

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

DAVID A. McNEAL,)	No. ED96796
)	
Appellant,)	Appeal from the Circuit Court of
)	the City of St. Louis
v.)	Cause No. 0922-CC09606
)	Honorable Michael Mullen
STATE OF MISSOURI,)	
)	
Respondent.)	Filed: April 10, 2012

David A. McNeal appeals the motion court’s denial of his Rule 29.15 motion for post-conviction relief. McNeal argues the motion court erred in denying his motion in that he alleged facts that were not refuted by the record that his trial counsel was ineffective for failing to request a jury instruction on a lesser included offense.

AFFIRMED.

DIVISION TWO HOLDS: McNeal’s allegation that his trial counsel’s decision not to request an instruction on a lesser-included offense is refuted by the record, and as such, the motion court did not err in denying McNeal’s Rule 29.15 motion without an evidentiary hearing.

Opinion by: Kenneth M. Romines, J.
Kathianne Knaup Crane, P.J. concurs.
Lawrence E. Mooney, J. dissents.

Attorneys for Appellant David A. McNeal: Andrew E. Zleit

Attorneys for Respondent State of Missouri: Chris Koster, Shaun J. Mackelprang

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