

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

<b>KEVIN L. HAYSLETT,</b>	)	
	)	
<b>Movant,</b>	)	<b>Case No. 0616-CV35881</b>
<b>v.</b>	)	<b>Division 1</b>
	)	
<b>STATE OF MISSOURI,</b>	)	
	)	
<b>Respondent.</b>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT  
OVERRULING AMENDED MOTION TO VACATE, SET ASIDE, OR CORRECT  
JUDGMENT AND SENTENCE PURSUANT TO SUPREME COURT RULE 24.035**

Movant’s Amended Motion to Vacate, Set Aside, or Correct Judgment and Sentence Pursuant to Supreme Court Rule 24.035, came before the Court for an evidentiary hearing on the 6th day of March, 2008. Based upon a review of the trial transcript, the Motions submitted by Movant, and the evidentiary hearing, the Court makes the following Findings of Fact and Conclusions of Law OVERRULING Movant’s Amended Motion to Vacate, Set Aside, or Correct Judgment and Sentence Pursuant to Supreme Court Rule 24.035.

**Findings of Fact**

**The Original Proceedings:**

1. On July 10, 2006, defendant appeared in this court in State of Missouri v. Kevin L. Hayslett, Case No. 16CR03-007329-01. The State withdrew its Amended Information, and pursuant to terms of plea agreement, Movant Kevin Hayslett pled guilty to Count 1 – Forcible Rape, Count 3-Forcible Sodomy, Count 5-Forcible Sodomy, Count 11- Forcible Rape, Count 13- Attempted Forcible Sodomy, County 19 – Forcible Rape, Count 23- Forcible Rape, Count 25- Forcible Sodomy, Count 27-Forcible Sodomy, Count 30-Forcible Rape, Count 31-Forcible

Sodomy, Count 32- Attempted Forcible Sodomy, Count 36 – Rorcible Rape, County 38-Forcible Sodomy, Count 40-Attempted Forcible Sodomy, Count 42- Assault in the First Degree, Count 48-Forcible Rape, Fount 50-Forcible Sodomy, Count 52- Attempted Forcible Sodomy and Count 54-Forcible Sodomy. In *State v. Kevin L. Hayslett*, 16CR03007329-01, Movant was charged in the Circuit Court of Jackson County with Count 1, Forcible Rape; Count 2, Armed Criminal Action; Count 3, Forcible Sodomy; Count 4, Armed Criminal Action; Count 5, Forcible Sodomy; Count 6, Armed Criminal Action; Count 7, Robbery 1<sup>st</sup> Degree; Count 8, Armed Criminal Action; Count 9, Armed Criminal Action; Count 10, Armed Criminal Action; Count 11, Forcible Rape; Count 12, Armed Criminal Action; Count 13, Attempted Forcible Sodomy; Count 14, Armed Criminal Action; Count 15, Forcible Sodomy; Count 16, Armed Criminal Action; Count 17, Forcible Sodomy; Count 18, Armed Criminal Action; Count 19, Forcible Rape; Count 20, Forcible Sodomy; Count 21, Attempted Forcible Sodomy; Count 22, Robbery 2<sup>nd</sup> Degree; Count 23, Forcible Rape; Count 24, Armed Criminal Action-Gun; Count 25, Forcible Sodomy; Count 26, Armed Criminal Action-Gun; Count 27, Forcible Sodomy; Count 28, Armed Criminal Action; Count 29, Forcible Rape; Count 30, Forcible Rape; Count 31, Forcible Sodomy; Count 32, Attempted Forcible Sodomy; Count 33, Attempted Forcible Sodomy; Count 34, Armed Criminal Action; Count 35, Forcible Sodomy; Count 36, Forcible Rape; Count 37, Forcible Rape; Count 38, Forcible Sodomy; Count 39, Attempted Forcible Sodomy; Count 40, Forcible Sodomy; Count 41, Robbery 1<sup>st</sup> Degree; Count 42, 1<sup>st</sup> Degree Assault With Serious Injury; Count 43, ; Count 44, ; Count 45, ; Count 46, ; Count 47, ; Count 48, Forcible Rape; Count 49, ; Count 50, Forcible Sodomy; Count 51, ; Count 52, Attempted Forcible Sodomy; Count 53, ; and, Count 54, Forcible Sodomy.

2. At the time of the guilty plea hearing, the Assistant Prosecutor Trisha Lacey described named charges and counts to which Mr. Hayslett was pleading guilty (as described above), and gave the following description of the terms of the guilty plea:

The remaining counts will be dismissed. The defendant is pleading up to the Court with a lid of two consecutive life sentences. (Tr.p.5, lines 2-5)

3. At the guilty plea hearing Mr. Hayslett indicated in his sworn testimony, that he completed twelfth grade. (Tr.p.5, lines 19-21).

