

SUPREME COURT OF MISSOURI

McKay v. State

520 S.W.3d 782 (Mo. banc 2017) · Decided June 27, 2017

SUMMARY

The Missouri Supreme Court held that a post-conviction motion filed before the judgment of conviction was finally affirmed was premature, not successive. Because the appellate court had remanded the speedy-trial issue while affirming other issues, the defendant’s later motion addressing that issue was timely and should be treated as a supplement to the premature initial motion. The Court vacated the dismissal and directed the motion court to permit counsel to file a single amended motion addressing all claims.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Laura Denvir Stith; Breckenridge, C.J.; Fischer, J.; Draper, J.; Stith, J.; Wilson, J.; Russell, J.; Powell, J.
JURISDICTION	Missouri
DECIDED	June 27, 2017
DISPOSITION	vacated
PROCEDURAL POSTURE	McKay appealed the motion court's dismissal of his post-conviction motion as successive. The Supreme Court of Missouri granted transfer after an intermediate appellate decision.
STANDARD OF REVIEW	Dismissal of a post-conviction motion as successive is reviewed for clear error under Rule 29.15(h). Findings and conclusions are clearly erroneous only when, after review of the entire record, the reviewing court is left with the definite and firm impression that a mistake has been made.
PRECEDENTIAL VALUE	Published Missouri Supreme Court opinion; binding precedent in Missouri.
PARTIES	Daniel McKay v. State

TOPICS

state post-conviction relief

successive petitions

appellate procedure

criminal procedure

standard of review

PRACTICE AREAS

Missouri post-conviction relief

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether a Rule 29.15 post-conviction motion filed before the judgment of conviction is finally affirmed is premature.
2. Whether a later post-conviction motion is successive when the earlier motion was prematurely filed before resolution of a remanded claim.
3. What remedy applies when a premature post-conviction motion was improperly decided on the merits and a later timely motion was dismissed as successive.

HOLDINGS

1. A post-conviction motion filed before the mandate affirming the entire judgment of conviction is issued is premature because the judgment is not yet final and subject to collateral attack.
2. When the initial post-conviction motion was filed prematurely, a motion filed after the entire conviction is affirmed is not successive; it should be treated as a timely supplement to the premature initial motion.
3. The motion court must treat the premature and timely pro se motions as a single motion and allow appointed counsel to file one amended motion addressing all claims, including claims previously ruled upon.

KEY QUOTATIONS

“Both of the rules thereby contemplate a single mandate that starts the running of the 90-day period for filing a motion.” (785)

“At that point the premature motion, as filed or as supplemented within the time permitted for filing such a motion, should be considered filed by the motion court.” (787)

“It was error to dismiss Mr. McKay’s timely pro se motion as successive.” (788)

FACTUAL BACKGROUND

McKay was convicted of two counts of selling a controlled substance and one count of unlawful possession of a firearm and received prison sentences. On direct appeal, the court of appeals remanded his speedy-trial claim for an evidentiary hearing while purporting to affirm the conviction in part. McKay then filed a post-conviction motion addressing claims other than the still-pending speedy-trial claim. After the speedy-trial claim was denied on remand and the conviction was finally affirmed, McKay filed a second motion addressing ineffective assistance related to that claim.

PROCEDURAL HISTORY

McKay was convicted after a jury trial and appealed, including on a speedy-trial claim. The court of appeals affirmed in part and remanded the speedy-trial issue for an evidentiary hearing. While that issue remained unresolved, McKay filed a Rule 29.15 motion addressing his other claims; the motion court denied relief and the court of appeals affirmed. After the speedy-trial claim was finally denied and the conviction was affirmed by a second mandate, McKay filed another post-conviction motion alleging ineffective assistance relating to the speedy-trial claim. The motion court dismissed it as successive, and the Supreme Court vacated that dismissal.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The circuit court must treat the premature first motion and the timely second pro se motion as a single motion and allow appointed counsel to file an amended post-conviction motion addressing all claims, including claims previously litigated in the premature motion.

CASES CITED

- Dorris v. State, 360 S.W.3d 260, 269 (Mo. banc 2012)
- Smith v. State, 21 S.W.3d 830, 831 (Mo. banc 2000)
- Futrell v. State, 667 S.W.2d 404, 406-07 (Mo. banc 1984)
- Whitfield v. State, 435 S.W.3d 700, 701 (Mo. App. 2014)
- Price v. State, 422 S.W.3d 292, 296 (Mo. banc 2014)
- Gehrke v. State, 280 S.W.3d 54, 56-57 (Mo. banc 2009)
- State v. McKay, 411 S.W.3d 295, 306 (Mo. App. 2013)
- State v. Robinson, 753 S.W.2d 36, 38 (Mo. App. 1988)
- Nolan v. State, 959 S.W.2d 939, 940 (Mo. App. 1998)
- Wright v. State, 501 S.W.3d 907, 908 (Mo. App. 2016)
- Woods v. State, 53 S.W.3d 587, 588-89 (Mo. App. 2001)
- Ramsey v. State, 98 S.W.3d 578, 579 (Mo. App. 2002)
- Roth v. State, 921 S.W.2d 680, 681 (Mo. App. 1996)

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