

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CARL P. GLAVIANO,**

**Appellant,**

**v.**

**STATE OF MISSOURI,**

**Respondent.**

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**DOCKET NUMBER WD69753**

**Date: September 15, 2009**

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Appeal from:

Lafayette County Circuit Court

The Honorable Larry D. Harman, Judge

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Appellate Judges:

Division One: Alok Ahuja, Presiding Judge, James M. Smart and Lisa White  
Hardwick, Judges

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Attorneys:

Frederick J. Ernst, Esq., Kansas City, MO, for appellant.

Shaun J. Mackelprang, Esq., and Daniel N. McPherson, Esq., Jefferson City, MO,  
for respondent.

**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**COURT OF APPEALS -- WESTERN DISTRICT**

**CARL P. GLAVIANO**

**Appellant,**

**v.**

**STATE OF MISSOURI,**

**Respondent.**

WD69753

LAFAYETTE COUNTY

Before Division One Judges: Alok Ahuja, Presiding Judge, James M. Smart and Lisa White Hardwick, Judges

On appeal from the denial of his Rule 29.15 motion, Carl Glaviano contends the motion court erred in: (1) ruling that his punitive sentencing claim was not cognizable in this post-conviction proceeding; (2) precluding him from deposing the sentencing judge; and (3) determining that defense counsel was not ineffective in failing to present character witnesses at his sentencing hearing.

**AFFIRMED.**

**Division One holds:** (1) the motion court correctly determined that the punitive sentencing claim was not cognizable in this post-conviction proceeding because it could have been brought on direct appeal; (2) Glaviano was not entitled to depose the sentencing judge on the punitive sentencing claim because the claim was not cognizable; and (3) the motion court did not clearly err in denying the

ineffective assistance of counsel claim because the evidence established that trial counsel made a reasonable, strategic decision not to call character witnesses at the sentencing hearing.

**Opinion by: Lisa White Hardwick, Judge**

September 15, 2009

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**