4. At the guilty plea hearing Mr. Hayslett answered the following question:

Q: ...You have had the chance to confer with both your attorney and with members of your family here today in the process that you have gone through in reaching these decisions here today, is that correct?

A: yes.

5. At the guilty plea hearing Mr. Hayslett gave the following testimony under oath:

Q: And, in fact, there is no promise on the ultimate sentence that you will receive except that the sentence that I would impose would be no more than two consecutive life sentences, is that right?

A: Yes.

Q: That would be two sentences equivalent to or comparable to 30 years each; do you understand that?

A: yes.

(Tr.p.8 line 19 – page 9, line2)

6. At the guilty plea hearing Mr. Hayslett answered the following testimony under oath:

Q: And are you satisfied that Mr. Ross has answered all of your questions in a reasonable manner and to your satisfaction?

A: Yes.

(Tr. p.14, lines 9-12)

Attorney Dan Ross represented Movant. Assistant Prosecuting Attorney Trisha Lacey represented the State.

7. The court also reiterated the sentencing lid near the conclusion of the hearing, and still in the presence of the defendant, saying, “And just so that the record is clear, the Court will consider the plea to be to a lid or a maximum sentence that can be imposed in this case of two consecutive life sentences. The SAR will be ordered today.” (Tr. p.36, lines 2-6)

8. At the sentencing hearing on September 15, 2006, the court imposed sentence of Life on Counts 1,3,5,11,13,19,23,25 and 27, all to run concurrent . The court imposed sentence of life on Counts 30,31,32,36,38,40,42,48,50,52 and 54, all to run concurrent and also to run consecutive to the sentences imposed on Counts 1,3,5,11,13,19,23,25 and 27.

9. Movant was delivered to the Missouri Department of Corrections on September 22, 2006.

10. Movant timely filed his pro se Motion on December 22, 2006, and the Amended Motion on July 3, 2007. The pro se Motion is incorporated into the Amended Motion as Paragraph 8(C), at pp. A-1 through A-4.

11. In his factual basis for Count 42, Kevin Hayslett testified as follows:

Q: On that date of September 18, 2003, at the location of 21<sup>st</sup> and Flora, Kansas City, Missouri, Jackson County, Missouri, did you strike an individual who you now know to be Amy Barron with a board—

A: Yes.

Q: --of some nature? And also strike her with a gun?

A: Yes.

Q: And would you agree that such conduct on your part was a substantial step toward the commission of a crime of either attempting to kill or to cause the woman who you now know to be Amy Barron serious physical injury?

A: Yes.

Q: And it was done knowingly on your part? In other words it wasn't an accident?

A: Yes

Q: And during the course thereof would you agree that the injuries or the wounds she suffered as a result of your conduct were serious physical injuries?

A: Yes. (Tr. p.29, line 11 – page 30, line 8)

....

Q: And where were you when you struck her with that board?

A: Outside of the truck.

...

Q: What kind of a board was it?

A: Not the size of a two by four. Something smaller.

Q: Where did you get the board?

A: Just on the ground.

(Tr. page 30, line 21 – p. 31, line8)

**Issues presented by Movant:**

12. In Paragraph 8(A) of Movant's motion, Movant raises the following issues:

A. Movant alleges that plea counsel provided ineffective assistance of counsel when counsel failed to inform Movant that serving his sentences consecutively meant Movant would serve his sentences one after the other.

B. Movant alleges that that his plea to Count 42 was unknowing and involuntary and that a sufficient factual basis was not established, because Count 42 alleged that he "struck A.B. with a 2 x 4 and a gun" and as his factual basis he testified that he picked up a stick or a board.

C. In his pro se issues raised by Movant himself by attachment to the Amended Motion, Movant alleges that "the state failed to charge and prove culpable mental state 652.012(2) on each of the 20 counts Movant plead guilty to. Violating Movants constitutional rights to the Fifth and Fourteenth Amendments of the United States Constitution."

D. In his pro se issues raised by Movant himself by attachment to the Amended Motion, Movant alleges "Movant was denied effective assistance of counsel in

“Contranention [sic] of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution as well as Art, I, Sec 10 & 18(A) of the Missouri Constitution.”

E. In his pro se issues raised by Movant himself by attachment to the Amended Motion, labeled as 9A, Movant alleges that “it is incumbent that the State show thee the by implication or fact the state of mind Movant was in at the time of the offense...Nothing is shown to that effect....”

F. In his pro se issues raised by Movant himself by attachment to the Amended Motion, labeled as Paragraph 9B, Movant alleges that the State failed to implicate, stating, “as to Counts 1,11,19,23,30,36,48, nothing is shown to validate as to what a deadly weapon was suppose to be....”

