



Missouri Court of Appeals  
Southern District

Division One

DAMIEN TODD BRYAN, )  
 )  
 Movant-Appellant, )  
 )  
 vs. ) No. SD34842  
 )  
 STATE OF MISSOURI, ) **Filed: January 26, 2018**  
 )  
 Respondent-Respondent. )

APPEAL FROM THE CIRCUIT COURT OF CAMDEN COUNTY

Honorable Patricia S. Joyce

**DISMISSED**

Damien Todd Bryan ("Movant") appeals from the motion court's denial of his amended Rule 29.15 motion for post-conviction relief.<sup>1</sup> Movant's amended motion raised 18 claims of ineffective assistance of trial counsel. Because the motion court did not adjudicate all of the claims raised in the amended motion, there is no final judgment. Accordingly, this Court has no authority to review the merits of Movant's claims, and the appeal must be dismissed.

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<sup>1</sup> All rule references are to Missouri Court Rules (2015).

After a jury trial, Movant was convicted of two counts of second-degree murder and one count of felony driving while intoxicated. The trial court entered sentences totaling 28 years' imprisonment. After this Court affirmed his convictions on direct appeal, Movant sought post-conviction relief and appears to have filed a timely *pro se* motion.<sup>2</sup> Movant then filed his amended post-conviction motion. The motion court denied the amended motion, and this appeal followed.

"A final judgment is one that resolves all claims and issues in a case, leaving nothing for future determination." ***Green v. State***, 494 S.W.3d 525, 527 (Mo. banc 2016) (superseded by rule on other grounds as stated in ***Creighton v. State***, 520 S.W.3d 416, 422 n.8 (Mo. banc 2017)). A final judgment is a prerequisite for appeal. ***Green***, 494 S.W.3d at 527; § 512.020 RSMo, (2016). Absent a final judgment, there is no appellate review and the appeal must be dismissed. ***Green***, 494 S.W.3d at 528.

For a judgment to be final, it must show that the motion court adjudicated each pleaded claim. ***Id.*** at 532-33. In this case, the motion court's judgment adjudicated some, but not all, of the ineffective assistance of counsel claims raised in Movant's amended post-conviction motion. Specifically, claims 8(B), (C), (D), (E), (G), (I), (K), and (O), were not acknowledged, discussed, or disposed of. When a motion court fails

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<sup>2</sup> We say "appears" because the only indication as to the timeliness of the *pro se* motion in the record on appeal is a docket entry; Movant has not included the actual *pro se* motion in the record. See ***Dorris v. State***, 360 S.W.3d 260, 267 (Mo. banc 2012) (absent certain exceptions, the movant must prove that his motion is timely by "timely filing the original *pro se* motion so that the time stamp on the file reflects that it is within the time limits proscribed in the Rule[.]"). The parties also raise a dispute as to the timeliness of Movant's amended motion that hinges in part on the convictions challenged in the *pro se* motion that is conspicuously absent from the record on appeal. Because there is no final judgment upon which this Court's review is predicated, the trial court retains the authority to and is in the best position to resolve these issues prior to entry of a final judgment in this case.

to "acknowledge, discuss, or dispose" of all claims asserted in a post-conviction relief motion, the judgment is not final and the appeal must be dismissed.<sup>3</sup> **Id.**

Because it adjudicates and disposes of some, but not all of the claims before it, the motion court's judgment is not final under Rule 74.01(b).

The appeal is dismissed for the failure to dispose of all the claims asserted in the amended motion. There is no final judgment.

MARY W. SHEFFIELD, P.J. – OPINION AUTHOR

GARY W. LYNCH, J. – CONCURS

DON E. BURRELL, J. – CONCURS

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<sup>3</sup> Even if this Court could generously construe the motion court's statement that Movant had failed to meet his burden of proving ineffective assistance of counsel as a "blanket denial," this Court "has limited the application of broad denials to claims specifically addressed in the judgment." **Emory v. State**, No. 104830, 2017 WL 4896786, at \*2 (Mo. App. E.D. October 31, 2017). "[B]lanket denials are deemed to refer only to the claims that are actually mentioned in the judgment." **Goetz v. State**, 502 S.W.3d 771, 772 (Mo. App. E.D. 2016).