Summary of SC98303, *State of Missouri v. Lamar Johnson*
Proceeding originating in the St. Louis circuit court, Judge Elizabeth B. Hogan
Argued and submitted April 14, 2020; opinion issued March 2, 2021

Attorneys: Johnson was represented by Lindsay J. Runnels of Morgan Pilate LLC in Kansas City, (816) 471-6694; Tricia Bushnell and Rachel Wester of the Midwest Innocence Project in Kansas City, (816) 221-2166; Matthew A. Jacober of Lathrop GPM LLP in Clayton, (314) 613-2845; and Alexander T. Brown and Alana McMullin of Lathrop GPM LLP in Kansas City, (816) 292-2000. The circuit attorney, Kimberly M. Gardner of St. Louis, (314) 622-4941, represented herself; she also was represented by Daniel S. Harawa of the Washington University School of Law, (314) 935-4689. The attorney general was represented by Solicitor General D. John Sauer, Shaun J. Mackelprang and Cris Stevens of the attorney general's office in Jefferson City, (573) 751-3321.

A number of organizations and individuals filed briefs as friends of the Court. Certain postconviction legal scholars were represented by Jennifer A. Merrigan of Phillips Black Inc. in Philadelphia and Kristin A. Swain of Phillips Black Inc. in St. Louis, both at (888) 532-0897. The American Civil Liberties Union of Missouri, American Civil Liberties Union Foundation, The Innocence Project Inc., The Innocence Network and Miracle of Innocence were represented by J. Nicci Warr and Samir Mehta of Stinson LLP in Clayton, (314) 863-0800. Certain legal ethics scholars were represented by Peter A. Joy, an attorney in St. Louis, (314) 935-6445. A group of 45 prosecutors was represented by Charles A. Weiss and Jonathan B. Potts of Bryan Cave Leighton Paisner LLP in St. Louis, (314) 259-2000, and Michael A. Wolff of the Saint Louis University School of Law, (314) 691-4377. The Missouri Association of Criminal Defense Lawyers and National Association of Criminal Defense Lawyers were represented by Elizabeth Unger Carlyle of Carlyle Parish LLC in Kansas City, (816) 525-6540; Kathryn B. Parish of Carlyle Parish LLC in St. Louis, (314) 392-0120; and Charles E. Atwell of Foland, Wickens, Roper, Hofer and Crawford PC in Kansas City, (816) 472-7474. Certain elected Missouri prosecutors were represented by William Locke Thompson and Scott E. Fox of the Cole County prosecutor's office in Jefferson City, (573) 634-9180. Certain retired Missouri judges were represented by James R. Wyrsch of Wyrsch Hobbs Mirakian PC in Kansas City, (816) 221-3280.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An inmate appeals from the dismissal of his motion for new trial, which was filed 24 years after his conviction for first-degree murder and armed criminal action. In a decision written by Judge Zel M. Fischer and joined by three judges, the Supreme Court of Missouri dismisses the appeal, finding there is no authority to appeal the dismissal of a motion for new trial filed decades after a criminal conviction becomes final.

In an opinion joined by one judge, Chief Justice George W. Draper III concurs in part and in the result of the principal opinion but writes separately because he believes a prosecutor may seek to overturn a wrongful conviction through a Rule 74.06(b)(5) motion, which allows a party to seek relief from a final judgment when it is no longer equitable that the judgment remain in force.

In an opinion joined by two judges, Judge Laura Denvir Stith concurs in part and in the result of the principal opinion but writes separately because she believes a petition for a writ of habeas corpus provides a mechanism by which the inmate may seek relief.

Facts: In 1995, Lamar Johnson was found guilty of first-degree murder and armed criminal action and was sentenced to life imprisonment. In 2018, the circuit attorney's conviction integrity unit began reviewing Johnson's case. The circuit attorney determined there was credible evidence of Johnson's innocence and of police and prosecutorial misconduct resulting in a wrongful conviction. In 2019, the circuit attorney filed a motion for a new trial in Johnson's case. Johnson joined the circuit attorney's motion. On its own motion, the circuit court appointed the attorney general to intercede in the case. Ultimately, the circuit court overruled the new trial motion, holding it lacked authority to consider it. Johnson appeals; the circuit attorney was designated an intervenor in the appeal.

APPEAL DISMISSED.

Court en banc holds: Johnson does not have any statutory authority to appeal. Section 547.070, RSMo, which governs a defendant's right to appeal in criminal cases, permits appeal only from final judgments rendered upon an information or indictment. A criminal judgment is final once sentence is entered and exhausts the circuit court's jurisdiction over the case. Because the circuit court's jurisdiction in Johnson's case was exhausted when he was sentenced in 1995, Johnson is appealing from an order dismissing a motion the circuit court lacked any authority to sustain. Furthermore, an appellate court's inherent power to prevent a miscarriage of justice or manifest injustice exists only if the case is otherwise properly before the appellate court. Accordingly, this Court lacks the authority to do anything but dismiss the appeal.

Concurring opinion by Chief Justice Draper: The author concurs with the principal opinion's holding that a motion for new trial cannot be used to set aside a conviction once affirmed on appeal and the mandate has issued. The author writes separately, however, because he believes a circuit attorney may seek to overturn a wrongful conviction through a Rule 74.06(b)(5) motion, which allows a party to seek relief from a final judgment when it is no longer equitable that the judgment remain in force. The author would find, under the rule's plain language, that a circuit or prosecuting attorney could bring an independent action in equity when justice so requires.

Concurring opinion by Judge Stith: The author concurs with the principal opinion's holding that a motion for new trial cannot itself be used to set aside a conviction once the judgment is affirmed on appeal and the mandate has issued. She writes separately to address arguments that an exception must be made to the normal timeline for filing a motion for new trial because a motion for new trial is the only mechanism realistically available to obtain a hearing that Johnson's conviction was unjust. The author notes Johnson can seek the same relief by filing a petition for a writ of habeas corpus. She further cites authority from the United States Supreme Court and from this Court stating it is not the attorney general's duty, as a representative of the state, to oppose all requests for habeas or other postconviction relief; rather, these authorities state the role of the attorney general is to ensure justice is done – not necessarily to obtain or sustain a conviction.