



Missouri Court of Appeals
Southern District

Division One

MARION W. KASPARIE, JR.,)
)
Movant-Appellant,)
)
v.) No. SD34400
) Filed: October 6, 2016
STATE OF MISSOURI,)
)
Respondent-Respondent.)
)

APPEAL FROM THE CIRCUIT COURT OF POLK COUNTY

Honorable Lisa Carter Henderson, Associate Circuit Judge

REVERSED AND REMANDED

Marion Kasparie, Jr. (Movant) appeals from the denial of his pro se Rule 29.15 motion.¹ He contends the motion court clearly erred by denying Movant's motion without appointing counsel to represent Movant, as required by Rule 29.15(e). Because this contention has merit, we reverse the order denying relief and remand for further proceedings consistent with this opinion.²

¹ All rule references are to Missouri Court Rules (2016).

² The State concedes the case must be remanded because of this error.

After a jury trial, Defendant was found guilty of second-degree domestic assault. The trial court imposed a seven-year sentence, suspended execution of same and placed Movant on probation for five years. This Court affirmed Movant's conviction on direct appeal. Mandate issued on January 27, 2016. On February 17, 2016, Movant filed a timely pro se Rule 29.15 motion. See Rule 29.15(b). The motion included a completed and notarized *in forma pauperis* affidavit. On March 11, 2016, the motion court denied relief without having appointed counsel to represent Movant. This appeal followed.

We review the motion court's ruling for clear error. Rule 29.15(k); *Williams v. State*, 168 S.W.3d 433, 439 (Mo. banc 2005). In relevant part, Rule 29.15(e) states that "[w]hen an indigent movant files a pro se motion, the court shall cause counsel to be appointed for the movant." *Id.* As Movant contends, the motion court's failure to appoint counsel was clearly erroneous. See *Bain v. State*, 59 S.W.3d 625, 627 (Mo. App. 2001); *Stroud v. State*, 978 S.W.2d 785, 786 (Mo. App. 1998); *State v. Wendleton*, 936 S.W.2d 120, 124 (Mo. App. 1996). The order denying relief is reversed. The cause is remanded for appointment of counsel and further proceedings pursuant to Rule 29.15.

JEFFREY W. BATES, P.J. – OPINION AUTHOR

DON E. BURRELL, J. – CONCUR

MARY W. SHEFFIELD, C.J. – CONCUR