G. In his pro se issues raised by Movant himself by attachment to the Amended Motion, labeled as Paragraph 9C I, II, and III, Movant alleges ineffective assistance of counsel in the following:

- I. Counsel failed to inquire into the tainted police lineup;
- II. Counsel failed to clearly view all of the evidence, including the State withholding exculpatory evidence;
- III. Counsel failed to ensure that Movant was given the agreed time for each count of his guilty plea.

#### **Evidence at 24.035 Evidentiary Hearing**

13. Movant requested an evidentiary hearing and to be personally present at any evidentiary hearing. Movant was granted the evidentiary hearing and was present and testified. Movant testified that he decided to plead guilty on the day of trial. He testified that he was told on that day by his lawyer that “everything was blown out of proportion.” When the court asked

him during the guilty plea about “2 life sentences,” he replied that “I wasn’t thinking.” He denied having been counseled by his lawyer regarding the definition of “consecutive” and “concurrent” in a way that he understood.

14. Dan Ross testified that he has no specific recollection of conversations with Kevin Hayslett in preparation for the guilty plea, but that his standard practice is to always explain the range of punishment on each offense; that he always describes “concurrent” time as “at the same time” as opposed to consecutive time which is “running wild” or “end to end”. He explains to his clients that “consecutive” sentences are served “end to end.” It was his customary practice to have that discussion with his clients prior to a guilty plea.

15. Mr. Ross represented Mr. Hayslett for 1.5 years. During that time he visited with Hayslett at the jail, had numerous telephone calls with Hayslett, and meetings with family members. Kevin Hayslett was above average in intelligence and wrote letters to his attorney, asking questions. Mr. Ross never had any reason to believe Hayslett lacked understanding of penalty ranges or the consequences of his plea.

16. Movant testified on his pro se claims. He read many of his handwritten claims 8a, 8b, 8c, 9A, 9B and 9C, verbatim from his motion and amended motion.

#### **Conclusions of Law**

17. In a Rule 24.035 motion, the Movant has the burden of proving the Movant’s claims for relief by a preponderance of the evidence. Rule 24.035(i).

18. Defendants in criminal proceedings are given the right to effective assistance of counsel under the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution.

19. To prevail on his claim of ineffective assistance of counsel in a guilty plea case, Movant must meet the test set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under Strickland, he must show (1) that his attorney failed to exercise the level of skill and diligence that a reasonably competent attorney would in a similar situation, and (2) that he was prejudiced by that failure. Id. at 687, 104 S.Ct. at 2064. After a guilty plea has been entered, “the issue of effectiveness of counsel is material only to the extent it affects the voluntariness and understanding with which the plea was made.” Winegar v. State, 967 S.W.2d 265, 267 (Mo.App. W.D.1998). To demonstrate “prejudice in a guilty plea case, a defendant must prove that, but for the errors of counsel, he would not have pled guilty and would have demanded a trial.” State v. Roll, 942 S.W.2d 370, 375 (Mo.en banc 1997).

20. In Point 1, Movant asserts that Dan Ross provided ineffective assistance of counsel when he failed to inform Movant that serving his sentences consecutively meant Movant would serve his sentences one after the other, and that Movant was thereby prejudiced. First, the court is not convinced that Movant lacked an understanding of the meaning of consecutive life sentences. Mr. Hayslett’s testimony at this evidentiary hearing was not believable. Given Mr. Hayslett’s education level, his command of the English language, his testimony during the guilty plea, and the practices of his attorney in explaining the terms “consecutive” and “concurrent,” this court finds that Movant has not met his burden of persuasion.

21. The court finds from a preponderance of the evidence, that Movant understood what consecutive life sentences meant, and that his plea was voluntary and that the range of punishment available to the sentencing court was fully understood by Movant at the time of his plea.



22. In examining the transcript of the guilty plea hearing, the court finds that Movant had many opportunities to question the term “consecutive,” and that there is no evidence of confusion or lack of understanding of consecutive life sentences.

23. Movant has failed to prove that he would have demanded a jury trial if he had understood the plea lid of two consecutive life sentences.

24. Movant’s second point, regarding Count 42, is contradicted by Movant’s testimony at the guilty plea. He did not testify that he picked up a “stick or a board.” His testimony was that he struck A.B. with both a board “of some nature” and also with a gun. He also admitted that he did so knowingly, not accidentally, and that during the course of striking her she suffered serious physical injuries.

25. Movant in his testimony at the guilty plea, admitted every essential element of the Assault in the First Degree, class A Felony charged in Count 42. Movant admitted that he used a board “of some size”. His failure to admit that the board was a 2 x 4 did not significantly change the Movant’s admission of every element of the Class A assault in the first degree. There was no violation of Supreme Court Rule 24.024.5(e), nor was there any violation of Movant’s constitutional rights. His admission of guilt to Count 42 was entered intelligently and voluntarily. Movant has demonstrated no prejudice. Movant’s point fails.

