

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DE ANDREA GRAY**

**v.  
STATE OF MISSOURI**

**APPELLANT,**

**RESPONDENT.**

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DOCKET NUMBER WD78896

DATE: August 30, 2016

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Appeal From:

Jackson County Circuit Court  
The Honorable W. Brent Powell, Judge

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Appellate Judges:

Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

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Attorneys:

De Andrea Gray, Appellant Pro Se.

Shaun Mackelprang, Jefferson City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**DE ANDREA GRAY,**

**APPELLANT,**

**v.**

**STATE OF MISSOURI,**

**RESPONDENT.**

No. WD78896

Jackson County

Before Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

De Andrea Gray ("Gray") appeals from a judgment denying his motion to vacate and expunge prior convictions pursuant to Rule 29.07(d). Gray argues that he was convicted of crimes for which he did not plead guilty, and that he received ineffective assistance of counsel.

**AFFIRMED.**

Division Two holds:

1. Rule 29.07(d) addresses the ability to withdraw a guilty plea. Though the Rule expresses no temporal limitation, it is settled that the Rule cannot be used to raise claims that could have been raised in a Rule 24.035 motion.
2. Gray claims that his convictions were based on a guilty plea that was not knowing and voluntary; that his sentence was illegally imposed because he was not present at the time he was convicted and sentenced; and that he received ineffective assistance of counsel which should have been raised in a timely filed Rule 24.035 motion.
3. Where a detainee fails to timely seek Rule 24.035 relief because the grounds for relief were not known to him, habeas relief may be available pursuant to Rule 91. Gray's motion did not seek habeas relief, and in any event Gray appears to be facially ineligible for habeas relief, as he is presently detained in another state, and as he has long since completed service of the sentences that had him detained in Missouri.
4. The absence of a temporal reference in Rule 29.07(d) may mean that the Rule affords relief in the rare case where claims that should have been raised in a Rule 24.035 motion can no longer be remediated by Rule 91 habeas relief because the grounds for relief were not known to the defendant until *after* a sentence is fully served and the defendant is no longer detained. However, even presuming that to be the case, Gray is foreclosed from seeking relief pursuant to Rule 29.07(d) because earlier judgments from which Gray did not appeal have already determined that Gray has not suffered a manifest injustice.

Opinion by Cynthia L. Martin, Judge

August 30, 2016

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