



*Missouri Court of Appeals  
Western District*

<b>MICHAEL D. TAYLOR, JR.,</b>	)	
	)	<b>WD72173</b>
<b>Appellant,</b>	)	
<b>v.</b>	)	<b>ORDER FILED:</b>
	)	
<b>STATE OF MISSOURI,</b>	)	<b>June 14, 2011</b>
	)	
<b>Respondent.</b>	)	

**Appeal from the Circuit Court of Jackson County, Missouri  
The Honorable Ann Mesle, Judge**

**Before Joseph M. Ellis, P.J., Victor C. Howard, and Thomas H. Newton, JJ.**

**ORDER**

**Per Curiam:**

Mr. Michael D. Taylor, Jr., appeals the denial of his Rule 24.035 post-conviction motion without an evidentiary hearing.

For reasons stated in the memorandum provided to the parties, we affirm. Rule 84.16(b).



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	)	<b>WD72173</b>
<b>Appellant,</b>	)	
<b>v.</b>	)	<b>MEMORANDUM FILED:</b>
	)	
<b>STATE OF MISSOURI,</b>	)	<b>June 14, 2011</b>
	)	
<b>Respondent.</b>	)	

**MEMORANDUM PROVIDING REASONS FOR ORDER  
AFFIRMING JUDGMENT UNDER RULE 84.16(b)<sup>1</sup>**

Mr. Michael D. Taylor, Jr., appeals the denial of his Rule 24.035<sup>2</sup> post-conviction motion without an evidentiary hearing. Mr. Taylor claims that the motion court erred in failing to grant him a hearing and in adopting the State’s findings of fact and conclusions of law. We affirm.

**Factual and Procedural Background**

Mr. Taylor pleaded guilty pursuant to a plea agreement, which required him to plead guilty to first-degree robbery, armed criminal action (ACA), assault on a law

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<sup>1</sup>This informal, unpublished memorandum is provided to the parties to explain the rationale for the order affirming judgment. This memorandum is not a formal opinion and is not uniformly available. It shall not be reported, cited, or used in unrelated cases before this court or any other court. A copy of this memorandum shall be attached to any motion filed for rehearing or for transfer to the Supreme Court.

<sup>2</sup> Rule references are to Missouri Rules of Civil Procedure 2009.

enforcement officer, and resisting arrest. Mr. Taylor admitted guilt to all of the charges except for the assault charge, for which he entered a no contest, or *Alford* plea.<sup>3</sup> In exchange for his pleas, the State recommended twenty years for all of the offenses and dropped a second-degree burglary charge in a separate case. Mr. Taylor was sentenced to twenty years imprisonment for the first-degree robbery and the ACA convictions, to run concurrently. He received a seven-year term of imprisonment for the assault conviction and a one-year term in jail for resisting arrest, to run concurrently with the other sentences.

Subsequently, Mr. Taylor filed an amended Rule 24.035 motion for post-conviction relief. The motion court denied it without an evidentiary hearing, and Mr. Taylor appeals, raising three points.

### **Standard of Review**

We review the denial of a Rule 24.035 post-conviction relief motion to determine if the motion court's findings and conclusions were clearly erroneous. Rule 24.035(k); *Samuel v. State*, 284 S.W.3d 616, 618 (Mo.App. W.D. 2009). We will affirm unless we have a definite and firm impression that a mistake has been made after review of the entire record. *Samuel*, 284 S.W.3d at 618.

### **Legal Analysis**

In his first two points, Mr. Taylor argues that the motion court erred in denying his motion without an evidentiary hearing because he “alleged facts, not conclusions, which

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<sup>3</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).

if true would entitle him to relief and which were not refuted by the record.” Specifically, Mr. Taylor argues that his plea counsel was ineffective because plea counsel misadvised him about the maximum sentence under the plea agreement that the court could sentence him and about the effect of an *Alford* plea. He further argues that his pleas of guilty were involuntary and that he would not have pleaded guilty but for plea counsel’s misrepresentations.

