

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

RENELL BURSTON, Appellant,) No. ED95228
) Appeal from the Circuit Court of
vs.) the City of St. Louis
) Honorable Jimmie M. Edwards
STATE OF MISSOURI, Respondent.) Filed: June 21, 2011

Renell Burston (Movant) appeals from the City of St. Louis Circuit Court's judgment denying his second Rule 29.15 motion for post-conviction relief, as successive. Movant contends that the motion court clearly erred in denying his second Rule 29.15 motion because: (1) his first Rule 29.15 motion was dismissed without prejudice and the dismissal was not a final, appealable judgment; (2) Movant was denied his rights to due process because he never received a ruling on the merits of his post-conviction relief claims; and (3) the record is "not clear" whether Movant's post-conviction counsel for his first Rule 29.15 motion "amended [Movant's] initial motion or did much of anything" and the motion court's dismissal of his first Rule 29.15 motion lacked detailed findings.

AFFIRMED

Division Five Holds: The motion court did not clearly err in denying Movant's second Rule 29.15 motion as successive because: (1) Rule 67.01 allowing civil litigants to refile an action dismissed without prejudice does not apply to Rule 29.15 motions; (2) Rule 29.15 does not provide a substantive right to collaterally attack a conviction or sentence, and when seeking post-conviction relief, movants are bound by the procedures available in Rule 29.15; and (3) Rollins v. State, 716 S.W.2d 810 (Mo.App.W.D. 1986) and Lewis v. State, 700 S.W.2d 491 (Mo.App.E.D. 1985), where the court allowed successive motions under Rule 27.26 and the motion was filed *pro se*, the motion was withdrawn without a record to demonstrate a lack of merit, and movant was not given the opportunity to amend the original motion, are distinguishable.

Opinion by: Patricia L. Cohen, J.
Gary M. Gaertner, Jr., P.J., and Mary K. Hoff, J., concur.

Attorney for Appellant: Edward S. Thompson

Attorney for Respondent: Shaun J. Mackelprang

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