OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

ROBERT W. ROSSA,	)	No. ED109242
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Charles County
v.	)	Cause No. 1811-CC00982
	)	
STATE OF MISSOURI,	)	Honorable Daniel G. Pelikan
	)	
Respondent.	)	Filed: June 8, 2021

Robert W. Rossa (Movant) appeals the judgment of the motion court denying his motion for post-conviction relief under Rule 24.035 without an evidentiary hearing. He argues his guilty plea was involuntary because his plea counsel and the court erroneously represented that he would receive credit for time served out of state. The State agrees Movant's motion alleged unrefuted facts that, if true, would entitle him to relief, and requests remand for an evidentiary hearing.

REVERSED AND REMANDED.

Division Four Holds: Movant's allegation that he relied on counsel's erroneous advice that he would receive credit for time he was incarcerated out of state was not refuted by Movant's statements to the court that no one made any promises to him regarding the amount of time he would serve. The parties and court were aware of the plea agreement Movant signed, which stated Movant would receive credit for time served in Colorado. The court incorporated that provision of the plea agreement specifically into its sentencing order. If Movant relied on such statements without being informed that the Missouri Department of Corrections actually determines the amount of proper credit for time served, such reliance would have been reasonable. Movant further alleged that he was prejudiced because, but for counsel's advice, he would not have pled guilty but would have gone to trial. This allegation is not refuted by the record. Thus, Movant was entitled to an evidentiary hearing on his claim that his counsel's erroneous advice rendered his plea involuntary.

Opinion by: Gary M. Gaertner, Jr., P.J.
Philip M. Hess, J., and Michael E. Gardner, J., concur.

Attorney for Appellant: Lisa M. Stroup
Attorneys for Respondent: Eric S. Schmidt, Amber L. Krisp