

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

ANDREW RUSH, JR.,) ED97300
)
 Appellant,) Appeal from the Circuit Court
) of the City of St. Louis
v.) 1022-CC11641
)
STATE OF MISSOURI,) Honorable Steven R. Ohmer
)
 Respondent.) Filed: May 29, 2012

Andrew Rush, Jr., (Movant) appeals from the judgment denying his Rule 24.035¹ motion without an evidentiary hearing. His motion alleged his counsel at sentencing was ineffective for requesting without permission from Movant that the sentencing court revoke Movant’s probation and sentence him to an imprisonment term of two years.

AFFIRMED.

Division One Holds: Because Movant alleged ineffectiveness of sentencing counsel, his claim was cognizable under Rule 24.035. However, Movant failed to show facts unrefuted by the record that but for his counsel’s request of straight revocation with a two-year sentence, there was a reasonable probability that the sentencing court would have sentenced him to less than five years in prison.

Opinion by: Gary M. Gaertner, Jr., J.
Clifford H. Ahrens, P.J., and Roy L. Richter, J., concur.

Attorney for Appellant: Gwenda Renee Robinson
Attorney for Respondent: Karen L. Kramer

¹ All rule references are to Mo. R. Crim. P. (2012), unless otherwise indicated.