

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

TODD C. WESTERGAARD,)	No. ED100063
)	
Movant/Appellant,)	Appeal from the Circuit Court
)	of St. Charles County
v.)	
)	
STATE OF MISSOURI,)	Honorable Nancy L. Schneider
)	
Respondent/Respondent.)	Filed: March 25, 2014

Todd C. Westergaard (Movant) appeals from the motion court’s judgment denying his amended Motion to Vacate, Set Aside or Correct Judgment and Sentence filed pursuant to Missouri Rule of Criminal Procedure 24.035.

On appeal, Movant argues the motion court erred in denying his post-conviction motion without an evidentiary hearing because he pled facts that warranted relief and were not conclusively refuted by the record, in that he was denied his rights to effective assistance of counsel and due process of law because his plea counsel induced his unknowing, unintelligent and involuntary plea on the mistaken belief that if he pleaded guilty pursuant to a plea agreement and received a concurrent sentence on a charge of felony possession of a controlled substance which was longer than a concurrent sentence imposed on a charge of felony forgery, he would not have to serve a mandatory minimum 80% of his sentence for forgery. Movant also filed a late notice of appeal, stating his notice of appeal was untimely because the *in forma pauperis* order was entered after the notice of appeal was filed.

AFFIRMED.

Division Two Holds: Movant’s notice of appeal was timely filed because, pursuant to Rule of Civil Procedure 81.04, amended on January 1, 2012, a motion to proceed *in forma pauperis* filed before the notice of appeal is considered to be filed with the notice of appeal.

Movant has failed to allege facts supporting his claims that are not clearly refuted by the record or would entitle him to relief. Movant was aware of the mandatory minimum sentencing requirement, understood the State’s sentencing recommendation and indicated he had not been promised anything other than the State’s recommendation in exchange for his plea of guilty. Furthermore, Movant’s alleged belief that he could avoid the mandatory minimum sentence requirement based exclusively on receiving a longer sentence on a separate crime is objectively unreasonable.

Opinion by: Sherri B. Sullivan, J. Lawrence E. Mooney, P.J., and Robert G. Dowd, Jr., J.,
concur.

Attorney for Movant: Gwenda Renee Robinson
Attorneys for Respondent: Todd T. Smith

<p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p>
