In the Missouri Court of Appeals
Eastern District

DIVISION THREE

BARRY E. ANDERSON, Appellant, v. STATE OF MISSOURI, Respondent.	)))))))))	No. ED113203 Filed: December 2, 2025

APPEAL FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
The Honorable Clinton R. Wright, Judge

Introduction

Appellant Anderson appeals the motion court's judgment denying his amended Rule 29.15 motion for post-conviction relief following an evidentiary hearing. [1] In one point on appeal, Appellant argues that he was denied effective assistance of counsel because trial counsel failed to investigate or call a ballistics expert to testify at trial, and but for trial counsel's failure, there is a reasonable probability that the jury would have found that Appellant acted in self-defense. Because Appellant's claim of error originated from his amended motion, which was untimely, and the motion court reviewed all of Appellant's *pro se* claims, we affirm the motion court's judgment denying post-conviction relief.

[1] All Rule references are to the Missouri Supreme Court Rules (2018).

Factual and Procedural Background

Appellant was charged with murder in the first degree, armed criminal action, and unlawful possession of a firearm relating to events that occurred on July 5, 2017. On that day, Victim, one of Appellant's neighbors, came to Appellant's apartment and stayed for a few minutes. Surveillance video from the hallway between the apartments showed Victim return to his apartment. About thirty minutes later, as seen on the video, Appellant knocked on Victim's door, entered Victim's apartment, and remained there for a few minutes before he went back to his apartment. The surveillance footage showed Appellant walking with a limp upon exiting Victim's apartment and it did not show any other movement in the hallway. It was clear that the only entrance to Victim's apartment was through the hallway as shown on the video.

Appellant's caregiver was present at Appellant's apartment when he went to Victim's apartment. She testified that she heard gun shots while Appellant was away and that when Appellant returned to his apartment he was bleeding from a gunshot wound to his foot. Appellant's caregiver had seen Appellant with a gun that day and knew that it was his gun because she had seen it in his apartment for several months. Appellant and his caregiver left to go to the hospital but, after a short time, returned to Appellant's apartment to call the police instead of going to the hospital.

The responding police officers spoke with Appellant, searched his apartment, and initiated transport of Appellant to the hospital. Appellant told the police officers at the apartment and at the hospital that Victim had attempted to rob him and Victim shot him in the foot during an altercation where they wrestled for control of Appellant's gun. The responding police officers went to Victim's apartment where they found him deceased after having been shot twice in the head. Investigators recovered DNA evidence from blood in the apartment, Appellant's clothes,

Appellant's shoe, and on the gun. Other evidence included ballistics information from the gun, ammunition recovered during the investigation, and the autopsy of Victim.

At trial, Appellant admitted that he shot Victim while Victim was unarmed but claimed that he did so in self-defense. The jury found Appellant guilty of second-degree murder, armed criminal action, and unlawful possession of a firearm. The circuit court sentenced Appellant to life in prison for second-degree murder, to be served consecutively to the twenty year sentence for armed criminal action and concurrently to the seven year sentence for unlawful possession of a firearm. This Court affirmed the convictions and sentences in *State v. Anderson*, 611 S.W.3d 583 (Mo. App. E.D. 2020).

Appellant timely filed a *pro se* motion for post-conviction relief pursuant to Rule 29.15 on March 8, 2021. The *pro se* motion raised ten claims of ineffective assistance of counsel. While an attorney from the public defender's office entered her appearance on June 7, 2021, the court never appointed counsel. Post-conviction counsel requested two additional thirty-day extensions, which the motion court granted. About three months after the final extension deadline, post-conviction counsel filed an untimely amended motion on January 13, 2022, raising five claims of ineffective assistance of counsel. It is undisputed that the amended motion was filed out of time.

The motion court held an evidentiary hearing. At that hearing, the motion court noted that it could not hold an abandonment inquiry for unappointed counsel, but did not rule on the timeliness of the amended motion. On September 20, 2024, the motion court issued its findings of fact and conclusions of law, in which it appointed Appellant's post-conviction counsel of record, found that Appellant had been abandoned by counsel, and ruled that the amended motion

was timely filed. The motion court then disposed of all Appellant's claims in the *pro se* and amended motions, denying relief on each claim.

