OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

JERRY A. HARLEY,	)	No. ED109228
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	the City of St. Louis
vs.	)	
	)	Honorable Michael F. Stelzer
STATE OF MISSOURI,	)	
	)	
Respondent.	)	Filed: October 19, 2021

Jerry Allen Harley, Jr. ("Movant") appeals from the order and judgment of the motion court denying his amended Rule 24.035 motion without an evidentiary hearing, which found that Movant failed to prove his plea counsel was ineffective.

Movant raises two points on appeal. In his first point, Movant argues that the motion court clearly erred in denying his amended Rule 24.035 motion without an evidentiary hearing because his plea counsel was ineffective for inducing him to plead guilty by making him believe that pleading guilty was the only option available to him, and not telling him that he could go to trial. In his second point, Movant argues that the motion court clearly erred in failing to conduct an abandonment inquiry after it failed to rule on the two motions filed by his appointed counsel requesting extensions of time to file an amended motion prior to the filing deadline. According to Movant, this rendered his amended motion untimely and created a presumption that he had been abandoned, which in turn necessitated an abandonment inquiry.

REVERSED AND REMANDED.

DIVISION I HOLDS: Because the motion court did not timely grant Movant's two requests for extensions of time to file an amended Rule 24.035 motion, the deadline to file Movant's amended motion was 60 days after the transcript was filed. However, because Movant's amended motion was not filed until 123 days after the transcript was filed, it was untimely under Rule 24.035(g). Furthermore, because the untimely filing of Movant's amended motion raised a presumption of abandonment by Movant's appointed counsel, the motion court had a duty to undertake an independent abandonment inquiry. However, the motion court failed to conduct an independent abandonment inquiry, and instead ruled on the merits of Movant's untimely amended Rule 24.035 motion, denying the same without an evidentiary hearing.

We hold that the motion court erred in failing to conduct an independent abandonment inquiry following the untimely filing of Movant's amended Rule 24.035 motion, and further, the motion court erred in ruling on the merits of Movant's untimely amended motion. Accordingly, we reverse the motion court's order and judgment denying Movant's amended motion without an

evidentiary hearing and remand this case to the motion court for an independent inquiry into whether Movant was abandoned by his appointed counsel and for further proceedings consistent with the outcome of the court's abandonment inquiry and this opinion.

Opinion by: Kelly C. Broniec, J.
Kurt S. Odenwald, P.J. and John P. Torbitzky, J. concur.

Attorney for Appellant: Ankoor D. Shah

Attorney for Respondent: Evan J. Buchheim

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.