

IN THE  
SUPREME COURT OF MISSOURI

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STEVEN GREEN,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. SC 95363
	)	
STATE OF MISSOURI,	)	
	)	
Respondent.	)	

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APPEAL TO THE MISSOURI SUPREME COURT  
FROM THE CIRCUIT COURT OF  
GREENE COUNTY, MISSOURI  
THIRTY-FIRST JUDICIAL CIRCUIT  
THE HONORABLE THOMAS MOUNTJOY, JUDGE

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APPELLANT'S SUBSTITUTE REPLY BRIEF

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### **JURISDICTIONAL STATEMENT**

Appellant adopts the Jurisdictional Statement from his initial brief.

### **STATEMENT OF FACTS**

Appellant adopts the Statement of Facts from his initial brief.

## ARGUMENT

### Point I.

The motion court clearly erred in overruling Mr. Green’s amended motion filed pursuant to Rule 29.15, because the court’s findings of fact and conclusions of law violated Rule 29.15(j), in that the motion court failed to adjudicate the *pro se* claims attached to the amended motion; specifically, the trial court failed to address claim 8.C.2, which asserted that trial counsel was ineffective for failing to request a speedy trial and 8.C.3, which asserted that trial counsel was ineffective for failing to investigate and interview witnesses in a timely fashion.

### Analysis

The State correctly asserts in its Respondent’s brief that in the present case, “there is no question of abandonment that needs to be addressed by the motion court.” (Rsp. Brf. 13). Indeed, the amended motion was timely filed within the limits established by Rule 29.15(g). (PCR LF 1, 51). Because of this, the State argues that *Moore v. State*, 458 S.W.3d 822 (Mo. banc 2015) is inapposite. (Rsp. Brf. 13). The State asserts that the issue in *Moore* “was not whether the motion court failed to make necessary findings on a claim when it denied the postconviction motion; rather, the issue was whether the motion court had adjudicated the correct motion.” (Rsp. Brf. 13).

The State overlooks that there were two issues decided by this Court in *Moore*: first, whether the motion court should have made an independent inquiry

into whether or not the movant was abandoned; and second, whether a remand to the motion court was necessary. 458 S.W.3d at 826. As to the first question, this Court unanimously agreed that the amended motion was untimely filed, and that an abandonment inquiry should have taken place. *Id.* at 826-28. As to the second question, only six judges agreed that remand was necessary. *Id.* at 826, 828-31. A dissenting opinion, though, pointed out that the movant's "pro se motion raises two claims, both of which were incorporated into the amended motion and denied by the motion court in the December 2012 judgment." *Id.* at 830. After analyzing why the *pro se* claims lacked merit, the dissenting opinion concluded that a remand was unnecessary. *Id.* at 830-31. The majority opinion disagreed, stating that "[t]he motion court did not reference these [*pro se*] claims or adjudicate them with written findings of fact and conclusions of law as required by Rule 29.15(j)." *Id.* at 826, n. 3. The majority opinion went on the state that the movant "has not received the process that justice requires." *Id.*

If remand was necessary in *Moore*, where *pro se* claims were attached to an amended motion, and the amended motion was denied but with no specific reference to the *pro se* claims, then remand is also necessary here. It would be inconsistent if this situation required a remand when an amended motion was *untimely* filed but not when it was *timely* filed. As stated in *Moore*, Rule 29.15(j) requires the motion court to reference all claims and to "adjudicate them with written findings of fact and conclusions of law." *Id.* This should be true regardless of when the amended motion was filed. This holding would be consistent with

previous holdings of this Court. See *Barry v. State*, 850 S.W.2d 348, 349-50 (Mo. banc 1993)(holding that remand is necessary when the motion court fails to issue findings of fact and conclusions of law on all issues presented); *Tooley v. State*, 20 S.W.3d 519, 520 (Mo. banc 2000)(“The failure to make findings and conclusions normally would require the case to be remanded for that purpose.”), overruled on other grounds by *Glover v. State*, 225 S.W.3d 425, 428 (Mo. banc 2007)(signature requirement is not jurisdictional).

On the other hand, if remand is unnecessary here, then remand should have also been unnecessary in *Moore*. However, this Court correctly determined in *Moore* that because the motion court did not explicitly adjudicate the *pro se* claims attached to the amended motion, the movant did not receive “the process that justice requires.” *Id.* This Court’s holding recognizes that in actions taken under Rule 29.15, justice is not possible without a fair process. Here, just as in *Moore*, the trial court failed to adjudicate all claims as required by Rule 29.15(j). This Court should therefore remand this case to the motion court to issue additional findings of fact and conclusions of law.

## **CONCLUSION**

As argued in Point I, this Court should remand the case back to the motion court to consider the claims presented in the attached *pro se* motion.

As argued in Points II, III, and IV, this Court should reverse the judgment of the motion court and order a new and fair trial.

As argued in Point V, this Court should remand the case back to the motion court to consider whether evidence of a memorandum written by trial counsel indicating the preliminary hearing was recorded would have resulted in the trial court assessing sanctions against the State for failing to produce the recording.

Respectfully submitted,

/s/ Samuel Buffaloe

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**Certificate of Compliance and Service**

I, Samuel Buffaloe, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2010, in Times New Roman size 13 point font. Excluding the cover page, the signature block, and this certificate of compliance and service, the reply brief contains 920 words, which does not exceed the 7,750 words allowed for an appellant's reply brief.

On this 4<sup>th</sup> day of April, 2016, an electronic copy of Appellant's Substitute Reply Brief was placed for delivery through the Missouri e-Filing System to Dora Fichter, Assistant Attorney General, at Dora.Fichter@ago.mo.gov.

/s/ Samuel Buffaloe

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Samuel Buffaloe