

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS – EASTERN DISTRICT**

DIVISION THREE

STATE OF MISSOURI,	)	No. ED92691
	)	
Plaintiff/Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	0722-CR10035-01
	)	
DONALD ROBERT HAWKINS,	)	Honorable John J. Riley
	)	
Defendant/Appellant.	)	FILED: April 27, 2010

Donald Hawkins (Defendant) appeals from the judgment upon his conviction by a jury for three counts of first-degree statutory rape, in violation of Section 566.032, RSMo 1994;<sup>1</sup> one count of attempted first-degree statutory sodomy, in violation of Sections 566.062 and 564.011; three counts of second-degree statutory rape, in violation of Section 566.034; three counts of second-degree statutory sodomy, in violation of Section 566.064; one count of attempted second-degree statutory sodomy, in violation of Sections 566.064 and 564.011; one count of second-degree child molestation, in violation of Section 566.068; and two counts of incest, in violation of Section 568.020. Defendant was sentenced to a total of twenty-six years imprisonment.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

Division III Holds:

(1) The trial court’s judgment entered upon his conviction for three counts of first-degree statutory rape, one count of attempted first-degree statutory sodomy, three counts of second-degree statutory rape, three counts of second-degree statutory sodomy, one count of attempted second-degree statutory sodomy, one count of second-degree child molestation, and two counts of incest is affirmed under Rule 30.25(b).

(2) The trial court plainly erred when it imposed a sentence of seven years on the count of attempted second-degree statutory sodomy, a class D felony, for which the maximum sentence was five years. We reverse the trial court’s judgment with respect to Defendant’s sentence for attempted second-degree statutory sodomy. We remand the cause with instructions for the trial court to resentence Defendant in accordance with our holding.

Opinion by: Mary K. Hoff, Judge    Glenn A. Norton, Presiding Judge and Lawrence E. Mooney, Judge, concur.

Attorney for Appellant:	Gwenda Renee Robinson
Attorney for Respondent:	Chris Koster

**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.**

<sup>1</sup> Unless otherwise indicated, all further statutory references are to RSMo 1994.

