Missouri Court of Appeals

Southern District

In Division

KEETON H. WARING, Movant-Appellant, v. STATE OF MISSOURI, Respondent-Respondent.	Case Number SD39329 **Filed: November 18, 2026**

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable Joshua B. Christensen, Judge

AFFIRMED

Keeton H. Waring ("Movant") was convicted by a jury of second-degree murder, unlawful use of a weapon, and unlawful possession of a firearm.[1] Movant timely filed an amended post-conviction motion pursuant to Rule 29.15 ("the Motion"), which alleged that he had received ineffective assistance of trial counsel. The Circuit Court of Greene County, Missouri ("motion court"), denied the Motion in its entirety after an evidentiary

[1] *See* §§ 565.021, 571.030, and 571.070. All statutory citations are to RSMo 2016, including amendments effective January 1, 2017, and all rule references are to Missouri Court Rules (2026), unless otherwise specified.

hearing. Movant brings two points on appeal, both of which allege that the motion court clearly erred in denying his ineffective assistance of counsel claims. Finding no clear error, this Court affirms the motion court's Judgment and Order Denying Movant's Amended Motion to Vacate, Set Aside, or Correct Judgment and Sentence Under Rule 29.15 ("Judgment and Order").

Factual Background and Procedural History

The State charged Movant with unlawful possession of a firearm for having possession of a shotgun while having previously been convicted of a felony, unlawful use of a weapon, and second-degree murder for the shooting of Jamie Carroll ("Victim") on or about February 21, 2019. A jury found Movant guilty as charged. Movant was sentenced to life in prison on the second-degree murder charge, 10 years' imprisonment for unlawful possession of a firearm, and seven years' imprisonment for unlawful use of a weapon. The trial court ordered that the life sentence and the 10-year sentence would run concurrently, with the seven-year sentence to run consecutively.[2] This Court affirmed Movant's convictions and sentences on direct appeal in an unpublished order and statement. *See* State v. Waring, SD37300, October 21, 2022. Relevant facts from Movant's criminal case are set forth below without further attribution.

[2] Movant was found to be a prior and persistent offender and was sentenced accordingly on all three counts.

Movant had been living at a house at 2050 North Johnston for two or three days before the shooting. One or two hours before the shooting, Chelzie Huffman ("Huffman") went to the house to visit. When she arrived, Movant was not there. The only other person there was Becky Robb ("Robb"), who was asleep in the bedroom. Huffman witnessed the events that followed right up until the time of the shooting, after which she ran out of the house.

Movant arrived shortly after Huffman. Movant was "extremely mad" and claimed someone had stolen things from him, including a backpack and a cell phone. A short time later, two more men arrived: Matt Deever ("Deever") and Robb's brother-in-law, Victim. When Victim and Deever entered the house, Movant was in the bedroom arguing with Robb. Victim walked into the bedroom to try to diffuse the situation and calm Movant. Robb occasionally yelled "no" or "stop." At some point, Movant and Victim came out of the bedroom toward the living room where Huffman saw Movant holding a short shotgun. Victim tried to push Movant's gun away from Victim. Eventually, Victim either let go of the gun or Movant pulled it away. To appease Movant, Victim put his arms up at about shoulder level and said something like, "Okay. That's okay." Movant then shot Victim. Huffman saw and heard Movant shoot Victim, and she identified Movant in court as the shooter.

When Corporal Christina Flood arrived at the house, her dash cam was recording. About a minute and 15 seconds after her arrival, the following exchange took place with Deever:

> OFFICER: What did he look like?
>
> DEEVER: He was a little white dude [unintelligible] named [Movant]. He had tattoos and shit.
>
> OFFICER: What was he wearing?
>
> DEEVER: A black shirt with like diamonds on the front of it, some shit like that.

Half a minute later, the following exchange took place with Robb:

> OFFICER: What's his name?
>
> ROBB: His name is [Movant]. I don't know – I just don't know his last name.

