



**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

LINN O. HOSKINS, III,)	
)	
Appellant,)	WD70413
v.)	
)	OPINION FILED:
)	December 22, 2009
STATE OF MISSOURI,)	
)	
Respondent.)	

**Appeal from the Circuit Court of Livingston County, Missouri
The Honorable Stephen K. Griffin, Judge**

Before Division Three: Mark D. Pfeiffer, Presiding Judge, and
James E. Welsh and Karen King Mitchell, Judges

Linn O. Hoskins, III (Hoskins), appeals the motion court's order denying his Rule 24.035 motion. On appeal, he presents one point in which he claims that the motion court erred in failing *sua sponte* to reduce his sentences from twenty-nine years to fifteen years because the record establishes that the trial court did not have the statutory authority to run his sentences consecutively. We affirm.

On May 9, 2007, Hoskins pleaded guilty to burglary in the first degree. The trial court sentenced him to a term of fifteen years but suspended the execution of his sentence and placed him on probation. On July 18, 2007, Hoskins pleaded guilty to burglary in the second degree and

stealing. The trial court sentenced him to seven years on each count but suspended the execution of his sentences.

On April 1, 2008, Hoskins pleaded guilty to stealing. The trial court sentenced him to seven years. At this time, the trial court revoked Hoskins's probation in the other cases. The trial court executed the fifteen-year sentence and ran the April 1, 2008 sentence of seven years concurrent to that sentence. The trial court and the State then discussed Hoskins's two seven-year sentences from July 18, 2007. The State informed the trial court that if it ran the sentences consecutively to the fifteen-year sentence, then it would not charge Hoskins with the additional charge of attempting to escape from prison. The trial court asked Hoskins if he felt that it was "a fair resolution," and Hoskins replied yes. The trial court ordered the two seven-year sentences to run consecutively to each other and to the fifteen-year sentence.

On April 21, 2008, Hoskins filed his *pro se* Rule 24.035 motion. On July 31, 2008, his appointed counsel filed an amended motion which alleged only that the trial court violated Hoskins's due process rights by engaging in negotiations with the State on his sentencing. The motion court denied his amended motion on November 12, 2008. This appeal follows.

In his sole point on appeal, Hoskins claims that the motion court erred in failing *sua sponte* to reduce his sentences from twenty-nine years to fifteen years because the record establishes that the trial court did not have the statutory authority to run his sentences consecutively. Hoskins claims that, pursuant to section 558.026,¹ the trial court was required to run his two seven-year sentences concurrently to his fifteen-year sentence. Hoskins concedes that he did not raise this issue in his Rule 24.035 motion but claims that this court has the authority to review his claim for plain error.

¹ All statutory citations are to RSMo 2000 unless otherwise indicated.

We disagree.

Rule 24.035(d) states that:

The motion to vacate shall include every claim known to the movant for vacating, setting aside, or correcting the judgment or sentence. The movant shall declare in the motion that the movant has listed all claims for relief known to the movant and acknowledging the movant's understanding that the movant waives any claim for relief known to the movant that is not listed in the motion.

Under this rule, the movant is required to list all known claims in his Rule 24.035 motion and must acknowledge that he waives any claims that he fails to include in his motion. A movant, therefore, cannot raise a claim on appeal if he fails to include the claim in his Rule 24.035 motion. *Goodwin v. State*, 191 S.W.3d 20, 41 (Mo. banc 2006); *Christeson v. State*, 131 S.W.3d 796, 802 n.7 (Mo. banc 2004). Furthermore, we cannot review these claims under our plain error standard. *Goodwin*, 191 S.W.3d at 41; *Collins v. State*, 228 S.W.3d 40, 42 (Mo. App. S.D. 2007). Thus, by failing to present this claim in his Rule 24.035 motion, Hoskins has waived the claim, and we cannot review it.

Hoskins concedes that, as a general rule, a person cannot present a claim if he did not include the claim in his Rule 24.035 motion. Nevertheless, he claims that this court can review his claim because his claim—that the trial court lacked the statutory authority to order his sentences to run consecutively—is a jurisdictional claim that he can raise at any time. For support of his proposition, Hoskins cites to *Ivy v. State*, 81 S.W.3d 199, 205-06 (Mo. App. W.D. 2002), and *Searcy v. State*, 981 S.W.2d 597, 598 (Mo. App. W.D. 1998).

