

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**REMIGIO CHERCO**

**APPELLANT,**

**v.  
STATE OF MISSOURI**

**RESPONDENT.**

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DOCKET NUMBER WD70071

DATE: February 9, 2010

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Appeal From:

Clay County Circuit Court  
The Honorable Michael J. Maloney, Judge

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Appellate Judges:

Division Four: Thomas H. Newton, Chief Judge, Lisa White Hardwick and Cynthia L. Martin,  
Judges

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Attorneys:

Elizabeth U. Carlyle, Columbus, MS, for appellant.

Shaun J. Mackelprang, Jefferson City, MO, for respondent.

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

REMIGIO CHERCO,

APPELLANT,

v.

STATE OF MISSOURI,

RESPONDENT.

No. WD70071

Clay County

Before Division Four Judges: Thomas H. Newton, Chief Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

Remigio Cherco appeals the motion court's denial of his Rule 24.035 motion for post-conviction relief following an evidentiary hearing. Cherco contends that the motion court erred in: (1) denying his motion on the grounds that his guilty pleas were not knowingly and voluntarily entered, and (2) denying his motion on the grounds that he received ineffective assistance of counsel at his sentencing hearing affecting the length of his sentence.

**AFFIRMED.**

**Division Four holds:**

(1) Cherco did not demonstrate deficient performance of counsel or prejudice negating the voluntariness of his guilty plea, notwithstanding his claim that he was unaware the recommended sentence was not binding on the trial court, or his claim that he was misinformed about his eligibility for parole.

(2) Cherco did not overcome the presumption that trial counsel's decision not to call character witnesses during the sentencing hearing was sound trial strategy. *Strickland* permits Cherco to argue prejudice in his sentencing hearing by arguing that but for trial counsel's errors his sentence would have been lower. However, Cherco failed to demonstrate prejudice, as there is no reasonable probability that character witness testimony would have affected the sentence imposed by the trial court.

**Opinion by: Cynthia L. Martin, Judge**

February 9, 2010

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