OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

DANIELL W. BIBBS,	)	No. ED107490
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	St. Louis County
vs.	)	
	)	Honorable John D. Warner, Jr.
STATE OF MISSOURI,	)	
	)	
Respondent.	)	Filed: March 10, 2020

Daniell Bibbs ("Movant") appeals the motion court's judgment denying his Rule 24.035 motion for post-conviction relief without an evidentiary hearing. Movant brings two points on appeal. First, he contends the motion court clearly erred in denying his claim that his pleas were involuntary and unknowing because after the charges were read to him he told the court "there was nothing forcible" about his conduct and the three charges he pled guilty to contained identical language. Movant's first point raises an argument which differs from the claim in his amended motion. Movant's amended motion alleged the plea court erred in accepting his guilty pleas without sufficient factual bases to support them. Because our Supreme Court clarified the case law interpreting the differences between an involuntary and unknowing plea and a plea without a sufficient factual basis, we exercise our discretion to review Movant's appeal on its merits *ex gratia*. *Booker v. State*, 552 S.W.3d 522, 529 (Mo. banc 2018) (differentiating a sufficient factual basis for a plea from a knowing and voluntary plea); *see also State v. Munoz*, 345 S.W.3d 888, 891 (Mo. Ct. W.D. 2011) (which reviewed a waived claim of trial court error *ex gratia*).

Second, Movant contends the motion court clearly erred in denying his claim of ineffective assistance of counsel because his plea counsel was ineffective for failing to investigate evidence the victim had made false or unsubstantiated allegations of a sexual nature against other men.

AFFIRMED.

DIVISION II HOLDS: The motion court did not clearly err in denying Movant's claim his pleas lacked sufficient factual bases because the State's recitation of the facts and Movant's colloquy with the plea court establish Movant pled guilty with an awareness of the circumstances and their probable consequences. Similarly, Movant's assertion on appeal his pleas were involuntary and unknowing is meritless. The motion court did not clearly err in denying Movant's claim of ineffective assistance of counsel because Movant admitted plea counsel "did the best that he could"; there was nothing further plea counsel could have done for his case, including interviewing other witnesses; and movant failed to allege what any of these other men would have testified to.

Accordingly, we affirm the judgment of the motion court.

Opinion by: Philip M. Hess, P.J.
Kurt S. Odenwald, J. and Lisa P. Page, J. concur.

Attorney for Appellant: Mary S. Choi

Attorney for Respondent: Nathan J. Aquino

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.