



Missouri Court of Appeals
Southern District

Division Two

JESSE V. DORRIS,)
)
 Movant-Appellant,)
)
 vs.) No. SD30491
)
 STATE OF MISSOURI,) **Filed: March 1, 2011**
)
 Respondent-Respondent.)

APPEAL FROM THE CIRCUIT COURT OF MISSISSIPPI COUNTY

Honorable T. Lynn Brown, Associate Circuit Judge

VACATED AND REMANDED WITH DIRECTIONS

Jesse V. Dorris ("Movant") appeals from a judgment denying his amended Rule 29.15 motion for post-conviction relief.¹ We vacate the judgment and remand the cause with directions to dismiss the motion because Movant failed to timely file his *pro se* motion as required by Rule 29.15(b).

Following a bench trial, Movant was convicted of possessing anhydrous ammonia in a non-approved container, a violation of section 578.154, RSMo Cum. Supp. 2004.

¹ All rule references are to Missouri Court Rules (2010), and all references to statutes are to RSMo 2000, unless otherwise specified.

We affirmed Movant's conviction on direct appeal. *State v. Dorris*, 277 S.W.3d 831 (Mo. App. S.D. 2009). We issued our mandate in that case on March 18, 2009.

One hundred and five days later, on July 1, 2009, Movant filed a *pro se* Rule 29.15 motion.² Appointed counsel subsequently filed an amended motion arguing, among other things and for the first time, that the trial court erred by sentencing Movant before the time for filing a motion for a new trial had lapsed. Following an evidentiary hearing, the motion court denied Movant's post-conviction claim for relief on the merits.

Rule 29.15(b) reads, in part: "If an appeal of the judgment or sentence sought to be vacated, set aside or corrected was taken, the motion shall be filed within 90 days after the date the mandate of the appellate court is issued affirming such judgment or sentence." Rule 29.15(b). The "[f]ailure to file a motion within the time provided by this Rule 29.15 shall constitute a complete waiver of any right to proceed under this Rule 29.15 and a complete waiver of any claim that could be raised in a motion filed pursuant to this Rule 29.15." *Id.*

The time limits set by Rule 29.15 "are valid and mandatory." *Swofford v. State*, 323 S.W.3d 60, 62 (Mo. App. E.D. 2010). "A court may not consider a Rule 29.15 motion filed more than ninety days after the appellate court issues its mandate because to do so conflicts with the express limits provided for the remedy under Rule 29.15." *Id.* A motion court has no option but to dismiss an untimely filed Rule 29.15 motion. *Id.* "[A]n untimely *pro se* motion for post-conviction relief is a fatal defect that cannot be cured by filing a timely amended motion." *Id.* Furthermore, "it is of 'no consequence' that the state did not request and the court did not grant dismissal on the ground that the

² Movant concedes, in his amended Rule 29.15 motion and his brief in this appeal, that this Court affirmed his conviction in his direct appeal and issued our mandate on March 18, 2009, and that he filed his *pro se* Rule 29.15 motion on July 1, 2009.

motion was not timely filed." *Id.* at 64 (quoting *Butler v. State*, 841 S.W.2d 192, 193 (Mo. App. E.D. 1992)). In other words, the state's failure to object to the untimeliness of the motion in the motion court does not waive a movant's noncompliance with Rule 29.15(b). *Id.* at 64.

We issued our mandate affirming Movant's conviction in his direct appeal on March 18, 2009. Movant filed his *pro se* motion one hundred and five days later on July 1, 2009. As such, the motion was untimely. Rule 29.15(b). Movant waived his right to proceed with his Rule 29.15 motion because he did not timely file his *pro se* motion. *Swofford*, 323 S.W.3d at 64.

The judgment is vacated and the cause remanded with directions to dismiss Movant's Rule 29.15 motion.

Nancy Steffen Rahmeyer, Presiding Judge

Scott, C.J., Francis, J., concur.

Attorney for Appellant -- Gwenda Renee Robinson

Attorneys for Respondent -- Chris Koster, James B. Farnsworth

Division II