



**Missouri Court of Appeals**  
**Southern District**

**In Division**

STATE OF MISSOURI ex rel.  
ATTORNEY GENERAL CATHERINE  
HANAWAY

Relator,

v.

THE HONORABLE CHARLES D.  
CURLESS,

Respondent.

No. SD39039

Filed: October 20, 2025

ORIGINAL PROCEEDING IN PROHIBITION

**PRELIMINARY WRIT OF PROHIBITION MADE PERMANENT**

The State of Missouri (“State”) sought a writ of prohibition or, alternatively, a writ of mandamus to order the Honorable Charles D. Curless (“the motion court”) to not proceed further on an amended motion for post-conviction relief filed on behalf of Robert Lee Young (“Movant”). A District Defender for the Missouri State Public Defender’s (“MSPD’s”) office filed an untimely amended motion for post-conviction relief pursuant

to Rule 29.15.<sup>1</sup> Following a hearing, the motion court found the abandonment doctrine applied to Movant's case as "[Movant] has been abandoned by counsel." The State contends a remedial writ is warranted because the motion court exceeded its authority in finding Movant abandoned by post-conviction counsel in that the abandonment doctrine applies only to appointed counsel and Movant's post-conviction counsel was not appointed by the motion court but, instead, voluntarily entered an appearance. This Court issued its Preliminary Writ in Prohibition directing the motion court to refrain from proceeding in the case until further order of this Court. Following briefing by the parties, this Court determines the abandonment doctrine does not apply to Movant's case because Movant's post-conviction counsel voluntarily entered an appearance and was not appointed by the motion court. We now make the Preliminary Writ of Prohibition permanent and direct the motion court to vacate its order finding Movant was abandoned by post-conviction counsel, take no further action regarding the amended motion for post-conviction relief, and limit its adjudication to the claims presented in Movant's *pro se* Rule 29.15 motion.

### **Factual Background and Procedural History**

On November 6, 2019, a jury found Movant guilty of robbery in the first degree and armed criminal action. Movant was sentenced on January 9, 2020. This Court affirmed Movant's convictions and sentences on direct appeal. *State v. Young*, 622

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<sup>1</sup> All rule references are to Missouri Court Rules (2020). Post-conviction relief proceedings are governed by the provisions of Rule 29.15 in effect on the date of a movant's sentencing. Rule 29.15(m). Movant was sentenced January 9, 2020.

S.W.3d 203 (Mo. App. S.D. 2021). This Court’s mandate issued June 2, 2021. Movant thereafter, on August 17, 2021, filed a timely *pro se* motion for post-conviction relief pursuant to Rule 29.15.

On March 22, 2022, the State requested that the motion court appoint the MSPD’s office to represent Movant, pursuant to Rule 29.15(e). On June 9, 2022, Movant sent correspondence to the motion court asking for the contact information of his counsel. The trial court never appointed counsel.<sup>2</sup> On July 19, 2022, the MSPD’s office assigned Movant’s post-conviction motion to an Assistant Public Defender. By email on that date, the MSPD’s office acknowledged that the motion court “never appointed us” as counsel and instructed an Assistant Public Defender to “enter in the PCR without court appointment.” The email, quoted verbatim, reads:

Strange deal, it was filed 8-17-21, court never appointed us he filed a premature one and court never appointed us on that one either and later dismissed it a judge that doesn’t normally handle PCR cases I think. I believe I recall Jedd represented him on direct appeal, double check that reach out to him, get an application for services and then when we have an approved application you can enter in the PCR without court appointment. explain it to the client in your initial contact letter, Marilin doesn’t have it open in Notes yet, but it will be soon.

Subsequently, on November 29, 2022, an Assistant Public Defender entered her appearance on Movant’s behalf. Movant’s amended Rule 29.15 motion was due on January 30, 2023, 60 days after the Assistant Public Defender entered her appearance. Rule 29.15(g); *see also* Rule 44.01(a). The initial Assistant Public Defender failed to

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<sup>2</sup> The record on appeal does not indicate the motion court took any action between the time the State requested appointed counsel on March 22, 2022, and counsel’s entry of appearance on November 29, 2022.

timely file an amended motion on Movant's behalf. On June 17, 2023, a new Assistant Public Defender entered his appearance in Movant's case and moved to withdraw the prior Assistant Public Defender. He also failed to file an amended post-conviction motion on Movant's behalf. On October 29, 2024, the State sought a show-cause order from the motion court directing the MSPD's office to explain why an amended Rule 29.15 motion had not been filed. On November 12, 2024, the District Defender entered his appearance, substituting himself for the previous Assistant Public Defender. On November 13, 2024, the motion court held a case management conference wherein it ordered that an amended motion be filed by December 20, 2024.