Sometime after the shooting, a detective interviewed Huffman. At trial, the detective testified that Huffman said that there was a struggle over a shotgun that Movant was holding, with Victim at the barrel end of the gun. Movant was able to pull the gun from Victim's grip, at which time Victim took a step backwards and displayed a submissive hand movement. Huffman then saw and heard Movant shoot Victim.

Movant timely filed the Motion pursuant to Rule 29.15,[3] and the motion court held an evidentiary hearing on October 1, 2024, and July 30, 2025. The motion court denied all claims in Movant's Motion, and Movant now appeals.

Standard of Review

We review a denial of a motion for post-conviction relief "to determine whether the [motion] court's findings and conclusions are clearly erroneous." ***Bricker v. State***, 736 S.W.3d 508, 511 (Mo. App. E.D. 2026) (alteration in original) (quoting ***Thomas v. State***, 710 S.W.3d 129, 132 (Mo. App. E.D. 2025)); Rule 29.15(k). A judgment is clearly erroneous when, after reviewing the entire record, this Court is "left with a definite and firm impression that a mistake has been made." ***Bricker***, 736 S.W.3d at 511 (quoting ***Washington v. State***, 681 S.W.3d 347, 353 (Mo. App. E.D. 2023)). This Court reviews the record in the light most favorable to the judgment, accepting as true all evidence and inferences that support the judgment and disregarding evidence and inferences that are contrary to it. ***Id.***

Both of Movant's claims on appeal allege ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel:

> [A] movant must satisfy *Strickland*'s two-pronged test. *Koenig v. State*, 727 S.W.3d 909, 911 (Mo. App. E.D. 2025) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Under *Strickland*,

[3] Movant timely filed his *pro se* motion on December 27, 2022, but no amended motion was filed on Movant's behalf. Appointed counsel subsequently filed an affidavit alleging that Movant had been abandoned, and the motion court found abandonment. The motion court then reappointed counsel on January 16, 2024, and appointed counsel timely filed the Motion at issue in this case on May 15, 2024.

> the movant must demonstrate by a preponderance of the evidence: "(1) trial counsel failed to exercise the level of skill and diligence reasonably competent trial counsel would in a similar situation, and (2) he was prejudiced by that failure." *Shockley v. State*, 579 S.W.3d 881, 892 (Mo. banc 2019). "If the movant fails to establish either prong, 'then we need not consider the other and the claim of ineffective assistance must fail.'" *Thomas*, 710 S.W.3d at 132 (quoting *Roberts v. State*, 535 S.W.3d 789, 797 (Mo. App. E.D. 2017)).

Id. We review Movant's claims with these principles in mind.

Analysis

Point 1

In his first point on appeal, Movant claims:

> The motion court clearly erred in denying claim 8(b) of [Movant's Motion] because this violated his right to effective assistance of counsel […] in that trial counsel's failure to advise [Movant] the government would consider a 20-year plea to second-degree murder was constitutionally deficient performance; [Movant] was prejudiced because the record affirmatively supports he would have taken such an offer instead of subjecting himself to the life sentence he received.

We disagree.

In claim 8(b) of his Motion, Movant claims that his trial counsel was ineffective for failing "to ask Movant if he would accept a 20 year offer on murder in the second degree." On this claim, the motion court found that trial counsel did discuss the status of plea negotiations with Movant, and that Movant did not suffer any prejudice. Not only did the motion court conclude that the credible testimony established that Movant would have rejected any plea offer, it also concluded that no formal plea offer was ever extended to Movant. The motion court's findings are not clearly erroneous.

Missouri law only recognizes "two narrow instances of ineffective counsel in the context of plea bargaining: (1) failing to communicate an existing offer to a defendant; and (2) providing bad advice about an existing offer." ***O'Brien v. State***, 673 S.W.3d 143, 147 (Mo. App. S.D. 2023). As in ***O'Brien***, Movant does not allege that trial counsel failed to communicate an existing plea offer to him, nor does he complain that trial counsel offered bad advice about an existing offer. ***Id.*** As such, "[t]his is not a valid claim under Rule 29.15." ***Id.***

Movant acknowledges that no formal plea offer was ever made to him, and the State indicated the same at a hearing held prior to Movant's trial. In fact, the parties discussed the status of plea negotiations on the record prior to the trial, and the State informed the trial court that it was willing to negotiate "along the lines of a murder 2 guilty plea[.]" Movant, however, was only amenable to pleading guilty to "manslaughter with a single-digit sentence[,]" something the State was "not in a position to offer." As such, plea negotiations did not go anywhere and did not result in a formal plea offer to Movant.

