

IN THE CIRCUIT COURT OF CHRISTIAN COUNTY, MISSOURI

State of Missouri, )  
Plaintiff, )  
vs. ) Case No. \_\_\_\_\_  
)  
\_\_\_\_\_ )  
Defendant. )

**POST CONVICTION RIGHTS NOTICE**

MO. S.Ct. Rules 24.035 (after Guilty Plea) and 29.15 (after Appeal)

A person who is convicted of a felony may seek relief from this court if he or she claims either that the conviction or sentence:

- (1) Violates the constitution or laws of this state or the Constitution of the United States, or
- (2) That this Court when imposing the sentence was without jurisdiction to do so, or
- (3) The sentence imposed was in excess of the maximum sentence authorized by law.

Rules 24.035 or 29.15 provide the only way by which you may seek relief for those claims. I am now providing you a copy of the rules and this notice.

There is a Criminal Procedure Form #40 available for your use in filing this motion. That form is available to you at no cost at the Circuit Clerk, 110 West Elm Street Room 202 Ozark, MO 65721; or Missouri Department of Corrections where you are incarcerated.

You must understand that any motion to vacate, set aside, or correct the judgment and sentence under this rule:

- (1) Must be filed with this court within 180 days of sentence, unless you appeal this court's judgment or sentence, or
- (2) If an appeal is taken, it must be filed with this court within 90 days after the date the mandate of the appellate court issues affirming this judgment and sentence.

Failure to file the motion within these time limits constitutes a complete waiver of any right you may have to seek relief under Rule 24.035 or 29.15

If you file this motion, you shall include every ground known to you for vacating, setting aside or correcting the judgment or sentence.

There is no cost deposit required for you to file this motion.

If you are indigent and file your own motion, an attorney will be appointed for you.

**I acknowledge receipt of this Notice.**

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Clerk Handbooks

Supreme Court Rules

<p><b>Subject:</b> Rule 29 - Rules of Criminal Procedure - Misdemeanors or Felonies - Verdict Sentence and New Trial</p> <p><b>Topic:</b> Conviction After Trial - Correction</p>	<p><b>Section/Rule:</b> 29.15</p> <p><b>Publication / Adopted Date:</b> June 13, 1979</p> <p><b>Revised / Effective Date:</b> January 1, 2018</p>
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**29.15. Conviction After Trial - Correction**

**(a) Nature of Remedy - Rules of Civil Procedure Apply.** A person convicted of a felony after trial claiming that the conviction or sentence imposed violates the constitution and laws of this state or the constitution of the United States, including claims of ineffective assistance of trial and appellate counsel, that the court imposing the sentence was without jurisdiction to do so, or that the sentence imposed was in excess of the maximum sentence authorized by law may seek relief in the sentencing court pursuant to the provisions of this Rule 29.15. This Rule 29.15 provides the exclusive procedure by which such person may seek relief in the sentencing court for the claims enumerated. The procedure to be followed for motions filed pursuant to this Rule 29.15 is governed by the rules of civil procedure insofar as applicable.

**(b) Form of Motion - Cost Deposit Not Required - Time to File - Failure to File, Effect of.** A person seeking relief pursuant to this Rule 29.15 shall file a motion to vacate, set aside or correct the judgment or sentence substantially in the form of Criminal Procedure Form No. 40.

No cost deposit shall be required.

The motion shall be filed no earlier than the date the sentence is entered if no appeal is taken, including if no appeal is taken after any remand of the judgment or sentence following a prior appeal, or the date the mandate of the appellate court issues affirming the judgment or sentence.

If the motion is filed prematurely, such motion shall be considered as filed immediately after sentence is entered if no appeal is taken, including if no appeal is taken after any remand of the judgment or sentence following a prior appeal, or the date the mandate of the appellate court issues affirming the judgment or sentence.

If no appeal of such judgment or sentence is taken, the motion shall be filed within 180 days of the date the sentence is entered.

