



**In the Missouri Court of Appeals  
Eastern District  
DIVISION TWO**

BRYAN M. MAGUIRE,	)	No. ED104268
	)	
Appellant,	)	
	)	Appeal from the Circuit Court
	)	of Franklin County
vs.	)	Cause No. 11AB-CC00143
	)	
STATE OF MISSOURI,	)	Honorable Gael D. Wood
	)	
Respondent.	)	Filed: October 3, 2017

**OPINION**

Bryan M. Maguire (“Movant”) appeals the motion court’s denial of his amended motion for post-conviction relief, arguing that his trial counsel was ineffective. The amended motion was filed outside the time limits of Missouri Supreme Court Rule 29.15(g).<sup>1</sup> Additionally, as Movant retained private counsel to represent him in the post-conviction relief proceedings, he could not invoke the abandonment doctrine to allow the motion court to consider his untimely amended motion. Thus, we find the motion court was without authority to rule on the merits of the amended motion, and it did not render a final, appealable judgment on Movant’s *pro se* motion for post-conviction relief. Accordingly, we must dismiss the appeal.

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<sup>1</sup> All references are to Missouri Supreme Court Rules 2011.

## I. Standard of Review

“Time limits for post-conviction relief motions are mandatory.” *Greenleaf v. State*, 501 S.W.3d 911, 912 (Mo. App. E.D. 2016) (citing *Stanley v. State*, 420 S.W.3d 532, 540 (Mo. banc 2014)). This Court is required to enforce the mandatory rules created by the Supreme Court of Missouri. *Id.* “Failing to abide by the Rule’s confines generally functions as a complete waiver.” *Norman v. State*, 509 S.W.3d 846, 848 (Mo. App. E.D. 2017). As stated in Rule 29.15(g), “[t]he court may extend the time for filing the amended motion for *one additional period* not to exceed thirty days.” (emphasis added). Our Supreme Court has made it clear that “[a] motion court has *no authority* to extend [the] time limit for filing an amended motion” beyond what the rules allow. *Stanley*, 420 S.W.3d at 541.

## II. Factual and Procedural Background

Movant was convicted of murder in the first degree (Count I) and armed criminal action (Count II) on December 21, 2009. He received a life sentence without the possibility of parole on Count I, with a concurrent term of thirty years’ imprisonment on Count II. Movant made a direct appeal to our Court. We issued the mandate in Movant’s direct appeal on March 10, 2011. Following an unsuccessful appeal to this Court, Movant timely filed a *pro se* motion for post-conviction relief under Rule 29.15 on May 31, 2011.<sup>2</sup>

Initially, counsel was *appointed* on June 16, 2011, and granted one 30-day extension of time to file an amended motion. This appointment and the issuance of our Court’s mandate in Movant’s direct appeal triggered the start of the time limits imposed by Rule 29.15(g),<sup>3</sup> making

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<sup>2</sup> “If an appeal of the judgment or sentence is 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).

<sup>3</sup> “If an appeal of the judgment sought to be vacated, set aside, or corrected is taken, the amended motion shall be filed within sixty days of the earlier of: (1) the date both the mandate of the appellate court is issued and counsel is appointed or (2) the date both the mandate of the appellate court is issued and an entry of appearance is filed by any

the amended motion due on September 14, 2011.<sup>4</sup> After initially using *appointed* counsel, Movant hired *private* counsel, who filed an entry of appearance on July 25, 2011. Appointed counsel filed a motion to rescind their appointment on August 5, 2011, which the court granted August 9, 2011. On September 26, 2011, Movant's retained counsel filed a motion to extend the time in which it could file an amended motion to October 14, 2011. The motion court granted the extension on the same day. However, this request was made after Movant's mandatory deadline of September 14, 2011. Further, the trial court does not have the authority to exceed the deadlines prescribed by the Missouri Supreme Court Rules. *Stanley*, 420 S.W.3d at 541.

