

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| CLARENCE BURGESS, Appellant, |) | No. ED94641 |
| |) | |
| vs. |) | Appeal from the Circuit Court |
| |) | of St. Louis County |
| STATE OF MISSOURI, Respondent. |) | FILED: February 22, 2011 |

Clarence Burgess (“Movant”) appeals from the dismissal of his Rule 24.035 motion for post-conviction relief based on Movant’s waiver of his right to seek post-conviction relief as part of the plea agreement. Movant also appeals the motion court’s denial of his motion for a change of judge.

TRANSFERRED.

Division Four holds: We would affirm the motion court’s denial of Movant’s motion for a change of judge. In addition, we would affirm the motion court’s dismissal of Movant’s Rule 24.035 motion because the record clearly demonstrates Movant was properly informed of his rights and that the waiver was made knowingly, voluntarily, and intelligently. See Jackson v. State, 241 S.W.3d 831 (Mo. App. E.D. 2007). However, in light of the general interest and importance of the issues regarding defense counsel advising a defendant to waive his right to seek post-conviction relief for ineffective assistance of counsel pursuant to Rule 24.035, we transfer the case to the Missouri Supreme Court, pursuant to Supreme Court Rule 83.02. The State has filed a motion to dismiss Movant’s appeal based upon Movant’s waiver of his right to seek post-conviction relief. This motion was taken with the case. Because of our disposition of this case, we hereby deny the State’s motion.

Opinion by: Robert G. Dowd, Jr., J.
Kurt S. Odenwald, P.J. and Robert G. Wilkins, Sp.J., concur.

Attorney for Appellant: Timothy J. Forneris

Attorneys for Respondent: Chris Koster and Jayne T. Woods

**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.**