Movant's counsel then filed an amended Rule 29.15 motion on December 20, 2024, 690 days out of time. On February 5, 2025, the motion court held a hearing to determine whether Movant had been abandoned by post-conviction counsel. After hearing testimony from both Assistant Public Defenders who had previously entered their appearances in Movant's case, the motion court found the abandonment doctrine applied to Movant's case and that Movant had, in fact, been abandoned by counsel. The State then filed its Petition for a Writ of Prohibition, or in the Alternative, a Writ of Mandamus with this Court.

### **Standard of Review**

“Writs of prohibition or mandamus are extraordinary remedies.” *State ex rel. Anderson v. Preyer*, 2025 WL 2437529, \*2 (Mo. App. S.D. Aug. 25, 2025) (quoting *State ex rel. Bailey v. Cox*, 690 S.W.3d 530, 531 (Mo. App. S.D. 2024)). “This Court has jurisdiction to issue original remedial writs pursuant to article V, section 4.1 of the

Missouri Constitution.” *State ex rel. Bailey v. Sengheiser*, 692 S.W.3d 20, 22 (Mo. banc 2024). It is appropriate for this Court to issue a writ of prohibition:

(1) to prevent the usurpation of judicial power when a lower court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted.

*Id.* (quoting *State ex rel. Monsanto Co. v. Mullen*, 672 S.W.3d 235, 239 (Mo. banc 2023)). A writ of mandamus is appropriate “only when a petitioner alleges and proves that he has a clear, unequivocal, specific right to a thing claimed.” *Id.* (quoting *Curtis v. Mo. Democratic Party*, 548 S.W.3d 909, 914 (Mo. banc 2018)). A writ of mandamus is appropriate to enforce a “clearly established and presently existing” right; it is not appropriate to establish a legal right. *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 576 (Mo. banc 1994). “The distinction between mandamus and prohibition is at best blurred, at worst nonexistent, and the subject matter to which the two writs apply overlap to a great extent.” *St. Louis Little Rock Hosp., Inc. v. Gaertner*, 682 S.W.2d 146, 148 (Mo. App. E.D. 1984).

The State asserts in its writ petition and appellate briefs that the motion court exceeded its authority in finding Movant had been abandoned by post-conviction counsel and it is, therefore, entitled to a writ of prohibition prohibiting the motion court from taking any action except to vacate its order finding Movant was abandoned or, alternatively, a writ of mandamus directing the motion court to vacate such order. The outcome of either relief requested is the same – vacating the motion court’s order finding Movant abandoned and proceeding on Movant’s *pro se* motion for post-conviction relief.

This Court issued its Preliminary Writ of Prohibition. It is for this Court to now determine whether its preliminary order should become permanent.

### **Analysis**

This Court's determination is governed by the recent opinions of the Supreme Court of Missouri in ***Mack v. State***, 716 S.W.3d 260 (Mo. banc 2025), and ***Scott v. State***, 719 S.W.3d 723 (Mo. banc 2025). In these cases, the Supreme Court reiterated that the abandonment doctrine allowing the filing of an untimely amended motion for post-conviction relief applies only to appointed post-conviction counsel. ***Mack***, 716 S.W.3d at 262; ***Scott***, 719 S.W.3d at 728. The doctrine does not apply to a public defender who enters his or her appearance on behalf of a movant without an order of appointment. ***Mack***, 716 S.W.3d at 262 (“[T]he public defender entered an appearance on Mack’s behalf without being appointed, meaning the abandonment doctrine does not apply and cannot be invoked to excuse the tardiness of Mack’s amended motion.”); ***Scott***, 719 S.W.3d at 728 (“If counsel is not appointed as counsel of record by an appointment order, the abandonment doctrine does not apply.”); *see also Beerbower v. State*, 699 S.W.3d 556, 559 (Mo. App. S.D. 2024) (holding that the abandonment doctrine does not apply if counsel voluntarily enters an appearance and no appointment of counsel has been entered; the doctrine only applies where counsel is appointed).

The abandonment doctrine originated as a means of ensuring the post-conviction counsel appointed by a motion court complies with the provisions of Rule 29.15. ***Gittemeier v. State***, 527 S.W.3d 64, 69 (Mo. banc 2017). The doctrine was adopted by the Supreme Court of Missouri in ***Luleff v. State***, 807 S.W.2d 495 (Mo. banc 1991), and

expounded on in *Sanders v. State*, 807 S.W.2d 493 (Mo. banc 1991). Prior to adoption of the abandonment doctrine, the effectiveness of post-conviction counsel could not be questioned based on the fact that a movant in a post-conviction proceeding has no constitutional right to competent effective assistance of counsel in a post-conviction proceeding.

