

OPINION SUMMARY
MISSOURI COURT OF APPEALS – EASTERN DISTRICT
DIVISION FIVE

HAIRL JOHNSON,)	No. ED93541
)	
Movant/Appellant,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	2204P-04554
)	
STATE OF MISSOURI,)	Honorable Margaret M. Neill
)	
Respondent.)	FILED: August 24, 2010

Hairl Johnson (Movant) appeals from the motion court’s judgment denying his amended Rule 24.035 motion for post-conviction relief.

Movant agreed to plead guilty to four drug-related offenses in exchange for the State’s promise to refrain from proving he was a prior and persistent drug offender and to instead recommend to the plea court that Movant receive concurrent sentences of fifteen years. During the sentencing hearing, the plea court referred to a second agreement between the Movant and the State, an agreement granting Movant jail-time credit for the time he had spent on bond. The plea court issued an order referencing this secondary agreement and ordering that such credit be granted.

The Department of Corrections did not grant Movant such credit because the law does not permit jail-time credit for the time that a defendant is free from custody on bond.

On appeal, Movant argues that the motion court clearly erred because his mistaken belief regarding the consequences of his plea agreement, a belief fostered by the erroneous representations made by his counsel and the plea court, impinged on the voluntariness and understanding of his guilty pleas.

REVERSED.

Division Five Holds: Movant was entitled to rely on the positive representations made to him by the plea court and by his counsel that an agreement granting him bond-time credit was permissible. Because bond-time credit is unavailable to defendants as a matter of law, these representations fostered a mistaken belief in Movant as to the consequences of his guilty plea. For this reason, the motion court’s judgment is reversed, and the causes shall be remanded to the trial court to provide Movant the opportunity to withdraw his guilty pleas.

Opinion by: Mary K. Hoff, Judge
Patricia L. Cohen, Judge, concur.
Attorney for Movant/Appellant:
Attorney for Respondent:

Gary M. Gaertner, Jr., Presiding Judge and
Alexandra Johnson
Chris Koster, Dora A. Fichter

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