

**OPINION SUMMARY**

**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

ANDRE MOORE, Movant/Appellant, ) No. ED93295  
 ) Appeal from the Circuit Court  
v. ) of the City of St. Louis  
 ) Honorable Timothy J. Wilson  
STATE OF MISSOURI, Respondent/Respondent. ) Date: July 6, 2010

Movant, Andre Moore, appeals from the judgment denying on the merits his Rule 24.035 motion for post-conviction relief without an evidentiary hearing after he pleaded guilty to possession of a controlled substance, in violation of section 195.202 RSMo (2000); felony resisting arrest, in violation of section 575.150 RSMo (Cum. Supp. 2005); and felony driving while revoked, in violation of section 302.321 RSMo (Cum. Supp. 2005).

**AFFIRMED; REMANDED FOR CORRECTION OF CLERICAL ERRORS IN UNDERLYING JUDGMENT.**

Division One Holds:

1. When it may be clearly inferred from the dates of the convictions that the prior felonies were committed at different times, the defendant is required to come forward with evidence that the crimes were, in fact, committed at the same time.
2. Because movant's prior convictions were based on violations of state law and because movant had no prior alcohol-related enforcement contacts, section 302.321.2 RSMo (Cum. Supp. 2005) did not require the state to plead or prove that movant was represented by or waived his right to counsel or that he served ten or more days for his prior driving while revoked convictions in order to charge movant with felony driving while revoked.
3. The state presented a sufficient factual basis for the court to accept movant's guilty plea for felony resisting arrest because the state showed movant was being arrested for a felony.
4. Here, the written judgment in the underlying criminal case was inconsistent with the oral pronouncement of judgment. On appeal from the judgment of the motion court in a post-conviction relief action, the appellate court may remand the case with directions to the motion court to order entry of a nunc pro tunc order to conform the written judgment in the underlying case to the oral disposition at sentencing.

Opinion by: Kathianne Knaup Crane, P.J.  
Clifford H. Ahrens, J. and Nannette A. Baker, J., concur.

Attorney for Appellant: Jo Ann Rotermund

Attorney for Respondent: Daniel N. McPherson

**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.**