

**OPINION SUMMARY**

**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

COREY A. WIGGINS, ) ED101660  
 )  
 Movant/Appellant, ) Appeal from the Circuit Court  
 ) of St. Louis County  
 v. ) 13SL-CC04554  
 )  
 STATE OF MISSOURI, ) Honorable Thea A. Sherry  
 )  
 Respondent. ) Filed: April 28, 2015

Corey A. Wiggins (Movant) appeals the judgment denying his motion for post-conviction relief under Missouri Rule of Criminal Procedure 24.035 without an evidentiary hearing. Movant argues that he adequately alleged unrefuted facts establishing his guilty plea was involuntary because his plea counsel failed to discuss the viability of proceeding to trial on the theory that he was guilty of the lesser-included offense of voluntary manslaughter, rather than second-degree murder.

REVERSED AND REMANDED.

Division Three Holds: The factual basis recited by the State does not conclusively refute the factual allegations in Movant’s motion. Additionally, Movant’s responses to general questions about satisfaction with counsel were insufficient to conclusively refute his specific allegation that counsel failed to discuss the possibility of proceeding to trial under a theory of guilt of a lesser-included offense. There is also nothing in the record to refute Movant’s allegation that he was not aware of the possibility of arguing for voluntary manslaughter, given that here it is based on the possibility that his history with the victim as well as events leading up to the shooting may have been relevant to show a context leading to sudden passion arising from adequate cause. Thus, the motion court clearly erred in denying Movant’s request for an evidentiary hearing.

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

Attorney for Appellant: Gwenda R. Robinson  
 Attorneys for Respondent: Chris Koster, Todd T. Smith

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 IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND  
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