Missouri Court of Appeals
Southern District

In Division

ROY L. BLACKSURE,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

Filed: August 10, 2026

Case Number SD39358

Missouri Court of Appeals
Southern District

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable Jerry A. Harmison, Jr., Judge

AFFIRMED

Following convictions and sentencing for first-degree robbery, armed criminal action, first-degree burglary, unlawful possession of a firearm, and fourth-degree assault, which this Court then affirmed on direct appeal, *see* ***State v. Blacksure***, 690 S.W.3d 629 (Mo.App. 2024), Roy L. Blacksure ("Movant") filed an untimely *pro se* motion for postconviction relief ("PCR"). The motion court, thereafter, dismissed Movant's subsequently filed amended PCR motion without conducting an evidentiary hearing, concluding that said amended motion failed to allege any facts that could

excuse Movant's untimely filing of his preceding *pro se* motion. Movant appeals, asserting in his sole point that the motion court clearly erred because he "pled circumstances beyond his control justifying late receipt of the motion, which require an evidentiary hearing to prove." We disagree and affirm the motion court's decision.

Applicable Legal Principles

A person convicted of a felony after trial may claim that the conviction or sentence violates the constitution or laws of Missouri by seeking postconviction relief in the sentencing court. Rule 29.15(a).[1] If the person appealed the judgment, "the motion shall be filed within 90 days after the date the mandate of the appellate court issues affirming such judgment or sentence." Rule 29.15(b). Failure to so file within this time limit, "shall constitute a *complete waiver* of any right to proceed under … Rule 29.15 and a *complete waiver* of any claim that could be raised in a motion filed pursuant to … Rule 29.15." ***Id.*** (emphasis added).

A movant, therefore, is required to plead and prove facts showing that his or her motion was timely filed or that the untimeliness is excused under a recognized exception. ***Dorris v. State***, 360 S.W.3d 260, 267 (Mo. banc 2012).

> The movant must allege facts showing he timely filed his motion and meet his burden of proof by either: (1) timely filing the original *pro se* motion so that the time stamp on the file reflects that it is within the time limits proscribed in the Rule; (2) alleging and proving by a preponderance of the evidence in his motion that he falls within a recognized exception to the time limits; or (3) alleging and proving by a preponderance of the evidence

[1] All Rule references are to Missouri Court Rules (2023).

in his amended motion that the court misfiled the motion.

Id.

Under Rule 29.15(h), "[i]f the court shall determine the motion and the files and records of the case conclusively show that the movant is entitled to no relief, a hearing shall not be held." "Courts will not draw factual inferences or implications in a Rule 29.15 motion from bare conclusions or from a prayer for relief." ***Johnson v. State***, 406 S.W.3d 892, 898 (Mo. banc 2013) (internal quotation marks omitted). "To be entitled to an evidentiary hearing, Movant's motion must: (1) allege facts, not conclusions, warranting relief; (2) raise factual matters that are not refuted by the file and record; and (3) raise allegations that resulted in prejudice." ***Id.***

Background

On June 27, 2024, this Court issued its mandate in Movant's direct appeal. Thereafter, on October 24, 2024, Movant filed his *pro se* PCR motion, twenty-nine days out of time. On a piece of paper attached to his Form 40, Movant alleged: "The reason why this form got turned in past my due date is because I was on a writ in Olathe, Kansas on another case and didn't have access to none of my legal work involving this case until Sept 27, 2024."

With the assistance of court-appointed counsel, Movant filed an amended motion on February 25, 2025, generally alleging and asserting the following:

> Movant's late filing was a result of his involuntary incarceration in Kansas, which prevented him from timely completing and filing his pro se post-conviction motion. As soon as his incarceration in Kansas ended, [M]ovant

completed and filed his motion.

> The untimeliness of [M]ovant's pro se motion resulted from third party interference, a recognized exception to the post-conviction time limits, in that the late filing of [M]ovant's pro se motion was due to his involuntary incarceration in Kansas. Thus, [M]ovant's pro se motion should be considered as timely filed pursuant to the requirements of Rule 29.15.

Movant's amended motion contained no elaboration as to the reason why his involuntary incarceration in Kansas prevented him from filing his *pro se* motion.

The motion court issued written findings of fact and conclusions of law dismissing Movant's amended motion without an evidentiary hearing. The motion court noted that "Movant alleged that he fits within the recognized exception of third[-]party interference." The motion court noted that this exception is "very rare[,]" quoting ***Ross v. State***, 659 S.W.3d 368, 371 (Mo.App. 2023). The motion court then noted the following, quoting from ***Trapp v. State***, 696 S.W.3d 890, 895 (Mo.App. 2024):

> This exception is shown "when a movant-inmate pleads and proves facts showing he 'wrote his initial post-conviction motion and took every step he reasonably could within the limitations of his confinement to see that the motion is filed on time' but 'the active interference of a third party beyond the inmate's control frustrate[d] those efforts and rendered the inmate's motion untimely.'"

