

APPENDIX

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Missouri Court of Appeals
Southern District

Division Two

JOHN SCOTT CRAMER,)	
)	
Movant-Appellant,)	
)	
v.)	No. SD36760
)	
STATE OF MISSOURI,)	Filed: April 12, 2021
)	
Respondent-Respondent.)	

APPEAL FROM THE CIRCUIT COURT OF CAMDEN COUNTY

Honorable Kenneth Hayden

(Bates, P.J., Lynch, J., and Burrell, J.)

ORDER

AFFIRMED

PER CURIAM. All judges agree to affirm and further believe that an opinion would have no precedential value. Accordingly, the judgment of the Circuit Court of Camden County, in its case numbered 15CM-CC00215, is unanimously affirmed in compliance with Rule 84.16(b).

The parties have been furnished with a written statement, for their information only, setting out the basis for the court's decision.



Missouri Court of Appeals

Southern District

Division Two

JOHN SCOTT CRAMER,

Movant-Appellant,

v.

STATE OF MISSOURI,

Respondent-Respondent.

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No. SD36760

Filed: April 12, 2021

APPEAL FROM THE CIRCUIT COURT OF CAMDEN COUNTY

Honorable Kenneth Hayden

STATEMENT

THIS STATEMENT DOES NOT CONSTITUTE A FORMAL OPINION OF THIS COURT. IT IS NOT UNIFORMLY AVAILABLE. IT SHALL NOT BE REPORTED, CITED, OR OTHERWISE USED IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT. THIS STATEMENT SHALL BE ATTACHED TO ANY MOTION FOR REHEARING OR APPLICATION FOR TRANSFER TO THE SUPREME COURT FILED WITH THIS COURT.

A jury found John Scott Cramer (“Movant”) guilty of the class-A felony of child molestation in the first degree.¹ The trial court accepted the verdict and imposed a “life”

¹ The crime was a class-A felony and not eligible for probation or parole in Movant’s case because his victim was less than twelve years of age and Movant had been previously convicted of an offense set forth in Chapter 566. See section 566.067.2(2) and .2(2)(a). All statutory references are to RSMo Cum. Supp. 2013.

sentence.²

In two points on appeal, Movant claims the motion court erred in denying his amended Rule 29.15 motion for post-conviction relief (“the motion”) because trial counsel was ineffective when she: (1) conceded his guilt to the jury; and (2) misadvised him as to the length of sentence he would be required to serve if convicted.³ Because the first claim has no merit and the second was not preserved for review, we affirm the motion court’s denial of postconviction relief.

In reviewing the denial of a Rule 29.15 motion for post-conviction relief, we limit our review to a determination of whether the findings and conclusions of law supporting the decision are clearly erroneous. Rule 29.15(k); *McDaniel v. State*, 608 S.W.3d 763, 766 (Mo. App. S.D. 2020). We presume the motion court’s findings are correct. *Anderson v. State*, 196 S.W.3d 28, 33 (Mo. banc 2006).

Nash v. State, 615 S.W.3d 883, 884 (Mo. App. S.D. 2021).

The Underlying Criminal Case

On October 2, 2010, Movant and his wife were spending the night at the home of Movant’s brother, Jason Cramer (“Brother”). Early the next morning, Movant’s wife awoke to find him coming out of the bedroom that belonged to Brother’s four-year-old daughter (“Victim”). Movant admitted to his wife that he had touched Victim. Movant left Brother’s home and was stopped by a police officer. Movant told the officer that he was on his way to the sheriff’s office to turn himself in “[f]or child molestation.”

² “For the purpose of determining the minimum prison term to be served, the following calculations shall apply: (1) A sentence of life shall be calculated to be thirty years[.]” Section 558.019.4(1). We affirmed Movant’s conviction and sentence on direct appeal in *State v. Cramer*, 465 S.W.3d 508, 509 (Mo. App. S.D. 2015), and we borrow liberally from that opinion in setting out the background of the underlying case without further attribution.

³ All rule references are to Missouri Court Rules (2020). We have independently verified the timeliness of Movant’s motions. See *Moore v. State*, 458 S.W.3d 822, 825-26 (Mo. banc 2015).

The nurse who examined Victim observed her genitals to be red and swollen, and Victim told a forensic interviewer that Movant had touched her genitalia. Officers took DNA samples and found Movant's DNA in Victim's underwear.

The State charged Movant by Information with one count of child molestation in the first degree. The Information listed the range of punishment as "not less than ten (10) years and not to exceed thirty (30) years, or life imprisonment." A Second Amended Information charged the same crime and indicated the same range of punishment, but it also added the following language: "[i]f defendant is found to have been convicted of an offense under Chapter 566, any term of imprisonment shall be served without probation and parole."

Prior to trial, Movant confirmed to the trial court that the State had offered him a plea deal for a sentence of 22 years, but he had rejected that offer and wanted to proceed to trial.

Analysis

The motion alleged, *inter alia*, that trial counsel was ineffective because she had "failed to inform Movant prior to Movant rejecting a State's plea offer that any sentence he would receive for first degree child molestation would be required to be served without parole eligibility" and "unreasonably conceded during closing argument that Movant had committed attempted child molestation[.]" The motion court denied all claims for relief after an evidentiary hearing.⁴

In order to prevail on a claim of ineffective assistance of counsel [(“IAC”)], a movant must show that: (1) counsel failed to perform with the level of skill and diligence that a reasonably competent attorney would have exercised in a similar situation (“the performance prong”); and (2) but for counsel's unprofessional errors, there is a reasonable probability the result of the proceeding would have been different (“the prejudice prong”). *McGuire*

⁴ Trial counsel's testimony was submitted to the motion court via deposition.

v. State, 523 S.W.3d 556, 563 (Mo. App. E.D. 2017) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

Nash, 615 S.W.3d at 884.

