Missouri Court of Appeals
Southern District

In Division

CORNELIUS PERKINS,

Movant-Appellant,

v.

STATE OF MISSOURI,

Respondent-Respondent.

Number SD38999

Filed: April 30, 2026

APPEAL FROM THE CIRCUIT COURT OF SCOTT COUNTY

Honorable R. Zachary Horack, Judge

DISMISSED AND REMANDED

Cornelius Perkins ("Movant") appeals the motion court's denial of his amended motion for post-conviction relief under Rule 29.15.[1] Movant asserts two points on appeal alleging ineffective assistance of counsel. We agree with the State, however, that the motion court erred in determining Movant was abandoned by counsel and adjudicating

[1] All rule references are to Missouri Court Rules (2021). "Post-conviction relief proceedings are governed by the provisions of Rule 29.15 in effect on the date of a movant's sentencing." ***State ex rel. Hanaway v. Curless***, 722 S.W.3d 842, 843 n.1 (Mo. App. S.D. 2025). Movant was sentenced on April 15, 2021.

Movant's amended motion because neither of Movant's post-conviction counsel were appointed to represent him. As such, the motion court should have disregarded the amended motion as untimely and proceeded to adjudicate Movant's *pro se* Rule 29.15 motion. Because there were claims asserted in the *pro se* motion that were not included in Movant's amended motion, we dismiss the appeal for lack of a final judgment and remand to the motion court for further proceedings consistent with this opinion.

Factual Background and Procedural History

Movant was charged with first-degree assault (§ 565.050)[2] for an incident that occurred while Movant was serving a sentence in the Scott County Jail. Following a jury trial, Movant was found guilty and sentenced as a prior and persistent offender to 25 years' incarceration. Movant's conviction was affirmed by this Court in ***State v. Perkins***, 640 S.W.3d 498 (Mo. App. S.D. 2022).

Movant prematurely filed his *pro se* motion for post-conviction relief on July 21, 2021. Pursuant to Rule 29.15(b), Movant's *pro se* motion is considered timely filed as of the date this Court issued its mandate affirming Movant's conviction on March 15, 2022. *See* Rule 29.15(b) ("If the motion is filed prematurely, such motion shall be considered as filed immediately after … the date the mandate of the appellate court issues affirming the judgment or sentence."). Initially, Nina McDonnell ("Original Counsel"), a public defender, entered her appearance on September 16, 2022. Public defender Tyler

[2] Unless otherwise indicated, all statutory references are to RSMo 2016, as amended through July 17, 2019, the date of the alleged crime.

Ludwig ("Substitute Counsel") thereafter entered his appearance on August 22, 2023. The record does not disclose any appointment order for either Original Counsel or Substitute Counsel to represent Movant in this case.

Substitute Counsel filed Movant's amended motion on December 18, 2023, over twenty-one months after Movant's *pro se* motion was deemed filed. Substitute Counsel thereafter filed a motion to declare that Movant had been abandoned by counsel, which was accompanied by an affidavit from Original Counsel stating she was on leave from September 16, 2022, until mid-to late-October 2022 and did not realize the deadlines for an amended motion had begun to run.

During the post-conviction relief hearing, the motion court found Movant was abandoned by counsel and excused Substitute Counsel's untimely filing of the amended motion. In its formal Judgment, the motion court found that both Original Counsel and Substitute Counsel entered their appearance for Movant, and held that Movant had been abandoned by counsel. The motion court proceeded to review Movant's amended motion on the merits and determined Movant did not receive ineffective assistance of counsel and was not entitled to post-conviction relief. This appeal followed.

Standard of Review

Under Rule 29.15(k), "[a]ppellate review of the trial court's action on the motion filed under this Rule 29.15 shall be limited to a determination of whether the findings and conclusions of the trial court are clearly erroneous." This Court presumes the motion court's findings are correct and a judgment is clearly erroneous only "when, in light of the entire record, the court is left with the definite and firm impression that a mistake has been made." ***Flaherty v. State***, 694 S.W.3d 413, 416 (Mo. banc 2024) (citing ***Davis v. State***, 486 S.W.3d 898, 905 (Mo. banc 2016)). We conduct a *de novo* review for "errors of law, rejection of factual findings for which there is no substantial evidence, and – in the rarest of cases – rejection of factual findings for which there may be substantial evidence" but which the appellate court is still definitely and firmly convinced a mistake has been made based on the record. ***Id***. at 419.

