

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

DAVID N. BRIGGS,

Appellant

v.

STATE OF MISSOURI.

Respondent

DOCKET NUMBER WD76056

DATE: August 12, 2014

Appeal From:

Circuit Court of Jackson County, MO
The Honorable James Dale Youngs, Judge

Appellate Judges:

Division Two
Victor C. Howard, P.J., James Edward Welsh, and Anthony Rex Gabbert, JJ.

Attorneys:

Jeannie Willibey, Kansas City, MO

Counsel for Appellant

Attorneys:

Shaun Mackelprang, Jefferson City, MO

Counsel for Respondent

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

**DAVID N. BRIGGS, Appellant, v.
STATE OF MISSOURI, Respondent**

WD76056

Jackson County

Before Division Two Judges: Howard, P.J., Welsh, and Gabbert, JJ.

David Briggs was convicted of first-degree murder, first-degree robbery, and two counts of armed criminal action. Following the denial of his direct appeal, Briggs filed a Rule 29.15 motion for post-conviction relief, alleging that trial counsel was ineffective for failing to request a lesser-included instruction for voluntary manslaughter. Briggs appeals the circuit court's denial of that motion.

Affirmed.

Division Two holds:

The circuit court did not err in denying Briggs's Rule 29.15 motion on his claim that trial counsel rendered ineffective assistance by failing to request a lesser-included instruction for voluntary manslaughter. Given that the jury convicted Briggs of first-degree murder, despite being instructed on three versions of homicide (*i.e.*, first-degree murder, second-degree murder, and second-degree felony murder), and given the overwhelming evidence that supported that conviction, even if counsel had requested a voluntary manslaughter instruction, and the instruction had been given, there is no reasonable probability that the outcome of the trial would have been different.

The circuit court did not err in failing to inquire into whether post-conviction counsel abandoned Briggs because Briggs did not raise any claim of abandonment before the circuit court, and the circuit court was not required to review the issue *sua sponte*. Thus, the court issued no findings or conclusions on that issue from which to determine if such "findings and conclusions" are "clearly erroneous," as required by the applicable standard of review in Rule 29.15(k).

Opinion by James Edward Welsh, Judge

August 12, 2014

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