This appeal follows.

Standard of Review

Appellate review of a judgment denying a Rule 29.15 motion for post-conviction relief is limited to whether the motion court's findings of fact and conclusions of law are clearly erroneous. *Shockley v. State*, 579 S.W.3d 881, 892 (Mo. banc 2019); Rule 29.15(k). "Findings and conclusions are clearly erroneous if, after a review of the entire record, the court is left with the definite and firm impression that a mistake has been made." *Price v. State*, 422 S.W.3d 292, 294 (Mo. banc 2014). This Court upholds the judgment of the motion court if it is "sustainable on any grounds." *Davis v. State*, 622 S.W.3d 721, 726 (Mo. App. E.D. 2021).

Discussion

In his sole point on appeal, Appellant alleges that the motion court erred in denying his amended motion because trial counsel was ineffective for failing to investigate and call a ballistics expert to testify regarding the trajectory of the bullet that went through Appellant's foot. Appellant argues that if such an analysis had been included there was a reasonable probability that the jury would have found that Appellant acted in self-defense. Appellant contends that failing to call the ballistics expert was unjustifiably unreasonable trial strategy that resulted in prejudice. Respondent argues that the motion court's *post hoc* appointment of the unappointed attorney of record was invalid and thus the untimely filing of the amended motion should not have been subject to an abandonment inquiry.

"Before reviewing the merits of an appeal from a motion court's denial of post-conviction relief, we are obligated to examine the timeliness of the amended motion." *Kinsella v. State*, 698 S.W.3d 858, 862 (Mo. App. E.D. 2024), *transfer denied* (Nov. 5, 2024) (quoting *Little v. State*,

652 S.W.3d 390, 392 (Mo. App. E.D. 2022)). Although the motion court erred in 1) appointing counsel *post hoc*, 2) finding that Appellant had been abandoned, and 3) reviewing the untimely amended motion, we nevertheless find no reversible error because all of the claims in Appellant's *pro se* motion were properly adjudicated.

Analysis

In Missouri, Rule 29.15 is "the single, unified procedure for inmates seeking post-conviction relief after trial." *Price*, 422 S.W.3d at 296. When an indigent person files a *pro se* motion for post-conviction relief, Rule 29.15 instructs the motion court to appoint counsel within 30 days and permits appointed counsel to file an amended motion alleging additional facts and claims. Rule 29.15(e). The rule specifies that

> If an appeal of the judgment sought to be vacated, set aside, or corrected is taken, the amended motion or statement in lieu of an amended motion shall be filed within 60 days of the earlier of the date both the mandate of the appellate court is issued and:
>
> (1) Counsel is appointed, or
> (2) *An entry of appearance is filed by any counsel that is not appointed but enters an appearance on behalf of movant*.
>
> The court may extend the time for filing the amended motion or statement in lieu of an amended motion, with no extension exceeding 30 days individually and the total of all extensions not to exceed 60 days

Rule 29.15(g) (emphasis added).

The purpose of Rule 29.15 is to "adjudicate claims concerning the validity of the trial court's jurisdiction and the legality of the conviction or sentence of the defendant… while avoiding delay in the processing of prisoners' claims and preventing the litigation of stale claims." *Id*. (quoting *State ex rel. Nixon v. Daugherty,* 186 S.W.3d 253, 254 (Mo. banc 2006)). A motion for postconviction relief must be "filed in the time limits established by rule, and the

failure to timely file results in a complete waiver of any right to proceed on the motion." *Scott v. State*, 719 S.W.3d 723, 726 (Mo. banc 2025) (internal quotations omitted). "The time limits in Rules 24.035 and 29.15 serve the legitimate end of avoiding delay in the processing of prisoner's claims and prevent the litigation of stale claims." *Dorris v. State*, 360 S.W.3d 260, 269 (Mo. banc 2012) (internal quotations omitted). Furthermore, it is this Court's duty "to enforce the mandatory time limits and the resulting complete waiver in the post-conviction rules." *Id*. at 268.