Analysis

This Court has an independent duty to verify the timeliness of Movant's motion for post-conviction relief before evaluating the merits of Movant's points on appeal. ***Beerbower v. State***, 699 S.W.3d 556, 558 (Mo. App. S.D. 2024) (citing ***Moore v. State***, 458 S.W.3d 822, 826-27 (Mo. banc 2015) (Fischer, J. concurring)). "It is the court's duty to enforce the mandatory time limits and the resulting complete waiver in the post-conviction rules[.]" ***Scott v. State***, 719 S.W.3d 723, 726 (Mo. banc 2025) (quoting ***Dorris v. State***, 360 S.W.3d 260, 268 (Mo. banc 2012)).

Movant's *pro se* motion was timely as it was deemed filed on March 15, 2022, the date this Court issued its mandate affirming his conviction. Despite both Original Counsel and Substitute Counsel entering appearances for Movant, the amended motion was not filed until over 21 months after Movant's *pro se* motion was deemed filed, and well past the 60-day deadline set forth in Rule 29.15(g).

Post-conviction counsel's failure to file a timely amended motion or a statement in lieu of an amended motion usually creates the presumption of abandonment. ***Beerbower***, 699 S.W.3d at 559 (citing ***Cooper v. State***, 675 S.W.3d 718, 721 (Mo. App. S.D. 2023)). However, the abandonment doctrine only applies to cases that involve appointed post-conviction counsel. ***Scott***, 719 S.W.3d at 728 (citing ***Gittemeier v. State***, 527 S.W.3d 64, 69 (Mo. banc 2017)). The abandonment doctrine does not apply if post-conviction counsel is not appointed as counsel of record by an appointment order. ***Id***. This is true even if the attorney that voluntarily enters his or her appearance is a public defender. ***Beerbower***, 699 S.W.3d at 559 (citing ***Kemper v. State***, 681 S.W.3d 611, 615 (Mo. App. E.D. 2023)); *see also* ***Mack v. State***, 716 S.W.3d 260, 262 (Mo. banc 2025) ("The parties agree the public defender entered an appearance on [Movant's] behalf without being appointed, meaning the abandonment doctrine does not apply and cannot be invoked to excuse the tardiness of [Movant's] amended motion."); *see also* ***Curless***, 722 S.W.3d at 847 ("[T]he motion court had no authority to find abandonment

in this case … as counsel already voluntarily entered in the case without an appointment order from the motion court.").

While Original Counsel's affidavit in support of the motion to declare abandonment refers to her as "appointed postconviction counsel," the record does not disclose any appointment order for either Original Counsel or Substitute Counsel. The motion court's written Judgment correctly finds that both Original Counsel and Substitute Counsel entered their appearances in the case. The subsequent finding that Movant was abandoned by counsel, however, was clearly erroneous. As made clear in ***Scott***, ***Beerbower***, ***Mack***, and ***Curless***, abandonment cannot be used to excuse the untimely filing of Movant's amended motion in this case as neither of the attorneys who represented him were appointed.

The motion court should have confined its review to the merits of Movant's *pro se* motion, which contained claims that were not included in the amended motion. ***Davis v. State***, 728 S.W.3d 669, 674-75 (Mo. App. E.D. 2025) (citing ***Kinsella v. State***, 698 S.W.3d 858, 865 (Mo. App. E.D. 2024)). Because there are claims in Movant's *pro se* motion that were not disposed of, the motion court's judgment is not final. *See* ***Mack***, 716 S.W.3d at 262 n.4 ("A judgment denying post-conviction relief is not final and appealable if it fails to acknowledge, adjudicate, or dispose all of the claims asserted in the post-conviction motion.") (internal quotations and citations omitted). Therefore, we cannot review Movant's claims on the merits and must dismiss the appeal. *See* ***Davis***,

728 S.W.3d at 675 (“Absent a final judgment there is no appellate review and the appeal must be dismissed.”) (internal citations omitted).

Conclusion

The appeal is dismissed for lack of a final judgment and we remand this case to the motion court for further proceedings consistent with this opinion.

MATTHEW P. HAMNER, J. – OPINION AUTHOR

BECKY J. WEST, J. – CONCURS

BRYAN E. NICKELL, J. – CONCURS