Missouri Court of Appeals

Southern District

In Division

STEPHEN G. PERRY,

Movant-Appellant,

v.

STATE OF MISSOURI,

Respondent-Respondent.

Number SD38890

Filed: April 30, 2026

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable T. Todd Myers, Circuit Judge

AFFIRMED

After a jury trial, Stephen Perry (Perry) was convicted of one count of statutory sodomy in the first degree. *See* § 566.062.[1] The trial court ultimately sentenced Perry to life imprisonment.

In Perry's sole point on appeal, he contends the motion court clearly erred in denying his amended Rule 29.15 motion because "after refusing to appoint substitute

[1] All statutory references are to RSMo (2016). All rule references are to Missouri Court Rules (2022).

counsel despite [Perry's] documented breakdown in communication with trial counsel," the trial court "failed to hold a hearing and clarify whether [Perry] wished to proceed pro se or with appointed counsel, leaving an incomplete record, and had the court held such a hearing, it would have learned [Perry] would have rather represented himself than have appointed counsel who did not communicate." This claim of trial-court error is not cognizable in a post-conviction appeal.

Factual Background

The case against Perry was initiated in April 2018. Thereafter, Perry was charged by second-amended felony information with one count of statutory sodomy in the first degree. Counsel (Trial Counsel) was appointed for Perry on May 16, 2018, and appeared with Perry at hearings on at least 13 occasions from June 2018 through January 2020. On March 2, 2020, Perry filed a *pro se* motion for "change of counsel." In the motion, Perry asserted that there had been a "complete breakdown" of communication between himself and Trial Counsel. Perry alleged that Trial Counsel had: (1) failed to respond to any of the "21 letters" sent by Perry; (2) met with Perry to discuss his case only twice; and (3) "refused" to take depositions or otherwise prepare.

Between August 2020 and January 2021, Perry made other *pro se* filings in the case. These filings included a motion "for ineffective assistance of counsel[,]" a motion "for new counsel[,]" and a letter to the court asserting that Perry had filed several motions, which the court "continues to deny[.]"

In May 2021, Perry's case proceeded to trial. The jury found Perry guilty of statutory sodomy in the first degree. The trial court sentenced him as a predatory sexual offender to life imprisonment with eligibility of parole at 25 years. After sentencing, Perry expressed that he was not satisfied with Trial Counsel's representation. Perry stated that he had only seen Trial Counsel three times throughout his representation. He stated that Trial Counsel never responded to any of his letters or answered his phone calls despite repeated attempts. The trial court found no probable cause to believe that Trial Counsel had provided ineffective assistance.

On direct appeal, Perry asserted that the trial court erred in sentencing him as a predatory offender because the jury – not the judge – was required to find that Perry had previously committed an act that would qualify him as a predatory sexual offender. ***State v. Perry***, 645 S.W.3d 713 (Mo. App. 2022). The State conceded that the trial court erred. ***Id***. at 714. This Court agreed, reversed Perry's sentence, vacated the designation of Perry as a predatory sexual offender, and remanded to the trial court for resentencing "within the unenhanced range of punishment" for this conviction. ***Id***. Upon remand, the trial court sentenced Perry to life imprisonment on July 29, 2022.

In a second direct appeal, Perry asserted that the trial court plainly erred in sentencing him to the maximum term of life in prison for statutory sodomy in the first degree. ***State v. Perry***, 673 S.W.3d 141 (Mo. App. 2023). This Court declined plain error review and affirmed Perry's conviction and sentence. ***Id***. at 142-43.

Perry filed a *pro se* motion for post-conviction relief on August 22, 2023. Counsel was then appointed and subsequently filed an amended motion on February 27, 2024.[2] In the amended motion, Perry claimed to have "attempted to proceed with his criminal case without counsel's representation, but his motions were disregarded."

An evidentiary hearing was held in October 2024. Because Trial Counsel had passed away prior to post-conviction proceedings, Perry was the sole witness. Perry testified that, aside from brief meetings in the court conference room before or after hearings, Trial Counsel met with Perry only two or three times during the pendency of his case. Perry stated that they reviewed videos at the first visit for "a little bit more than an hour." Perry testified that the second visit lasted "about 30 minutes," but he could not recall what was discussed. Perry also testified that, during the third meeting, he and Trial Counsel reviewed the sentencing assessment report for about 45 minutes.

