MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SHANIA A. HARNESS,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD83510

Date: November 3, 2020

Appeal from:
Buchanan County Circuit Court
The Honorable Patrick K. Robb, Judge

Appellate Judges:
Division Four: Cynthia L. Martin, C.J., and Alok Ahuja and Edward R. Ardini, JJ.

Attorneys:
Jeffrey C. Esparaza, Kansas City for appellant
Karen L. Kramer, Jefferson City for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SHANIA A. HARNESS, Appellant,
v.
STATE OF MISSOURI, Respondent.

WD83510 Buchanan County

Before Division Four Judges: Cynthia L. Martin, C.J., and Alok Ahuja and Edward R. Ardini, JJ.

Shania Harness pleaded guilty in the Circuit Court of Buchanan County to one count of first-degree robbery. She was sentenced to twelve years' imprisonment. Harness filed a motion for post-conviction relief under Supreme Court Rule 24.035, and counsel was appointed to represent her. Harness' appointed counsel filed an untimely amended motion for post-conviction relief, alleging that Harness' plea counsel provided ineffective assistance at Harness' sentencing hearing.

Without addressing the untimeliness of the amended motion, the circuit court denied Harness' amended motion on the merits after an evidentiary hearing. Harness appeals.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Division Four holds:

The amended motion for post-conviction relief filed by Harness' appointed counsel was untimely. The filing deadlines in Rule 24.035(g) are mandatory, and the circuit court was required to enforce those deadlines, whether raised by the parties or not.

Given the untimeliness of the amended motion, the question becomes whether responsibility for the untimely filing rests with Harness, or with her appointed lawyer. If Harness bears responsibility for the untimely filing, then the circuit court was required to disregard the untimely amended motion, and instead address only the claims in Harness' original, *pro se* motion for post-conviction relief. If responsibility for the untimely filing rested on appointed counsel, however, Harness was "abandoned" by counsel. In that situation, the circuit court would be required to treat the untimely amended motion as timely filed.

Because the circuit court failed to consider whether Harness had been abandoned by post-conviction counsel, and because the abandonment inquiry will determine which motion the circuit court should appropriately consider, we reverse the circuit court's judgment. The case is remanded to permit the circuit court to conduct an independent inquiry into whether Harness was abandoned by appointed counsel, and for further proceedings consistent with the outcome of that inquiry.

Opinion by: Alok Ahuja, Judge November 3, 2020

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