

Summary of SC90918, Anthony C. Moore v. State of Missouri

Appeal from the St. Louis city circuit court, Judge Bryan L. Hettenbach
Argued and submitted Oct. 19, 2010; opinion issued Dec. 7, 2010

Attorneys: Moore was represented by Gwenda R. Robinson of the public defender's office in St. Louis, (314) 340-7662, and the state was represented by Jamie P. Rasmussen 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 filed his motion for post-conviction relief from his prison sentence more than four months late appeals the judgment dismissing his motion. In a 7-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the circuit court's judgment. The record reflects the appeals court sent the man a copy of its mandate when it issued, and there are no rare circumstances that justify his failure to file a pro se motion within the 90-day time limit. In a concurring opinion, Judge Laura Denvir Stith notes that the man failed to show his appellate counsel was ineffective because he did not prove she affirmatively undertook to inform him of when the mandate would issue, and the record shows he knew when the mandate issued and the significance of that date as beginning the time in which he could seek post-conviction relief.

Facts: Anthony Moore was convicted of two counts of first-degree murder and was sentenced to two terms of life in prison with no possibility of parole. At the sentencing proceeding, the court informed Moore he had the right to seek post-conviction relief under Rule 29.15. The court told Moore that if he appealed, his Rule 29.15 motion would be due 90 days after the court of appeals issued its mandate (making its opinion final). The court further instructed Moore which form to use for filing his motion and where he could obtain it. Moore told the court he understood his right to file the Rule 29.15 motion. Moore appealed, and the court of appeals affirmed his conviction. It issued its mandate in October 2008. In March 2009, Moore's appellate counsel sent him a letter advising him that the mandate had issued in the appeal, that the deadline for filing a Rule 29.15 motion had passed two months earlier and that, if he wished to seek post-conviction relief, he should do so as soon as possible. More than two months later – and 218 days after the mandate issued – Moore filed his motion. The circuit court dismissed his motion as untimely. Moore appeals.

AFFIRMED.

Court en banc holds: The circuit court did not clearly err in dismissing Moore's motion for post-conviction relief as there were no rare circumstances in this case that justify Moore's failure to prepare and send the motion within 90 days after the mandate issued. Legal assistance is not required to file the initial motion under Rule 29.15(b); an unrepresented indigent defendant could do so on his own, and then the circuit court appoints counsel who has the opportunity to file an amended motion. Under Rule 29.15(b), an individual who fails to file a motion for post-conviction relief within the 90-day time limit completely waives the right to seek relief under that rule and completely waives all claims that could be raised in a post-conviction motion.

Courts have created two exceptions that excuse untimely filings: when post-conviction counsel abandons the individual; and when rare circumstances outside the individual's control justify late receipt of the motion. Abandonment traditionally excuses a late filing when post-conviction counsel fails to file an amended motion, depriving the individual of meaningful review of the claims; when post-conviction counsel files an untimely amended claim; or when post-conviction counsel's overt actions prevent the individual from timely filing the original motion. Here, there was no abandonment. Appellate counsel has no duty to represent an individual in post-conviction proceedings or inform the individual of his post-conviction rights under Rule 29.15 or the issuance of a mandate. Nothing in the record indicates Moore's appellate counsel agreed to inform Moore when the mandate issued, the appellate court's docket entries indicate the clerk of the appellate court sent Moore a copy of the mandate the day it issued, and he does not refute that he received the mandate.

Concurring opinion by Judge Stith: The author writes separately to note that where counsel affirmatively has told the client that counsel will take responsibility for a matter, then the client has the right to rely on that statement. Under the rules of professional responsibility, an attorney who has undertaken to inform the client of a deadline has an ethical obligation to fulfill that undertaking. As such, it is ineffective assistance of counsel to fail to file timely a client's pro se motion for post-conviction relief despite promising to do so. If the record here supported Moore's claim that his appellate counsel undertook to inform him when the mandate issued but failed to do so, then he would be entitled to relief, even though Missouri's rules impose no such requirement on appellate counsel. Moore failed to present evidence that his appellate counsel specifically undertook to inform him of when the mandate issued, and the record shows he was aware the mandate had issued through the notice the appellate clerk sent and was aware of the significance of that date through the information provided him at the time of sentencing. As such, he failed to show his appellate counsel was ineffective.