The law is clear that failed plea negotiations do not implicate the Constitution and Movant has therefore failed to allege a cognizable claim on appeal. *See* ***Rowland v. State***, 129 S.W.3d 507, 510 (Mo. App. S.D. 2004) ("Unless and until a plea agreement is reached and embodied in the judgment of a court, nothing has occurred of constitutional significance."). Additionally, even if a formal offer had been extended to

Movant, the credible testimony from trial counsel was that Movant was only willing to plead guilty to a manslaughter charge with a single-digit sentence, something the State was not willing to consider. Point one is denied.

Point 2

In his second point on appeal, Movant claims:

> The motion court clearly erred in denying claim 8(c) of [Movant's Motion] because this violated his right to effective assistance of counsel […] in that trial counsel's failure to investigate Johnny Braudrick [("Braudrick")] as a witness was constitutionally deficient performance under the circumstances; because Braudrick's testimony could have impeached Chelzie Huffman's testimony as the leading government witness, [Movant] was prejudiced by counsel's unconstitutional performance.

We disagree.

In claim 8(c) of his Motion, Movant claims that trial counsel was ineffective for failing to call Braudrick as a witness because Braudrick would have impeached Huffman. Movant claims Braudrick and Huffman were in front of the residence at the time of the shooting, and Braudrick would have put Huffman's testimony that she witnessed the shooting in doubt. The motion court found that this claim failed because Braudrick's testimony would not have offered Movant a defense, would have strengthened the State's case, and would have impeached only small portions of Huffman's testimony. Once again, the motion court's findings are not clearly erroneous.

> "To prove ineffective assistance for failure to call a witness, the defendant must show that: '(1) trial 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.'" *Glass v. State*, 227 S.W.3d 463, 468 (Mo. banc 2007) (quoting *Hutchison v. State*, 150 S.W.3d 292, 304 (Mo. banc 2004)).

Anderson v. State, 564 S.W.3d 592, 601 (Mo. banc 2018). "Ordinarily the choice of witnesses is a matter of trial strategy and will support no claim of ineffective assistance of counsel." ***Id.*** (quoting ***Barton v. State***, 432 S.W.3d 741, 750 (Mo. banc 2014)).

Movant claims that Braudrick's testimony would have provided him a viable defense because it would have impeached Huffman's testimony, the only eyewitness to the crime. Specifically, Movant claims that Braudrick's testimony would have established that Huffman was coming out of the house and facing away from the house when the gunshot went off.

We first note that, as the motion court correctly found, Braudrick's testimony would have only arguably impeached a small portion of Huffman's testimony, while corroborating a large portion of it. Huffman testified at trial that she did not remember telling officers that she saw the gun discharge; rather, she testified that, upon hearing the gun discharge, she ran out the door and left right away. More importantly, however, Braudrick's testimony would not have impeached most of Huffman's testimony, including the fact that she saw Movant with the gun pointed at Victim before hearing the shot.

Finally, trial counsel credibly testified at the evidentiary hearing in this case that he and Movant discussed witnesses before trial and agreed that they did not want to

call as witnesses anyone who was present inside the residence, including Braudrick. Movant cannot succeed on a claim of ineffective assistance of counsel when he knowingly and voluntarily agrees to counsel's proposed trial strategy. ***Riston v. State***, 737 S.W.3d 137, 143 (Mo. App. S.D. 2026).

Movant's second point is denied, and the Judgment and Order of the motion court is affirmed.

JENNIFER R. GROWCOCK, J. – OPINION AUTHOR

MATTHEW P. HAMNER, J. – CONCURS

BRYAN E. NICKELL, J. – CONCURS