MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE ex rel., ERIC SCHMITT,

Relator,

v.

THE HONORABLE KEVIN HARRELL, CIRCUIT JUDGE OF JACKSON COUNTY,

Respondent.

DOCKET NUMBER WD84772

Date: September 7, 2021

Appeal from:
Jackson County Circuit Court

Appellate Judges:
Writ Division: Thomas N. Chapman, P.J., and Alok Ahuja, and W. Douglas Thomson, J.J.

Attorneys:
Andrew J. Crane, Andrew J. Clarke, Jefferson City, for Realtor
Jeanne K. Peters-Baker, Daniel M. Nelson, Kate E. Brubacher, Logan Rutherford, Tricia J. Bushnell, Robert J. Hoffman, Kansas City for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI ex rel., ERIC SCHMITT, Relator,
v.
THE HONORABLE KEVIN HARRELL, CIRCUIT JUDGE OF JACKSON COUNTY, Respondent.

WD84772 Jackson County

Before Writ Division Judges: Thomas N. Chapman, P.J., and Alok Ahuja, and W. Douglas Thomson, J.J.

In 1979, Kevin Strickland was convicted following a jury trial of three counts of murder. On August 28, 2021, the Jackson County Prosecutor filed a motion under § 547.031, RSMo, to have Strickland's convictions set aside, on the basis that the Prosecutor had concluded that Strickland was actually innocent.

As required by § 547.031.2, the circuit court notified the Attorney General of the filing of the Prosecutor's Motion to Set Aside. The court also set the Prosecutor's Motion for hearing on September 2, 2021, giving the Attorney General only three days' notice. The Attorney General filed a motion to continue the September 2 hearing, as well as a motion to recuse the circuit court, and a motion to transfer the Prosecutor's Motion to a new civil docket number. The circuit court struck the Attorney General's motions without considering them on the merits. The court concluded that, although the Attorney General was entitled to participate in the hearing on the Prosecutor's Motion, he was not entitled to file pre-hearing motions.

The Attorney General filed an Emergency Petition for Writ of Prohibition in this Court on September 1, 2021. We granted writ relief on the same day. Due to the exigencies of time, and as authorized by Supreme Court Rule 84.24(k), we did not issue a formal opinion on September 1, but do so now.

PERMANENT WRIT OF PROHIBITION ISSUED.

Writ Division holds:

Section 547.031.2 expressly grants the Attorney General the right to participate in the hearing on the Prosecutor's Motion to Set Aside. A common-sense reading of the statute requires that the Attorney General be permitted to file motions relating to the conduct of that hearing. The circuit court erred by striking the Attorney General's motions, without deciding those motions on their merits.

The circuit court also erred by setting the hearing on the Prosecutor's Motion for September 2, 2021, on only three business days' notice. Section 547.031.2 expressly gives the Attorney General the right to participate in the hearing on the Prosecutor's Motion. The Attorney General must be given notice sufficient to allow his office a reasonable opportunity to prepare for the hearing, given the extensiveness of the relevant record, and the complexity and gravity of the issues involved. In setting a hearing, the court must provide all participants a reasonably opportunity to prepare, while also taking account of Strickland's substantial interest in a prompt disposition.

Opinion by: Alok Ahuja, Judge September 7, 2021

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