

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION THREE

DAVID A. MCNEAL,)	No. ED102152
)	
Appellant,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	0922-CC09606
)	
STATE OF MISSOURI,)	Honorable Michael K. Mullen
)	
Respondent.)	Filed: February 16, 2016

David A. McNeal (“Movant”) appeals the judgment denying his Rule 29.15¹ motion for post-conviction relief. In 2008, Movant was convicted of second-degree burglary and stealing for the theft of a drill from an apartment he entered. He has an extensive criminal history, such that he was prosecuted as a prior and persistent offender, subjecting him to an extended term of imprisonment if convicted of a felony. At Movant’s trial, trial counsel effectively conceded Movant’s guilt of trespass, but failed to request the lesser-included instruction for trespass to submit this misdemeanor alternative to the jury. In his Rule 29.15 motion for post-conviction relief that is the subject of this appeal, Movant asserts his trial counsel was ineffective for failing to request a lesser-included instruction on trespass, which might have shielded him from a felony conviction and an extended term of imprisonment. The motion court denied Movant’s motion after an evidentiary hearing.

REVERSED AND REMANDED.

Division Three holds: The motion court clearly erred in denying Movant relief because (1) under the circumstances of this case, trial counsel lacked an objectively reasonable strategic reason for failing to request a trespass instruction; and (2) had a trespass instruction been submitted, a reasonable probability existed that the outcome of the trial would have been different and the jury would have acquitted Movant of burglary. Accordingly, we reverse the motion court’s judgment and remand for a new trial.

Opinion by: Robert M. Clayton III, P.J.
Lawrence E. Mooney, J., and James M. Dowd, J., concur.

Attorney for Appellant: Andrew E. Zleit

Attorney for Respondent: Chris Koster and Shaun J. Mackelprang

¹ All references to Rules are to Missouri Supreme Court Rules (2015).

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.