

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

RONALD TAYLOR,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD78411

Date: August 23, 2016

Appeal from:
Clinton County Circuit Court
The Honorable Daren L. Adkins, Judge

Appellate Judges:
Division Four; Alok Ahuja, C.J., P.J., Thomas H. Newton and Anthohny Rex Gabbert, JJ.

Attorneys:
Mary H. Moore, Jefferson City, for respondent
Natalie T. Hull, Kansas City for appellant

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

RONALD TAYLOR

Appellant,

v.

STATE OF MISSOURI,

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WD78411

Clinton County

Appellant Ronald Taylor pleaded guilty to three charges of burglary in the second degree under § 569.170, RSMo, based on break-ins at three school buildings in Plattsburg in July 2009. The offenses constituted Class C felonies, punishable by “a term of years not to exceed seven years.” § 558.011.1(3), RSMo. Taylor was sentenced to three consecutive seven-year sentences, and placed on probation. After his probation was revoked and the sentences executed, Taylor moved for post-conviction relief under Supreme Court Rule 24.035.

In his amended postconviction relief motion, Taylor argued that his guilty pleas were involuntary because they were coerced by the State’s initial filing of charges of burglary in the first degree, for which the prosecution lacked probable cause. Taylor further alleged that the pleas were coerced and involuntary due to the ineffective assistance of his plea counsel, who failed to advise Taylor of the lack of a factual basis for the first-degree burglary charges, and failed to investigate or challenge the initial charges before advising Taylor to accept a plea agreement. Taylor alleged that he would not have pleaded guilty, but would have insisted on going to trial, were it not for prosecution’s initial filing of the baseless first-degree burglary charges, and his counsel’s incompetent response to those charges.

The Circuit Court of Clinton County denied postconviction relief without conducting an evidentiary hearing. The circuit court concluded that Taylor’s allegations were refuted by the record, because during his guilty-plea hearing Taylor “denied that he had been threatened or coerced into pleading guilty,” and expressed no dissatisfaction with the representation provided by his plea counsel.

Taylor appeals.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Division Four holds:

We first address the State's claim that Taylor's amended postconviction relief motion was filed one day out of time. Although the motion is file-stamped a day late, it bears a facsimile transmission stamp indicating that it was received during business hours on the day it was due. Under the circuit court's local rules, filing by facsimile transmission was acceptable, and the time recorded on the facsimile transmission stamp is treated as the time of filing. Taylor's amended motion was accordingly timely.

Taylor was entitled to an evidentiary hearing on his motion if he alleged facts, not conclusions, warranting relief, and the facts alleged raise matters not refuted by the record of his case. Here, Taylor's amended motion alleged that the charging instruments, probable-cause affidavits, and discovery in the case failed to disclose any basis for a first-degree burglary charge, and that his appointed counsel failed to investigate or challenge the charges, but instead assumed that the charges were valid. Taylor's amended motion also alleged that he would not have pleaded guilty if he had known the original charges lacked a good-faith basis. If Taylor can establish that his guilty pleas were induced by the threat of prosecution for charges for which the State lacked probable cause, and that his plea counsel did not advise him of the baselessness of the original charges or take action to challenge them, he would establish the involuntariness of his pleas, and be entitled to withdraw them.

Taylor's claims are not refuted by the record. Although at his guilty-plea hearing the circuit court asked him if he had been subject to any threats or coercion, the context of the court's question would not have prompted Taylor to raise complaints about the existing first-degree burglary charges. The circuit court's general questioning of Taylor concerning his satisfaction with counsel was insufficient to raise the issue of counsel's failure to address the initial charges, particularly when Taylor may not have been aware of the lack of a factual basis for the charges at the time he entered his guilty plea.

Before: Division Four; Alok Ahuja, P.J., Thomas H. Newton and Anthohny Rex Gabbert, JJ.

Opinion by: Alok Ahuja, Judge

August 23, 2016

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