

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**CHRISTOPHER M. HART,
APPELLANT
vs.**

**STATE OF MISSOURI,
RESPONDENT**

DOCKET NUMBER WD73527

DATE: JUNE 5, 2012

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Michael W. Manners, Judge

Appellate Judges:

Division One: Joseph M. Ellis, P.J., James E. Welsh and Alok Ahuja, JJ.

Attorneys:

Susan L. Hogan, for Appellant

Richard A. Starnes, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CHRISTOPHER M. HART, APPELLANT

v.

STATE OF MISSOURI, RESPONDENT

WD73527

Jackson County, Missouri

Before Division One Judges: Joseph M. Ellis, P.J., James E. Welsh and Alok Ahuja, JJ.

Christopher Hart appeals from the denial of his Rule 24.035 motion for post-conviction relief following an evidentiary hearing. Hart had previously entered a plea of guilty to one count of assault in the second degree. In exchange for his plea, the State agreed to recommend a sentence of fifteen years imprisonment and placement in a long-term drug treatment program. The court sentenced him consistently with the agreement. Hart was delivered to the Missouri Department of Corrections on July 24, 2002, where he began a drug treatment program. After later being released on probation, Hart violated his probation, which was eventually revoked.

REVERSED AND REMANDED FOR DISMISSAL.

Division One holds:

(1) Because he did not appeal the original judgment, Appellant was required to file his Rule 24.035 motion within 180 days of being delivered into the custody of the Department of Corrections. This time began to run on July 24, 2002, when he was delivered to the Department of Corrections for drug treatment. As it was untimely filed, Appellant's post-conviction motion should have been dismissed.

(2) While Appellant's claim that the trial court lacked authority to revoke his probation might be cognizable by means of a writ of prohibition or *habeas corpus*, and certainly would have been an appropriate argument to make at the probation violation hearing, it cannot be asserted in an untimely post-conviction motion challenging his conviction.

Opinion by Joseph M. Ellis, Judge

Date: June 5, 2012

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