

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**CHARLES W. BURNETT,
APPELLANT
vs.**

**STATE OF MISSOURI,
RESPONDENT**

DOCKET NUMBER WD76486

DATE: DECEMBER 2, 2014

Appeal from:

The Circuit Court of Clinton County, Missouri
The Honorable Jason A. Kanoy, Judge

Appellate Judges:

Division Two: Victor C. Howard, Presiding Judge, Alok Ahuja, Judge and Gary D. Witt, Judge

Attorneys:

S. Kate Webber, for Appellant

Shaun Mackelprang, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CHARLES W. BURNETT, APPELLANT

v.

STATE OF MISSOURI, RESPONDENT

WD76486

Clinton County, Missouri

Before Division Two: Victor C. Howard, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Charles W. Burnett appeals the judgment of the motion court denying his Rule 24.035 motion for postconviction relief following an evidentiary hearing. He sought to vacate, set aside, or correct the judgment and sentence, alleging that his guilty plea was not knowing and voluntary because no factual basis was established and that he received ineffective assistance of counsel. Burnett argues on appeal that the record does not contain a factual basis for his guilty plea to receiving stolen property. He claims that he was denied effective assistance of counsel when plea counsel did not seek to withdraw his guilty plea when probation under the plea agreement became impossible and imprisonment unavoidable. Burnett also complains the trial court's findings of fact and conclusions of law were not sufficiently specific regarding his claims that his plea counsel had a conflict of interest and that the plea court had categorically refused to consider the full range of punishment.

AFFIRMED IN PART; REVERSED IN PART, REMANDED.

Division Two holds:

- (1) Because the record showed that the charging document clearly charged Burnett with all the elements of the crime, the nature of the charge was explained to him, and he admitted guilt, a sufficient factual basis was established.
- (2) The record supported the trial court's conclusion that plea counsel was not ineffective and had discussed with Burnett the possibility of filing a motion to withdraw his guilty plea but that none was filed because Burnett never told counsel to file one.
- (3) The motion court's finding that it was "highly skeptical" of Burnett's testimony about his representation by plea counsel and that such testimony was "self-serving and not grounded in truth" was sufficient to provide an adequate record for review of Burnett's claim that plea counsel had a conflict of interest, and showed that the motion court disbelieved Burnett's testimony in that regard and accordingly that Burnett had not met his burden to prove any conflict of interest.

(4) Because the motion court's finding was not sufficient to provide an adequate record for review of Burnett's claim that the plea court had categorically refused to consider the full range of punishment, the motion court's judgment as to that claim is reversed, and the cause is remanded for entry of findings of fact and conclusions of law that comply with Rule 24.035(j). In all other respects, the judgment is affirmed.

Opinion by: Victor C. Howard, Judge

Date: December 2, 2014

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