MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CHRISTOPHER MICHAEL KING

APPELLANT,

v.

STATE OF MISSOURI

RESPONDENT.

DOCKET NUMBER WD84079

DATE: January 11, 2022

Appeal From:

Harrison County Circuit Court
The Honorable Thomas R. Alley, Judge

Appellate Judges:

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

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Attorneys:

Carol Jansen, Columbia, MO, for appellant.

Evan Joseph Buchheim, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CHRISTOPHER MICHAEL KING, APPELLANT,
v.
STATE OF MISSOURI, RESPONDENT.

WD84079 Harrison County

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

Christopher Michael King ("King") appeals the judgment of the Circuit Court of Harrison County, Missouri ("motion court"), denying, without an evidentiary hearing, his motion for post-conviction relief pursuant to Rule 29.15. On appeal, King claims that the motion court erred in: (1) denying, without an evidentiary hearing, King's claim that his trial counsel was ineffective in failing to request a verdict directing instruction for the lesser-included offense of attempted assault in the second degree because there is a reasonable probability that the jury would have convicted him on the lesser charge; (2) denying, without an evidentiary hearing, King's claim that his trial counsel was ineffective for failing to object to the court's verdict directing instruction for attempted assault in the first degree under section 562.012, RSMo; and (3) denying, without an evidentiary hearing, his claim that the sentencing court was under the mistaken impression that King would not have to serve 85 percent of his sentence.

AFFIRMED.

Division Three holds:

There is a presumption that trial counsel's performance was sufficient. *McNeal v. State*, 412 S.W.3d 886, 890 (Mo. banc 2013). It can be an objectively reasonable trial strategy *not* to submit an available lesser-included instruction, especially when the attorney concludes that it is in the best interest of his client "to deny the jury the opportunity to compromise on some middle ground" between the greater offense and acquittal. *Love v. State*, 670 S.W.2d 499, 502 (Mo. banc 1984). King's motion only includes a legal conclusion that counsel's performance was insufficient but fails to include any factual allegation that counsel's failure to offer the instruction for the lesser-included offense was due to inadvertence or anything other than reasonable trial strategy, which is the presumption and is supported by the record. No hearing on King's motion was necessary on this basis.

The State concedes that its verdict directing instruction for attempted assault in the first degree did not strictly comply with the approved MAI-CR instruction, but King fails to show that there is a reasonable probability that the outcome of his trial would have been different had the proper instruction been given in that the offered instructions included definitions for all the

necessary terms and were unlikely to have misled, misdirected, or confused the jury as to the elements of the offense.

King's claim that the sentencing court was confused or mistaken as to what portion of King's sentence he would have to serve before becoming eligible for parole is a matter that should have been raised on direct appeal and is, therefore, improperly raised in a motion for post-conviction relief.

Opinion by: Gary D. Witt, Judge January 11, 2022

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