If an appeal of the judgment or sentence sought to be vacated, set aside or corrected is taken, the motion shall be filed within 90 days after the date the mandate of the appellate court issues affirming such judgment or sentence.

If an appeal of such judgment or sentence sought to be vacated, set aside or corrected is taken and the appellate court remands the case for further proceedings, the motion shall be filed within 180 days of the date the court's resulting judgment or sentence is entered if no appeal is taken after remand. If an appeal of the resulting judgment or sentence is taken after remand, then the motion shall be filed within 90 days after the date the mandate of the appellate court issues affirming the judgment or sentence entered after remand.

If the motion is sent to the sentencing court by first-class United States Mail and is addressed correctly with sufficient postage and deposited in the mail on or before the last day for filing the motion, the motion shall be deemed to be filed timely. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of the filing of the motion. Failure to file a motion within the time provided by this Rule 29.15 shall constitute a complete waiver of any right to proceed under this Rule 29.15 and a complete waiver of any claim that could be raised in a motion filed pursuant to this Rule 29.15.

**(c) Clerk's Duties.** Movant shall file the motion and two copies thereof with the clerk of the trial court. The clerk shall file stamp the motion on the date it is received and retain in the court file the envelope in which the motion was sent. The clerk shall immediately deliver a copy of the motion to the prosecutor. Upon receipt of the motion, the clerk shall notify the sentencing judge and shall notify the court reporter to prepare and file the complete transcript of the trial if the transcript has not yet been prepared or filed. If the motion is filed by an indigent pro se movant, the clerk shall forthwith send a copy of the motion to the counsel who is appointed to represent the movant.

**(d) Contents of Motion.** The motion to vacate shall include every claim known to the movant for vacating, setting aside, or correcting the judgment or sentence. The movant shall declare in the motion that the movant has listed all claims for relief known to the movant and acknowledging the movant's understanding that the movant waives any claim for relief known to the movant that is not listed in the motion.

**(e) Pro Se Motion - Appointment of Counsel - Amended Motion, Required When.** Within 30 days after an indigent movant files a pro se motion, the court shall cause counsel to be appointed for the movant. Counsel shall ascertain whether sufficient facts supporting the claims are asserted in the motion and whether the movant has included all claims known to the movant as a basis for attacking the judgment and sentence. If the motion does not assert sufficient facts or include all claims known to the movant, counsel shall file an amended motion that sufficiently alleges the additional facts and claims. If counsel determines that no amended motion shall be filed, counsel shall file a statement setting out facts demonstrating what actions were taken to ensure that (1) all facts supporting the claims are asserted in the pro se motion and (2) all claims known to the movant are alleged in the pro se motion. The statement shall be presented to the movant prior to filing. The movant may file a reply to the statement not later than ten days after the statement is filed.

**(f) Withdrawal of Counsel.** For good cause shown, counsel may be permitted to withdraw upon the filing of an entry of appearance by successor counsel. If appointed counsel is permitted to withdraw, the court shall cause new counsel to be appointed. If an indigent movant is seeking to set aside a death sentence, successor counsel shall have at least the same qualifications as required by Rule 29.16 as the withdrawing counsel.

**(g) Amended Motion - Form, Time for Filing - Response by Prosecutor.** Any amended motion shall be signed by movant or counsel. The amended motion shall not incorporate by reference or attachment material contained in any previously filed motion nor attach or incorporate the pro se motion. All claims shall be included within the same body and text of the amended motion.

If no appeal of the judgment sought to be vacated, set aside, or corrected is taken, the amended motion or statement in lieu of an amended motion shall be filed within 60 days of the earlier of the date both a complete transcript of the trial and sentencing hearing has been filed in the trial court and:

(1) Counsel is appointed, or

(2) An entry of appearance is filed by any counsel that is not appointed but enters an appearance on behalf of movant.

If an appeal of the judgment sought to be vacated, set aside, or corrected is taken, the amended motion or statement in lieu of an amended motion shall be filed within 60 days of the earlier of the date both the mandate of the appellate court is issued and:

(1) Counsel is appointed, or

(2) An entry of appearance is filed by any counsel that is not appointed but enters an appearance on behalf of movant.