Point 1

Movant's first point claims the motion court clearly erred in denying relief because trial counsel "improper[ly]" conceded Movant's "guilt" in what amounted to "[his] own counsel essentially testify[ing] against him and inject[ing] a 'guilty mind' into evidence[,]" and she made this concession without his permission.

The following facts are relevant to that claim. During her closing argument, trial counsel urged the jury as follows to find Movant not guilty of first-degree child molestation and convict him instead of the lesser offense of attempted child molestation.

We have an unfortunate family situation, a sad little girl and a man who went to turn himself in for what he believed was child molestation. What do we have proof of? We have proof that [Movant] went into [Victim's] room, that he moved her that night, he put her on the floor, his wife woke up, interrupted what could have been a very bad situation. [Movant] went and said, "I need to turn myself in for this," and that's what we have. It's not child molestation, it's attempted child molestation.

The motion court disbelieved Movant's testimony that he did not agree to trial counsel's strategy of arguing for a lesser-offense, and we defer to "the motion court's superior opportunity to judge the credibility of witnesses." *Barton v. State*, 432 S.W.3d 741, 760 (Mo. banc 2014) (quoting *State v. Twenter*, 818 S.W.2d 628, 635 (Mo. banc 1991)). Here, the motion court, although not required to do so, gave the following explanation for why he did not believe Movant's testimony.

[Trial counsel] stated in her deposition that there may have been some sort of conversation about going for a lesser charge, but that she did not remember. [] Movant testified at the hearing that he was present during [trial counsel]'s closing argument. However, Movant was given an opportunity by the court at the conclusion of the trial, and at sentencing, to inform the court of any

grievances he had with [trial counsel]. On neither occasion did [Movant] mention that he disagreed with the trial strategy argued in closing.

We defer to that credibility finding and deny Point 1.

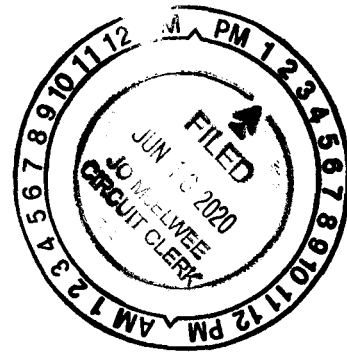
Point 2

Point 2 claims the motion court erred in denying the motion because trial counsel was ineffective when she misadvised him about the sentence he could receive if convicted of first-degree child molestation. But for that misadvise, Movant claims that he would have accepted the State's plea offer and not gone to trial.

Movant failed to preserve this claim for review. The motion claimed IAC based upon trial counsel's "*fail[ure] to inform* Movant prior to Movant rejecting a State's plea offer that any sentence he would receive for first degree child molestation would be required to be served without parole eligibility." (Emphasis added.)

A claim that counsel provided *misinformation* is materially different from a claim that he or she failed to provide information. See *Webb v. State*, 334 S.W.3d 126, 127 (Mo. banc 2011). Claims not raised in a post-conviction motion are waived, and we cannot review them on appeal. *Tisius v. State*, 519 S.W.3d 413, 425 (Mo. banc 2017).

Point 2 also fails, and the motion court's denial of postconviction relief is affirmed.



IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

JOHN SCOTT CRAMER,

Plaintiff

vs.

STATE OF MISSOURI

Respondent

Court Case No. 15CM-CC00215

JUDGMENT ENTRY and ORDER

Whereupon on the 27th day of February, 2020 Movant's Amended Motion Under Rule 29.15 come before this Court for hearing. Movant appeared in person and with Counsel Heather Davis. Respondent, State of Missouri, appeared by Sherrie Hamner. Evidence was presented. The Court granted the parties 45 days to file proposed findings of fact and conclusions of law along with a proposed judgment at which time the Court took the matter under advisement.

Now on this 10th day of June the Court again takes up this matter and makes the following Findings of Fact and Conclusions of Law. To the extent that any of the following Findings of Fact constitute Conclusions of Law they are adopted as such and to the extent any of the following Conclusions of Law are actually Findings of Fact, they are adopted as such.

FINDINGS OF FACT

1. Movant is currently incarcerated in the Western Missouri Correctional Center, 609 E. Pence Road, Cameron, MO 64429.
2. In 2014 Movant was represented by Attorney Karie Comstock on case number 10CM-CR02002-01.
3. On February 6, 2014, Movant was convicted by a jury of Child Molestation in the First Degree in the Circuit Court of Camden County in Camdenton, Missouri in case number 10CM-CR02002-01.

4. At the jury trial, Movant appeared in person and by Attorney Comstock. The State of Missouri appeared by Assistant Prosecutor Sherrie Hamner.

5. On July 23, 2014 Movant was sentenced to life without parole in the Missouri Department of Corrections by the Honorable Kenneth Hayden, of the Circuit Court of Camden County in Camdenton, Missouri.

6. On July 13, 2015 the judgment and sentence were affirmed and on July 29, 2015 the mandate was issued by the Missouri Court of Appeals, Southern District in case number SD33468.

7. On appeal the Movant was represented by Attorney Sam Buffalo.

8. On August 31, 2015, Movant timely filed a Motion to Vacate, Set Aside or Correct Judgment and Sentence. The motion alleges that Movant's convictions and sentences should be set aside because Movant was denied his right to due process of law and a fair trial.

