

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**SKYLOR W. RADMER**

**RESPONDENT,**

**v.**

**STATE OF MISSOURI**

**APPELLANT.**

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DOCKET NUMBER WD74014

DATE: March 27, 2012

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Appeal From:

Buchanan County Circuit Court  
The Honorable Patrick K. Robb, Judge

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Appellate Judges:

Division One: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, Judge and Karen King Mitchell, Judge

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Attorneys:

Ruth Sanders, Kansas City, MO, for respondent.

Pamela Kay Blevins, St. Joseph, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**SKYLOR W. RADMER,**

**RESPONDENT,**

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**STATE OF MISSOURI,**

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No. WD74014

Buchanan County

Before Division One: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, Judge and Karen King Mitchell, Judge

In a bifurcated jury trial, Skylor Radmer was found guilty of two counts of first-degree statutory sodomy and sentenced to ninety years imprisonment. After the court of appeals affirmed his conviction, Radmer filed a Rule 29.15 motion, arguing that his counsel was ineffective for failing to hire a psychologist to testify about Radmer's mental disability during the sentencing phase of the trial. After an evidentiary hearing, the court granted Radmer's motion, finding that his trial counsel's failure to call a psychologist constituted ineffective assistance of counsel. The State appeals, arguing that defense counsel's failure to call a psychologist to testify about Radmer's mental disability in the sentencing phase did not rise to the level of ineffective assistance of counsel, and even if it did, Radmer suffered no prejudice.

**AFFIRMED.**

**Division One holds:** The trial court did not clearly err in finding that Radmer's trial counsel was ineffective and that prejudice resulted from that ineffectiveness. While the decision not to call a witness is presumptively a matter of reasonable trial strategy so that the trial counsel was not ineffective, the record supports a conclusion that Radmer's trial counsel had no strategy with respect to the failure to call a psychologist to testify to Radmer's mental disability. The record equally supports a conclusion that even if the failure to call a psychologist was a trial strategy, that strategy was not reasonable. Because the judge at the Rule 29.15 motion hearing was the same judge who presided over Radmer's trial, the judge was in a unique position to evaluate prejudice and did not err in finding that prejudice resulted as a result of trial counsel's failure to call a psychologist to testify as to Radmer's mental illness.

Opinion by Cynthia L. Martin, Judge

March 27, 2012

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