The court may extend the time for filing the amended motion or statement in lieu of an amended motion, with no extension exceeding 30 days individually and the total of extensions not to exceed 60 days.

Any response to the motion by the prosecutor shall be filed within 30 days after the date an amended motion or statement in lieu of an amended motion is required to be filed.

**(h) Hearing Not Required, When.** If the court shall determine the motion and the files and records of the case conclusively show that the movant is entitled to no relief, a hearing shall not be held. In such case, the court shall issue findings of fact and conclusions of law as provided in Rule 29.15(j).

**(i) Presence of Movant - Record of Hearing - Continuance of Hearing - Burden of Proof.** At any hearing ordered by the court the movant need not be present. The court may order that testimony of the movant shall be received by deposition. The hearing shall be on the record and shall be confined to the claims contained in the last timely filed motion. The court may continue the hearing upon a showing of good cause. The movant has the burden of proving the movant's claims for relief by a preponderance of the evidence.

**(j) Findings and Conclusions - Judgment.** The court shall issue findings of fact and conclusions of law on all issues presented, whether or not a hearing is held. Rule 78.07(c) shall apply to these proceedings. If the court finds that the judgment was rendered without jurisdiction, that the sentence imposed was illegal, or that there was a denial or infringement of the rights given movant by the constitution of Missouri or the constitution of the United States as to render the judgment subject to collateral attack, the court shall vacate and set aside the judgment and shall discharge the movant or resentence the movant or order a new trial or correct the judgment and sentence as appropriate.

**(k) Appeal - Standard of Appellate Review.** An order sustaining or overruling a motion filed under the provisions of this Rule 29.15 shall be deemed a final judgment for purposes of appeal by the movant or the state. If the court finds that a movant allowed an appeal is an indigent person, it shall authorize an appeal in forma pauperis and furnish without cost a record of all proceedings for appellate review. When the appeal is taken, the circuit court shall order the official court reporter to promptly prepare the transcript necessary for appellate review without requiring a letter from the movant's counsel ordering the same. If the sentencing court finds against the movant on the issue of indigence and the movant so requests, the court shall certify and transmit to the appellate court a transcript and legal file of the evidence solely on the issue of indigence so as to permit review of that issue by the appellate court. Appellate review of the trial court's action on the motion filed under this Rule 29.15 shall be limited to a determination of whether the findings and conclusions of the trial court are clearly erroneous.

**(l) Successive Motions.** The circuit court shall not entertain successive motions.

**(m) Schedule.** This Rule 29.15 shall apply to all proceedings wherein sentence is pronounced on or after

January 1, 2018. If sentence was pronounced prior to January 1, 2018, postconviction relief shall continue to be governed by the provisions of Rule 29.15 in effect on the date the motion was filed or December 31, 2017, whichever is earlier.

*(Added Feb. 11, 1987, eff. Jan. 1, 1988. Amended May 23, 1987, eff. Jan. 1, 1988; June 20, 1995 and corrected Nov. 21, 1995, eff. Jan. 1, 1996; amended Nov. 19, 1996, eff. July 1, 1997; Oct. 6, 1999, eff. July 1, 2000; June 21, 2002, eff. Jan. 1, 2003; Dec. 28, 2016, eff. Jul. 1, 2017; June 27, 2017, eff. Jan. 1, 2018; Dec. 7, 2018, eff. Jan.1, 2018.)*



Clerk Handbooks

Supreme Court Rules

<b>Subject:</b>	<b>Rule 24 - Rules of Criminal Procedure - Misdemeanors or Felonies - Arraignment and Proceedings Before Trial</b>	<b>Section/Rule:</b>	<b>24.035</b>
		<b>Publication / Adopted Date:</b>	<b>June 13, 1979</b>
<b>Topic:</b>	<b>Conviction after Guilty Plea - Correction</b>	<b>Revised / Effective Date:</b>	<b>January 1, 2018</b>