9. On December 16, 2015 Movant filed an Amended Motion under Rule 29.15.

10. On August 22, 2019, Movant was present with counsel, Attorney Heather Davis. Respondent was present by Assistant Prosecuting Attorney Sherrie Hamner. Evidence was presented. The Court took judicial notice of the underlying criminal file, 10CM-CR02002-01, in which Movant was convicted.

CONCLUSIONS OF LAW

1. The issue in this matter is whether the Movant was denied his right to effective assistance of counsel. Movant asserts that his trial and appellate counsel were ineffective for a number of reasons and Movant was prejudiced as a result.

2. To establish ineffective assistance of counsel worthy of post-conviction relief, the Movant must satisfy *Strickland v. Washington's* two-prong test. 466 U.S. 668, 687, 104 S.Ct. 2052. First, the movant must show that counsel's performance fell below an objective standard of reasonableness. *Id.* at 688, 104 S.Ct. 2052. "Further, Movant must overcome the presumption that the challenged action was a sound trial strategy, adequate assistance was rendered, and all significant decisions were the result of reasonable professional judgment." *Malbow v. State*, 439 S.W.3d 764, 770 (Mo. 2014).

"If counsel's performance was deficient, the movant then must prove that he was prejudiced by counsel's deficiency. *Id.* at 687, 104 S.Ct. 2052. The hallmark of *Strickland* prejudice is a finding, by a reasonable probability, that the movant would have received a **different** result at trial if counsel had not made the unprofessional errors alleged. *Id.* at 694, 104 S.Ct. 2052. A "reasonable probability" is one sufficient to undermine confidence in the **outcome** of the proceeding. *Id.*" *Taylor v. State*, 382 S.W.3d 78 (Mo. 2012).

3. The first point asserted by Movant was that trial counsel failed to object and seek a mistrial after Detective Hines testified that Movant had invoked his *Miranda* right to remain silent and confer with an attorney. Detective Hines testified that he escorted Mr. Cramer upstairs from the jail to the interview room, that he read him rights per *Miranda* and that he invoked his right to have an attorney present before any questioning. (Tr. 246). The testimony was not improper. In *State v. Ervin*, 398 S.W.3d 95, the prosecutor played a video in which the Defendant was read *Miranda* and ended an interview after first discussing his relationship with the Victim, the interaction with the Victim earlier in the day and his understanding of the Victim's injuries. The court found that it was not a case where the defendant refused to answer a direct charge of guilt or "clammed up" under circumstances calling for an admission of guilt. *Id.* at 101. The court found that such evidence is only improper "where a jury could conclude that only a guilty person would have remained silent." *Id.* citing *State v. Tims*, 865 S.W.2d 881, 885. In this case, not only was there no direct charge of guilt, *Miranda* was invoked prior to any questioning at all. However, even if the testimony was improper, it was not emphasized nor argued by the State. Similarly, the court in *Ervin* noted that it was not the case where the Detective's examination was somehow emphasized so as to create an impermissible inference of guilt arising from the exercise of that constitutional right. *Id.* The court noted that the State did not draw attention to Defendant's reassertion of his Fifth Amendment privilege during opening statement, during testimony or in closing argument. In *State v. Riley*, 901 S.W.2d 92, 95 (Mo. App. 1995), the court found no error where the evidence came "in a casual way and the prosecutor made no attempt to make anything of it."

In the present case, the Prosecutor made no further inquiry of the Detective regarding it. There was no mention of the invocation of rights any further in the trial, nor in closing arguments. In deposition testimony, trial counsel stated that she believes she may have made a strategic decision not to object. (Deposition, P.12-13). Therefore, even if the testimony were improper and the strategic decision to not object was not reasonable, the defendant was not prejudiced. Point denied.

4. The second point asserted by Movant was that trial counsel unreasonably conceded during closing argument that Movant had committed attempted child molestation. Ms. Comstock stated in her deposition that there may have been some sort of conversation about going for a lesser charge, but that she did not remember. (Deposition, P.7). Movant testified at the hearing that he was present during Ms. Comstock's closing argument. However, Movant was given an opportunity by the court at the conclusion of the trial, and at sentencing, to inform the court of any grievances he had with Ms. Comstock. On neither occasion did he mention that he disagreed with the trial strategy argued in closing. (Tr. 347-353, 381-388). Point denied.

5. The third point asserted by Movant was that trial counsel unreasonably failed to inform him prior to rejecting a plea offer that any sentence would be required to be served without parole eligibility. Ms. Comstock testified that plea discussions happened up to the morning of trial. (Deposition, P.14). A *Frye* hearing was held on February 3, 2014, the morning of trial, in which the offer of 22 years was rejected by the Movant. Movant was present at the *Frye* hearing and affirmatively rejected the plea offer. (Tr. 48-50). Ms. Comstock testified in her deposition that while she didn't remember specifically without her file or notes what she had discussed with the defendant, she had discussed parole eligibility with Movant. (Deposition, P. 7-9). She also testified that she had reviewed the pleadings with the defendant. (Deposition, P. 13-14). The Amended Information filed on July 18, 2013 and the Second Amended Information filed on February 3, 2014 both specifically state in the range of punishment that any term of imprisonment will be served without probation or parole. Point denied.

6. The fourth point asserted by Movant was that trial counsel unreasonably failed to object to State's Exhibit 4, the recording of the 911 call made by Movant's wife. The 911 tape was not bolstering, but explained subsequent police action. During the trial, Mrs. Cramer testified that she called 911 and gave them a description of the vehicle the defendant was driving. (Tr. 161) Officer Bithell then testified that he received a dispatch to watch for a red Ford Mustang, which he found and pulled over. (Tr. 172-174).

