OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DANIEL C. HARMON,	)	No. ED108133
	)	
Movant/Appellant,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	
STATE OF MISSOURI,	)	Honorable Steven R. Ohmer
	)	
Respondent/Respondent.	)	Filed: April 14, 2020

Daniel C. Harmon (Appellant) appeals from the trial court's judgment denying his Rule 24.035 motion for post-conviction relief without an evidentiary hearing. Appellant claims the motion court clearly erred in denying his motion because: (1) he was denied due process of law in that his stealing offense was a misdemeanor under State v. Bazell, 497 S.W.3d 263 (Mo. banc 2016), and his five-year sentence exceeded the authorized punishment; (2) plea counsel was ineffective for failing to move to dismiss the felony charge and failing to advise Appellant that he was charged only with a misdemeanor offense; and (3) probation revocation counsel was ineffective for failing to argue the conviction should be amended to a misdemeanor and Appellant should be sentenced to no more than one year's incarceration.

DISMISSED in part and AFFIRMED in part.

Division Three Holds: Because Appellant absconded from probation, we use our discretion to invoke the escape rule and deny review of Appellant's first and second claims. We find the motion court did not clearly err in denying Appellant's third claim because Appellant failed to allege facts that would entitle him to relief. Appellant did not receive ineffective assistance of counsel when counsel failed to advocate for Appellant's conviction to be amended because at the time of the probation revocation hearing, the Missouri Supreme Court held Bazell did not apply retroactively.

Opinion by: Sherri B. Sullivan, J. Mary K. Hoff, P.J., and Angela T. Quigless, J., concur.

Attorney for Appellant: Lisa M. Stroup
Attorney for Respondent: Shaun J. Mackelprang

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