26. On pro se issues raised by Movant, he has failed to demonstrate facts warranting relief. Movant has failed to prove any facts which would entitle him to relief on his allegation that the State failed to charge and prove culpable mental state on each count. He admitted culpable mental state in the factual basis given for each count to which he pled guilty. “A person who pleads guilty to a criminal offense has a right to challenge the sufficiency of the information or indictment by direct appeal. A postconviction motion does not substitute for a direct appeal.”

Soutee v. State, 51 S.W.3d 474 (Mo.App.S.D. 2001), citing State v. Tolliver, 839 S.W.2d 296, 298 (Mo. banc 1992), Rodden v. State, 795 S.W.2d 393, 395 (Mo. banc 1990), cert. denied, 499 U.S. 970, 111 S.Ct. 1608, 113 L.Ed.2d 670 (1991). Matters that were or should have been raised on direct appeal are not subject to review by motion for post-conviction relief.” State v. Sparks, 916 S.W.2d 234, 236 (Mo.App.1995). Movant did not challenge the sufficiency of Count I of the information by direct appeal of his criminal case. He is not entitled to do so in this appeal.

27. In Point 8B, Movant claims generally that he was denied effective assistance of counsel. No specifics are provided either in this pro se issue of his amended motion or at the evidentiary hearing. No showing of prejudice is provided. Movant’s point fails.

28. In Point 8C of his pro se issues, Movant claims that the state failed to implicate what was considered a deadly weapon, thus violating his constitutional rights. Any insufficiency in the State’s information was not timely and properly raised on direct appeal. Movant has made no showing of facts or prejudice from this unsubstantiated allegation. His point is denied.

29. In Point 9A Movant claims that the State failed to show the state of mind of the Movant at the time of the offense. Movant made a sufficient factual showing to support each count on which he pled guilty and was found guilty by reason of his plea of guilty. Movant has failed to meet his burden of proof that he is entitled to relief on this issue.

30. In Point 9B Movant alleges that on Counts 1,11,19,23,30,36 and 48 “nothing is shown to validate as to what a deadly weapon was suppose to be.” Movant here again appears to be challenging the charging document on “what the weapon was.” His allegations are incomprehensive and nonspecific. He offered nothing in support of this allegation at the evidentiary hearing. Movant has failed to meet his burden of proof that he is entitled to relief on this point.

31. On pro se Point C (I), Movant alleges that counsel failed to inquire into the tainted police lineup. There was no evidence offered at the evidentiary hearing which demonstrates that Movant was prejudiced by this alleged failing on his attorney's part. Movant's burden has not been met.

32. On pro se Point C (II), Movant alleges that his counsel failed to "clearly view all the evidence of the alleged charges in that the State intentionally withheld exproculatory [sic] evidence that was favorable to the Movant." Movant has failed to meet his burden on this point. There was no evidence that evidence was withheld by the State or that his counsel failed to view the evidence. There was no evidence of prejudice demonstrated. Point denied.

33. On pro se Point C(III), Movant alleges that counsel failed to ensure that Movant was given the agreed upon time for each count as to a guilty plea, thus breaching the agreement. Movant's point is unsubstantiated by evidence. In fact, the evidence reveals that the Movant was sentenced within the range set by the plea agreement. Point denied.

**IT IS THEREFORE ORDERED AND ADJUDGED** that Movant's Amended Motion to Vacate, Set Aside, or Correct Judgment and Sentence Pursuant to Supreme Court Rule 24.035 should be and is now **OVERRULED AND DENIED**.

**IT IS FURTHER ORDERED** that judgment be entered in favor of Respondent State of Missouri.

**SO ORDERED.**

#### **CONCLUSION AND JUDGMENT**

**WHEREFORE, IT IS ADJUDGED AND DECREED** that for the reasons set forth above, the Court finds that Movant has failed to meet his burden of proving any ground for the relief sought in this proceeding under Rule 24.035. Movant's Amended Motion to Vacate and

Set Aside Sentence or Correct the Judgment of Sentence Pursuant to Supreme Court Rule 24.035, is now **OVERRULED AND DENIED** in all respects.

**IT IS ORDERED.**

**/s/ Sandra C. Midkiff**

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SANDRA C. MIDKIFF, Circuit Judge

Date: 3/27/08

I hereby certify that a copy of the above was mailed/  
faxed to the parties on \_\_\_\_\_, 2008:

S. Kathleen Webber, Fax: 889-2088  
Trisha Lacey/Sydney Wallace, Fax: 881-3516

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Kayla Riga, Judicial Administrative Assistant