Even if it were bolstering, the admission of the 911 tape was harmless error. Ms. Comstock testified that she didn't think it was particularly bolstering and didn't think it had that much of an effect. (Deposition, P. 9). In *State v. Moorehead*, the court found that the 911 tape offered nothing into evidence which had not been previously established, was short in duration and the authenticating witness testified at trial. *Moorehead*, 811 S.W.2d 425, 428 (Mo. App. E.D. 1991). The court found that even if the 911 tape was improper bolstering of the witness' testimony, its admission was not prejudicial and therefore harmless. *Id.* Therefore, in this

case, it was not ineffective on the part of trial counsel to fail to object and would not have been prejudicial to the Movant in any case. Point denied.

7. The fifth point asserted by Movant was that trial counsel failed to call mitigation witnesses at Movant's sentencing who would have testified as to Movant's attempts to get into sex offender treatment at or around the time of the alleged offense. These arguments were made to the court at sentencing. Trial counsel argued at sentencing that Movant was trying to get back into MOSOP and had talked with the sex offender registry person. (Tr. 367). Movant addressed the issue with the trial court himself again when the judge asked him about counsel. Movant complained that the witnesses were not called, but could not give the court any details as to what additional information the individuals would have said had they been called as witnesses. (Tr. 383-384). Ms. Comstock testified that she did not think it would have been helpful to call the witnesses at sentencing, and in fact would have been more damaging to admit he was having thoughts of reoffending. (Deposition, P.10). At the hearing, Movant acknowledged that the matter had been argued at sentencing, but that he wanted the witnesses called at trial. This point was not pled by Movant in his Amended Motion and is not properly before the Court. Point denied.

8. The sixth point asserted by Movant is that trial counsel failed to move to strike venire person number 37. The transcript reveals that venire person number 37 stated that he/she did not know Assistant Prosecutor Hamner personally, but believed she and her husband had bought and sold a few properties with an agent in their office. The venire person also stated that there was nothing about that experience that would cause them not to be able to listen to the evidence and not be fair and impartial. (Tr. 76-77). Ms. Comstock testified that she did not think "it appeared to be that big of a deal." (Deposition, P.11). She testified that compared to the other options in the jury pool, the answers given were acceptable and the person still seemed like a better option than some of the others. (Deposition, P.15). No further evidence was presented by Movant as to this point. Point denied.

9. The seventh point asserted by Movant was that trial counsel failed to establish that Cara Gerdiman and other Kids' Harbor employees were not unbiased interviewers. The Movant states in his Amended Motion that in pre-trial testimony, Cara Gerdiman admitted that she and other employees of Kids' Harbor were part of the prosecutor's team, and not unbiased interviewers. The Amended Motion complains that reasonably competent trial counsel would have established the bias. This statement is an inaccurate reading of the pretrial testimony.


Upon cross examination, Ms. Gerdiman agreed that she had received training, including "It Takes a Team to Protect a Child." She further agreed that she saw herself as part of a team that works together to promote children's interests. (Tr. 21). She also agreed that someone from Kids' Harbor attends meetings at the Prosecutor's Office. (Tr. 21). Ms. Gerdiman did not state she and members of her staff were part of the "prosecutor's team." There is nothing in the Amended Motion to suggest what trial counsel failed to ask or do based on that pretrial testimony. Ms. Comstock testified that she thought she had asked Ms. Gerdiman about staffing meetings and did not remember there being anything about attending meetings with the prosecutor's office. (Deposition, P.11). No further evidence was presented by Movant as to this point. Point denied.

10. The eighth point asserted by Movant was that appellate counsel failed to assert on appeal that the trial court erred by allowing the testimony of Cara Gerdiman regarding her meeting with the complaining witness and by allowing the admission of a recorded interview. "To prevail on a claim of ineffective assistance of appellate counsel, the movant must establish that counsel failed to raise a claim of error that was so obvious that a competent and effective lawyer would have recognized and asserted it." *Williams v. State*, 168 S.W.3d 433, 444 (Mo. banc 2005). Movant must demonstrate that had appellate counsel raised the allegation of error, there is a reasonable probability that the outcome of the appeal would have been different. *Taylor v. State*, 262 S.W.3d 231, 253 (Mo. banc 2008) (citing *Smith v. Robbins*, 528 U.S. 259, 285, 120 S.Ct. 746, 764, 145 L.Ed.2d 756 (2000)). The only evidence adduced by Movant on this point was an Affidavit of Samuel Buffaloe, appellate counsel. In his affidavit, Mr. Buffaloe explains that he did not pursue this claim on appeal because he did not believe it had any chance for success. (Affidavit, p. 2). Mr. Buffaloe outlines in his affidavit the reasoning behind this conclusion and the case law to support this reasoning. (Affidavit, p. 1-2). No further evidence was presented by the Movant as to this claim. Point denied.

11. The Court concludes that Movant did not receive ineffective assistance of counsel. Additionally, Movant has failed to make a sufficient showing to support *Strickland's*, prejudice prong because of the overwhelming evidence presented that established his guilt. He fails to demonstrate by a reasonable probability that *but for* counsel's alleged errors the result of the

proceeding would have been different. Movant's claim for relief under Section 29.15 RSMo is merit. Movant's Amended Motion filed herein pursuant to Section 29.15 RSMo, is denied.

IT IS SO ORDERED.



