



Missouri Court of Appeals
Southern District

Division Two

JAMAAL J. WALLS,	)	
	)	
Appellant,	)	
	)	
vs.	)	Nos. SD 36544 & SD 36545
	)	Consolidated
	)	
STATE OF MISSOURI,	)	Filed: January 19, 2021
	)	
Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF TANEY COUNTY

Honorable Judge Eric D. Eighmy

REVERSED and REMANDED

Jamaal J. Walls ("Movant") appeals the denial of his amended Rule 24.035¹ motion seeking to set aside his guilty pleas. In a single point relied on, Movant claims his guilty pleas were not voluntarily and knowingly entered because he did not know he would be classified as a dangerous offender. Because the motion court made insufficient findings of fact as to the timeliness of Movant's *pro se* motion, we reverse and remand with instructions for the motion court to enter findings on the issue of timeliness.

¹ All rule references are to Missouri Court Rules (2018).

Factual and Procedural Background

Since Movant's original 24.035 filing was received after November 13, 2018—the filing deadline—and since the envelope contained no postmark, we begin with the procedural background since "neither the motion court nor the appellate court has authority to consider the merits of the claim raised in an untimely-filed post-conviction motion." ***Miley v. State***, 559 S.W.3d 97, 99 (Mo. App. E.D. 2018).

On May 16, 2018, Movant pleaded guilty to first degree burglary in violation of section 569.160² and to failure to appear in violation of section 544.665 pursuant to plea agreements.³ That same date he was sentenced to 15 years in the department of corrections for the burglary charge, and four years on the failure to appear charge, to run consecutive to each other. He was sentenced under section 217.362 to a long-term treatment program.

Pursuant to Rule 24.035(a), Movant, having been convicted of a felony on a plea of guilty, was allowed to file for post-conviction relief. His *pro se* motion was due 180 days after sentencing which would have been November 12, 2018. Rule 24.035(b). However, because November 12, 2018 was a holiday, the deadline for filing was extended to November 13, 2018. Rule 44.01(a). The Circuit Court received the *pro se* motion on November 16, 2018—which was three days *after* the filing deadline. The envelope containing the motion, which was retained by the clerk's office, bore no postmark.

Movant's court-appointed counsel filed an amended motion stating that

² All statutory citations are to RSMo. (2016) unless otherwise indicated.

³ These pleas were entered in two separate cases. Movant filed an appeal for each judgment in his post-conviction cases. The appeals were consolidated by order of this Court.

"[a]lthough [Movant's Motion to Vacate] was filed with the [c]ourt four (sic) days past due, the Form 40 should be considered timely because of the Mailbox Rule." An evidentiary hearing was held on the amended motion. The State raised the issue of the timeliness of the filing. The motion court addressed the issue of timeliness in its judgment as follows:

Timeliness of *Pro Se* Motion

A threshold issue in this case is whether Movant's pro se motions should be deemed timely filed. The motions were received by the Circuit Clerk on November 16, 2018. Under Supreme Court Rule 24.035(b), the motions were due by November 12, 2018, i.e., within 180 days of the sentencing date. Generally, the failure to file a timely motion is a complete waiver of post-conviction claims. *See* Rule 24.035(b). Rule 24.035(b) does allow for a motion to be treated as timely, if it is deposited in the mail in proper form on or before the deadline for filing.

At his hearing Movant testified that he had mailed the motions to the Circuit Clerk prior to the deadline for filing. Movant testified that he had been provided the address for the Circuit Clerk by staff at the Department of Corrections. The envelope used by Movant during his initial attempt was admitted as an exhibit at Movant's hearing. The envelope was addressed to the Circuit Clerk and bore the correct town, state, and zip code. A postal marking on the envelope indicated that the mail had been processed on November 6, 2018.

The same marking also indicated the mail was returned to sender/refused/unable to forward. The parties agree that the mail was returned because the wrong P.O. Box number was written on the envelope. That P.O. Box number belonged to the municipality of Forsyth. Although the Circuit Court of Taney County is located in Forsyth, the Circuit Court has its own separate P.O. Box number.

Under these circumstances, the [c]ourt will treat the pro se motions as timely filed. *See Spells v. State*, 213 S.W.3d 700, 702 (Mo. App. W.D. 2007) ("The mere fact that Appellant addressed his envelope to the incorrect P.O. Box should not deprive Appellant of his day in court.").

Discussion

The time limits for filing a Rule 24.035 motion for post-conviction relief "are mandatory, strictly enforced, and may not be extended." **Miley**, 559 S.W.3d at 99. If a movant fails to file a Rule 24.035(b) motion in a timely fashion "the result is a complete waiver of the right to proceed under the rule, and neither the motion court nor the appellate court has authority to consider the merits of the claim raised in an untimely-filed post-conviction motion." **Id.**

Movant must allege facts showing he timely filed his motion and must meet his burden of proof by a preponderance of the evidence. **Dorris v. State**, 360 S.W.3d 260, 267 (Mo. banc 2012). Rule 24.035(b) prescribes the procedure for determining if a *pro se* motion is timely:

If the motion is sent to the sentencing court by first-class United States Mail and is addressed *correctly* with sufficient postage and *deposited in the mail on or before the last day for filing the motion, the motion shall be deemed to be filed timely. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of the filing of the motion.* Failure to file a motion within the time provided by this Rule 24.035 shall constitute a *complete waiver* of any right to proceed under this Rule 24.035 and a complete waiver of any claim that could be raised in a motion filed pursuant to this Rule 24.035.

(Emphasis added). Accordingly, timeliness of the *pro se* motion is established by demonstrating that the motion is deposited in the mail in a correctly-addressed envelope with sufficient postage on or before the last day for filing of the motion. See **Kirk v. State**, 590 S.W.3d 897, 901 (Mo. App. W.D. 2019).

Rule 24.035(j) requires the motion court to issue findings of fact and conclusions of law on *all* issues presented, and the findings and conclusions must be sufficiently specific to allow meaningful appellate review. **Barry v. State**, 850 S.W.2d 348, 350 (Mo. banc 1993). Here, the motion court made insufficient findings of fact as to whether

Movant placed the correctly-addressed envelope in the mail on or before the filing deadline of November 13, 2018. Because the motion court made findings of fact and conclusions of law which are insufficient to allow meaningful appellate review on the issue of timeliness under Rule 24.035(b), we reverse the judgment and remand.

Conclusion

We reverse and remand the matter for the motion court to make findings on whether Movant placed the correctly-addressed envelope in the mail on or before the filing deadline of November 13, 2018.

MARY W. SHEFFIELD, J. – OPINION AUTHOR

GARY W. LYNCH, J. – CONCURS

DON E. BURRELL, J. – CONCURS