MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MARLIN DALLAS LANE

APPELLANT,

v.

STATE OF MISSOURI

RESPONDENT.

DOCKET NUMBER WD84281

DATE: March 15, 2022

Appeal From:

Benton County Circuit Court
The Honorable James A. Hackett, Judge

Appellate Judges:

Division One: Mark D. Pfeiffer, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

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Attorneys:

Marlin Dallas Lane, Pro Se, Farmington, MO, for appellant.

Richard Anthony Starnes, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MARLIN DALLAS LANE, APPELLANT,
v.
STATE OF MISSOURI, RESPONDENT.

WD84281 Benton County

Before Division One Judges: Mark D. Pfeiffer, Presiding Judge, Karen King Mitchell, Judge, and Gary D. Witt, Judge

Marlin Dallas Lane ("Lane") appeals the judgment of the Circuit Court of Benton County ("motion court") dismissing his Rule 24.035 motion for post-conviction relief as untimely filed, following an evidentiary hearing. On appeal, appearing *pro se*, Lane argues: (1) the motion court erred in failing to inquire into a conflict of interest by entertaining Lane's notarized motion to relieve appointed counsel; (2) Lane's counsel was ineffective in failing to investigate, gather evidence, and locate witnesses; and (3) Lane's counsel failed to inform Lane he was part of a legal entity that involved other defendants who committed other crimes that were fraudulently conveyed to the public as appellants. After Lane's case was submitted and briefed, he filed an untimely motion for expansion of the record, which was taken with the case. We affirm the judgment of the motion court and deny Lane's motion for expansion of the record.

AFFIRMED.

Division One holds:

A post-conviction motion filed after a plea of guilty from which there was no direct appeal must be filed within 180 days after the movant is sentenced. Rule 24.035(b). "Failure to file a motion within the time provided by this Rule 24.035 shall constitute a complete waiver of any right to proceed under this Rule 24.035 and a complete waiver of any claim that could be raised in a motion filed pursuant to this Rule 24.035." *Id.* Lane's motion was filed 475 days out of time, and on appeal, Lane never addresses the timeliness of his Rule 24.035 motion. Lane does not argue his Rule 24.035 motion should have been considered timely or that a judicially created exception applies to his case. To the extent that any of Lane's arguments pertains to the reason his motion was untimely filed, the motion court did not find Lane's testimony credible.

Lane's motion for expansion of the record was untimely. "Rule 81.12(f) provides that '[i]f anything material is omitted from the record on appeal, the parties, by stipulation or the appellate court, on a proper suggestion or of its own initiative, shall direct that the omission or misstatement be corrected.'" *Saturn of Tiffany Springs v. McDaris*, 331 S.W.3d 704, 712 n.7 (Mo. App. W.D. 2011) (emphasis omitted). Lane's motion was not supported by the parties' stipulation, was not sought by this Court's own initiative, and is not based on a "proper suggestion." Further, it was not filed until after the case was fully briefed and had already been submitted. Motion is denied.

Opinion by: Gary D. Witt, Judge March 15, 2022

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