

SUPREME COURT OF MISSOURI
en banc

In September 2012, Staten filed a *pro se* Rule 24.035 motion to vacate, set aside, or correct the judgment and sentence entered in 2012. Staten's motion was filed in the underlying criminal case.² In October of 2012, the motion court issued findings of fact and conclusions of law granting Staten's *pro se* motion, setting aside his guilty plea, vacating the criminal judgment and sentence, and reinstating the three original charges.

In 2013, Staten pleaded guilty to the reinstated second-degree murder and armed criminal action charges.³ In April 2014, the court sentenced Staten to concurrent terms of life and 30 years' imprisonment.

In June of 2014, Staten filed a Rule 24.035 *pro se* motion again seeking to set aside his guilty plea and vacate his judgment and sentence. This time, Staten's *pro se* motion was filed in a separate case identified with a case number associated with a civil action. Staten's post-conviction counsel filed an entry of appearance and subsequently filed an amended Rule 24.035 motion in October 2014.⁴

² Staten used the Office of State Courts Administrator's form CV145 to file his *pro se* motion. Form CV145 tracks Form 40 from this Court's Rules of Criminal Procedure. These two forms reserve a blank space on the top front page for a case number to be assigned to the motion. It is not uncommon for a litigant acting without counsel to include the underlying criminal case number in this space when preparing the motion utilizing these forms. Likewise, it is not uncommon for court clerks to file the *pro se* motion in the case number identified in the motion.

³ The State again dismissed the unlawful possession of a firearm charge.

⁴ The motion court held an evidentiary hearing on Staten's amended motion and overruled it in November 2016. Staten appealed. The court of appeals reversed the motion court's judgment finding the amended motion untimely. The court of appeals remanded for the court to determine whether Staten was abandoned by his post-conviction counsel. On remand, the motion court found Staten had been abandoned by post-conviction counsel and subsequently considered Staten's amended motion.

In April 2019, the motion court entered a judgment overruling Staten's amended motion and issuing findings of fact and conclusions of law. Staten appealed. After an opinion by the court of appeals, this Court granted transfer. Mo. Const. art. V, § 10.

Analysis

Staten advances two claims on appeal. Staten first argues the circuit court lacked jurisdiction to accept his guilty plea to second-degree murder and armed criminal action in 2013. Specifically, Staten claims the motion court's judgment setting aside his guilty plea, vacating the criminal judgment and sentence, and reinstating the charges in 2012 was void because his original Rule 24.035 *pro se* motion was filed and disposed in the underlying criminal case instead of a separate civil case number. According to Staten, because the motion court's judgment vacating his sentence and reinstating the charges in 2012 was void, the circuit court lacked jurisdiction and could not accept his guilty plea to the reinstated charges in 2013. Staten also alleges his counsel was ineffective. Specifically, Staten claims his counsel failed to object to the circuit court's lack of jurisdiction based on the post-conviction procedure employed to adjudicate the 2012 Rule 24.035 motion and this failure to object subjected Staten to double jeopardy. Because the motion court did not lack jurisdiction in adjudicating his post-conviction motion in 2012 and his ineffective assistance of counsel claim depends on the success of his first claim, both claims fail.

Standard of Review

This Court reviews the denial of a motion for post-conviction relief for clear error. *Swallow v. State*, 398 S.W.3d 1, 3 (Mo. banc 2013); *see also* Rule 24.035(k). “A judgment is clearly erroneous when, in light of the entire record, the court is left with the definite and firm impression that a mistake has been made.” *Swallow*, 398 S.W.3d at 3. When reviewing the denial of post-conviction relief, this Court interprets the facts ““in the light most favorable to the verdict.”” *Storey v. State*, 175 S.W.3d 116, 125 (Mo. banc 2005) (quoting *State v. Tokar*, 918 S.W.2d 753, 761 (Mo. banc 1996)). The movant bears the burden of proof, Rule 24.035(i), as “[a] post-conviction relief ruling is presumed correct.” *Forrest v. State*, 290 S.W.3d 704, 708 (Mo. banc 2009).