Prior to *Luleff* and *Sanders*, this Court took the stance “that postconviction proceedings may not under any circumstances be used to challenge the effectiveness of post-conviction counsel.” *Sanders*, 807 S.W.2d at 494. That stance arises from the fact that there is no constitutional right to appointment of competent counsel in postconviction relief proceedings. *Barton v. State*, 486 S.W.3d 332, 336 (Mo. banc 2016). In adopting the abandonment doctrine, this Court altered its traditional stance and “recognized that the failure to file an amended motion ... is not merely a claim of ineffective assistance of counsel. Rather, in such a case it is as if counsel had not been appointed at all, for counsel has abandoned his or her client.” *Id.* at 337.

*Gittemeier*, 527 S.W.3d at 69.

The Court’s rationale in adopting the abandonment doctrine applies only to appointed post-conviction counsel. As stated in *Beerbower*:

Because the abandonment doctrine was intended to apply only to situations where it is “as if counsel had not been appointed at all,” it does not apply to situations like this, where counsel voluntarily enters an appearance without an order appointing counsel.[] When counsel voluntarily enters his or her appearance on behalf of a movant, as opposed to being appointed by the court, counsel has voluntarily taken an action indicating he or she has knowledge of the case and intends to represent the client. In that situation, it is not “as if counsel had never been appointed at all.” This is true even if the counsel that enters his or her appearance is a public defender. In such a scenario, there is no meaningful distinction between a privately retained counsel who enters an appearance and a public defender who voluntarily enters an appearance since both have taken an action in the case acknowledging their representation of the movant.

*Beerbower*, 699 S.W.3d at 559-60 (footnote omitted).

Although the motion court acknowledges in its briefing that it had no authority to apply the abandonment doctrine in Movant's case per the Supreme Court of Missouri's recent holding in **Scott**, "[i]f counsel is not appointed as counsel of record by an appointment order, the abandonment doctrine does not apply," which reaffirms **Gittemeier** and **Beerbower**, the motion court argues that the facts of **Scott** are distinguishable from those before this Court. It argues that the public defender in **Scott** entered an appearance within the 30-day time requirement of Rule 29.15(e) for the motion court to appoint counsel, unlike here where the trial court failed to appoint counsel within the 30 days from when Movant filed his *pro se* post-conviction motion and counsel did not enter an appearance until more than a year after Movant filed his *pro se* post-conviction motion.<sup>3</sup> It argues that it should be allowed the opportunity to correct its failure to comply with Rule 29.15(e) and to formally appoint counsel for Movant.

The motion court's argument overlooks the Supreme Court's decision in **Mack**, where a public defender entered an appearance in a movant's case after the court failed to appoint counsel within the 30-day time requirement set forth in Rule 29.15(e) and his amended post-conviction motion was filed out of time. **Mack**, 716 S.W.3d at 261-62. The movant asserted, for the first time on appeal, that the motion court erred in failing to appoint counsel under Rule 29.15(e) and requested the Supreme Court to "place [movant] in the position he would have occupied had counsel been appointed" by the motion court. **Id.** at 262, n.2. The Supreme Court determined the claim was not preserved for appeal,

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<sup>3</sup> Rule 29.15(e) provides that the court shall appoint counsel for a movant within 30 days after an indigent movant files a *pro se* motion.

but then further held movant’s assertion “also fails on the merits because counsel’s entry of appearance obviated the need for the motion court to appoint counsel.” *Id.* at 262, n.2. In so holding, the Supreme Court determined counsel’s voluntary entry of appearance, albeit beyond the 30-day period after the movant filed his *pro se* post-conviction motion where the court should have appointed counsel to act on the movant’s behalf pursuant to Rule 29.15(e), removed the motion court’s obligation to appoint counsel.

Applying the Supreme Court’s holding in *Mack* here, the motion court had no authority to find abandonment in this case and any subsequent order appointing counsel is unnecessary as counsel already voluntarily entered in the case without an appointment order from the motion court. The abandonment doctrine is not available to excuse post-conviction counsel’s failure to timely file an amended post-conviction motion on Movant’s behalf.

### **Conclusion**

The preliminary writ issued by this Court is made permanent. The motion court is ordered to vacate its order finding Movant was abandoned by post-conviction counsel, take no further action regarding the amended motion for post-conviction relief, and limit its adjudication to the claims presented in Movant’s *pro se* Rule 29.15 motion.

JENNIFER R. GROWCOCK, C.J. – OPINION AUTHOR

DON E. BURRELL, J. – CONCURS

MATTHEW P. HAMNER, J. – CONCURS