MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ALAN L. ECHOLS,
APPELLANT

vs.

STATE OF MISSOURI,
RESPONDENT

DOCKET NUMBER WD83980

DATE: SEPTEMBER 28, 2021

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Jalilah Otto, Judge

Appellate Judges:

Division Three: Edward R. Ardini, Jr., Presiding Judge, Mark D. Pfeiffer. Judge and W. Douglas Thomson, Judge

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Attorneys:

Kent E. Gipson, for Appellant

Shaun Mackelprang, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

ALAN L. ECHOLS, APPELLANT,
v.
STATE OF MISSOURI, RESPONDENT.

WD83980 Jackson County

Before Division Three Judges: Edward R. Ardini, Jr., Presiding Judge, Mark D. Pfeiffer, Judge, and W. Douglas Thomson, Judge

In 1991, a jury found Appellant Alan Echols ("Echols") guilty of first-degree murder and armed criminal action. Echols was permitted to remain free on bond prior to sentencing, and he fled the state. He was apprehended in 1999, and was sentenced to serve life without the possibility of parole. Echols appealed through retained counsel ("Retained Counsel"), and his convictions and sentences were affirmed on appeal.

In 2001, Echols filed a timely *pro se* motion for postconviction relief pursuant to Rule 29.15. He was appointed counsel to represent him in the postconviction proceedings, however appointed counsel withdrew when Retained Counsel entered his appearance. Thereafter, Retained Counsel filed a timely amended motion on Echols's behalf. The State moved to dismiss based on the "escape rule," and the court granted the motion and dismissed Echols's Rule 29.15 claims. Echols appealed—after retaining the services of new counsel—asserting the motion court erred in dismissing his Rule 29.15 claims under the "escape rule" and in failing to *sua sponte* remove Retained Counsel. Echols claimed that Retained Counsel labored under a conflict of interest because he had also represented Echols in his direct appeal, and thus would be hesitant to assert claims of ineffective assistance of appellate counsel. We affirmed the judgment, finding that the motion court did not abuse its discretion in dismissing Echols's Rule 29.15 claims and, in light of that determination, Echols's conflict-of-interest claim was moot.

In 2018, Echols filed a Motion for Post-Conviction Relief Due to Conflict of Interest and Abandonment, again asserting that Retained Counsel had labored under a conflict of interest during the initial postconviction proceedings. Echols alleged that, as a result, Retained Counsel had effectively abandoned him, and he was entitled to file a new, untimely Rule 29.15 motion. The motion court denied the motion and Echols appealed.

AFFIRMED.

Division Three holds:

(1) Echols is barred from relitigating his conflict-of-interest claim under the "law of the case doctrine," which provides that a previous holding in a case constitutes the law of the case and precludes relitigation of the issue on remand and subsequent appeal. We previously determined that Retained Counsel's alleged conflict of interest was moot, and we will not relitigate the issue.

(2) Even if we were to decide the merits of Echols's claim, we would affirm the motion court's judgment because the abandonment doctrine only applies to appointed counsel, not retained counsel.

Opinion by: Edward R. Ardini, Jr., Judge Date: September 28, 2021

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