MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ZENO SIMS,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD84050

Date: October 26, 2021

Appeal from:

Jackson County Circuit Court
The Honorable Patrick W. Campbell, Judge

Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Gary D. Witt and Edward R. Ardini, Jr., Judges

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Attorneys:
Jeffrey C. Esparza, Kansas City, for appellant.
Daniel N. McPherson, Jefferson City, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ZENO SIMS, Appellant,
v.
STATE OF MISSOURI, Respondent.

WD84050 Jackson County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, Gary D. Witt and Edward R. Ardini, Jr., Judges

Zeno Sims appeals from the judgment denying his Rule 24.035 motion after he pleaded guilty to second-degree murder, first-degree assault, and two counts of armed criminal action. He contends the motion court clearly erred in denying him postconviction relief because he established that: (1) the sentencing court exceeded its authority by directing that his state sentence be served consecutively to his federal sentence; and (2) defense counsel was ineffective for failing to inform the sentencing court that the federal district court had the authority to determine whether he must serve his federal sentence and a state sentence, which had yet to be imposed, concurrently or consecutively.

AFFIRMED.

Division Three holds:

(1) The motion court did not clearly err in denying Sims's claim that the sentencing court exceeded its authority by directing that his state sentence run consecutively to his federal sentence. While both federal and state courts have the authority to decide whether their sentence is to run concurrently with or consecutively to the other sovereign's sentence, that decision is not binding on the other sovereign because principles of dual sovereignty require that the sovereign in whose custody the defendant serves the second sentence make the ultimate decision as to whether to give the defendant credit for the time served on the first sentence. Because Sims's federal sentence was served first, the circuit court was not bound by the district court's decision and could deny Sims credit against his state sentence for the time he served in federal custody.

(2) The motion court did not clearly err in denying Sim's claim that defense counsel was ineffective for failing to inform the circuit court that the district court's decision that the sentences run concurrently was controlling. Principles of dual sovereignty require that the circuit court's decision control under these circumstances, so any argument to the contrary by defense counsel would have been non-meritorious. Defense counsel will not be deemed ineffective for failing to make a non-meritorious argument.

Opinion by: Lisa White Hardwick, Judge October 26, 2021