At the evidentiary hearing, Perry admitted into evidence 18 letters he wrote to Trial Counsel that he claims went unanswered. He also stated that no one ever informed him of his rights regarding representation, and he was unaware that he could hire private counsel or represent himself.

When asked by the State, Perry agreed that he wanted a lawyer to represent him, just not his appointed Trial Counsel.

[2] This Court has independently verified that Perry's original and amended post-conviction motions were timely filed. *See* ***Moore v. State***, 458 S.W.3d 822, 825-26 (Mo. banc 2015).

The motion court issued its findings of fact and conclusions of law in December 2024, denying Perry's post-conviction motion. In its findings, the court stated, "[a] desire to proceed *pro se* is not reflected in the record, and in fact [Perry's] own filings clearly refute the claim made in the Amended Motion that [Perry] wanted to proceed *pro se*." This appeal followed.

Discussion and Decision

On appeal, our review is limited to the issues framed by the appellant's point relied on. ***State v. Cummings***, 686 S.W.3d 709, 717 (Mo. App. 2024); ***State v. Blackburn***, 168 S.W.3d 571, 576 n.4 (Mo. App. 2005). In Perry's sole point on appeal, he contends that, "after refusing to appoint substitute counsel despite [Perry's] documented breakdown in communication" with Trial Counsel, "the court failed to hold a hearing and clarify whether [Perry] wished to proceed pro se or with appointed counsel, leaving an incomplete record, and had the court held such a hearing, it would have learned [Perry] would have rather represented himself than have appointed counsel who would not communicate." The references in this point to "the court" are directed at the trial court in the underlying criminal case, rather than any findings or conclusions by the motion court.

Claims of trial-court error are generally not cognizable in a Rule 29.15 proceeding. As we explained in ***McMannis v. State***, 720 S.W.3d 285, 290 (Mo. App. 2025), "[p]ost-conviction relief under Rule 29.15 is not a substitute for direct appeal or to obtain a second chance at appellate review." *See also* ***McLaughlin v. State***, 378

S.W.3d 328, 357 (Mo. banc 2012); ***Jones v. State***, 696 S.W.3d 450, 460 (Mo. App. 2024). Thus, "[a] Rule 29.15 motion cannot be used to obtain review of matters which were or should have been raised on direct appeal." ***Phillips v. State***, 214 S.W.3d 361, 364 (Mo. App. 2007); *see* ***Voss v. State***, 570 S.W.3d 184, 197 (Mo. App. 2019).

Here, the issue raised in Perry's point relied on was well known to him, but it was not raised in either of his direct appeals. "Issues that could have been raised on direct appeal – even constitutional claims – may not be raised in postconviction motions, except where fundamental fairness requires otherwise and only in rare and exceptional circumstances." ***State v. Tolliver***, 839 S.W.2d 296, 298 (Mo. banc 1992); *see* ***Shockley v. State***, 579 S.W.3d 881, 900 (Mo. banc 2019).[3] Perry has not shown such rare and exceptional circumstances exist here. Because Perry does not raise a cognizable point on appeal, the order denying relief on his amended Rule 29.15 motion is affirmed.

JEFFREY W. BATES, J. – OPINION AUTHOR

JENNIFER R. GROWCOCK, C.J. – CONCUR

BECKY J. WEST, J. – CONCUR

[3] To fall within this exception, the factual basis for the claim must not have been known to the movant during trial or on direct appeal. *See, e.g.*, ***Shockley***, 579 S.W.3d at 900 (a claim of juror misconduct amounting to a constitutional error can only be raised in a Rule 29.15 motion when the factual basis of the juror misconduct was not discovered until after trial); ***Tisius v. State***, 183 S.W.3d 207, 212 (Mo. banc 2006) ("Unlike a claim of withheld evidence, which would not be known to a movant during trial or direct appeal, a claim involving allegedly improper argument was apparent at trial and could have been raised on direct appeal.").