



In the Missouri Court of Appeals Eastern District

DIVISION TWO

EDWARD WALKER,	)	No. ED109158
	)	
Movant/Appellant,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
v.	)	
	)	
STATE OF MISSOURI,	)	Honorable Joan L. Moriarty
	)	
Defendant/Respondent.	)	Filed: July 6, 2021

OPINION

Edward Walker (Appellant) appeals the motion court's denial without an evidentiary hearing of his "Amended Motion to Vacate, Set Aside or Correct Judgment and Sentence" filed pursuant to Rule 29.15. We affirm.

Factual and Procedural Background

A jury convicted Appellant of murder in the second degree under § 565.021 RSMo. and armed criminal action under § 571.015 RSMo. on April 5, 2013.¹ On October 4, 2013, the trial court sentenced Appellant to 30 years of imprisonment for murder second degree and 15 years of imprisonment for armed criminal action, both sentences to be served consecutively. On direct

¹ All statutory references are to RSMo. 2016 unless otherwise noted.

appeal, this court vacated the sentence for murder second degree and remanded the case for a new penalty phase and for resentencing on that count solely.²

On remand and prior to the murder second degree penalty phase, Appellant and the state agreed to a 22-year period of imprisonment regarding the murder second degree conviction. On June 4, 2019, as agreed and understood by Appellant, the trial court sentenced Appellant to 22 years in the department of corrections for murder second degree and ordered that sentence to be served consecutively with the previously imposed 15-year sentence for armed criminal action.

On December 4, 2019, counsel for Appellant filed a motion for post-conviction relief under Rule 29.15 alleging the trial court violated his constitutional rights protecting against double jeopardy when it sentenced him to consecutive sentences on both the murder second degree and armed criminal action convictions.³ Additionally, Appellant asserts the trial court imposed consecutive sentences in retaliation for Appellant exercising his right to appeal. The motion court dismissed Appellant's motion because it was untimely, finding it was filed 183 days after the date of sentencing, which violates the Rule 29.15 deadline provision. Despite the untimely filing, the motion court addressed Appellant's substantive claims and found them to be without merit. This appeal follows.

Points Relied On

Appellant argues the motion court erred when it denied his Rule 29.15 motion without an evidentiary hearing because the consecutive sentences for murder second degree and armed

² In *State v. Walker*, this court held the trial court erred when it precluded Appellant from questioning the venirepersons about whether they could consider the entire range of punishment for murder second degree. 448 S.W.3d 861 (Mo. App. E.D. 2014).

³ At times, Appellant refers to Rule 24.035 as the appropriate legal mechanism when seeking relief from this court. Since Appellant was convicted following a jury trial, we conclude that Rule 29.15 is the appropriate venue of analysis. Following remand, the court resentenced Appellant to the agreed 22-year sentence involving armed criminal action but, significantly, he was convicted of this offense following a jury trial, not a plea of guilty. Thus, Rule 29.15 is applicable.

criminal action violated his constitutional right protecting against double jeopardy. Moreover, Appellant's post-conviction motion was erroneously denied because the court imposed consecutive sentences in retaliation for Appellant's successful appeal which violates his due process and equal protection rights, he contends. Further, Appellant claims his post-conviction motion was timely filed and thus should not have been dismissed without an evidentiary hearing.

Standard of Review

This court's review of a Rule 29.15 motion denial is "limited to a determination of whether the findings and conclusions of the trial court are clearly erroneous." Rule 29.15(k); *see also Hopkins v. State*, 519 S.W.3d 433, 435 (Mo. banc 2017). The motion court's findings are presumptively correct. *Davis v. State*, 486 S.W.3d 898, 905 (Mo. banc 2016). The court's findings and conclusions are clearly erroneous only if a review of the entire record leaves this court with the "definite and firm impression that a mistake has been made." *Mason v. State*, 552 S.W.3d 191, 194 (Mo. App. E.D. 2018).

Discussion

Appellant's Post-Conviction Motion was Untimely

Appellant argues that because his Rule 29.15 motion for post-conviction relief was filed within 180 days of the date of his delivery to the department of corrections, his motion is timely. We disagree.

Appellant incorrectly relies on a previous version of Rule 29.15(b). The current version of the rule applicable to this matter specifies that in "all proceedings wherein sentence is pronounced on or after January 1, 2018," a movant must file their motion "within 180 days of the date the sentenced is entered." Rule 29.15(m); Rule 29.15(b).

The time limits of Rule 29.15 are constitutional, mandatory and represent a strict guideline for filing post-conviction motions. *Mitchell v. State*, 386 S.W.3d 198, 200 (Mo. App. E.D. 2012); *Burgin v. State*, 969 S.W.2d 226, 227 (Mo. App. E.D. 1998). According to the rule, “[f]ailure to file a motion within the time provided by this Rule 29.15 shall constitute a complete waiver of any right to proceed under this Rule 29.15 and a complete waiver of any claim that could be raised in a motion filed pursuant to this Rule 29.15.” Rule 29.15(b).

Here, Appellant’s post-conviction motion is untimely on its face. Following remand and pursuant to the agreement crafted by the parties, the trial court sentenced Appellant on June 4, 2019. Per the motion’s certificate of service, Appellant’s motion was filed 183 days later on December 4, 2019.⁴ Accordingly, Appellant waived the substantive claims asserted in his motion.

Moreover, Appellant does not allege his motion is subject to an applicable exception nor does he claim a misfiling of his motion on the part of the court. The abandonment doctrine which excuses the untimely filing of amended motions by appointed counsel is inapplicable here. See *Price v. State*, 422 S.W.3d 292, 297 (Mo. banc 2014). This is because the present case involves the untimely filing of an initial motion. As explained by the Supreme Court of Missouri in *Price*, “the abandonment doctrine was created to excuse the untimely filing of *amended motions* by appointed counsel under Rule 29.15(e)” and “does not apply to untimely *initial motions*.” *Id.* (emphasis in original). Because Appellant’s initial motion was untimely and not subject to any applicable exceptions, Appellant was not entitled to an evidentiary hearing and the court properly dismissed his motion.⁵

⁴ Because the 180th day was a Sunday, the due date was pushed forward to Monday, December 2. Rule 44.01(a).

⁵ While dismissal is the appropriate outcome, Appellant’s arguments asserting both a double jeopardy violation and retaliation also lack merit. Appellant incorrectly relies on *State ex rel. Green v. Moore*, 131 S.W.3d 803 (Mo. banc 2004), where the Supreme Court of Missouri voided Green’s ACA conviction after finding the accompanying

Conclusion

We hold the judicious motion court did not err in denying Appellant's post-conviction motion without an evidentiary hearing. The judgment of the motion court is affirmed.



Thom C. Clark, Judge

Sherri B. Sullivan, C.J., concurs.

Lisa P. Page, J., concurs.

murder second degree conviction under § 565.021.1(2) RSMo. (felony murder) created cumulative punishment and triggered a double jeopardy violation. *Id.* at 809-810. In *Green*, the court held that while the ACA charge in question was “nominally based” on the felony murder charge, that ACA charge was in fact premised on the unlawful use of a weapon charge because the weapon charge predicated the felony murder. *Id.* at 809-810. Unlike *Green*, Appellant was not convicted of felony murder under § 565.021.1(2) RSMo.; rather, he was convicted under § 565.021.1(1) RSMo., which excludes the involvement of an underlying felony offense. Likewise, the retaliation claim fails because, among other reasons, Appellant consented to consecutive sentences.