Missouri Court of Appeals
Southern District

In Division

JOHNNY LEE COOPER, Movant-Appellant, v. STATE OF MISSOURI, Respondent-Respondent.	No. SD38911 Filed: December 9, 2025

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY
Honorable T. Todd Myers

AFFIRMED

Johnny Lee Cooper ("Movant") appeals the motion court's denial of Movant's original *pro se* Rule 29.15 motion for postconviction relief ("the motion") without holding an evidentiary hearing.[1] Movant's sole point on appeal claims the motion court

[1] Movant previously appealed the motion court's dismissal of his amended motion, but we had to dismiss that appeal as the amended motion was not timely filed by Movant's retained counsel. ***Cooper v. State***, 675 S.W.3d 718 (Mo. App. S.D. 2023). However, as noted in that opinion, because Movant's original *pro se* motion had been timely filed, the motion court then denied Movant's *pro se* motion after we dismissed the previous appeal. All rule references are to Missouri Court Rules (2025).

clearly erred in failing to conduct an evidentiary hearing as the motion claimed that he received ineffective assistance of counsel ("IAC") when trial counsel failed to call two witnesses to testify on his behalf at his trial. Because the motion pled only conclusions, and did not plead the facts necessary to support that claim, no evidentiary hearing was necessary, and we affirm the circuit court's denial of postconviction relief.

> "A movant is entitled to an evidentiary hearing on his Rule 29.15 motion only if: (1) the movant pleaded facts, not conclusions, warranting relief; (2) the facts alleged are not refuted by the record; and (3) the matters complained of resulted in prejudice to the movant." [*Dent v. State*, 662 S.W.3d 792, 797 (Mo. App. E.D. 2023)]. "An evidentiary hearing may only be denied when the record conclusively shows that the movant is not entitled to relief." *Wilkes v. State*, 82 S.W.3d 925, 927-28 (Mo. banc 2002) (emphasis omitted).

Gray v. State, No. SD 38721, 2025 WL 3214052, at *2 (Mo. App. S.D. Nov. 18, 2025).

> To prevail on a claim of [IAC] for failure to call a witness, the [movant] must show: "(1) counsel knew or should have known of the existence of the witness; (2) the witness could be located through reasonable investigation; (3) the witness would testify; and (4) the witness's testimony would have produced a viable defense." *Deck v. State*, 381 S.W.3d 339, 346 (Mo. banc 2012) (citation omitted).

McFadden v. State, 553 S.W.3d 289, 305 (Mo. banc 2018).

> Movant's sole point on appeal claims:
>
> The motion court clearly erred in denying … [the motion] without an evidentiary hearing because [Movant] … claimed he received [IAC] … because trial counsel failed to call and present the testimony of two witnesses who would have testified that they overheard telephone conversations that would have indicated the alleged victims in [Movant]'s case fabricated their claims against him. This testimony would have been admissible for purposes of impeachment, and it would have in fact impeached the main allegations and testimony that provided the basis for the elements of the offenses for which [Movant] was charged and convicted[.]

We disagree.

> As to this claim, the motion pleaded as follows:
>
> 8. State concisely all the claims known to you for vacating, setting aside or correcting your conviction and sentence:
>
> (a) failed to call impeachment witnesses who would have testified that the alleged victims [f]abricated the claims against [Movant].
>
> ….
>
> 9. State concisely and in the same order the facts supporting each of the claims set out in (8), and the names and addresses of the witnesses or other evidence upon which you intend to rely to prove such facts:
>
> (a) Tom and Deanna Price [telephone number redacted]; overheard telephone conversations. David Williams [telephone number redacted]; overheard telephone conversations.[2]

Those allegations fail to allege any of the four elements that are necessary to prevail on a claim of IAC based upon the failure to call a witness at trial. Movant did not assert that trial counsel knew about these witnesses and that the testimony of those witnesses would have provided a viable defense. Further, even if the motion had stated what the witnesses' testimony would have been, Movant rightly notes that it would be hearsay, and he fails to allege any exception to the general rule that such hearsay would not have been admissible at his trial.

[2] Appellate counsel does not indicate which two of these three identified witnesses are at issue.

The circuit court's denial of postconviction relief without holding an evidentiary hearing is affirmed.

DON E. BURRELL, J. – OPINION AUTHOR

JEFFREY W. BATES, J. – CONCURS

JENNIFER R. GROWCOCK, C.J. – CONCURS