

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| EDDIE HEAD, |) | No. ED93893 |
| |) | |
| Movant, |) | |
| |) | Appeal from the Circuit Court |
| vs. |) | of the City of St. Louis |
| |) | |
| STATE OF MISSOURI, |) | Honorable Julian L. Bush |
| |) | |
| Respondent. |) | FILED: September 28, 2010 |

Eddie Head (Movant) appeals from the judgment of the Circuit Court of the City of St. Louis denying, after an evidentiary hearing, his Rule 29.15 motion for post-conviction relief. Movant claims that his trial counsel was ineffective for failing to (1) present evidence of another man’s DNA on the rape victim and (2) correct the trial court’s misapprehension of the felony class of the kidnapping conviction as relevant to sentencing.

REVERSED AND REMANDED FOR RE-SENTENCING.

DIVISION THREE HOLDS: (1) The record supports the motion court’s finding that counsel’s decision to omit DNA evidence was reasonable trial strategy. (2) Counsel provided ineffective assistance in that he ignored the proper felony class of Movant’s kidnapping conviction and, as a result, affirmatively misinformed the trial court thereof and requested sentencing based on harsher guidelines than were applicable to the offense. Even though Movant’s sentence remained within the legal range, we cannot say that the judge would not have pronounced a less severe sentence using the correct guidelines. That determination is left to the discretion of the trial court. The appropriate remedy is to remand for re-sentencing.

Opinion by: Clifford H. Ahrens, J. Sherri B. Sullivan, P.J., and Lawrence E. Mooney, J.

Attorney for Appellant: Scott Thompson

Attorney for Respondent: Chris Koster

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| <p>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.</p> |
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