

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

GALIN E. FRYE

APPELLANT,

v.

STATE OF MISSOURI

RESPONDENT.

DOCKET NUMBER WD70504
DATE: March 23, 2010

Appeal From:

Boone County Circuit Court
The Honorable Clifford E. Hamilton, Jr., Judge

Appellate Judges:

Division Four: Thomas H. Newton, Chief Judge, Joseph M. Ellis and Cynthia L. Martin, Judges

Attorneys:

Emmett D. Queener, Columbia, MO, for appellant.

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

MISSOURI APPELLATE COURT OPINION SUMMARY

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No. WD70504

Boone County

Before Division Four: Thomas H. Newton, Chief Judge, Joseph M. Ellis and Cynthia L. Martin,
Judges

Galin Frye appeals the motion court's denial of his Rule 24.035 motion for post-conviction relief following an evidentiary hearing. Frye contends that the circuit court clearly erred in denying his motion because he received ineffective assistance of counsel as a result of trial counsel's failure to inform him of a plea offer made by the State.

REVERSED AND REMANDED.

Division Four holds:

Frye established by a preponderance of the evidence that he was not informed of the offer. Trial counsel's performance was deficient. Frye was prejudiced by counsel's ineffective assistance because, as a result of counsel's deficient performance, Frye was unable to accept a plea offer he would otherwise have accepted. The judgment entered on the guilty plea is reversed and the guilty plea is deemed withdrawn. The case is remanded for further proceedings.

Opinion by: Cynthia L. Martin, Judge

March 23, 2010

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