The motion court finally turned to Movant's allegations, concluding as follows:

> The only specific *fact* alleged by Movant is that he was out of state, incarcerated in Olathe, Kansas until September 27, 2024. This is insufficient, without more, to show that Movant was unable to file [the] Pro Se Motion on time. Movant does not allege that he lacked access to a computer or a law library. Movant had counsel at the time, and does not allege that he could not contact counsel or that he lacked phone records. Even if this Court considers the more specific allegations in [the] Pro Se Motion that Movant lacked his legal file, Movant does not explain why he

> was unable to procure said legal file. Other than his incarceration somewhere other than the Missouri Department of Corrections ["DOC"], Movant simply provides no facts to uphold his burden to show by a preponderance of the evidence that he took every step he reasonably could within the limitations of his confinement to see that the motion is filed on time but the active interference of a third party beyond the inmate's control frustrated those efforts and rendered the inmate's motion untimely.
>
> There is no case law to conclude that incarceration somewhere other than [DOC] is a sufficient fact, by itself, to support an exception to Rule 29.15(b)'s time standards. Such a situation is not very rare, as exceptions to the time standards must be. While it may be enough to support an exception when combined with other specific allegations such as an inability to access a law library or procure a Form 40 (See [***Trapp***, 696 S.W.3d at 895]), no such facts are alleged by [the] Amended Motion.

(Internal quotation marks omitted.)

Movant timely appeals.

Analysis

Movant asserts that he "pled circumstances beyond his control justifying late receipt of the motion, which require an evidentiary hearing to prove." Movant then attempts to identify those circumstances by his argument stating that "[i]n his *pro se* motion, [Movant] explained that he was incarcerated in the State of Kansas on a writ in another case and did not receive his mail until he was back in [DOC] on September 27, 2024, past the due date." Movant further states that his amended motion "explained that third party interference should excuse the untimeliness due to [Movant]'s incarceration in Kansas during the relevant time period."

Initially, we must note that Movant's *pro se* motion contained no allegation that

Movant "did not receive his mail" while incarcerated in Kansas. Rather, Movant alleged that he lacked access to his "legal work" while so incarcerated. Regardless, however, the allegation in Movant's *pro se* motion is immaterial to this analysis for the following reasons:

> [T]he parties and the court should consider only the amended motion, and not the movant's *pro se* motion, because the amended motion supersedes the movant's *pro se* motion and renders it a nullity. Any claims from a movant's *pro se* motion which are not included in a subsequent amended motion are not to be considered by the court. Accordingly, the motion court has no duty to respond to the allegations in the movant's *pro se* motion that were not in the amended motion, and any reference to those allegations in the motion[] court's findings is *surplusage*.

Spann v. State, 677 S.W.3d 897, 903 (Mo.App. 2023) (internal quotation marks, citations, and footnote omitted).

As such, we turn to Movant's amended motion. The motion court accurately observed that the only *fact* alleged by Movant in his amended motion preventing the timely filing of his *pro se* motion was that he was incarcerated in Kansas. With this as Movant's only factual allegation, it follows that

> Movant's amended PCR motion alleges no facts supporting that he prepared his initial PCR motion at any time during the 90 days after mandate was issued in [his direct appeal], that he did all that he reasonably could to ensure the timely filing of his prepared motion during that period, or that a third party beyond Movant's control actively interfered with Movant's timely filing of his prepared motion.

McDaniel v. State, 608 S.W.3d 763, 770 (Mo.App. 2020). We note that in ***McDaniel***, the movant was at all relevant times in federal custody. ***Id.*** at 765. His third-party interference claim included (amongst other allegations mostly directed at inaction by

retained counsel) an allegation that he "'has never been in the custody of DOC (where the Form 40 and its instructions are readily available)[.]'" ***Id.*** at 766. This Court concluded that said custody allegation was insufficient to invoke the third-party interference exception, stating that "'Missouri case law is clear that there is no requirement that a person be in Missouri custody, much less in the custody of DOC, to institute proceedings under Rule 29.15.'" ***Id.*** at 770 n.7 (quoting ***Watson v. State***, 520 S.W.3d 423, 432 (Mo. banc 2017)).

Under ***McDaniel***, Movant's sole factual allegation that he was in out-of-state custody is likewise insufficient to invoke the third-party interference exception to the time limits of Rule 29.15(b). This instant case is not analogous to the ***Trapp*** case, which the motion court accurately distinguished in its opinion on the basis that Movant did not allege his incarceration *prevented him from accessing* a law library or Form 40. *See* ***Trapp***, 696 S.W.3d at 896. The motion court did not err in dismissing Movant's amended petition. Movant's sole point is denied.

Decision

The motion court's dismissal of Movant's amended post-conviction relief motion is affirmed.

BECKY J. WEST, C.J. – OPINION AUTHOR

JENNIFER R. GROWCOCK, J. – CONCURS

MATTHEW P. HAMNER, J. – CONCURS