

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DEE ANN PAGEL

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD78066

DATE: January 12, 2016

Appeal From:

Johnson County Circuit Court
The Honorable Michael L. Wagner, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Attorneys:

Damien De Loyola, Kansas City, MO, for appellant.

Shaun Mackelprang, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

DEE ANN PAGEL,

APPELLANT,

v.

STATE OF MISSOURI,

RESPONDENT.

No. WD78066

Johnson County

Before Division Three: Joseph M. Ellis, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Appellant Dee Anne Pagel was convicted by a Johnson County jury of second-degree murder, Section 565.021, first-degree assault, Section 565.050, and two counts of armed criminal action, Section 571.015. Pagel now appeals the motion court's denial of her Rule 29.15 motion for post-conviction relief, in which she alleged her trial counsel was ineffective because he advised her not to testify in her own defense. Pagel raises six points on appeal all related to this general claim of ineffectiveness.

WE AFFIRM

Division Three holds:

(1) The trial court did not err by failing to recognize that unreasonable trial strategy can provide the basis for an ineffective assistance claim as the court recognized in its judgment that Pagel was entitled to reasonably competent advice regarding her decision whether to testify.

(2) The trial court did not misunderstand Pagel's claim in that the trial court considered trial counsel's advice not to testify and found that the strategy was a reasonable trial strategy and within the broad discretion afforded to trial counsel.

(3) The trial court did not err in finding that trial counsel's performance was reasonable in that trial counsel made an informed decision regarding his advice to Pagel that she not testify and his advice was supported by reasonable concerns that (1) information regarding prior criminal behavior would come into evidence if Pagel testified and (2) Pagel's emotional instability at the time of trial could harm her defense if she testified.

(4) Because the trial court's finding that trial counsel's performance was not deficient, it is unnecessary to decide Pagel's claims of error regarding whether she established prejudice.

(5) Having found no error, Pagel's final claim of cumulative error requiring reversal has no merit.

Opinion by Gary D. Witt, Judge

January 12, 2016

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