**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

DREW RYLAND

Appellant

v.

STATE OF MISSOURI

Respondent

DOCKET NUMBER WD83470 Consolidated with WD83553

DATE: March 23, 2021

Appeal From:

Circuit Court of Jackson County, MO
The Honorable George Edgar Wolf, III, Judge

Appellate Judges:

Division One
Alok Ahuja, P.J., Thomas H. Newton, and Thomas N. Chapman, JJ.

Attorneys:

Richard Johnson, Kansas City, MO — Counsel for Appellant
Jeffrey Esparza, Kansas City, MO — Co-Counsel for Appellant

Attorneys:

Daniel McPherson, Jefferson City, MO — Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**DREW RYLAND, Appellant,**
**v.**
**STATE OF MISSOURI, Respondent.**

**WD83470 (consolidated with WD83553)** **Jackson County**

Before Division One Judges: Ahuja, P.J., Newton, and Chapman, JJ.

Ryland timely filed a motion *pro se*, or without representation by counsel, to vacate, set aside, or correct a judgment entered on a jury verdict convicting him of nine criminal counts related to an automobile collision resulting in death. This Court had affirmed the conviction on direct appeal, but he argued in his post-conviction relief motion, filed under Rule 29.15, that his trial counsel provided ineffective representation at trial in violation of his constitutional rights. Ryland did not ask the court to allow him to proceed as an indigent person. The motion court, however, ordered the office of the appellate public defender to represent him and also ordered a 30-day extension of time for an amended motion to be filed, if the public defender decided that one was needed. Ten days later, counsel filed a document indicating that he would represent Ryland. Before the 90-day deadline for filing the amended motion expired, counsel asked the court for another 30-day extension of time to file the motion. The court granted the motion, and counsel filed the amended motion 117 days after the court initially ordered the appellate public defender to represent Ryland. There was some overlap between the *pro se* motion and the amended motion, but the amended motion raised additional claims of trial-counsel ineffectiveness. After an evidentiary hearing, the motion court overruled the amended motion. The court did not issue findings of fact or conclusions of law on the substance of the issues Ryland had raised in the *pro se* Rule 29.15 motion.

**REVERSED AND REMANDED.**

**Division One holds:**

Ryland and the State argue that the motion court did not have the authority to order a second 30-day extension for the filing of the amended motion. We agree. Under the version of Rule 29.15 in effect when Ryland filed the *pro se* motion, the court had the authority to grant just one 30-day extension beyond the 60 days permitted under the rule for filing an amended motion. Because the amended motion was not filed within 90 days of the order appointing counsel, it was filed too late.

Ryland also contends that the lawyer who filed the amended motion on his behalf was not an appointed public defender. If this is so, then the trial court erred by considering the late amended motion rather than the timely *pro se* motion in ruling on Ryland's post-conviction claims.

The State argues that the record is not clear about the status of the lawyer who filed the amended motion, so the case should be returned to the motion court to decide whether this lawyer was a special public defender. If he was, then the abandonment doctrine applies. Under that doctrine, where an appointed public defender files an amended Rule 29.15 motion beyond the deadline, the court may find that the movant has been abandoned through no fault of his own and may rule on the amended motion rather than the *pro se* motion; this doctrine does not apply under Rule 29.15 to privately retained counsel. We agree with the State that the record is unclear regarding the status of motion counsel. The matter must be remanded for the motion court to decide whether he was appointed or privately retained and, accordingly, which post-conviction relief motion should be ruled on. The first point is granted.

In the second point, Ryland argues that the motion court erred in overruling one of the claims raised in the amended motion, and, because that claim was also raised in the *pro se* motion, he asks this Court to reverse the judgment and sentence and order a new trial. The claims, however, do not appear to be the same. In the *pro se* motion, Ryland argued that trial counsel was ineffective for failing to hire a "medical expert" who would have examined the evidence and pointed out to the jury that injuries sustained by another occupant of the vehicle could involve only a driver and not a passenger. The amended motion stated that trial counsel did not have the photographs of those injuries examined by an expert and discussed the findings made by a forensic epidemiologist who had reviewed them. The deposition testimony of and forensic report prepared by this epidemiologist were introduced during the evidentiary hearing. The motion court found that this individual was not a licensed medical doctor, so we do not believe that the "forensic epidemiologist" referred to in the amended motion was the same as the "medical expert" cited in the *pro se* motion. Since we are remanding the case for the motion court to decide whether the court must rule on the *pro se* motion rather than the amended motion, we do not consider this point further.

Accordingly, we reverse and remand to the motion court for further proceedings consistent with this opinion.

**Opinion by: Thomas H. Newton, Judge** March 23, 2021

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