

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

LESTER KRUPP, JR.,)	No. ED95024
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
v.)	
)	
STATE OF MISSOURI,)	Honorable Colleen Dolan
)	
Respondent.)	Filed: March 8, 2011

Lester F. Krupp, Jr. (Krupp) appeals from the motion court's judgment denying his amended Rule 29.15 motion for post-conviction relief on the merits, without an evidentiary hearing. Krupp was convicted by a jury of felonious restraint, four counts of deviate sexual assault, and one count of sexual misconduct in the first degree. Krupp pled guilty to charges that had originally been severed from those charges for which he was tried – one count of felonious restraint and one count of second-degree domestic assault. This Court dismissed Krupp's direct appeal based upon Krupp's waiver of appeal in circuit court. State of Missouri v. Krupp, Jr., ED92150 (Mo. App. E.D. 2009). Krupp files this motion for post-conviction relief alleging that he received ineffective assistance of counsel because his trial counsel failed to present the testimony of a witness, failed to submit instructions for sexual misconduct in the first degree as a lesser-included offense for deviate sexual assault, and gave errant advice regarding Krupp's parole eligibility.

TRANSFERRED to the Missouri Supreme Court.

Division Four holds: Upon our review of the record, we would dismiss Krupp's appeal and remand this matter to the motion court with directions to vacate its judgment and dismiss Krupp's amended post-conviction motion because Krupp waived his right to file a petition for post-conviction relief as part of his plea and sentencing agreement. However, in light of the general interest and importance of the issues involved, we transfer the case to the Missouri Supreme Court, pursuant to Supreme Court Rule 83.02.

Opinion by: Kurt S. Odenwald, P.J.
Robert G. Dowd, Jr., J., and Nancy L. Schneider, Sp. J., Concur

Attorney for Appellant: Scott Thompson

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.