**24.035. Conviction after Guilty Plea - Correction**

**(a) Nature of Remedy - Rules of Civil Procedure Apply.** A person convicted of a felony on a plea of guilty claiming that the conviction or sentence imposed violates the constitution and laws of this state or the constitution of the United States, including claims of ineffective assistance of trial and appellate counsel, that the court imposing the sentence was without jurisdiction to do so, or that the sentence imposed was in excess of the maximum sentence authorized by law may seek relief in the sentencing court pursuant to the provisions of this Rule 24.035. This Rule 24.035 provides the exclusive procedure by which such person may seek relief in the sentencing court for the claims enumerated. The procedure to be followed for motions filed pursuant to this Rule 24.035 is governed by the rules of civil procedure insofar as applicable.

**(b) Form of Motion - Cost Deposit Not Required - Time to File - Failure to File, Effect of.** A person seeking relief pursuant to this Rule 24.035 shall file a motion to vacate, set aside or correct the judgment or sentence substantially in the form of Criminal Procedure Form No. 40.

No cost deposit shall be required.

The motion shall be filed no earlier than the date the sentence is entered if no appeal is taken, including if no appeal is taken after any remand of the judgment or sentence following a prior appeal, or the date the mandate of the appellate court issues affirming the judgment or sentence.

If the motion is filed prematurely, such motion shall be considered as filed immediately after the sentence is entered if no appeal is taken, including if no appeal is taken after any remand of the judgment or sentence following a prior appeal, or the date the mandate of the appellate court issues affirming the judgment or sentence.

If no appeal of such judgment or sentence is taken, the motion shall be filed within 180 days of the date the sentence is entered.

If an appeal of the judgment or sentence sought to be vacated, set aside or corrected is taken, the motion shall be filed within 90 days after the date the mandate of the appellate court issues affirming such judgment or sentence.

If an appeal of such judgment or sentence sought to be vacated, set aside or corrected is taken and the appellate court remands the case for further proceedings, the motion shall be filed within 180 days of the date the court's resulting judgment or sentence is entered if no appeal is taken after remand. If an appeal of the resulting judgment or sentence is taken after remand, then the motion shall be filed within 90 days after the date the mandate of the appellate court issues affirming the judgment or sentence entered after remand.

If the motion is sent to the sentencing court by first-class United States Mail and is addressed correctly with sufficient postage and deposited in the mail on or before the last day for filing the motion, the motion shall be deemed to be filed timely. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of the filing of the motion. Failure to file a motion within the time provided by this Rule 24.035 shall constitute a complete waiver of any right to proceed under this Rule 24.035 and a complete waiver of any claim that could be raised in a motion filed pursuant to this Rule 24.035.

**(c) Clerk's Duties.** Movant shall file the motion and two copies thereof with the clerk of the trial court. The clerk shall file stamp the motion on the date it is received and retain in the court file the envelope in which the motion was sent. The clerk shall immediately deliver a copy of the motion to the prosecutor. Upon receipt of the motion, the clerk shall notify the sentencing judge and shall notify the court reporter to prepare and file the complete transcript of the movant's guilty plea and sentencing hearing if the transcript has not yet been prepared or filed. If the motion is filed by an indigent pro se movant, the clerk shall forthwith send a copy of the motion to the counsel who is appointed to represent the movant.

**(d) Contents of Motion.** The motion to vacate shall include every claim known to the movant for vacating, setting aside, or correcting the judgment or sentence. The movant shall declare in the motion that the movant has listed all claims for relief known to the movant and acknowledging the movant's understanding that the movant waives any claim for relief known to the movant that is not listed in the motion.