Hoskins is correct that, in those cases, the appellate courts reviewed a movant's claim even though he failed to include the claim in his post-conviction relief motion because the claim questioned the trial court's jurisdiction to take a certain action. *Ivy*, 81 S.W.3d at 205-06; *Searcy*, 981 S.W.2d at 598. For example, in *Ivy*, the court reviewed the appellant's claim that, while the trial

court had general subject matter jurisdiction over criminal cases, it lacked the jurisdiction to impose sentences on him because of double jeopardy. *Ivy*, 81 S.W.3d at 205-06. In making this argument, however, Hoskins ignores the fact that the Missouri Supreme Court recently clarified the law on subject matter jurisdiction and held that these types of claims are not jurisdictional.

In *Andrews v. State*, 282 S.W.3d 372 (Mo. App. W.D. 2009), this court noted that the Missouri Supreme Court recently clarified the law on subject matter jurisdiction:

In *Webb ex rel. J.C.W. v. Wyciskalla*, 275 S.W.3d 249 (Mo. banc 2009), the Missouri Supreme Court clarified that Missouri recognizes only two types of jurisdiction: personal and subject matter. *Id.* at 251-53. Both personal and subject matter jurisdiction derive from constitutional principles. *Id.* Subject matter jurisdiction refers to the ‘court’s authority to render a judgment in a particular category of case.’ *Id.* at 253. In Missouri, the court’s subject matter jurisdiction derives directly from article V, section 14 of the Missouri Constitution, which says that ‘[t]he circuit courts shall have original jurisdiction over all cases and matters, civil and criminal.’ . . .

The Supreme Court noted that there were prior cases that had created another form of subject matter jurisdiction called ‘jurisdictional competence.’ The issue of ‘jurisdictional competence’ arose when there was no question that the circuit court had subject matter jurisdiction over the general issue, but there was [a] question ‘whether the issue or parties affected by the court’s judgment [were] properly before it for resolution at that time.’ *Id.* (internal quotation marks omitted). In *Webb*, the Missouri Supreme Court stated that ‘jurisdictional competence’ had no constitutional basis and was not recognized in Missouri. *Id.*

Andrews, 282 S.W.3d at 374 n.3.

Pursuant to *Webb*, the appellants in *Ivy* and *Searcy* did not really raise issues regarding the trial court’s subject matter jurisdiction over their cases because they were criminal cases and the trial court has subject matter jurisdiction over all criminal cases. *Id.* Rather, in those cases, the appellants raised questions of “jurisdictional competence,” which is no longer recognized in Missouri. *Id.*

In Hoskins’s case, therefore, the trial court had subject matter jurisdiction over him because Hoskins’s case was a criminal case and the trial court has jurisdiction over all criminal cases.

Hoskins's claim that the trial court did not have the statutory authority to run his sentences consecutively is not an issue of subject matter jurisdiction and is, instead, an attempt to inject the now unrecognized topic of "jurisdictional competence." Hoskins's claim, therefore, is not a jurisdictional claim that can be raised for the first time on appeal from the motion court's denial of his Rule 24.035 motion. For the purposes of this appeal, then, by failing to present the claim in his Rule 24.035 motion, Hoskins waived it.

Furthermore, a review of the record establishes that Hoskins's failure to present the claim in his motion was intentional. The record at the sentencing hearing shows that the State agreed that it would not file additional charges against Hoskins if the trial court ran his two seven-year sentences consecutively. The record also shows that Hoskins listened to this exchange and agreed that the compromise was fair:

THE COURT: Is the State in a position to enter an agreement not to file any charges based on the two consecutive sentences then on that?

[THE STATE]: If the Court imposed the sentences consecutive, I will not file charges against Mr. Hoskins for the attempted escape, Your Honor.

THE COURT: Do you understand that? Does that sound like a fair resolution then?

[MR. HOSKINS]: Yes.

From this exchange, it is obvious that Hoskins was aware that the trial court was going to execute his sentences consecutively. It is also clear that Hoskins affirmatively agreed to the trial court's sentencing order so that he could escape additional charges from the State. Thus, it is apparent to us that Hoskins did not present this claim in his motion because he believed that he was

receiving a benefit from the trial court's actions. The trial court, therefore, did not err in failing *sua sponte* to reduce Hoskins's sentences from twenty-nine years to fifteen years.

We affirm the trial court's order denying Hoskins's Rule 24.035 motion.

Mark D. Pfeiffer, Presiding Judge

James E. Welsh, Judge, and
Karen King Mitchell, Judge, concur.