

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

HATTIE L. SMITH, Appellant,)	No. ED90883
)	
vs.)	Appeal from the St. Louis County
)	Circuit Court
STATE OF MISSOURI, Respondent.)	Filed: December 23, 2008

OPINION SUMMARY

Hattie Smith (“Movant”) appeals the from the judgment of the Circuit Court of St. Louis County denying her Rule 29.15 motion for post-conviction relief. Plaintiff asserts that the motion court clearly erred in denying, without an evidentiary hearing, her claims that: (1) trial counsel was ineffective for failing to inform Movant of her right to testify at trial; and (2) appellate counsel was ineffective for failing to assert on direct appeal that the trial court erred in giving the jury the hammer instruction. We affirm in part and reverse and remand in part.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division One Holds: Movant is entitled to an evidentiary hearing on her claim that trial counsel was ineffective for failing to inform Movant of her right to testify at trial because the facts alleged by Movant are not refuted by the record. We affirm the motion court’s denial of Movant’s claim that appellate counsel was ineffective for failing to assert on appeal that the trial court erred in giving the jury the hammer instruction because Movant failed to establish that she was prejudiced by counsel’s alleged error.

Opinion by: Patricia L. Cohen, J. Kurt S. Odenwald, P.J. and Glenn A. Norton, J., concur

Attorney for Appellant: Maleaner R. Harvey

Attorneys for Respondent: Shaun J. Mackelprang and Daniel N. McPherson

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