

Summary of SC90695, *Linn O. Hoskins III v. State of Missouri*

Appeal from the Livingston County circuit court, Judge Stephen K. Griffin
Argued and submitted Oct. 19, 2010; opinion issued Dec. 7, 2010

Attorneys: Hoskins was represented by Ellen H. Flottman of the public defender's office in Columbia, (573) 882-9855, and the state was represented by Richard A. Starnes of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man who was denied post-conviction relief on one ground raises a different ground on appeal. In a unanimous decision written by Judge Michael A. Wolff, the Supreme Court of Missouri affirms the circuit court's judgment. The applicable rule governing post-conviction relief does not permit a new ground to be reviewed for the first time on appeal and provides no exceptions that would cover the new claim raised here. The post-conviction relief rule further prohibits the conflicting rule of civil procedure – that otherwise permits such “plain error” review in certain circumstances – from applying here.

Facts: Linn Hoskins committed three felonies before he first was sentenced. He pleaded guilty to second-degree burglary and stealing for breaking into an apartment in December 2006 and stealing a television, stereo and CDs. He also pleaded guilty to first-degree robbery for breaking into the room of a former roommate in January 2007 and choking her. In June 2007, the circuit court sentenced Hoskins to 15 years in prison for the first-degree robbery conviction, suspended execution of the sentence and placed him on probation for five years. The next month, the court sentenced Hoskins to prison terms of seven years each for the stealing and second-degree robbery convictions, suspended execution of both sentences and placed him on probation for five years. While he was on probation, he took a four-wheel ATV and caused property damage while driving it around. He pleaded guilty to stealing a motor vehicle and was placed in jail pending sentencing. While awaiting sentencing, Hoskins and another prisoner attempted to escape from custody. The court sentenced Hoskins to seven years in prison for the conviction for stealing a motor vehicle, revoked his probation, and ordered the 15-year sentence to be executed (to take effect) and served concurrently with the sentence for the offense involving the ATV. The court also ordered that the other two seven-year sentences (for the offenses involving the CDs) be executed and served consecutively to each other and to the 15-year sentence. This latter order noted the state's agreement not to charge Hoskins with attempted escape if he served the sentences consecutively. Hoskins subsequently sought post-conviction relief, which the court denied. He appeals.

AFFIRMED.

Court en banc holds: There is no authority for Hoskins to seek “plain error” review in his appeal from the denial of post-conviction relief under Rule 24.035. When he sought such relief, the only ground he raised was that the court engaged in improper plea negotiations with the prosecutor. The court overruled his motion. On appeal, for the first time Hoskins argued the

circuit court lacked authority to order that he serve his previous three prison sentences consecutively because they were not deemed consecutive when they first were pronounced and suspended. In effect, he is arguing he should have been sentenced only to a total of 15 years in prison, not 29. Rule 24.035(d) requires an individual filing a post-conviction relief motion filed under Rule 24.035 to say in the motion that he “waives any claim for relief known to the movant that is not listed in the motion.” This language conflicts with Rule 84.13(c), a civil procedure rule that allows for plain-error review of certain issues, at the discretion of the appellate court, even if they were not preserved for appellate review. By its terms, Rule 24.035 is governed by the rules of civil procedure unless such a rule conflicts with the post-conviction rule. As such, the plain-error review otherwise permitted under Rule 84.13(c) does not apply on appeal to review claims not raised in a Rule 24.035 motion.