Honorable Kenneth Hayden
Judge, 26th Judicial Circuit

Date: 6-10-2020

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IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
)
vs.) Appeal No. SD 33468
)
JOHN SCOTT CRAMER,)
)
Appellant.)

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI
26TH JUDICIAL CIRCUIT, DIVISION II
HONORABLE KENNETH M. HAYDEN, JUDGE

STATE OF MISSOURI,)
)
Plaintiff,)
)
vs.) Case No. 10CM-CR02002-01
)
JOHN SCOTT CRAMER,)
)
Defendant.)

RECORD ON APPEAL
TRANSCRIPT

A P P E A R A N C E S

FOR STATE/RESPONDENT:	FOR DEFENDANT/APPELLANT:
MR. BRIAN D. KEEDY	MS. KARIE COMSTOCK
MS. SHERRIE HAMNER	MR. FAWZY SIMON
Prosecuting Attornes	Mr. AUSTIN SMITH
Camden County Courthouse	Public Defenders
Camdenton, Missouri	Lebanon, Missouri

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July 23, 2014

THE COURT: Court calls Case Number 10CM-CR02002-01, State of Missouri versus John Scott Cramer. Defendant appears in person with counsel, Ms. Comstock; State of Missouri by and through assistant prosecuting attorney, Sherrie Hamner. This matter comes before the Court today for sentencing July 23, 2014. This is the Circuit Court of Camden County, Missouri.

Mr. Cramer, this case was previously tried to a jury. You were found guilty with regard to the Class A felony of child molestation in the first degree. The Court ordered a Sentencing Assessment Report, the matter was originally set for sentencing May 13 of this year and was subsequently continued to today's date. Is the defendant prepared to proceed with sentencing at this time, Ms. Comstock?

MS. COMSTOCK: Yes, Your Honor.

THE COURT: Is State prepared to proceed with sentencing at this time, Ms. Hamner?

MS. HAMNER: Yes, sir.

THE COURT: Any victim impact other than what is set forth in the Sentencing Assessment Report, Ms. Hamner?

MS. HAMNER: Judge, I have spoken with the father of the victim. He was actually here the first time it was set. My understanding was he did not wish to speak, just wanted to be here. He is not here today, but we did speak with him today. His -- what he wanted the Court to know was that he

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1 doesn't want him out, and that was the extent of -- he did not
2 wish to speak any further.

3 THE COURT: All right. Has the State had the
4 opportunity to review the Sentencing Assessment Report?

5 MS. HAMNER: Yes, Judge.

6 THE COURT: Any additions or corrections?

7 MS. HAMNER: No.

8 THE COURT: Has the defendant had the opportunity to
9 review the Sentencing Assessment Report?

10 MS. COMSTOCK: Yes, Your Honor.

11 THE COURT: Any additions or corrections?

12 MS. COMSTOCK: Judge, we would like to address it in
13 our argument to the Court, we will be addressing some of the
14 statements in there.

15 THE COURT: I just need to know any additions or
16 corrections because before the State makes a recommendation,
17 if you believe there's inaccurate information set forth in the
18 Sentencing Assessment Report, I believe we need to correct it
19 before I hear a recommendation.

20 MS. COMSTOCK: No, Judge, it's more a disagreement over
21 some characterizations.

22 THE COURT: So no additions or corrections?

23 MS. COMSTOCK: No.

24 THE COURT: All right.

25 MS. COMSTOCK: May I have just a moment, Your Honor?

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1 THE COURT: You may.

2 (A DISCUSSION WAS HELD OFF THE RECORD)

3 MS. COMSTOCK: Judge, on Page 6 of the Sentencing
4 Assessment Report, the third full paragraph down from the top,
5 the paragraph that starts with "a prior Sentencing Assessment
6 Report," the third line of that paragraph says, "The report
7 indicates that there were some behavior issues and at age 11,
8 he was placed in Royal Oaks Hospital." He's just concerned
9 that some of the ages when the report alleges that he was
10 placed in different facilities may not be exactly correct. He
11 agrees that he was at Gillis and he was at Royal Oaks, but he
12 has concerns about where they got the information as to what
13 ages he was at those times.

14 THE COURT: Okay. So the ages might be --

15 MS. COMSTOCK: Might be a few years different.

16 THE COURT: All right. Any other additions or
17 corrections?

18 MS. COMSTOCK: Judge, also on Page 8 of the Sentencing
19 Assessment Report, the first full paragraph, he denies that he
20 was saving any sort of pornographic materials. There's
21 reference to the fact that in the investigation, they searched
22 his hard drive and there were digital comic strips and such,
23 but he denies that those were anything that he was saving on
24 his hard drive.

25 THE COURT: Anything else? I'll order that paragraph

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1 redacted from the Sentencing Assessment Report. Anything
2 else?

3 MS. COMSTOCK: No, Your Honor.

4 THE COURT: Recommendation from State?

5 MS. HAMNER: Judge, in this case because of the prior
6 and the age of the victim, the range of punishment in this
7 case is ten years to 30 or life.

8 MS. COMSTOCK: I apologize, Judge. I don't mean to
9 interrupt Ms. Hamner, but would it not be appropriate -- I
10 don't know that the Court has made a ruling prior to the
11 sentencing on my Motion for Judgment of Acquittal
12 Notwithstanding the Verdict of the Jury.

13 MS. HAMNER: I believe we did that at the last court
14 date.

15 THE COURT: That was done May 13, 2014.

16 MS. COMSTOCK: I apologize, Ms. Hamner.

17 THE COURT: You may continue.

18 MS. HAMNER: AS I was saying, Judge, because of the
19 prior and the age of the victim, the range of punishment is
20 ten years to 30 or life. In this case, the State is going to
21 ask the Court to impose life. My first concern in asking the
22 Court for that is the prior.

