



Missouri Court of Appeals  
Southern District

Division One

WESLEY L. HATMON,	)	
	)	
Movant-Appellant,	)	
	)	
v.	)	No. SD36289
	)	
STATE OF MISSOURI,	)	<b>Filed: July 29, 2020</b>
	)	
Respondent-Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF DALLAS COUNTY

Honorable Lisa Carter Henderson, Associate Circuit Judge

**REVERSED & REMANDED WITH INSTRUCTIONS**

Wesley L. Hatmon (“Movant”), following an evidentiary hearing on an amended motion, was denied post-conviction relief under Rule 24.035.<sup>1</sup> Unfortunately, we must reverse and remand, not on the merits, but for an independent evidentiary inquiry on whether Movant was abandoned by post-conviction counsel. Both Movant and the State agree that the amended motion was untimely. The notice of filing of guilty plea and sentencing transcript, filed by post-conviction counsel, erroneously stated the due date for

<sup>1</sup> All rule references are to Missouri Court Rules (2020), unless otherwise specified.

the amended motion.<sup>2</sup> The issue of the timeliness of the amended motion was neither mentioned in the Rule 24.035 evidentiary hearing, nor addressed in the findings of facts and conclusions of law.

We must address the timeliness of the amended motion. *Moore v. State*, 458 S.W.3d 822, 826-27 (Mo. banc 2015). “The filing deadlines for post[-]conviction relief are mandatory, and cannot be waived.” *Watson v. State*, 536 S.W.3d 716, 717 (Mo. banc 2018) (internal quotations and citation omitted). “The untimely filing of an amended motion by post[-]conviction counsel creates a presumption of abandonment.” *Id.* at 719. When the presumption of abandonment arises, “the motion court is obligated to conduct an independent inquiry to determine whether the movant was actually abandoned.” *Milner v. State*, 551 S.W.3d 476, 479-80 (Mo. banc 2018).

We, therefore, have no choice but to reverse the judgment and remand the case to the motion court with instructions to make an independent inquiry on the abandonment issue.

Nancy Steffen Rahmeyer, P.J. – Opinion Author

Daniel E. Scott, J. – Concur

William W. Francis, Jr., J. – Concur

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<sup>2</sup> Separate counsel relied upon that date in the filing of the amended motion.