IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

GABRIEL KNIGHT DAWSON,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD82441

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: July 14, 2020

APPEAL FROM

The Circuit Court of Buchanan County, Missouri
The Honorable Patrick K. Robb, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Ardini, J., CONCURRING. Ahuja, J., CONCURS in separate opinion.

ATTORNEYS

Rosemary E. Percival, Assistant State Public Defender, Kansas City, MO, Attorney for Appellant.

Eric S. Schmitt, Attorney General, and Shaun J. Mackelprang, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

GABRIEL KNIGHT DAWSON, Appellant,
v.
STATE OF MISSOURI, Respondent.

WD82441 **Buchanan County**

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and Alok Ahuja and Edward R. Ardini, Jr., Judges

Mr. Gabriel Knight Dawson ("Dawson") appeals from the judgment of the Circuit Court of Buchanan County, Missouri ("motion court"), denying his Rule 24.035 motion for post-conviction relief after an evidentiary hearing. On appeal, Dawson contends that the motion court clearly erred in denying his claim that the sentencing court "improperly sentenced" him without considering a sentence under the dual-jurisdiction statute, § 211.073, RSMo, and in denying his claims that plea counsel was ineffective for failing to present mitigation evidence at his sentencing hearing.

Affirmed.

Division Two Majority Opinion holds:

1. The decision whether to place an offender under the dual-jurisdiction program is a matter for the court's discretion. The record reflects that a conscious decision was made by Dawson and his plea counsel *not* to seek dual-jurisdiction consideration by the sentencing court under the juvenile code and, instead, to seek probation under the general criminal code. Hence, at the sentencing hearing, section 211.073 was not mentioned. But, when the sentence imposed was not what Dawson wanted, Dawson *then* argued via his Rule 24.035 motion that his due process rights were violated by the sentencing court's failure to consider dual jurisdiction.

Here, the motion court and the sentencing court are one and the same. Though the *motion* court judge candidly admitted in the Rule 24.035 proceedings that the *sentencing* court judge "did not consider Dawson for imposition of dual jurisdiction" as mandated by section 211.073, the motion court identified a litany of objective reasons why this same judge would *not* have imposed a different sentence had he considered section 211.073 at sentencing—a sentence that the motion *and* sentencing judge indicated was the most lenient the judge was willing to consider under the circumstances. By having the same judge serve as both the sentencing court and the motion court, the record presents an objectively reasonable and "considered rejection" of dual jurisdiction by that same judge. The motion court's finding that there was no prejudice is not clearly erroneous.

2. The motion court concluded that Dawson could have called mitigation witnesses at the sentencing hearing; but after considering the mitigation witnesses' testimony proffered at the post-conviction relief evidentiary hearing, the motion court found that even had plea counsel presented the mitigation evidence at the sentencing hearing, it would not have resulted in a lower sentence for Dawson. The motion court's conclusion is objectively reasonable. Likewise, where we have the benefit of having a motion court who also served as the sentencing court, the motion court's ruling as to the impact of character witnesses is entitled to special deference and has been categorized by other courts as being "virtually unchallengeable." Dawson failed to establish that he was prejudiced by plea counsel's failure to present mitigation evidence at his sentencing hearing.

Judge Ahuja's Concurring Opinion states:

Judge Ahuja concurs in the result, and with the Court's opinion – with one exception. Where the circuit court denies post-conviction relief on the basis that a movant was not prejudiced by his counsel's failure to present different evidence or argument at sentencing, prior decisions of the Court of Appeals give special, heightened deference to that determination, *if* the sentencing judge was also the post-conviction judge. Judge Ahuja contends that this heightened level of deference is inconsistent with the prejudice inquiry required under *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, the prejudice inquiry is objective, not subjective, and "should not depend on the idiosyncracies of the particular decisionmaker," or the "particular judge's sentencing practices." *Id.* at 695. The identities of the sentencing and post-conviction judges should have no impact on the standard of appellate review.

Majority Opinion by: Mark D. Pfeiffer, Presiding Judge July 14, 2020
Concurring Opinion by: Alok Ahuja, Judge

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