23 As the Court's aware, Mr. Cramer had a prior child
24 molestation conviction. The victim in that case was seven
25 years old, according to the SAR. And because of that case,

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1 Mr. Cramer has already been through MOSOP.

2 My second concern in making that recommendation is what
3 appears to be a lack of remorse or understanding that what he
4 did was wrong. The Court can note in the SAR some of the
5 responses of Mr. Cramer. In discussing I believe that prior
6 allegation or the prior conviction and in discussing with the
7 officer that did this SAR, Cramer explained that he wanted the
8 officer to understand that his sexual offenses were not
9 because he was high or drunk or because he was aroused, but
10 that his behavior is the way that he shows love. I think
11 that's extremely concerning.

12 The officer also talked to him about how he selected
13 the victim of the current offense, and to that Mr. Cramer told
14 the officer that, "I wanted her to understand I love her." He
15 stated that he does not select his victims and that he's not
16 opportunistic, but instead that is how he shows love; also
17 very concerning. And also he said when asked how he chooses a
18 victim or what characteristics he looks for, Cramer stated,
19 "Nothing specific, I think they choose me." I'll remind the
20 court that the victim in this case at the time of the offense
21 was four years old.

22 Mr. Cramer has done this behavior before, has been
23 convicted of child molestation before. He's been convicted of
24 child molestation this time, and the State has serious
25 concerns that based on his lack of remorse or lack of

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1 understanding that what he did was wrong, he will do it again.
 2 And at some point there is nothing else to do to protect
 3 society from Mr. Cramer doing it again other than to remove
 4 him from it. And that is why the State is recommending life.

5 THE COURT: Is that with or without possibility of
 6 parole?

7 MS. HAMNER: I believe it's without, Judge.

8 MS. COMSTOCK: I believed that it was with.

9 THE COURT: That's determined by -- I know this is not
 10 a probation eligible offense.

11 MS. HAMNER: I believe it's without, Judge, according
 12 to 566.067.

13 THE COURT: That's what it looks like to me. The
 14 clerk's handed me a copy of that. Ms. Comstock?

15 MS. COMSTOCK: I'm pulling it up. Judge, I do see
 16 where it says, "shall serve his or her term of imprisonment
 17 without eligibility for probation or parole," but I believe my
 18 -- I guess my understanding is that the Department of
 19 Corrections computes a life sentence at 30 years, so when we
 20 talk about whether it's -- is it life without, I don't think
 21 it's -- I still don't think it's life without.

22 THE COURT: I understand that, but the statute
 23 provides, "shall serve his or her term of imprisonment without
 24 eligibility for probation or parole," it's just an issue of
 25 whether parole's granted. And there's a difference between

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1 parole and you serving your full sentence.

2 MS. COMSTOCK: True.

3 THE COURT: So that's all I'm getting at. The parties
4 agree that it's an offense that is not eligible for probation
5 or parole?

6 MS. COMSTOCK: Yes.

7 THE COURT: All right. Ms. Comstock, on behalf of the
8 defendant?

9 MS. COMSTOCK: Judge, I'm going to start out by
10 talking, and I know that at some point that Mr. Cramer wishes
11 to personally address the Court. And I know he's really
12 nervous, but I'm going to do the best I can to get through as
13 much for him before he makes his statement to the Court.

14 One of Mr. Cramer's issues is that he feels very
15 misunderstood, and I can tell the Court in my dealings with
16 Mr. Cramer and my representation, I've had many conversations
17 with him and I've read a lot of his writings and his letters,
18 and he struggles with finding words, with expressing himself.
19 He's constantly doing a lot of internal reflection and trying
20 to convey to other people, including the person who showed up
21 for one interview to meet with him for the SAR, he's
22 constantly -- he really has a focus with words and he's trying
23 to figure out the best way to express words. He looks up
24 definitions all the time and has a real hard time with
25 personal expression.

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1 That being said, he wants the Court to understand where
 2 he's come from in life, where he's been. And that is laid out
 3 in some part in the Sentencing Assessment Report, that he was
 4 taken away from his mother when he was very young and he was
 5 placed into state care in the State of Kansas -- Kansas City,
 6 I'm sorry, Kansas City which was actually the State of
 7 Missouri side.

8 When he was in state custody, he was repeatedly abused.
 9 He was repeatedly victimized by other children and by other
 10 people whose care and custody he was placed into.

11 I know that the SAR says that they've reviewed some
 12 other prison records where he said he had a happy childhood,
 13 and part of this is -- that report was done approximately 14
 14 years ago. In the last 14 years, Mr. Cramer, has spent a lot
 15 of time meeting with -- he's gone to group therapy and meeting
 16 with different therapists and going back through his life and
 17 finding out that he had suppressed a lot of memories about a
 18 lot of abuse that he suffered, and he's been trying to work
 19 his way through those issues that he has had.

20 And so some of the things that he reports to this
 21 officer for the SAR are going to be contradictory to what he's
 22 reported previously because he's been on an internal
 23 exploration to figure out why he behaves the way he behaves
 24 and why he has done what he has done.

