IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

BUDDY WICKIZER,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD83078

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: March 2, 2021

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable James F. Kanatzar, Judge

JUDGES

Division Three: Mitchell, P.J., and Witt and Gabbert, JJ. CONCURRING.

ATTORNEYS

Damien de Loyola, District Defender, Kansas City, MO, Attorney for Appellant.

Eric S. Schmitt, Attorney General, and Karen L. Kramer, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BUDDY WICKIZER, Appellant,
v.
STATE OF MISSOURI, Respondent.

WD83078 **Jackson County**

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and Gary D. Witt and Anthony Rex Gabbert, Judges

Buddy Wickizer appeals the denial, following an evidentiary hearing, of his Rule 29.15 motion for post-conviction relief. Wickizer raises two claims on appeal; he argues that trial counsel was ineffective for failing to object to (1) an improper prior-offender finding and (2) the prosecutor's closing argument. Finding no error, we affirm.

AFFIRMED.

Division Three holds:

1. Prejudice cannot be established from trial counsel's failure to object to an improper prior-offender finding by simply alleging deprivation of jury sentencing; a movant must show that, had counsel objected, he would have received a lesser sentence.

2. Prosecutors are given leeway to make retaliatory arguments in rebuttal and may argue reasonable inferences from the evidence presented. Here, the evidence indicated that the 11-year-old victim had herpes and that she most likely acquired herpes from genital contact. Because the evidence also showed that the only person the victim had genital contact with was the defendant, it was reasonable for the prosecutor to argue, in rebuttal, that the victim acquired herpes from the defendant. Therefore, trial counsel was not ineffective in failing to object to the argument.

Opinion by: Karen King Mitchell, Presiding Judge March 2, 2021

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