OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

PERVIS MCALLISTER,	)	No. ED109569
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	Honorable David L. Vincent III
STATE OF MISSOURI,	)	
	)	
Respondent.	)	FILED: March 15, 2022

Pervis McAllister ("McAllister") appeals from the motion court's judgment denying his Rule 29.15 motion for post-conviction relief following jury trial convictions for first-degree child molestation, first-degree statutory sodomy, and first-degree statutory rape. McAllister raises five points on appeal. Points One, Two, and Three contend appellate counsel failed to challenge the sufficiency of the evidence for statutory sodomy. Points Four and Five assert appellate counsel failed to raise instructional error subjecting McAllister to double jeopardy on the charges of child molestation and statutory rape.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

DIVISION ONE HOLDS: Because appellate counsel failed to raise a meritorious sufficiency claim as to whether the State proved hand-to-genital conduct to sustain McAllister's conviction on first-degree statutory sodomy in Count IV, the motion court clearly erred denying post-conviction relief without an evidentiary hearing and we grant Point One. Because the State adduced testimony that McAllister's sexual abuse of C.S. occurred within the alleged timeframe, the motion court did not err in finding appellate counsel was not ineffective for failing to raise a meritless sufficiency challenge to McAllister's convictions on statutory sodomy in Counts IX and X, and we deny Points Two and Three. Because the charges of first-degree child molestation and first-degree statutory rape each contain an element the other does not, the motion court did not err in finding neither trial counsel nor appellate counsel provided ineffective assistance for failing to raise a meritless claim of double jeopardy, and we deny Points Four and Five. Accordingly, we affirm the motion court's judgment on Points Two, Three, Four, and Five, and we reverse on Point One. We remand as to Count IV only for the motion court to grant an evidentiary hearing and continue post-conviction relief proceedings consistent this opinion. The remainder of the motion court's judgment is affirmed.

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

Attorney for Appellant: Shelby M. Cowley

Attorney for Respondent: Richard A. Starnes

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.