

**Summary of SC91695, Willie E. Cooper v. State of Missouri**

Appeal from the St. Louis County circuit court, Judge Gloria Clark Reno  
Argued and submitted Oct. 18, 2011; opinion issued Dec. 6, 2011

**Attorneys:** Cooper was represented by Scott Thompson of the public defender's office in St. Louis, (314) 340-7662, and the state was represented by John W. Grantham 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 waived his rights to seek post-conviction relief as part of a plea agreement appeals the circuit court's overruling of his motion for such relief. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case with instructions for the circuit court to dismiss the motion. The record from the circuit court refutes the man's claims that his attorney failed to exercise the customary skill and diligence of a reasonably competent attorney under similar circumstances and that he was prejudiced. Further, the record clearly demonstrates that the man was informed of his post-conviction rights properly and that his waiver of those rights was made knowingly, voluntarily and intelligently.

Judge Cynthia L. Martin, a judge on the Missouri Court of Appeals, Western District, sat in this case by special designation to fill a then-vacancy on the Court (from before the appointment of Judge George W. Draper III).

**Facts:** Willie Cooper pleaded guilty to two counts of criminal conduct. As part of the plea agreement with the state, Cooper waived his right to seek post-conviction relief, and the state agreed to recommend that Cooper serve two concurrent 15-year sentences in prison, that the court suspend execution (enforcement) of the sentences and that the court place Cooper on probation for five years. At a hearing, the circuit court questioned Cooper about the terms of the agreement and the circumstances under which he entered into it. He told the court that he was satisfied with his attorney's service, that his attorney did not pressure him to plead guilty, that he understood the rights he was giving up as part of the plea agreement, and that he was entering into the plea agreement knowingly, voluntarily and intelligently. Satisfied with Cooper's answers, the court entered its judgment in accordance with the plea agreement. Cooper subsequently violated the terms of his probation. As a result, the circuit court revoked Cooper's probation and executed the sentences, to run concurrently. Cooper then sought post-conviction relief, alleging ineffective assistance of counsel. The circuit court overruled Cooper's motion for relief on the merits, without a hearing. Cooper appeals.

**VACATED AND REMANDED WITH DIRECTIONS.**

**Court en banc holds:** The circuit court erred in ruling on Cooper's motion on the merits rather than dismissing it based on his waiver of post-conviction relief.

(1) Whether a defense counsel's potential conflict of interest alone is enough to render a defendant's guilty plea unknowing, involuntary and unintelligent is an issue of first impression in this Court. After Cooper waived his rights to seek post-conviction relief, the advisory committee adopted an opinion that it may be a potential conflict of interest for defense attorneys to advise their clients to waive the clients' rights to seek post-conviction relief alleging ineffective assistance of counsel. In reliance on this opinion, Cooper alleges his waiver of his post-conviction rights was not knowing, voluntary and intelligent. Since the opinion was adopted, no attorney has sought review of the opinion, nor has this Court been asked to discipline an attorney based on this opinion. Additionally, the opinion fails to reference or discuss state and federal court decisions that approve the waiver of post-conviction relief as part of a plea bargain. Further, even if anyone had sought to discipline an attorney pursuant to this advisory committee opinion, a violation of a professional rule of ethics does not equate to a constitutional violation warranting post-conviction relief.

(2) Because Cooper did not plead this claim in his motion before the circuit court, it did not make specific findings of fact or conclusions of law as to this point. The court's judgment will not be reversed for not making a finding of fact or conclusion of law to an issue not presented. In the future, if a movant alleges that a waiver of post-conviction relief was not made knowingly, voluntarily or intelligently because of an actual conflict of interest that adversely affected defense counsel's performance, the circuit court shall comply with the requirements of Rule 24.035(h) and (j) and make findings of fact and conclusions of law regardless of whether a hearing is held.

(3) It is settled law in this state and many other states that a defendant can waive his right to seek post-conviction relief in return for a reduced sentence if the record clearly demonstrates that the defendant was informed of his rights properly and that the defendant made the waiver knowingly, voluntarily and intelligently. To prevail on a claim of ineffective assistance of counsel founded on counsel's conflict of interest, the movant (who filed the motion for relief) would have to plead and prove that his attorney had an actual conflict of interest, where something was done or foregone that was advantageous to the attorney and detrimental to the movant. Here, Cooper received substantial benefit in exchange for his waiver of post-conviction relief: he was granted probation instead of being sent directly to prison, and when he violated the terms of his probation, he received the benefit of concurrent rather than consecutive sentences. In addition, his own testimony on the record refutes his claims that his attorney failed to exercise the customary skill and diligence of a reasonably competent attorney under similar circumstances and that he was prejudiced. Further, the record clearly demonstrates that Cooper was informed of his post-conviction rights properly and that his waiver of those rights was made knowingly, voluntarily and intelligently. Accordingly, the circuit court's judgment is vacated, and the case is remanded with instructions that the circuit court dismiss Cooper's motion for post-conviction relief.