IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

JASON L. BERRY,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD82440

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: March 31, 2020

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Kevin D. Harrell, Judge

JUDGES

Division Four: Mitchell, C.J., and Witt and Ardini, JJ. CONCURRING.

ATTORNEYS

Susan L. Hogan, Appellate Defender, Kansas City, MO, Attorney for Appellant.

Eric S. Schmitt, Attorney General, and Karen L. Kramer, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JASON L. BERRY, Appellant,
v.
STATE OF MISSOURI, Respondent.

WD82440 **Jackson County**

Before Division Four Judges: Karen King Mitchell, Chief Judge, and Gary D. Witt and Edward R. Ardini, Jr., Judges

Jason Berry appeals, following an evidentiary hearing, the denial of his amended Rule 29.15 motion for post-conviction relief. In his sole point on appeal, Berry argues that the hearing court erred in denying his motion because he received ineffective assistance of counsel in that he was dissatisfied with his assigned public defender and was unable to have his case assigned to a different public defender. Finding no error, we affirm.

AFFIRMED.

Division Four holds:

1. On appeal, we review the denial of a motion for post-conviction relief to determine whether the motion court's findings of fact and conclusions of law are clearly erroneous; such findings and conclusions are clearly erroneous only if, after reviewing the entire record, we are left with the definite and firm impression that a mistake has been made.

2. To be entitled to post-conviction relief for ineffective assistance of trial counsel, a movant must show by a preponderance of the evidence that counsel failed to exercise the level of skill and diligence that a reasonably competent trial counsel would in a similar situation and movant was thereby prejudiced.

3. We presume that counsel both rendered adequate assistance and exercised reasonable professional judgment and that any challenged action was based upon sound trial strategy; the movant must overcome that presumption.

4. To demonstrate prejudice caused by counsel's ineffective assistance, the movant must show that, but for counsel's poor performance, there is a reasonable probability that the outcome of the trial would have been different.

5. If either the performance prong or the prejudice prong is not met, the court need not consider the other prong, and the movant's claim fails.

6. A criminal defendant is entitled to legal counsel, but he does not have an absolute right to choose his appointed counsel.

7. To warrant substitution of appointed counsel, a defendant must demonstrate justifiable dissatisfaction with counsel (*e.g.*, a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant); mere dissatisfaction is insufficient as is disagreement about trial strategy or a general dissatisfaction with the amount of time a defendant is able to spend with counsel.

8. Berry failed to demonstrate justifiable dissatisfaction with trial counsel where the record showed that counsel regularly met with Berry, explained the evidence against him, relayed plea offers to him, and advised him of his options regarding pleading or proceeding to trial.

9. Berry failed to present evidence to rebut the presumption that trial counsel rendered adequate assistance and exercised professional judgment, and thus, the motion court did not clearly err in denying Berry's motion.

Opinion by: Karen King Mitchell, Chief Judge March 31, 2020

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.