In the Missouri Court of Appeals
Eastern District

DIVISION THREE

TERRELL GRAN JOHNSON,	)	No. ED108454
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	the City of St. Louis
vs.	)	1522-CC10175
	)	
STATE OF MISSOURI,	)	Honorable Calea F. Stovall-Reid
	)	
Respondent.	)	Filed: December 1, 2020

Terrell Johnson appeals from the judgment denying his Rule 29.15 motion for post-conviction relief after a jury convicted him of felony burglary in the first degree, felony stealing over $500, and misdemeanor property damage in the second degree. The motion court considered and denied each of Johnson's allegations of ineffective assistance of counsel made in his *pro se* motion and in his untimely amended motion. In his sole point on appeal, Johnson contends the motion court clearly erred in denying his claim of ineffective assistance of counsel for failing to use the transcript of his alleged co-defendant's guilty plea to impeach his testimony at trial to show he and the co-defendant did not act together in committing the crimes. In response, the State argues this Court should decline to review this point because it was only raised in his untimely amended motion and the motion court specifically found no abandonment by post-conviction counsel.

REVERSE AND REMAND.

DIVISION III HOLDS: We reverse and remand this matter for the motion court to conduct an adequate independent inquiry on the record into the question of abandonment. Although the motion court found that Johnson had not been abandoned by appointed counsel, the record is inadequate for us to determine whether the motion court made the mandatory independent inquiry into whether abandonment occurred so as to allow for his untimely amended motion to be considered.

Opinion by: James M. Dowd, J.

Angela T. Quigless, P.J., and Kurt S. Odenwald, J., concur.

Attorney for Appellant: Steven Kratky

Attorney for Respondent: Dora A. Fichter

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.