OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DONOVAN E. TATE,	)	No. ED101060
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Honorable Rex Burlison
STATE OF MISSOURI,	)	
	)	
Respondent.	)	FILED: April 14, 2015

Appellant Donovan Tate ("Tate") appeals from the judgment of the motion court, following an evidentiary hearing, denying his Rule 29.15 motion seeking to set aside his convictions for first-degree robbery and armed criminal action. A jury found Tate guilty of one count of first-degree robbery and one count of armed criminal action stemming from the robbery of a Boost Mobile store. Tate's convictions were affirmed by this Court on direct appeal in State v. Tate, 390 S.W.3d 265 (Mo. App. E.D. 2013). Tate subsequently filed a Rule 29.15 motion for post-conviction relief alleging that both trial counsel and appellate counsel provided ineffective assistance of counsel. Following an evidentiary hearing, the motion court denied Tate's Rule 29.15 motion. On appeal, Tate claims that the motion court clearly erred in denying his Rule 29.15 motion because Tate proved by a preponderance of the evidence that (1) appellate counsel was ineffective for failing to assert, on direct appeal, that the trial court erred in overruling Tate's Batson challenge to the prosecution's peremptory strike of Juror 558, and (2) trial counsel was ineffective for failing to share with Tate certain incriminating video surveillance evidence and audio recording evidence prior to trial.

AFFIRMED.

Division III holds: Because the motion court did not clearly err in concluding that appellate counsel's decision not to pursue a Batson claim on appeal was a reasonable strategic decision, we affirm the judgment of the motion court denying Tate's Rule 29.15 motion alleging ineffective assistance of appellate counsel. Because the motion court did not clearly err in accepting trial counsel's testimony that Tate was adequately informed of the video and audio evidence and that trial counsel advised Tate to plead guilty, we affirm the judgment of the motion court denying Tate's Rule 29.15 motion alleging ineffective assistance of trial counsel

Opinion by: Kurt S. Odenwald, P.J., Robert G. Dowd, Jr., J. and Gary M. Gaertner, Jr., J. Concur.

Attorney for Appellant: Matthew Huckeby

Attorney for Respondent: Chris Koster and Evan J. Buchheim

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.