

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**MICHAEL L. GEHLERT,
APPELLANT**

vs.

**STATE OF MISSOURI,
RESPONDENT**

WD69445

DATE: FEBRUARY 10, 2009

Appeal from:
MILLER COUNTY CIRCUIT COURT
THE HONORABLE G. STANLEY MOORE, JUDGE

Appellate Judges:
Division Three: Howard, P.J., Ellis and Ahuja, JJ.

Attorneys:
Craig A. Johnston, Esq., Columbia, MO., for Appellant

Shaun J. Mackelprang, Esq., Jefferson City, MO, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS, WESTERN DISTRICT

MICHAEL L. GEHLERT,
v.
STATE OF MISSOURI,

Appellant
Respondent

WD 69445

Miller County, Missouri

Before Division Three Judges: Howard, P.J., Ellis and Ahuja, JJ.

Michael Gehlert appeals the denial of his *pro se* Rule 24.035 motion for postconviction relief in which he sought to vacate his conviction and seven-year sentence for forgery, section 570.090, RSMo 2000. He asserts that the motion court clearly erred in denying his motion because (1) the court failed to hold a hearing and determine that he was abandoned by postconviction counsel; and (2) the time limit for filing an amended motion had not yet passed.

REVERSED AND REMANDED.

Division Three holds:

Where the record showed no activity by postconviction counsel other than attempting to acquire the transcripts and, thus, does not indicate whether counsel made the determinations required by Rule 24.035(e) regarding filing an amended motion, a presumption is created that counsel failed to comply with the rule. The denial of Mr. Gehlert's Rule 24.035 motion is, therefore, reversed, and the case is remanded to the motion court for determination of whether Mr. Gehlert was abandoned by postconviction counsel.

Opinion by: Victor Howard, J.

February 10, 2009

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