

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

KRISTEN SCHALLON, Movant/Appellant,)	No. ED99733
vs.)	Appeal from the Circuit Court
STATE OF MISSOURI, Respondent.)	of the City of St. Louis
	Honorable Michael Mullen
	Filed: June 30, 2014

The movant, Kristen Schallon, appeals the denial of his Rule 29.15 motion for post-conviction relief following an evidentiary hearing. A jury had convicted the movant of committing 45 sexual offenses against his stepdaughter when she was between the ages of eight and 16. The Circuit Court of the City of St. Louis had entered judgment against the movant, and sentenced him to concurrent terms of imprisonment totaling 30 years, namely 19 sentences of 30 years each for the counts of forcible sodomy, forcible rape, and first-degree statutory sodomy; 16 sentences of seven years each for the counts of second-degree statutory sodomy and attempted second-degree statutory sodomy; and ten sentences of one year each for the counts of first-degree sexual misconduct. This post-conviction appeal involves 12 counts of second-degree statutory sodomy, for which the court sentenced the movant to concurrent terms of imprisonment of seven years on each count. The movant asserts that appellate counsel was ineffective for failing to challenge the sufficiency of the evidence to support his convictions on these 12 counts.

AFFIRMED.

DIVISION TWO HOLDS: We conclude that appellate counsel was not ineffective. First, viewing the evidence and inferences therefrom in the light most favorable to the verdict, we hold that the evidence was sufficient to support the movant's conviction of each of the 12 counts of second-degree statutory sodomy at issue here. Consequently, appellate counsel could not be ineffective for failing to challenge the sufficiency of the evidence on these counts on direct appeal.

Second, because post-conviction counsel denied appellate counsel access to her complete file and notes on the movant's case, forcing appellate counsel to speculate about her reasoning, decisions, and strategy on appeal, her testimony was robbed of its probative force. As a result, the movant failed to rebut the presumption that appellate counsel performed effectively and that her decisions resulted from reasonable strategy.

Opinion by: Lawrence E. Mooney, P.J.
Robert G. Dowd, Jr., J. and Sherri B. Sullivan, J. concur.

Attorney for Appellant: Gwenda R. Robinson

Attorneys for Respondent: Chris Koster and Daniel N. McPherson

**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.**