MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COREY GRAY, APPELLANT,
v.
STATE OF MISSOURI, RESPONDENT.

DOCKET NUMBER WD84965

DATE: December 6, 2022

Appeal From:

Platte County Circuit Court
The Honorable James Walter Van Amburg, Judge

Appellate Judges:

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

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Attorneys:

Michael Keith Hill, Kansas City, MO, for appellant.

Karen Louise Kramer, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COREY GRAY, APPELLANT,
v.
STATE OF MISSOURI, RESPONDENT.

WD84965 Platte County

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

Corey Gray ("Gray") appeals the judgment of the Circuit Court of Platte County ("motion court"), following an evidentiary hearing, denying Gray's amended motion pursuant to Rule 29.15. On appeal, Gray argues the motion court erred in denying his amended motion because Trial Counsel was ineffective in failing to impeach the Victim with her prior inconsistent statements under oath and, as a result, Gray was prejudiced.

AFFIRMED.

Division Four holds:

This was a second trial following a mistrial due to a hung jury. Trial Counsel's decision to not impeach Victim with her prior inconsistent statements on cross-examination during the second trial was reasonable trial strategy and was not ineffective assistance of counsel. Trial Counsel testified that his strategy during the first trial was to impeach the Victim with her prior inconsistent statements from the deposition regarding digital penetration. However, Victim's testimony at the second trial was consistent with her testimony at the deposition regarding a lack of penetration. Trial Counsel testified that he decided not to impeach Victim at the second trial with her prior inconsistent statements from the first trial because it would place the issue of digital penetration before the jury in the second trial and also, the cross-examination during the first trial was not as effective as it appeared in the transcript. Victim's testimony regarding touching, but not penetration, lined up with the jury instructions for lesser-included offenses he planned to submit, which gave Gray a stronger chance at a misdemeanor conviction rather than a felony conviction. Trial Counsel's strategy was reasonable in all respects, and his conduct did not fall below an objective level of reasonableness.

Opinion by: Gary D. Witt, Judge December 6, 2022

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