25 He wants the Court to understand that he did do the

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1 MOSOP program and he did learn a lot from the MOSOP program,
 2 and he tried to get back into MOSOP before this offense date
 3 after he was off of parole. He was registering as a sex
 4 offender and my office did confirm that he came here and
 5 talked with a sex offender person on staff who does sex
 6 offender registry and told them that he was having thoughts
 7 that he didn't like in his head, he was having thoughts of
 8 reoffending. He reached out for help to the sex offender
 9 registry officer here, and he reached out for help to his
 10 college professor.

11 He also spoke with somebody -- I think it was -- he
 12 also spoke with Mr. Armstrong from Probation and Parole and he
 13 -- that's who he was referred to by the people that he went to
 14 for help, and he said that he wanted -- he felt like he needed
 15 additional counseling and additional help. And when he went
 16 to try to get the counseling and help, he was told it was
 17 going to be \$100 per session -- \$150 per session. At that
 18 time he was enrolled in community college and didn't have the
 19 resources available. Here we had somebody who was reaching
 20 out to community members and because of a lack of financial
 21 resources, was not able to get into any sort of program.

22 He has been struggling with internal demons and trying
 23 to figure out how to behave properly. The probation officer
 24 notes that twice in their interview, Mr. Cramer used the
 25 terminology, when referring to his wife and the victim in this

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1 case, that he had sympathy and empathy, and that goes back to
 2 his MOSOP education where they talk about trying to understand
 3 what's happened and what your actions do to other people and
 4 learning, you know, that this is a crime that affects many
 5 people and it's not just about himself.

6 So he was trying to express to the probation officer
 7 that he was aware of the impact that this had; however, before
 8 meeting with the person from Probation and Parole for the SAR,
 9 the Court needs to know that Mr. Cramer believes that he has
 10 grounds for appeal and in his -- well, he has grounds that he
 11 wants to take up for appeal, and he can't make any admission
 12 or statement that would interfere with his ability to proceed
 13 with his appeal.

14 So Mr. Cramer was aware of that prior to meeting with
 15 the person from Probation and Parole doing the Sentencing
 16 Assessment Report, and so he did do some self censoring when
 17 talking with her, and likewise he is doing some self censoring
 18 in talking to the Court because he wants to have the
 19 opportunity to appeal certain issues in his case.

20 And I don't want the Court to take that as a showing of
 21 a lack of remorse or a lack of empathy; he's just limited in
 22 his statements that he can make, and he was trying to figure
 23 out how to express that to the Probation and Parole officer.

24 Judge, I think that I've covered the parts that I had
 25 to address, and I think Mr. Cramer wants to make a statement

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1 now.

2 THE COURT: All right, sir.

3 DEFENDANT CRAMER: All right, Your Honor, my life for
4 the State of Missouri started at four years old. It has
5 disrupted my life in every way that it imaginably possibly
6 can. Most of my life, positive leadership has been unforeseen
7 by the judicial system. I believe that it's for a political
8 and financial agenda for the system, and nothing it's ever
9 done for me or my life has ever been for me, it's been for its
10 own purpose, its own agendas, not for me.

11 As far as this case is concerned, I have been confined
12 in your jail for 45 months, working on 46 months, okay, so I
13 feel that anything that has occurred in this crime has been
14 well served. I believe that my behavior or lack of whatever
15 the judicial system wants to call this, I feel that my debt to
16 society has been paid in your jail. And time in jail is twice
17 as hard as it is in prison. I've been there, so I can sort of
18 understand the experience between the two. Other than that, I
19 don't know how to explain it to you.

20 Okay, on to other things, I believe that bad court
21 ethics by the prosecutor and an ineffective counsel, which I
22 have brought up on three different occasions, this --
23 actually, two different occasions, once before Judge Moore,
24 and I brought it up to you at the end of trial, telling you
25 that I felt that I had an ineffective representation and I was

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1 being railroaded by the judicial system.

2 And Ms. Comstock the last time that I was before you
3 told you in person that she had been an ineffective
4 representation and had not properly established the available
5 victim as unavailable during trial. You told Ms. Comstock
6 that she had her opportunity in trial and I believe that
7 you're not taking into consideration that it's not Ms.
8 Comstock that's having to deal with this problem of her being
9 an ineffective representation, it's Mr. Cramer. And it states
10 in 492.304 that the video from child harbor [sic] is not
11 supposed to be admitted if the child does not testify in
12 trial. That's a hearsay issue from 075 something. I can't --

13 THE COURT: I'm familiar with the statute.

14 DEFENDANT CRAMER: 491.075.

15 THE COURT: 491.075, I'm familiar with it.

16 DEFENDANT CRAMER: Okay. Reasonable doubt was, at
17 best, speculated and not proven in this case. The
18 prosecutor's speculation coerced and inflamed the jury to
19 believe there was a victim when there wasn't one. A mistrial
20 or acquittal should be granted over the basis of questioning
21 the proof beyond a shadow of a doubt as there was no victim or
22 crime. That makes it not about right, wrong or justice, but
23 was political and financial agenda for the judicial system.

24 Okay, before Judge Moore, before you became my judge
25 and why you became my judge is because I fired Ms. Comstock

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1 two weeks before trial was to take place before him.
 2 Incompetence -- and then we went to court the next day or
 3 sometime later that afternoon where I was told by Mr. Moore
 4 that I couldn't fire Ms. Comstock, that she had to disqualify
 5 herself for three different purposes. I'm not exactly sure
 6 what those purposes are, I can't remember, and then she tried
 7 to trick me at some point into signing an unfair, unrealistic
 8 plea agreement before him that has not ever changed.