It is undisputed that Appellant's amended motion was untimely, however, post-conviction counsel filed a motion to excuse the untimely filing due to abandonment and the motion court found that Appellant was abandoned by post-conviction counsel. The purpose of the abandonment doctrine is to "excuse the untimely filing of amended motions by *appointed* counsel under Rule 29.15(e)." *Gittemeier v. State*, 527 S.W.3d 64, 69 (Mo. banc 2017) (emphasis added). The Missouri Supreme Court has repeatedly distinguished between appointed and unappointed counsel, holding that the abandonment doctrine does not apply when counsel of record is unappointed. *Scott*, 719 S.W.3d at 728; *Mack v. State*, 716 S.W.3d 260, 262 (Mo. banc 2025); *see also Beerbower v. State*, 699 S.W.3d 556, 559 (Mo. App. S.D. 2024), *transfer denied* (Nov. 19, 2024).

Appellant's post-conviction counsel, a public defender, was not appointed by court order at the time the amended motion was filed nor during the evidentiary hearing. Post-conviction counsel voluntarily entered her appearance. Since post-conviction counsel was unappointed, the abandonment doctrine was inapplicable. *Scott*, 719 S.W.3d at 728. This is true even though post-conviction counsel was a public defender. *Kemper v. State*, 681 S.W.3d 611, 615 (Mo. App. E.D. 2023*), transfer denied* (Jan. 30, 2024) (holding that the relief provided by the abandonment doctrine for an untimely amended motion did not apply when the public defender entered an

appearance without a court order). The distinction between appointed and unappointed counsel is appropriate in post-conviction proceedings because "the abandonment doctrine was intended to apply only to situations where it is as if counsel had not been appointed at all" and "[w]hen 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." *Beerbower*, 699 S.W.3d at 559-60. As a result, "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." *Id*. at 560. Here, because post-conviction counsel was unappointed counsel at the time the amended motion was filed, the motion court erred in finding that Appellant had been abandoned.

Moreover, the motion court's *post hoc* appointment of the attorney of record was unnecessary because "the public defender's entry of an appearance without an appointment order obviates the need for the motion court to appoint counsel under Rule 29.15(e) because the movant is shown of record as represented by counsel." *Scott*, 719 S.W.3d at 728-29. Since Appellant was already represented when the motion court appointed counsel, counsel's voluntary entry of appearance "obviated the need for the motion court to appoint counsel." *Mack*, 716 S.W.3d at 262 n.2; *see also Kinsella*, 698 S.W.3d at 865 ("We will not interpret Rule 29.15(e) as requiring a motion court to appoint counsel for an indigent movant when it appears from the record that the movant is already represented."). As a result, the motion court's appointment of counsel was invalid and the untimely filing of the amended motion could not be cured by appointing counsel after an evidentiary hearing. Thus, the amended motion could not be

reviewed by the motion court, and this Court is likewise unable to review a claim of error arising from the amended motion.

Notwithstanding this error, we affirm the judgment of the motion court. "Even if the stated reason for the court's ruling is incorrect, the judgment should be upheld if it is sustainable on any other grounds." *Smith v. State*, 617 S.W.3d 499, 502 (Mo. App. E.D. 2021). The motion court thoroughly reviewed all of Appellant's *pro se* claims in its findings of fact and conclusions of law, making the motion court's judgment final. *Contra Beerbower*, 699 S.W.3d at 560 (Because the "pro se motion included at least one claim not raised in the amended motion, the motion court failed to dispose of all of the claims and the judgment is not final."). While Appellant's amended motion was untimely and should not have been reviewed, all of Appellant's claims from the *pro se* motion have been adjudicated by the motion court and found to be without merit. We do not address claims raised in Appellant's *pro se* motion since none of those claims were raised by Appellant on appeal. Accordingly, Appellant's point is denied.

Conclusion

For the foregoing reasons, the judgment of the motion court denying post-conviction relief is affirmed.



RENÉE D. HARDIN-TAMMONS, PRESIDING JUDGE

Angela T. Quigless, J., and
Thomas C. Clark II, J., concur.