

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

DARYLE GILYARD,

Appellant

v.

STATE OF MISSOURI.

Respondent

DOCKET NUMBER WD70467

DATE: February 23, 2010

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Edith L. Messina, Judge

Appellate Judges:

Division Three: James Edward Welsh, P.J., Mark D. Pfeiffer and Karen King Mitchell, JJ.

Attorneys:

S. Kate Webber, Kansas City, MO

Counsel for Appellant,

Attorneys:

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Counsel for Respondent
Counsel for Respondent
Counsel for Respondent

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

**DARYLE GILYARD, Appellant, v.
STATE OF MISSOURI, Respondent**

WD70467

Jackson County

Before Division Three Judges: James Edward Welsh, P.J., Mark D. Pfeiffer and Karen King Mitchell, JJ.

Daryle Gilyard appeals the circuit court's judgment denying his Rule 24.035 motion for post-conviction relief after an evidentiary hearing. Gilyard pleaded guilty to one count of first degree assault and one count of armed criminal action for which he was sentenced to eighteen years imprisonment on each count, with the sentences to run concurrently. In this appeal, Gilyard alleges that his plea was involuntary because his plea counsel coerced him into pleading. In particular, Gilyard asserts that his plea counsel: (1) told him that he would definitely be sentenced to twenty-five years imprisonment if he went to trial, (2) failed to explain the elements of assault in the first degree, and (3) failed to "ensure that he would not necessarily be convicted at trial."

AFFIRMED.

Division Three holds:

Gilyard did not assert any of these claims in his post-conviction motion. Nowhere in his amended motion does Gilyard assert that his plea counsel told him that he would definitely be sentenced to twenty-five years imprisonment if he went to trial or that his plea counsel failed to explain the elements of assault in the first degree. Moreover, we cannot find in his motions Gilyard's allegation that his plea counsel failed to "ensure that he would not necessarily be convicted at trial." None of these allegations appear in Gilyard's pro se motion or amended motion for post-conviction relief. When claims on appeal are not asserted in an original or amended post-conviction motion, they are waived.

Opinion by: James Edward Welsh, Judge

February 23, 2010

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