To be entitled to an evidentiary hearing on a Rule 24.035 motion, the “(1) movant [must have] pleaded facts, not conclusions, warranting relief; (2) the facts alleged are not refuted by the record; and (3) the matters complained of resulted in prejudice to the movant.” *Webb v. State*, 334 S.W.3d 126, 128 (Mo. banc 2011); *see also* Rule 24.035(h). A movant claiming ineffective assistance of counsel must allege facts, not refuted by the record, that show counsel’s performance fell below the level of a competent attorney and counsel’s incompetence prejudiced him. *Webb*, 334 S.W.3d at 128. A movant under Rule 24.035 establishes prejudice by “showing that there is a reasonable probability, that but for [plea] counsel’s errors, he would have insisted on going to trial.” *Id.* (citation and internal quotation marks omitted). A defendant may be entitled to relief when plea counsel misleads the defendant into pleading guilty if the misrepresentation undermines the voluntariness of the plea. *Krider v. State*, 44 S.W.3d 850, 857 (Mo.App. W.D. 2001). The test to determine if the misrepresentation affected the voluntariness of the plea is whether a reasonable basis exists in the record for the movant’s mistaken belief. *Id.*

Mr. Taylor claims that his pleas were involuntary because plea counsel misadvised him that if he pleaded guilty, his sentence from the court would not exceed ten years, thus failing to explain that the plea agreement allowed the court to sentence him to prison for a maximum of twenty years for all four counts. Mr. Taylor also claims that his plea counsel misadvised him by stating that entering an *Alford* plea would result in the dismissal of the assault charge. The record refutes these claims.

First, during a discussion about the plea negotiations in Mr. Taylor's presence, the State highlighted the difference between a previous plea agreement, which offered a fixed total of fifteen years for all of the counts, and the active plea agreement, offering Mr. Taylor an opportunity to seek a lesser sentence from the court, but also allowing the State to ask for a maximum of twenty years of imprisonment for all four charges. Second, the record shows that Mr. Taylor was able to explain the agreement to the court. Mr. Taylor stated, "I have anywhere from probation to twenty years with a lid on it." Third, after Mr. Taylor entered his pleas to each count, plea counsel informed him of the punishment ranges for each conviction on the record. He specifically asked Mr. Taylor if he knew that he was facing a minimum term of ten years imprisonment for first- degree robbery and a maximum term of life. Mr. Taylor admitted being aware of the sentencing ranges. Finally, Mr. Taylor admitted that plea counsel explained the risk associated with seeking a lesser sentence from the court and that he wanted to take the risk. The aforementioned statements negate any reasonable basis upon which Mr. Taylor could have believed that ten years was the maximum amount of time the court would sentence him. Additionally,

Mr. Taylor's own explanation of the plea agreement negates a finding that counsel did not explain the agreement to him.

The same statements also negate any reasonable basis for Mr. Taylor's claim that he did not understand the effect of an *Alford* plea. Moreover, specific statements surrounding the *Alford* plea also refutes his claim. First, plea counsel explained to Mr. Taylor that Mr. Taylor was not admitting to assaulting the officer, but was pleading no contest by entering the *Alford* plea, and that the plea had the same legally binding effect as pleading guilty. Second, Mr. Taylor recognized the sentencing range for the assault conviction for which he had entered an *Alford* plea. Mr. Taylor agreed that the range of punishment was accurate for the assault charge. This would have been the appropriate time to object if he thought the *Alford* plea dismissed the charge. Third, the State reiterated what plea counsel had explained about the legal effect of entering an *Alford* plea and questioned Mr. Taylor whether that was his understanding. Mr. Taylor answered in the affirmative. Finally, at the sentencing hearing, plea counsel argued for a certain sentence on the assault conviction. Mr. Taylor did not challenge the conviction for assaulting the officer despite this opportunity. The aforementioned refutes any claim that he did not understand the consequences of the *Alford* plea or any claim that he believed the assault charge would consequently be dismissed. Therefore, Mr. Taylor's first and second points are denied.

In his third point, Mr. Taylor argues that the motion court erred in denying relief "by issuing findings and conclusions that were not a product of the court's careful,

thoughtful, and independent judgment.” A trial court may adopt a party’s proposed findings in whole or part as long as they reflect the court’s independent judgment. *See Ferguson v. State*, 325 S.W.3d 400, 414 (Mo.App. W.D. 2010).

Mr. Taylor claims that the findings and conclusions were not a reflection of the court’s independent judgment because it cites erroneous filing dates for the post-conviction motion, relies on overruled law, and prevents a meaningful review. As the State asserts, this point is not preserved because Mr. Taylor failed to raise this claim in a post-trial motion. In *State v. Kenley*, 952 S.W.2d 250, 260 (Mo. banc 1997), the Supreme Court stated that a similar claim was not preserved because the movant failed to address the error in a Rule 75.01 motion. *Id.* Notwithstanding, the record supports the judgment, so Mr. Taylor failed to show a lack of independent judgment by the motion court. *See id.* at 261-62 (stating an adopted judgment will stand if supported by the record).

### **Conclusion**

For the foregoing reasons, we affirm.