**(e) Pro Se Motion - Appointment of Counsel - Amended Motion, Required When.** Within 30 days after an indigent movant files a pro se motion, the court shall cause counsel to be appointed for the movant. If the pro se motion is filed prematurely, such motion shall be considered as filed immediately after the time to file an appeal has expired if no appeal is taken, including if no appeal is taken after any remand of the judgment or sentence following a prior appeal, or the date the mandate of the appellate court issues affirming the judgment or sentence. Counsel shall ascertain whether sufficient facts supporting the claims are asserted in the motion and whether the movant has included all claims known to the movant as a basis for attacking the judgment and sentence. If the motion does not assert sufficient facts or include all claims known to the movant, counsel shall file an amended motion that sufficiently alleges the additional facts and claims. If counsel determines that no amended motion shall be filed, counsel shall file a statement setting out facts demonstrating what actions were taken to ensure that (1) all facts supporting the claims are asserted in the pro se motion and (2) all claims known to the movant are alleged in the pro se motion. The statement shall be presented to the movant prior to filing. The movant may file a reply to the statement not later than ten days after the statement is filed.

**(f) Withdrawal of Counsel.** For good cause shown, counsel may be permitted to withdraw upon the filing of an entry of appearance by successor counsel. If appointed counsel is permitted to withdraw, the court shall cause new counsel to be appointed. If an indigent movant is seeking to set aside a death sentence, successor counsel shall have at least the same qualifications as required by Rule 24.036 as the withdrawing counsel.

**(g) Amended Motion - Form, Time for Filing - Response by Prosecutor.** Any amended motion shall be signed by movant or counsel. The amended motion shall not incorporate by reference or attachment material contained in any previously filed motion nor attach or incorporate the pro se motion. All claims shall be included within the same body and text of the amended motion.

If no appeal of the judgment sought to be vacated, set aside, or corrected is taken, the amended motion or statement in lieu of an amended motion shall be filed within 60 days of the earlier of the date both a complete transcript consisting of the guilty plea and sentencing hearing has been filed in the trial court and:

(1) Counsel is appointed, or

(2) An entry of appearance is filed by any counsel that is not appointed but enters an appearance on behalf of movant.

If an appeal of the judgment sought to be vacated, set aside, or corrected is taken, the amended motion or statement in lieu of an amended motion shall be filed within 60 days of the earlier of the date both the mandate of the appellate court is issued and:

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**(k) Appeal - Standard of Appellate Review.** An order sustaining or overruling a motion filed under the provisions of this Rule 24.035 shall be deemed a final judgment for purposes of appeal by the movant or the state. If the court finds that a movant allowed an appeal is an indigent person, it shall authorize an appeal in forma pauperis and furnish without cost a record of all proceedings for appellate review. When the appeal is taken, the circuit court shall order the official court reporter to promptly prepare the transcript necessary for appellate review without requiring a letter from the movant's counsel ordering the same. If the sentencing court finds against the movant on the issue of indigence and the movant so requests, the court shall certify and transmit to the appellate court a transcript and legal file of the evidence solely on the issue of indigence so as to permit review of that issue by the appellate court. Appellate review of the trial court's action on the motion filed under this Rule 24.035 shall be limited to a determination of whether the findings and conclusions of the trial court are clearly erroneous.



**(l) Successive Motions.** The circuit court shall not entertain successive motions.

**(m) Schedule.** This Rule 24.035 shall apply to all proceedings wherein sentence is pronounced on or after January 1, 2018. If sentence was pronounced prior to January 1, 2018, postconviction relief shall continue to be governed by the provisions of Rule 24.035 in effect on the date the motion was filed or December 31, 2017, whichever is earlier.

*(Added Feb. 11, 1987, eff. Jan. 1, 1988. Amended May 22, 1987, eff. Jan. 1, 1988; June 20, 1995, eff. Jan. 1, 1996; Nov. 19, 1996, eff. July 1, 1997; Oct. 6, 1999, eff. July 1, 2000; June 21, 2002, eff. Jan. 1, 2003. eff. May 31, 2016; May 31, 2016, eff. Jan. 1, 2017; Dec. 28, 2016, eff. Jul. 1, 2017; Jun. 27, 2017, eff. Jan. 1, 2018; Dec. 7, 2018, eff. Jan. 1, 2018.)*