

**OPINION SUMMARY**

**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

FRANKLIN R. VOEGTLIN,	)	No. ED101851
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Honorable Thomas J. Frawley
STATE OF MISSOURI,	)	
	)	
Respondent.	)	FILED: June 23, 2015

Appellant Franklin R. Voegtlin (“Voegtlin”) appeals from the judgment of the motion court denying his Rule 24.035 motion for post-conviction relief without an evidentiary hearing. Voegtlin pleaded guilty to one count of the Class C felony of stealing by deceit at least \$500. Voegtlin was sentenced as a prior and persistent offender to ten years’ imprisonment. Voegtlin contends on appeal that the motion court clearly erred in denying his motion for post-conviction relief without an evidentiary hearing because he alleged facts not refuted by the record that would entitle him to relief on his ineffective assistance of counsel claim. Specifically, Voegtlin contends that plea counsel rendered ineffective assistance of counsel by (1) erroneously advising Voegtlin that if he pleaded guilty he would be sentenced to a term of ten years’ imprisonment, with execution of the sentence suspended, and placed on four years’ probation; (2) failing to investigate Voegtlin’s claim that he had a claim of right to the money he was accused of stealing; (3) failing to advise Voegtlin that if he were to be sentenced to prison, he would be required to serve a minimum of 40% of the sentence; and (4) failing to object when Voegtlin was classified as a prior and persistent offender. Voegtlin additionally contends that the motion court erred in failing to include sufficient findings of fact and conclusions of law in its judgment on the issue of plea counsel’s failure to object to Voegtlin’s prior and persistent offender classification.

**AFFIRMED IN PART; REMANDED IN PART.**

Division III holds: Because the record of the guilty plea hearing directly refutes Voegtlin’s claim that his plea was involuntary, the motion court did not clearly err in denying Voegtlin’s ineffective assistance claim without an evidentiary hearing with respect to Points One and Two on appeal. Because Voegtlin failed to allege facts warranting relief on his claim of ineffective assistance of counsel with respect to Point Three, the motion court did not clearly err in denying Voegtlin’s claim without an evidentiary hearing. Because the trial court did not issue any conclusions of law with respect to Voegtlin’s claim relating to his prior and persistent offender classification, we remand Point Four to the motion court with instructions to provide specific conclusions of law addressing the prior and persistent offender issues raised by Voegtlin in his motion for post-conviction relief as required by Rule 24.035(j). We remand with instructions as to Point Four only and affirm the remainder of the motion court’s judgment.

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

Attorney for Appellant: Lisa M. Stroup

Attorney for Respondent: Chris Koster and Shaun J. Mackelprang

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