OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

JOHN R. STARKS III,	)	No. ED109555
	)	
Appellant,	)	Appeal from the Circuit Court
	)	for the City of St. Louis
v.	)	Cause No. 1822-CC00471
	)	
STATE OF MISSOURI,	)	Honorable James E. Sullivan
	)	
Respondent.	)	Filed: December 14, 2021

John R. Starks III appeals from the circuit court's judgment overruling his motion for postconviction relief under Rule 24.035 without an evidentiary hearing. Starks pleaded guilty to twelve counts of second-degree burglary. He filed a motion for postconviction relief claiming his guilty plea was involuntary, unknowing, and unintelligent because he received ineffective assistance of counsel when his counsel assured him that he would be sentenced to probation. In his sole point on appeal, Starks asserts the circuit court erred by overruling his motion without first conducting an evidentiary hearing.

AFFIRMED.

Division One Holds: The circuit court did not clearly err in overruling Starks's motion without an evidentiary hearing. During the plea hearing, the circuit court asked Starks several questions specifically relating to the availability of probation. Starks testified that he understood his sentence was entirely at the circuit court's discretion, that he could not take back his guilty plea if the court did not put him on probation, and that no one had promised him that he would receive probation. The record conclusively refutes Starks claim for ineffective assistance of counsel. Because Starks failed to allege facts not conclusively refuted by the record, the circuit court did not clearly err in overruling his motion without first conducting an evidentiary hearing.

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

Attorney for Appellant: Maleaner R. Harvey
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.