MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DERICK T DAVIS,

Appellant

v.

STATE OF MISSOURI,

Respondent

DOCKET NUMBER WD83193

DATE: November 10, 2020

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Joel P. Fahnstock, Judge

Appellate Judges:

Division Four
Cynthia L. Martin, Chief Judge, Presiding, Gary D. Witt, Judge, Anthony Rex Gabbert, Judge

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Attorneys:

James C. Egan, Columbia, MO,
Counsel for Appellant

Attorneys:

Daniel N. McPherson, Jefferson City, MO,
Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DERICK T DAVIS, Appellant,
v.
STATE OF MISSOURI, Respondent.

WD83193 **Jackson County**

Before Division Four Judges: Cynthia L. Martin, Chief Judge, Presiding, Gary D. Witt, Judge, and Anthony Rex Gabbert, Judge

Derik T. Davis appeals the denial, after an evidentiary hearing, of his Rule 29.15 motion for post-conviction relief. He contends the motion court, 1) clearly erred in denying Davis's claim that trial counsel was prejudicially ineffective by failing to object to the prosecutor's reference, in closing argument, to Davis not testifying, and 2) clearly erred in denying Davis's claim that appellate counsel was prejudicially ineffective for failing to raise the issue on appeal that, Shana Hawkins's testimony violated Davis's right to confrontation.

AFFIRMED.

Division Four holds:

1. The motion court did not clearly err in concluding that, Davis failed to meet his burden to prove that, but for trial counsel's failure to object to the prosecutor's statement in closing, there is a reasonable probability the result of the trial would have been different.

2. The motion court did not clearly err in concluding that appellate counsel was not ineffective for strategically declining to raise what would have been a non-meritorious right to confrontation claim regarding Shana Hawkins's testimony.

Opinion by: Anthony Rex Gabbert, Judge Date: November 10, 2020

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