OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

MORTEZ CLEAVES,	)	No. ED109120
	)	
Movant/Appellant,	)	
	)	Appeal from the Circuit Court
	)	of Cape Girardeau County
vs.	)	Cause No. 19CG-CC00004
	)	
STATE OF MISSOURI,	)	Honorable Gary A. Kamp
	)	
Defendant/Respondent.	)	Filed: July 20, 2021

Mortez Cleaves (Movant) appeals the motion court's judgment overruling his "Motion to Vacate, Amend or Set Aside the Plea or Sentence and Request for Evidentiary Hearing" pursuant to Rule 24.035. After hearing argument on the record, the motion court rejected Movant's claims, without an evidentiary hearing, that his trial counsel misrepresented the guilty plea arrangements and was equally negligent for failing to conduct the deposition of a defense witness. Initially, Movant alleges that this court should reverse and remand because the motion court did not inquire about the abandonment issue caused by post-conviction counsel's failure to file a timely amended motion. Additionally, Movant alleges the motion court erred when denying the requested relief because trial counsel failed to conduct a deposition of a crucial defense witness.

REVERSED AND REMANDED.

Division Two Holds: The motion court erred when failing to conduct an independent inquiry into the abandonment issue and make factual determinations regarding the reason for the untimely filing of the amended motion. Since this issue is dipositive, we do not address Movant's more specific complaints about trial counsel's performance contained in point two; rather we reverse the judgment of the motion court and remand with instructions for the court to conduct a record addressing the abandonment issue.

Opinion by: Thom C. Clark, J. Sherri B. Sullivan, C.J., and Lisa P. Page, J., concur.

Attorney for Appellant: Gwenda Robinson

Attorney for Respondent: Amber Krisp

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.