

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ARYAN D. NEAL**

**APPELLANT,**

**v.  
STATE OF MISSOURI**

**RESPONDENT.**

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DOCKET NUMBER WD73588

DATE: July 31, 2012

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Appeal From:

Jackson County Circuit Court  
The Honorable J. Dale Youngs, Judge

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Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

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Attorneys:

Fred Ernst and Susan E. Summers, Kansas City, MO, for appellant.

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

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**ARYAN D. NEAL,**

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**v.**

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No. WD73588

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Before Division Three: Victor C. Howard, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

Aryan Neal appeals from the denial of his Rule 24.035 motion after an evidentiary hearing. First, Neal contends that he was denied effective assistance of counsel because trial counsel had a conflict of interest and acted contrary to Neal's interests in connection with Neal's motion to withdraw his guilty pleas. Neal claims that had trial counsel not acted contrary to his interests, there is a reasonable probability that the trial court would have permitted the withdrawal of his guilty pleas and he would have exercised his right to a jury trial. Second, Neal claims that his guilty pleas were not knowing and voluntary because they were made in reliance on trial counsel's affirmative misrepresentation that a key witness positively identified Neal. Neal claims that had he known that the witness did not positively identify him, he would not have pled guilty and would have exercised his right to a jury trial.

Affirmed.

(1) Plea counsel's alleged misrepresentation of Neal's identification by a witness amounted to nothing more than an opinion about the import of the witness's testimony. Neal had equal access to the witness's testimony and an equal opportunity to independently characterize its potential weight. Neal failed to meet his burden to establish ineffective assistance of counsel.

(2) Plea counsel's examination of Neal *after* his guilty pleas were entered could not, as a matter of practicality, have impacted the voluntariness of Neal's guilty pleas.

(3) Where a defendant claims ineffective assistance of counsel and thus waives the attorney-client privilege with respect to trial counsel's representation, trial counsel is entitled to defend himself against the claim without withdrawing, and no actual conflict is created impacting a defendant's constitutional right to counsel, *unless* it is determined that there is a factual basis for the claim of ineffective assistance.

(4) Neal failed to meet his burden of demonstrating an actual conflict of interest that adversely affected plea counsel's performance and failed to establish prejudice.

(5) There is a difference between a conflict of interest rising to the level of a violation of the constitutional right to counsel, and a conflict of interest as anticipated by the Rules of Professional Conduct.

Opinion by Cynthia L. Martin, Judge

July 31, 2012

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