A litigant seeking post-conviction relief for ineffective assistance of counsel must satisfy the two-pronged test enumerated in *Strickland v. Washington*, 466 U.S. 668 (1984). *See State v. Simmons*, 955 S.W.2d 729, 746 (Mo. banc 1997). First, the defendant must show trial counsel failed to exercise the level of skill, care, and diligence practiced by a reasonably competent attorney in a similar situation; second, the defendant must show the trial counsel’s failure prejudiced the defendant. *Id.* If the defendant “fails to satisfy either prong, we need not consider the other.” *Id.*

The Motion Court’s Post-Conviction Jurisdiction

Relying on several cases from this Court, Staten speciously contends the circuit court lacked jurisdiction to accept his guilty plea in 2013 and sentence him in 2014. Citing *State ex rel. Zahnd v. Van Amburg*, 533 S.W.3d 227 (Mo. banc 2017), Staten claims the motion court exhausted its jurisdiction after it imposed sentence in 2012 in the underlying

criminal case. *See id.* at 230 (quoting *State ex rel. Simmons v. White*, 866 S.W.2d 443, 445 (Mo. banc 1993)) (“A circuit court “exhausts its jurisdiction” over a criminal case once it imposes sentence [A]ny action taken by a circuit court after sentence is imposed is a ‘nullity’ and ‘void’ unless specifically authorized by law.”). Staten maintains there was no express provision authorizing the 2012 post-conviction motion in the underlying criminal case, and the court lacked authority to set aside his guilty plea, vacate the original criminal judgment and sentence, and reinstate the three original charges. Citing *Dorris v. State*, 360 S.W.3d 260 (Mo. banc 2012), Staten also reasons a Rule 24.035 motion constitutes a collateral attack on a judgment. *See id.* at 269 (quoting *White v. State*, 939 S.W.2d 887, 893 (Mo. banc 1997)) (“Rule 29.15 and 24.035 motions represent a ‘collateral attack on a final judgment of a court.’”). Because the motion court acted under the underlying criminal case number to grant his *pro se* Rule 24.035 motion, Staten insists the motion court’s ruling on that motion did not constitute a collateral attack on his underlying criminal conviction. Staten claims this precluded the motion court’s authority to take any action invalidating the original plea and sentence imposed in 2012. Finally, relying on *Vogl v. State*, 437 S.W.3d 218 (Mo. banc 2014), Staten states, “harmonizing this Court’s Rules with its understanding that postconviction motions commence an independent civil action means a post-conviction motion must always be filed and adjudicated in a new case file.” *See id.* at 225 (“Vogl’s *pro se* motion was an initial pleading commencing an independent civil action.”). Based on *Zahnd*, *Dorris*, and *Vogl*, Staten avers the motion court’s vacatur of his original guilty plea and sentence in 2012 was invalid. Staten contends this rendered the circuit court’s subsequent action in his underlying criminal case void as well.

But *Zahnd*, *Dorris*, and *Vogl* do not support Staten’s argument; rather, these cases refute it. While *Zahnd* does state “a circuit court ‘exhausts its jurisdiction’ over a criminal case once it imposes a sentence[,]” *Zahnd* also specifically recognizes the circuit court retains jurisdiction to consider post-conviction motions “authorized by law.” *Zahnd*, 533 S.W.3d at 230 (quoting *Simmons*, 866 S.W.2d at 445). The circuit court, therefore, retains jurisdiction to consider post-conviction motions sought and authorized by the procedure set forth in Rule 24.035. *Simmons*, 866 S.W.2d at 445 (A circuit court adjudicating a criminal case “can take no further action in that case except when otherwise expressly provided by statute or rule. **See, for example, Rule 24.035**”) (emphasis added). Therefore, the circuit court possessed jurisdiction to consider Staten’s initial *pro se* Rule 24.035 motion in 2012.

