MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

DARION POLK,

Appellant

v.

STATE OF MISSOURI.

Respondent

DOCKET NUMBER WD82759

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: August 18, 2020

Appeal From:

Circuit Court of Boone County, MO
The Honorable Kevin Crane, Judge

Appellate Judges:

Division Three
Gary D. Witt, P.J., Lisa White Hardwick and Thomas N. Chapman, JJ.

Attorneys:

Jessica Hathaway, Clayton, MO — Counsel for Appellant

Attorneys:

Shaun Mackelprang, Jefferson City, MO — Counsel for Respondent

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DARION POLK, Appellant,
v.
STATE OF MISSOURI, Respondent.

WD82759 **Boone County**

Before Division Three Judges: Witt, P.J., Hardwick and Chapman, JJ.

Darion Polk ("Polk") appeals the judgment denying his Rule 24.035 motion for post-conviction relief entered by the Circuit Court of Boone County, Missouri ("motion court"), following an evidentiary hearing. Polk claims he received ineffective assistance of counsel when entering his plea to three counts of robbery in the first degree, and three counts of armed criminal action. Specifically, he claims that trial counsel coerced his plea by advising him that the facts that the perpetrators of the robberies were mostly black, the victims were mostly white, and the trial would take place in majority white Boone County would play harder to a jury. We affirm.

AFFIRMED.

Division Three holds:

Where Polk's claim on appeal is a new claim based on counsel's testimony at the evidentiary hearing and was not asserted in his amended 24.035 motion, it is waived and cannot be raised for the first time on appeal.

Opinion by: Thomas N. Chapman, Judge Date: August 18, 2020

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