The amended motion was filed on October 14, 2011. Under Rule 29.15, arguments raised in a time-barred motion cannot be considered by our Court; we may only consider the most current timely motion (the *pro se* motion in this case). *See Stanley*, 420 S.W.3d at 540 (Mo. banc 2014). Thus, Movant's *pro se* motion was the proper motion for the motion court to consider. However, the motion court's judgment was based on the allegations in Movant's *amended* motion. No judgment was rendered on the *pro se* motion.

Movant raises three points concerning trial and appellate counsels' ineffectiveness based on his amended motion. However, because an untimely motion for post-conviction relief is procedurally barred from consideration, and the motion court did not render a final judgment on Movant's *pro se* motion, we must dismiss the cause.

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counsel that is not appointed[.]...The court may extend the time for filing the amended motion for one additional period not to exceed thirty days." Rule 29.15(g).

<sup>4</sup> Sixty days from June 16, 2011 fell on August 15, 2011, a Monday. The thirty-day extension changed the expiration date to September 14, 2011. *See Edwards v. State*, 514 S.W.3d 68, 70 (Mo. App. E.D. 2017) (explaining the two-step process for calculating a deadline for an amended motion for post-conviction relief).

### III. Discussion

Movant acknowledges the amended motion was untimely filed. Whether the motion court may consider Movant's untimely amended motion hinges on whether the abandonment doctrine solely applies to indigent movants with appointed counsel or whether it also applies to movants with retained, private counsel. The abandonment doctrine "was created to excuse the untimely filing of amended motions by appointed counsel under Rule 29.15(e)." *Id.* at \*8 (quoting *Price v. State*, 422 S.W.3d 292, 294 (Mo. banc 2014)). If a court determines Movant has been "abandoned" by counsel for failure to file a timely amended motion, the court may consider the untimely-filed motion. *Wilson v. State*, 495 S.W.3d 827, 829 (Mo. App. E.D. 2016). "The motion court is the appropriate forum to conduct... an [abandonment] inquiry." *Id.* However, this exception is not available to Movant.

Recently, the Supreme Court of Missouri "expressly addressed whether retained counsel can abandon a movant by failing to timely file an amended motion for post-conviction relief," and it concluded that the doctrine only applies to *appointed* counsel. *Gittemeier* at \*5. In the case before us, Movant retained *private* counsel; thus, he is not afforded the exception to Rule 29.15 granted by the abandonment doctrine.


If a movant files an untimely amended motion for post-conviction relief, and the movant has not been abandoned, "the motion court should not permit the filing of the amended motion and should proceed with adjudicating the movant's initial motion." *Moore v. State*, 458 S.W.3d 822, 825 (Mo. banc 2015). Here, the "initial motion" is Movant's *pro se* motion. Thus, the proper motion for the motion court to assess is the *pro se* motion. The record reflects that the motion court rendered a judgment based on Movant's amended motion.

Movant argues that if we find Movant was not "abandoned" and his amended motion was untimely, then the case reverts to the claims filed in the *pro se* motion, which was timely filed.

Movant contends that because the claims raised in the amended motion were also raised in the *pro se* motion, we can review the merits of the motion court’s ruling. However, this only holds true when the judgment rendered addresses all of the claims raised by the timely filed motion. *See Green v. State*, 494 S.W.3d 525, 529 (citing Rule 78.07(c)). Here, the *pro se* motion included multiple additional claims not included in the amended motion. Accordingly, the motion court failed to adjudicate all of Movant’s claims at the time it issued its judgment. When a motion court fails to “acknowledge, adjudicate, and dispose of all claims in its judgment,” then the judgment issued is not “final.” *Id.* at 531–33 (citing Rule 74.01). Our Supreme Court was presented with a highly similar set of facts in *Green*. There, the motion court’s judgment only considered five of the movant’s seven claims. *Id.* at 533. Consequently, our Supreme Court dismissed the appeal, finding the motion court’s judgment was not a final and appealable judgment. *Id.* (citing Rule 74.01(b)). We must do the same in the case before us.

#### **IV. Conclusion**

Because the motion court’s judgment did not dispose of all claims presented to it in Movant’s *pro se* motion, there is no final judgment. Accordingly, this appeal must be dismissed.

  
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Colleen Dolan, Judge

Sherri B. Sullivan, P.J., concurs.  
Roy L. Richter, J., concurs.