Though it was filed and adjudicated in the underlying criminal case, Staten’s initial Rule 24.035 motion was, and clearly functioned as, an independent, post-conviction collateral attack of Staten’s 2012 criminal judgment and sentence. Rule 24.035(a) provides,

A person convicted of a felony on a plea of guilty claiming ... ineffective assistance of trial and appellate counsel, [or] that the court imposing the sentence was without jurisdiction to do so ... may seek relief in the sentencing court pursuant to the provisions of this Rule 24.035. This Rule 24.035 provides the exclusive procedure by which such person may seek relief in the sentencing court for the claims enumerated. The procedure to be followed for motions filed pursuant to this Rule 24.035 is governed by the rules of civil procedure insofar as applicable.

As Staten notes, Rule 24.035(a) provides “the exclusive procedure” for adjudicating post-conviction motions in the sentencing court following a guilty plea. The rule, however,

is silent as to whether it authorizes the motion court to adjudicate the post-conviction motion in a new case with a different identifying civil case number or whether the court may do so under the underlying criminal case number. The rule merely mandates that the civil rules of procedure govern the adjudication of the motion, and Staten does not allege the court failed to adjudicate the motion according to civil procedure. While this Court has suggested, and it is most certainly preferred, that Rule 24.035 motions be filed and pursued in a separate civil action to demonstrate the collateral nature of the proceeding, *Vogl*, 437 S.W.3d at 225, Staten does not point to any language in *Vogl*, *Dorris*, or any other case that requires a proceeding constituting a collateral attack on a court judgment to be filed and adjudicated under a separate case number from the underlying case. Nor can Staten supply language from these cases prohibiting a motion court from considering and disposing of a timely filed Rule 24.035 motion in a case number that tracks the underlying criminal case, as long as the procedure set out in the rule is properly followed.⁵

This Court is loath to find the motion court lacked jurisdiction just because the case number affixed to the judgment contained the same letters and numbers as the underlying criminal action when the Rule 24.035 motion was otherwise legally considered and disposed of as an independent, civil, post-conviction motion in every possible way. Such

⁵ Staten also cites *Pace v. City of St. Joseph*, 458 S.W.3d 870, 874 (Mo. App. 2015) and *State ex rel. Van Hafften v. Ellison*, 285 Mo. 301, 226 S.W. 559 (Mo. banc 1920), in support of his argument that his initial Rule 24.035 motion was not a collateral attack on the underlying criminal judgment and sentence because the motion was filed in the underlying criminal case. But like *Vogl* and *Dorris*, these cases do not specifically hold that a judgment could not be collaterally attacked in a post-conviction proceeding denominated by a case number associated with the underlying criminal judgment.

a finding would prioritize form over substance. A motion court possesses jurisdiction over timely filed Rule 24.035 motions, and such motions constitute “collateral attack[s] on a final judgment of a court” regardless of the case number employed in the proceeding. *McKay v. State*, 520 S.W.3d 782, 784 (Mo. banc 2017) (quoting *Dorris*, 360 S.W.3d at 269). For these reasons, this Court finds no clear error, *Swallow*, 398 S.W.3d at 3, and denies Staten’s first point.

Ineffective Assistance

Staten’s arguments supporting his ineffective assistance claim suffer a similar fate. Based on the reasoning refuted above, Staten contends his counsel was ineffective in failing to object to the circuit court’s final judgment and sentence because the motion court lacked jurisdiction to set aside and vacate Staten’s original plea, conviction, and sentence. Staten further alleges his counsel was ineffective in failing to object to the motion court’s judgment and sentence because the court’s invalid vacatur and institution of a new finding of guilt and sentence constituted multiple punishment that violated his rights under the Missouri and United States constitutions to be free from double jeopardy.

As discussed above, because the motion court did not invalidly set aside and vacate Staten’s underlying criminal plea, conviction, and sentence in 2012, his post-conviction counsel was not ineffective under either argument Staten advances. Because Staten cannot show his trial counsel failed to exercise the same level of skill and diligence practiced by a reasonably competent attorney in a similar situation, or that he was prejudiced in any way, this point too is denied. *Simmons*, 955 S.W.2d at 746.

For these reasons, the motion court's judgment is affirmed.

W. Brent Powell, Judge

Draper, C.J., Wilson, Russell, Breckenridge and Fischer, JJ., concur.
Ransom, J., not participating