

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, ex rel.,)	No. ED97414
CHRIS KOSTER, Attorney General,)	
)	
Relator,)	
)	
v.)	Writ of Habeas Corpus
)	Circuit Court of St. Francois County
HONORABLE SHAWN MCCARVER,)	Cause No. 11SF-CC00062
Associate Circuit Judge, St. Francois)	
County, Missouri, and VICKI WEIBLE,)	
Circuit Clerk, St. Francois County,)	
)	
Respondents.)	Filed: May 15, 2012

In this original proceeding in certiorari, the State, as relator, requests this court to quash the writ of habeas corpus issued in favor of Robert Gnade by the Circuit Court of St. Francois County. The State maintains that the circuit court erred in granting the writ because Gnade failed to show the cause and prejudice necessary to overcome the procedural default of a claim that Gnade could have raised either on direct appeal or in a Rule 29.15 motion.

WRIT OF HABEAS CORPUS AFFIRMED.

Writ Division Seven Holds: The circuit court did not exceed its authority or abuse its discretion in granting the writ of habeas corpus because: 1) Gnade demonstrated that the factual basis for his claim was not known to him prior to or during the pendency of his direct appeal or during the time available for filing for post-conviction relief; 2) Gnade established prejudice by virtue of our decision in Preston v. State, 325 S.W.3d 420 (Mo.App.E.D. 2010).

Opinion by: Patricia L. Cohen, P.J.
Kathianne Knaup Crane, J., and Roy L. Richter, J., concur.

Attorney for Relator: Andrew W. Hassell

Attorney for Respondents: Ellen H. Flottman

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.