

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

MATTHEW WILSON,)	No. ED97772
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Charles County
vs.)	
)	Honorable Ted Clint House
STATE OF MISSOURI,)	
)	
Respondent.)	FILED: October 23, 2012

Matthew Wilson (“Wilson”) appeals from the motion court’s denial, without an evidentiary hearing, of his motion for post-conviction relief under Mo. R. Crim. P. 29.15 (2007). Wilson was convicted after a jury trial of first-degree robbery under Section 569.020,¹ felonious restraint under Section 565.120, forcible sodomy under Section 566.060, sexual abuse under Section 566.100, and four counts of armed criminal action under Section 571.015. This Court affirmed Wilson’s conviction on direct appeal in State v. Wilson, 320 S.W.3d 222 (Mo. App. E.D. 2010). Wilson subsequently filed, and the motion court denied, a motion for post-conviction relief on grounds of ineffective assistance of appellate counsel and prosecutorial misconduct. Wilson argued in his motion that appellate counsel was ineffective in failing to raise the issue of whether the trial court plainly erred in failing to appoint substitute defense counsel. Wilson further contended that his conviction should be set aside due to prosecutorial misconduct.

AFFIRMED.

Division IV holds: Wilson’s appellate counsel was not ineffective for failing to raise on direct appeal the issue of whether the trial court plainly erred in failing to appoint substitute counsel because the point would not have been successful on appeal. As to his second point, Wilson may not raise a claim of prosecutorial misconduct in a motion for post-conviction relief when he failed to raise that claim in his direct appeal. Accordingly, the motion court did not clearly err in denying Wilson’s motion for post-conviction relief.

Opinion by: Kurt S. Odenwald, J., Lawrence E. Mooney, P.J., and Patricia L. Cohen, J., Concur.

Attorney for Appellant: Andrew E. Zleit

Attorney for Respondent: Chris Koster and Gregory L. Barnes

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.

¹ All statutory references are to RSMo. Cum. Supp. 2007.