



Missouri Court of Appeals
Southern District

In Division

KEVIN KELLY,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

No. SD38760

Filed: November 6, 2025

APPEAL FROM THE CIRCUIT COURT OF BUTLER COUNTY

Honorable John H. Shock, Judge

VACATED AND REMANDED WITH DIRECTIONS

Kevin Kelly (“Movant”) appeals the denial of his Rule 24.035¹ motion (“the motion”) for post-conviction relief after an evidentiary hearing. In two points on appeal, Movant argues the motion court clearly erred in finding his motion was untimely filed, and in finding he had received effective assistance of counsel although counsel had failed to object to evidence of an out-of-state conviction. Because the motion court correctly found the motion was untimely filed yet proceeded to consider the merits of the claim for

¹ All rule references are to Missouri Court Rules (2022).

ineffective assistance of counsel, we vacate the motion court's ruling and remand with directions to dismiss.

Factual and Procedural History

In the underlying criminal case, Movant entered a guilty plea to possession of a controlled substance on February 15, 2022, and was sentenced to 15 years' imprisonment, with the execution of that sentence suspended for 5 years on condition that Movant successfully complete supervised probation, an alternative court services program, and 100 hours of community service. When the trial court examined Movant about his desire to enter a guilty plea, Movant testified that no one had made any promises to him to plead guilty and that his understanding of the plea agreement was that the State would recommend he "complete Drug Court with a 15-year backup." The trial court also asked him, "[d]o you understand that by pleading guilty you are giving up all of the rights that we've just discussed as well as any objection to the way the police obtained the evidence against you and there will not be a trial?" Movant testified affirmatively. After Movant pleaded guilty, the trial court then informed Movant of his post-conviction rights, advised Movant how to seek relief in the court, and informed Movant of the mandatory deadlines for filing a post-conviction relief motion.

Movant subsequently violated his probation and on August 9, 2022, the trial court revoked his probation and executed his sentence.

On December 30, 2022, Movant filed a pro se Rule 24.035 motion for post-conviction relief. Although the motion was untimely, the motion judge at that time (Judge Pritchett) appointed counsel on January 4, 2023, and granted time to file an amended

motion. Appointed counsel filed an amended motion on June 22, 2023. The motion court (now Judge Shock) held an evidentiary hearing on Movant's motion and found Movant's pro se motion "was filed out of time pursuant to Missouri Supreme Court Rule 24.035." Despite this finding, the motion court also made findings of fact and conclusions of law regarding Movant's claim of ineffective assistance of counsel.

Standard of Review

We review the denial of a Rule 24.035 motion for postconviction relief to determine whether the circuit court's findings and conclusions are clearly erroneous. Rule 24.035(k); *Shepard v. State*, 658 S.W.3d 70, 75 (Mo.App. 2022). "Findings and conclusions are clearly erroneous if, after reviewing the entire record, there is a definite and firm impression that a mistake has been made." *Shepherd*, 658 S.W.3d at 75. "A motion court lacks the authority to review the merits of an untimely initial motion and must dismiss it." *Pulliam v. State*, 644 S.W.3d 321, 323 (Mo.App. 2022).

Discussion

As in all post-conviction relief actions, we must first determine whether the motion was timely filed. Compliance with Rule 24.035 is not waivable, and it is our "duty to enforce the mandatory time limits and the resulting complete waiver in the post-conviction rules." *Jackson v. State*, 597 S.W.3d 449, 452 (Mo.App. 2020). Movant did not file a direct appeal and thus Movant's Rule 24.035 motion must have been filed within 180 days of the date the sentence or judgment was entered. *See* Rule 24.035(b).

Movant admits his "pro se motion for post-conviction relief was due to the court by August 14, 2022, 180 days after his sentencing date." Movant also admits he was not

abandoned by counsel, and only argues his tardiness should be excused under the “active interference” exception to the Rule 24.035 deadlines, as “he was prevented from filing his pro se motion within 180 days of being sentenced.” See *Price v. State*, 422 S.W.3d 292, 302 (Mo. banc 2014). The “active interference” exception applies as follows:

Where an inmate writes his initial post-conviction motion and takes every step he reasonably can within the limitations of his confinement to see that the motion is filed on time, a motion court may excuse the inmate’s tardiness when the active interference of a third party beyond the inmate’s control frustrates those efforts and renders the inmate’s motion untimely.

Luttrell v. State, 720 S.W.3d 22, 25 (Mo.App. 2025). However, “this exception only applies when (1) an inmate prepares the motion and does all he reasonably can do to ensure that it is timely filed and (2) any tardiness results solely from the active interference of a third party beyond the inmate’s control.” *Goldberg v. State*, 635 S.W.3d 599, 604 (Mo.App. 2021) (quotation modified). Movant’s only argument in support of an exception is his “honest, mistaken belief he was not eligible to pursue post-conviction relief until after the deadline to file such a motion had passed, because of the court’s ambiguous explanation of post-conviction rights.” Movant asserts this “ambiguity” caused him to believe he could not pursue post-conviction rights, but admits this belief was mistaken.

“A movant’s ignorance of the law is no excuse for the failure to assert timely claims for post-conviction relief.” *Watson v. State*, 520 S.W.3d 423, 431 (Mo. banc 2017). The only exception exists “when the circuit court misinforms a defendant about the appropriate deadlines to file his or her motion during the sentencing colloquy.” *Id.* at

434. Here, Movant does not claim that the motion court misinformed him as to the deadline for filing his motion. To the contrary, Movant merely claims that he misunderstood the motion court’s statements, not that the statements were incorrect in any fashion. Furthermore, Movant “testified he did not remember the court explaining to him his rights under Rule 24.035,” but admits those rights were explained at the sentencing colloquy. Movant’s misunderstanding of the law is not an excuse for the untimely filing of this motion. Movant had the opportunity to draft and file his post-conviction motion in a timely manner, and failed to do so. *See Pool v. State* 621 S.W.3d 640, 643 (Mo.App. 2021) (where Movant presented no evidence that he took any action to draft his pro se motion or to meet the applicable filing deadline for his motion, his motion was untimely).

Because Movant was late in filing his pro se Rule 24.035 motion, the motion court should have dismissed it as untimely. *Pulliam* 644 S.W.3d at 323. Thus, we need not address Movant’s second point.

Conclusion

The motion court’s October 3, 2024, order is vacated and this cause is remanded with directions to the motion court to dismiss Movant’s Rule 24.035 motion.

BECKY J. WEST, J. – OPINION AUTHOR

JENNIFER R. GROWCOCK, C.J. – CONCURS

MATTHEW P. HAMNER, J. – CONCURS