

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS EASTERN DISTRICT**  
**DIVISION FOUR**

JERRY A. RUTLIN,	)	No. ED100126
	)	
Movant/Appellant,	)	Appeal from the Circuit Court
	)	of St. Francois County
vs.	)	
	)	
STATE OF MISSOURI,	)	Honorable Sandra Martinez Levy
	)	
Respondent.	)	Filed: June 30, 2014

Jerry Rutlin (Movant) appeals from the judgment of the motion court denying his Rule 29.15 motion for post-conviction relief without an evidentiary hearing. Movant contends that the motion court clearly erred in denying his claim that: (1) his trial counsel was ineffective for failing to investigate and call his former cellmate to testify at trial; and (2) appellate counsel was ineffective for failing to raise a claim on appeal that the trial court plainly erred in prohibiting defense counsel from implicating Movant’s cellmate during closing arguments.

AFFIRMED.

Division IV Holds:

- 1) The motion court did not clearly err in denying Movant’s post-conviction claim without an evidentiary hearing on the basis that trial counsel was ineffective for failing to call Movant’s former cellmate to testify at trial because Movant failed to allege unrefuted facts warranting post-conviction relief and Movant failed to show that the witness’s proposed testimony would have provided a viable defense.
- 2) The motion court did not clearly err in denying post-conviction relief based on Movant’s claim that appellate counsel was ineffective for failing to raise a claim on appeal that the trial court plainly erred in prohibiting the defense from implicating Movant’s cellmate during closing arguments.

Opinion by: Philip M. Hess, J.  
Lisa S. Van Amburg, P. J. and Patricia L. Cohen, J. concur.

Attorney for Appellants: Andrew Zleit  
Attorney for Respondent: Mary Highland Moore

<b>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.</b>
--