

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

JAMES JOSEPH HAMILTON,

Appellant

v.

STATE OF MISSOURI.

Respondent

DOCKET NUMBER WD75773

DATE: August 13, 2013

Appeal From:

Circuit Court of Cole County, MO
The Honorable Daniel Richard Green, Judge

Appellate Judges:

Division One
Victor C. Howard, P.J., Joseph M. Ellis, and Anthony Rex Gabbert, JJ.

Attorneys:

James Hamilton, Boone Terre, MO

Appellant Acting Pro Se,

Attorneys:

Jase Carter, Jefferson City, MO

Counsel for Respondent

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

**JAMES JOSEPH HAMILTON, Appellant, v.
STATE OF MISSOURI, Respondent**

WD75773

Cole County

Before Division One Judges: Victor C. Howard, P.J., Joseph M. Ellis, and Anthony Rex Gabbert, JJ.

James Joseph Hamilton appeals the dismissal of his petition for declaratory judgment which sought to challenge for the second time the circuit court's judgment on his motion for post-conviction DNA testing. Hamilton contends that court erred when: (1) it dismissed his petition for declaratory judgment and injunctive relief because the court failed to enter findings of fact and conclusions of law on his post-conviction motion for DNA testing pursuant to Section 547.035.8, RSMo Cum. Supp. 2012; (2) it dismissed his petition without giving Hamilton adequate time to reply to the State's motion to dismiss, and (3) it made its dismissal of Hamilton's petition for declaratory judgment final without first giving due consideration to Hamilton's requests for reconsideration and leave to amend.

AFFIRMED.

Division One holds:

The circuit court did not err in summarily dismissing Hamilton's petition for declaratory judgment. Hamilton already litigated, or had the opportunity to litigate, on appeal the claims alleged in his petition. Therefore, Hamilton failed to state a claim upon which relief could be granted, and his claims constituted an impermissible collateral attack on the judgment.

Opinion by: Anthony Rex Gabbert, Judge

Date: August 13, 2013

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