of the entirety of the record, including the conduct of the plea proceeding. *See Routt v. State*, 493 S.W.3d 904, 910 (Mo. App. E.D. 2016) (stating "[f]indings and conclusions are clearly erroneous if, after a review of the entire record, we are left with the definite and firm impression that a mistake has been made").

Here, the conduct of the plea proceeding included the use of the type of group plea procedure that has been repeatedly criticized and condemned by Missouri courts, and recognized as having the potential to influence involuntary pleas (*see* App. Br. 31-32, citing cases). Recognizing the risks inherent in the use of such a procedure, this Court should review the record of inquiries and responses generated through use of this group plea procedure with heightened scrutiny, and find that the group plea record is, by its very nature, insufficient to

ever *conclusively* refute Mr. Ryan's amended motion allegations. *Miller v. State*, ED103323, 2016 WL 2339049, at *4 (Mo. App. E.D. May 3, 2016).

Respondent argues the opposite (Resp. Br. 27-31). Respondent seeks to divorce this Court's review of the conduct of the plea proceeding, i.e., the use of the group plea procedure, from this Court's review of the entire record, so as to make this Court's review of the plea court's use of the group plea procedure dependent upon the content of the post-conviction movant's pleadings, and not obligatory upon this Court (Resp. Br. 27-31).

In the last five pages of Respondent's 32-page brief, Respondent suggests that this Court's review should be confined to a rote review of inquiries and responses in the record, without regard for the plea procedure used, unless and until the post-conviction movant alleges in his amended motion that a defect or irregularity in the group plea procedure rendered his plea involuntary (Resp. Br. 27-31).

Respondent's suggestion is contrary to the law. This Court must consider the totality of the circumstances in testing the voluntariness of a plea and in assessing the validity of a claim of ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 691 (1984); *Brady v. United States*, 397 U.S. 742, 749 (1970); *Boykin v. Alabama*, 395 U.S. 238, 242-44 (1969). The record must

affirmatively show, under the totality of the circumstances, that the plea was voluntary. *Brady*, 397 U.S. at 749; *Boykin*, 395 U.S. at 242-44.

An examination of the totality of the circumstances unquestionably consists of a review of the entire record, including the conduct of the plea proceeding, or in this case, the use of the group plea procedure. Therefore, this Court's review of the use of the group plea procedure is a necessary byproduct of this Court's obligatory review of the entirety of the record.

Consequently, Mr. Ryan did not, as Respondent argues, waive this Court's review of the plea court's use of the group plea procedure by failing to allege in his amended motion that a defect or irregularity in the group plea procedure rendered his plea involuntary (*see* Resp. Br. 27-31). Regardless whether Mr. Ryan made such an amended motion allegation, this Court must review the plea court's use of the group plea procedure, as part of its review of the record and this Court should weigh use of the group plea procedure in determining whether the allegations in the amended motion warrant an evidentiary hearing.

In *Roberts v. State*, 276 S.W.3d 833, 836 (Mo. banc 2009), Roberts asserted on appeal that he was entitled to an evidentiary hearing on his Rule 24.035 claim of ineffective assistance of counsel. The motion court had denied Roberts' claim

without an evidentiary hearing after finding the claim was refuted by the record of Roberts' responses at his group plea. *Roberts*, 276 S.W.3d at 835.

Though Roberts had not separately raised a claim in his amended motion, alleging a defect or irregularity in the group plea procedure rendered his plea involuntary, on appeal, this Court weighed use of the group plea procedure in reversing the motion court's judgment. *Id.* at 835, 837. This Court noted that use of the group plea procedure increased the opportunity for mistake and confusion, and left room for the movant to assert confusion about his plea. *Id.* This Court held that the group plea record did not conclusively show Roberts was not entitled to relief, and that the motion court clearly erred in denying an evidentiary hearing in his case. *Id.*

Similarly, in this case, this Court should find that the motion court erred in denying an evidentiary hearing because the group plea record does not conclusively show Mr. Ryan is not entitled to relief. *See, e.g., Miller, supra*, *4 (finding group plea record failed to conclusively show movant was entitled to no relief).

Mr. Ryan pled facts, not conclusions, which the record does not conclusively refute and that entitle him to relief on his claim of ineffective assistance of counsel. Mr. Ryan maintains that counsel unreasonably pressured

and misled him to enter an involuntary plea by belatedly 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 a matter of minutes. Mr. Ryan's responses at the group plea that contradict his amended motion claim were induced by counsel's coercion and the inherent coercive nature of pleading guilty with a group of other defendants who acquiesced to the group plea procedure, raised no complaints, persisted in their guilty pleas, and gave the expected responses to the plea court's inquiries. Mr. Ryan did as those around him did, and alleges that but for the use of the group plea procedure, he would have responded differently to the plea court's inquiries.

CONCLUSION

WHEREFORE, based on his arguments in his opening and reply briefs, Appellant Charles Ryan respectfully requests that this Court reverse the judgment of the motion court and remand for an evidentiary hearing on his post-conviction allegations.

Respectfully submitted,

/s/ Gwenda Reneé Robinson

Gwenda Reneé Robinson, #43213
District Defender, Office B/Area 68
Missouri State Public Defender
Eastern Appellate/Post-conviction
1010 Market Street, Suite 1100
St. Louis, MO 63101
314.340.7662 (telephone)
314.340.7685 (facsimile)
Gwenda.Robinson@mspd.mo.gov

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE AND COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06(b), I hereby certify that on Monday, January 08, 2018, a true and correct copy of the foregoing was e-filed with this Court and sent to Assistant Attorney General Shaun Mackelprang at Shaun.Mackelprang@ago.mo.gov, the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102 per the Missouri E-Filing System Clerk. In addition, I hereby certify that this brief includes the information required by Rule 55.03. This brief was prepared with Microsoft Word for Windows, uses Constantia FB 13 point font, and contains 1,469 words.

/s/ Gwenda Reneé Robinson

Gwenda Reneé Robinson, #43213
District Defender, Office B/Area 68
Missouri State Public Defender
Eastern Appellate/Post-conviction
1010 Market Street, Suite 1100
St. Louis, MO 63101
314.340.7662 (telephone)
314.340.7685 (facsimile)
Gwenda.Robinson@mspd.mo.gov

ATTORNEY FOR APPELLANT