



Missouri Court of Appeals
Southern District

Division Two

REGGIE OLIPHANT,	)	
	)	
Movant-Appellant,	)	
	)	
vs.	)	No. SD35397
	)	Filed: October 15, 2018
STATE OF MISSOURI,	)	
	)	
Respondent-Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF DALLAS COUNTY

Honorable Lisa C. Henderson, Judge

REVERSED AND REMANDED WITH DIRECTIONS

Reggie Oliphant (“Oliphant”), appeals from the judgment of the motion court denying his Rule 24.035¹ motion to set aside his convictions for two counts of distribution, delivery, manufacture, or production of a controlled substance; and one count of keeping or maintaining a public nuisance. Because the record is insufficient to demonstrate that the motion court conducted the required *Moore*² abandonment inquiry following appointed counsel’s untimely amended motion, we reverse and remand.

¹ All rule references are to Missouri Court Rules (2018).

² *Moore v. State*, 458 S.W.3d 822, 825 (Mo. banc 2015).

Motion Court Failed to Conduct *Moore* Abandonment Inquiry

The record reflects (and both parties agree) that appointed counsel filed an untimely amended motion. An untimely amended motion raises the presumption of abandonment, which the motion court *must* resolve after inquiry. ***Moore v. State***, 458 S.W.3d 822, 825 (Mo. banc 2015). “The result of the inquiry into abandonment determines which motion—the initial motion or the amended motion—the court should adjudicate.” ***Id.*** at 826.

As the State correctly indicates, “there is an insufficient record to establish that the motion court made an inquiry in to whether [Oliphant] was abandoned[.]”

We reverse and remand with directions that the motion court conduct a ***Moore*** abandonment inquiry, and for such further proceedings as appropriate pursuant to Rule 24.035.

WILLIAM W. FRANCIS, JR., P.J. - OPINION AUTHOR

DANIEL E. SCOTT, J. - CONCURS

MARY W. SHEFFIELD, J. - CONCURS