



In the Missouri Court of Appeals Eastern District

DIVISION FIVE

EDWARD SMITH, JR.,)	No. ED95666
)	
Appellant,)	Appeal from the Circuit Court
)	of City of St. Louis
v.)	Case No. 0922-CR08249
)	
STATE OF MISSOURI,)	Honorable Michael K. Mullen
)	
Respondent.)	Filed: June 21, 2011

Introduction

Edward Smith, Jr. (Movant) appeals from the judgment denying his Rule 24.035¹ motion without an evidentiary hearing. The State of Missouri confesses to reversible error on each of Movant's three points on appeal. We reverse and remand for further proceedings.

Background

Movant was charged with stealing property valued at over \$500, in violation of Section 570.030, RSMo (2009). He was charged as a prior and persistent offender, based on five previous felony convictions. In January 2009, Movant pleaded guilty and admitted to having at least two prior felony convictions. The trial court sentenced him to

¹ All rule references are to Mo. R. Crim. P. 2011, unless otherwise indicated.

seven years in the Missouri Department of Corrections. Movant did not file a direct appeal.

Movant filed a pro se Rule 24.035 motion for post-conviction relief. In an amended motion, Movant asserted that his trial counsel was ineffective for (1) misadvising him that he would only be required to serve 37% of a seven-year sentence; (2) failing to locate and interview a specific witness; and (3) failing to file a motion to suppress the live lineup identification for suggestiveness. Movant asserted that but for these errors, he would not have pleaded guilty. The motion court entered an “Order/Judgment/Memorandum,” which merely stated, “Movant’s motion to vacate, set aside or correct Judgment or sentence and request for evidentiary hearing is heard and is hereby: DENIED.” This appeal follows.

Discussion

For each of his three points on appeal, Movant argues that the motion court erred by failing to issue findings of fact and conclusions of law, as required by Rule 24.035(j). The State concedes the error on all three points, and we agree.

Rule 24.035(j) provides that “[t]he [motion] court shall issue findings of fact and conclusions of law on all issues presented, whether or not a hearing is held.” The findings and conclusions must be sufficient to permit meaningful appellate review. Muhammad v. State, 320 S.W.3d 727, 729 (Mo. App. E.D. 2010). Appellate review of the denial of a Rule 24.035 motion is “limited to a determination of whether the findings and conclusions of the trial court are clearly erroneous.” Rule 24.035(k); Hollingshead v. State, 324 S.W.3d 779, 781 (Mo. App. W.D. 2010). This review, however, presupposes that the motion court complied with its Rule 24.035(j) obligation. Hollingshead, 324

S.W.3d at 781. Without findings and conclusions by the motion court, the reviewing court must engage in de novo review, which is not permitted under Rule 24.035(k). Id.

Here, the court issued an order stating merely that the motion and request for a hearing “is heard and is hereby: DENIED.” This summary order was not sufficient to meet Rule 24.035(j)’s requirements for findings of fact and conclusions of law, and we must remand for entry of the necessary findings and conclusions before we are able to conduct a meaningful review. Id. at 782 (summary denials do not comply with Rule 24.035); Mitchell v. State, 192 S.W.3d 507, 510 (Mo. App. E.D. 2006) (reversed and remanded for further proceedings when motion court failed to issue findings and conclusions as contemplated by Rule 24.035). There exist a number of exceptions to this rule, but they do not apply here. Hollingshead, 324 S.W.3d at 782 (listing exceptions).

Point sustained.

Conclusion

We reverse the motion court’s order denying post-conviction relief, and we remand for further proceedings consistent with this opinion and Rule 24.035(j).

Gary M. Gaertner, Jr., Presiding Judge

Mary K. Hoff, J., concurs.
Patricia L. Cohen, J., concurs.