

STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)

**FILED**  
AUG 27 2015  
22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

JULIUS L. EDMONDS, )  
 )  
Movant, )  
 ) No. 1522-CC00435  
vs. )  
 ) Division No. 12  
STATE OF MISSOURI, )  
 )  
Respondent. )

**ENTERED**  
AUG 27 2015

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Movant has timely filed a motion pursuant to Rule 24.035. Movant's counsel has filed an amended motion on July 27, 2015.<sup>1</sup> Having examined the records and files in this case, the Court now finds as follows:

FINDINGS OF FACT

1. Movant was charged in Cause No. 1422-CR00509-01 with sodomy first degree and burglary first degree.
2. Movant pleaded guilty on January 9, 2015 to sodomy first degree. The guilty plea was pursuant to an agreement with the State whereby the State would dismiss the burglary charge and

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<sup>1</sup> The transcript of movant's guilty plea and sentencing was not filed with the Court and the time limit for filing an amended motion was never triggered.

movant was to receive a sentence of ten years for the sodomy charge.

3. Movant was sentenced on January 9, 2015 to a term of ten years in accordance with the plea agreement.

4. Movant was represented by Sara Gordon and the State was represented by Anna Kratky.

5. Movant was a high school graduate.

6. Movant understood the charge against him and said he had discussed the case with his attorney sufficiently to make his decision to plead guilty.

7. Movant understood the range of punishment on the sodomy charge was five to thirty years or life imprisonment.

8. Movant understood the rights he was waiving by his guilty plea.

9. Movant told the Court he wished to waive his rights and to admit he was guilty of sodomy first degree in return for a ten year sentence. When asked if he was positive this was what he wished to do, movant responded, "Yes, sir. I'm positive."

10. Movant understood he was to receive a sentence of ten years and he understood he would have to serve 85% of the sentence before being eligible for parole. Movant also understood he would be subject to lifetime supervision.

11. Movant said he was making his plea voluntarily and without force or intimidation.

12. Movant admitted the facts recited by Ms. Kratky were true. Movant admitted that on February 12, 2014, he forcibly put his finger into the vagina of the victim who is a handicapped woman who needs assistance getting out of bed and into a wheelchair at times. The Court asked movant, "You're charged with forcibly putting your finger into the vagina of Ms. VV. Is that true or not true?" Movant responded, "Yes, it's true, Your Honor."

13. Movant admitted he pleaded guilty in July 1991 to two counts of possession of a controlled substance and in February 1991 he pleaded guilty to possession of a controlled substance.

14. Movant testified that he had never been treated for any mental disorder and the only health problems he had were high blood pressure and diabetes.

15. After pronouncement of his sentence movant testified he had discussed the case sufficiently with Ms. Gordon, she had discussed his rights if he went to trial, he said he had no witnesses to call if the case went to trial, Ms. Gordon had answered all of his questions, had done everything he asked, and he said he had no complaints.

CONCLUSIONS OF LAW

1. Movant has requested an evidentiary hearing. To be entitled to an evidentiary hearing the movant must plead facts, not conclusions, which are not refuted by the record, which if true would entitle movant to relief, and the matters complained of must have resulted in prejudice. Woolridge v. State, 239 S.W.3d 151, 154 (Mo.App.E.D. 2007); Mosby v. State, 236 S.W.3d 670, 675 (Mo.App.S.D. 2007). A movant is not entitled to a hearing where the motion, files and record of the case conclusively show that the movant is not entitled to relief. Rule 24.035(h); State v. Fraction, 782 S.W.2d 764, 769 (Mo.App. 1989); Welch v. State, 770 S.W.2d 441 (Mo.App. 1989). This Court has reviewed the files and transcript in this case and finds that movant has failed to allege grounds that would entitle him to relief if true and that are not refuted by the record. Movant is therefore not entitled to an evidentiary hearing.

2. The only claim in movant's amended motion is that his attorney was ineffective for failing to advise movant that he had a viable defense to the charge of first degree sodomy and that if he went to trial he could have argued he was guilty of

sodomy second degree. He claims his attorney did not advise him of the definition of "forcible compulsion" as used in § 556.061(12).

3. After a plea of guilty the effectiveness of counsel is only cognizable and relevant as it affects the voluntariness of the plea. Coke v. State, 229 S.W.3d 638, 641 (Mo.App.W.D. 2007); Salinas v. State, 96 S.W.3d 864, 865 (Mo.App.S.D. 2002). The movant must show that but for his counsel's errors he would not have pled guilty and would have insisted on going to trial. Zarhouni v. State, 313 S.W.3d 713, 716 (Mo.App.W.D. 2010). A defendant who repeatedly assures the court at his guilty-plea hearing that he is satisfied with his counsel's performance and believes his counsel has done everything defendant requested is barred from obtaining post-conviction relief based on ineffective assistance of counsel. Wild v. State, 345 S.W.3d 328, 330 (Mo.App.E.D. 2011); Golliday v. State, 203 S.W.3d 258, 261 (Mo.App.S.D. 2006).

4. In accordance with § 566.060 a person commits the crime of sodomy first degree " if he or she has deviate sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion." A person commits sodomy second degree if

he has deviate sexual intercourse with another person without that person's consent. Section 556.061.12 defines the term "forcible compulsion" to mean either "(a) Physical force that overcomes reasonable resistance; or (b) A threat, express or implied, that places a person in reasonable fear of death, serious physical injury or kidnapping of such person or another person." The force involved is force calculated to overcome the victim's resistance and it need not come after the victim has physically resisted. State v. French, 308 S.W.3d 266, 272 (Mo.App.E.D. 2010).

The Court finds movant's claim is without merit. The record indicates that movant's guilty plea was made voluntarily and in the course of the guilty plea movant said he understood the charge. Movant has a high school education and he admitted he forcibly put his finger into the victim's vagina. The facts recited by the prosecuting attorney were sufficient for movant to understand the nature of the charge against him, the facts do not constitute sodomy second degree because movant admitted he used force, and movant does not deny that he used force in committing sodomy.<sup>2</sup>

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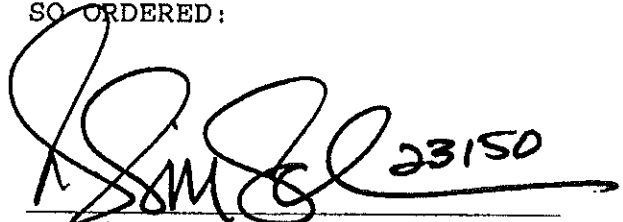
<sup>2</sup> For purposes of determining whether there is a factual basis for a plea, every element of a crime to which a defendant pleads guilty need not be

ORDER

The Court has reviewed the record, relevant case law and movant's Rule 24.035 Motion. The Court finds that movant has failed to allege facts which are not refuted by the record and which entitle him to relief.

THEREFORE, the Court orders, adjudges and decrees that Movant's request for a hearing is DENIED and that the Motion made pursuant to Supreme Court Rule 24.035 is DENIED.

SO ORDERED:



Dennis M. Schaumann, Judge

Dated: \_\_\_\_\_

8/27/15

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explained as long as the defendant understands the nature of the charge. Thurman v. State, 263 S.W.3d 744, 753 (Mo.App.E.D. 2008); State v. Taylor, 929 S.W.2d 209, 217 (Mo.banc 1996).