

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| PIETRO HICKEY, Movant/Appellant, |) | No. ED93397 |
| |) | |
| vs. |) | Appeal from the Circuit Court |
| |) | of St. Charles County |
| STATE OF MISSOURI, Respondent. |) | Filed: July 6, 2010 |

The movant, Pietro Hickey, appeals the denial of his Rule 29.15 motion for post-conviction relief without an evidentiary hearing. The movant claims that trial counsel was ineffective, first—for laboring under an actual conflict of interest, and second—for inducing the movant’s unknowing, unintelligent, and involuntary waiver of his right to testify.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART

DIVISION THREE HOLDS: We affirm the motion court’s determination, without an evidentiary hearing, that counsel did not labor under an actual conflict of interest and thus was not ineffective. We hold, however, that the motion court clearly erred in denying an evidentiary hearing to the movant on his claim that counsel misled him into making an unknowing waiver of his right to testify. We reverse and remand for the limited purpose of holding an evidentiary hearing to determine the veracity of the movant’s claim that counsel misled him into waiving his right to testify.

Opinion By: Lawrence E. Mooney, J. Glenn A. Norton, P.J., and Mary K. Hoff, J.,
concur.

Attorney for Appellant: Gwenda Robinson

Attorneys for Respondent: Chris Koster and Mary H. Moore

**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.**