

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CLAYTON R. DUNLAP,  
APPELLANT  
vs.**

**STATE OF MISSOURI,  
RESPONDENT**

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DOCKET NUMBER WD76751

DATE: JANUARY 13, 2015

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Appeal from:

The Circuit Court of Jackson County, Missouri  
The Honorable Kathleen A. Forsyth, Judge

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Appellate Judges:

Division Two: Joseph M. Ellis, Presiding Judge, Victor C. Howard, Judge and Mark D. Pfeiffer,  
Judge

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Attorneys:

Gregory A. Doty, for Appellant

Shaun Mackelprang, for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CLAYTON R. DUNLAP, APPELLANT**

**v.**

**STATE OF MISSOURI, RESPONDENT**

WD76751

Jackson County, Missouri

Before Division Two: Joseph M. Ellis, Presiding Judge, Victor C. Howard, Judge and Mark D. Pfeiffer, Judge

Clayton Dunlap appeals from the denial of his Rule 24.035 motion for postconviction relief after an evidentiary hearing. Dunlap's motion alleged that counsel was ineffective for failing to investigate and present mitigation evidence at sentencing and failing to investigate the allegedly unconstitutional collection of his blood. On appeal, Dunlap argues that the motion court applied the incorrect standard to determine prejudice to his claim of ineffective assistance of counsel at sentencing and also erroneously failed to make findings on his claim of ineffective assistance of counsel based on counsel's failure to investigate and move to suppress evidence obtained as a result of the warrantless, nonconsensual seizure and search of Dunlap's blood.

**REVERSED AND REMANDED IN PART, AFFIRMED IN PART**

**Division Two holds:**

Because the motion court expressly analyzed both of Dunlap's claims of ineffective assistance of counsel at sentencing as a determination of whether the ineffective performance affected the outcome of the plea process rather than the outcome of the sentencing phase of the proceedings, the motion court's findings and conclusions applied the incorrect standard of analysis constituting reversible error, and the issue is therefore remanded for issuance of findings and conclusions pursuant to the correct standard. Because Dunlap's motion to amend the judgment pursuant to Rule 78.07(c) did not argue the issue of the motion court's failure to make findings and conclusions on his claim of ineffective assistance related to the seizure and search of his blood, that issue was not preserved for appellate review and is therefore dismissed.

**Opinion by: Victor C. Howard, Judge**

Date: January 13, 2015

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