

Summary of SC95139, *Walter Barton v. State of Missouri*

Appeal from the Cass County circuit court; Judge R. Michael Wagner
Argued and submitted March 1, 2016; opinion issued May 3, 2016

Attorneys: Barton was represented by Frederick A. Duchardt Jr., an attorney in Trimble, (816) 213-0782; and the state was represented by Michael J. Spillane and Caroline M. Coulter 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 death row defendant appeals the circuit court's judgment denying him permission to supplement his post-conviction motion and overruling his motion asking the court to find that his post-conviction counsel abandoned him. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the circuit court's judgment. The defendant's post-conviction counsel did not abandon him. His claim is one of ineffective assistance of post-conviction counsel, which is unreviewable in Missouri courts.

Facts: Walter Barton was convicted of first-degree murder and sentenced to death for the 1991 murder of an Ozark mobile home park manager. During his post-conviction proceedings, one of his attorneys withdrew as counsel due to a mental illness. Before withdrawing, however, Barton's attorney filed an amended post-conviction relief motion alleging 48 claims of error within six broad grounds for relief. Despite this filing, Barton asserted that, because his attorney suffered from a mental illness at some point during these proceedings, and this caused counsel not to bring certain additional claims, Barton was abandoned. The circuit court denied him relief. He appeals.

AFFIRMED.

Court en banc holds: Barton was not abandoned by his post-conviction counsel. This Court consistently has recognized a claim of abandonment in only two distinct circumstances – when post-conviction counsel: (1) takes *no action* with respect to filing an amended motion or (2) is aware of the need to file an amended motion but fails to do so in a timely manner. In the years since this Court recognized such claims, it has not expanded abandonment beyond these two situations, neither of which applies to Barton's case. Barton's counsel *did* take action by filing an amended post-conviction motion asserting numerous claims for relief. Barton was not abandoned. Barton's claims are that of ineffective assistance of post-conviction counsel, which are unreviewable in Missouri courts.