



**In the Missouri Court of Appeals
Eastern District
DIVISION ONE**

JOHNNY D. SITTNER,)	No. ED99165
)	
Appellant,)	Appeal from the Circuit Court
)	of Washington County
vs.)	09WA-CC00535
)	
STATE OF MISSOURI,)	Honorable Kenneth W. Pratte
)	
Respondent.)	Filed: August 13, 2013

OPINION SUMMARY

Johnny D. Sittner appeals the motion court's denial of his amended motion to "re-open" his post-conviction proceedings without an evidentiary hearing.

AFFIRMED.

Division One holds:

- (1) Sittner's amended motion to "re-open" his post-conviction proceedings is actually a motion for post-conviction relief due to abandonment filed under Rule 29.15.¹ Accordingly, pursuant to Rule 29.15(k), we have jurisdiction over Sittner's appeal from the motion court's "order" denying him relief.
- (2) Sittner's claim that he was incompetent to assist post-conviction counsel ("Counsel") is not a recognized claim of abandonment. Therefore, the motion court did not clearly err in denying Sittner's motion for post-conviction relief due to abandonment without an evidentiary hearing.
- (3) Sittner's claim that he was abandoned due to Counsel's alleged failure to include additional grounds of relief in Sittner's amended Rule 29.15 motion amounts to a claim of ineffective assistance of post-conviction counsel. Because claims of ineffective

¹ All references to Rules are to Missouri Supreme Court Rules (2013).

assistance of post-conviction counsel are categorically unreviewable, the motion court did not clearly err in denying Sittner's motion for post-conviction relief due to abandonment without an evidentiary hearing.

Opinion by: Glenn A. Norton, J. Roy L. Richter, P.J. and Clifford H. Ahrens, J., concur.

Attorney for Appellant: Elizabeth Unger Carlyle

Attorneys for Respondent: Chris Koster, Attorney General
Jennifer A. Rodewald, Assistant Attorney General

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.