9 When I told her no about the agreement and confinements
 10 because the alleged crime amount of time are unjustifiable
 11 with the refuted DNA facts that the prosecuting attorney's
 12 office has had all along, also questioning the proof beyond a
 13 shadow of doubt, which to me is one of Ms. Comstock's
 14 inabilities to listen to me, an example of I believe that she
 15 is not taking into consideration that I am her boss and she is
 16 not my boss, that it's not the attorney or prosecutor's way or
 17 no way.

18 During trial, as I explained to you while ago, Ms.
 19 Comstock was advanced as supervisor over the public defender's
 20 office for Mr. Fawzy's position and has been practicing law
 21 for however long. She should have therefore known the proper
 22 legal procedures, but instead acted as a prosecutor and not a
 23 defense attorney, specifically by not properly establishing
 24 the unavailability of the alleged victim in this case as a
 25 reasonable, prudent attorney would have done in accordance

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1 with 492.304 by knowing the proper legal procedures to have
 2 the victim declared unavailable. Matter of material law would
 3 not have allowed the child harbor [sic] interview to be
 4 admitted as evidence before the jury from an unavailable
 5 witness, also questioning proof beyond a shadow of a doubt in
 6 this case.

7 As I stated awhile ago, Ms. Comstock even sat and
 8 allowed the jury to be inflamed and coerced into believing
 9 speculation that a severe crime of child molestation in the
 10 first degree has occurred for sexual gratification or arousal
 11 from one person or another when proof beyond a shadow of a
 12 doubt was not proven and not factual with explainable refuted
 13 DNA results.

14 Ms. Comstock has informed me that I am or was her
 15 quietest client and has forgotten about me up to six-month
 16 periods of time. I believe that Ms. Comstock has not taken
 17 into account or really listened to me about being her boss as
 18 a client but has implied by legal actions it is the
 19 prosecutor's or attorney's way or no way as I explained while
 20 ago.

21 I believe I stated at the end of trial that I am being
 22 unethically, legally railroaded by the judicial system and
 23 that you as the judge are not taking into considerations Ms.
 24 Comstock's ineffective assistance of counsel. Legal effects
 25 and actions are legally affecting me, not her. It was not my

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1 responsibility or job to know the law for trial, as it was
2 expected from counsel.

3 Her negligence was and is now being used against me as
4 an unethical prejudiced tactic for legal ramifications by the
5 judicial systems. Negligence of the law may not be a defense;
6 however, her ineffective representation was out of my control
7 at the time. Again, an acquittal or mistrial should be
8 granted as there is reasonable doubt as to whether there was a
9 victim or crime. The available victim who was not deemed
10 unavailable testified upon the prosecutor's questioning them
11 that they were unable to recall any of the alleged incidents
12 between her and I, the child harbor [sic] interview and was
13 only able to recall the trip to the hospital for the SAFE
14 exam, there again putting proof beyond a shadow of a doubt
15 into question.

16 I shouldn't be facing an appeal or post relief
17 conviction because, again, there's no victim or crime. Okay,
18 I made a phone call to my wife and I believe that the reason
19 that the phone call was taken into a misconception is because
20 I was trying to harm my wife by hurting her feelings and
21 telling her what she wanted to hear, not trying to imply that
22 I committed a crime for this case. I've talked with Ms.
23 Comstock several times since trial has taken place, and I do
24 not reference a single person in the phone call, I reference
25 the child or the person in this particular phone call as

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1 "her." That could be assumed as anyone. If that shows a lack
2 of remorse or empathy, I -- I do have empathy and I do have
3 remorse.

4 I was a victim, so I know what it feels like to go
5 through and have to deal with what's going on inside of my own
6 mind. Why would I comply that onto a child's life is beyond
7 my understanding of why someone would try to comply that, that
8 I'm that type of person, which brings me to a whole different
9 level of my inability to commit this type of crime.

10 During my teenage life, I left home at 17 years old
11 against the Cramers wishes. I dropped out of high school, I
12 was sexually abused again at 17 by a friend's dad. The State
13 of Missouri conveniently did not pick up the charges against
14 the man, even though it was reported, making it okay for
15 Mr. Cramer to again be victimized by the system and another
16 person where I cried out for help.

17 That in turn put me into a situation where I did do my
18 first crime, and I do have remorse and empathy for the victim
19 for that crime. I am very sorry for that person, it was not
20 my intentions to try to harm that person. And the
21 misconception of what I believe love to be, I in fact tried to
22 have Ms. Comstock explain to you that the word "love" is being
23 taken out of context. It's actually that I want to show care
24 instead of love because love can mean sexual desire, and that
25 is not the case and what I am trying to do. I do not wish to

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1 have sex with a child.

2 Okay, anyway, since I dropped out of school, that led
3 me to go to prison. I didn't have my GED, I didn't have a
4 high school diploma or anything like that. Once I was in the
5 Department of Corrections, the State of Missouri implied that
6 I had to get my GED, which I missed getting by six points six
7 months before my release from Department of Corrections.

8 In that period of time, the State of Missouri again
9 conveniently told me that they could not allow me to get my
10 GED because there was not enough time. However, after I was
11 released from prison within a six-month period, taking one
12 hour of my day every day, I missed getting a GED scholarship
13 by six points and went to college. And while I was in college
14 as an aviation maintenance technician, I never missed a day, I
15 was never late, I was holding an A, holding a GPA of 3.85 and
16 was on the dean's list.

17 Now I'm asking you, Your Honor, for the ability to
18 enlist into the United States military with those backgrounds
19 so that I can do something positive with my life instead of
20 having the state continuously try to destroy it.

21 THE COURT: Anything else?

22 DEFENDANT CRAMER: Oh, I also cannot stand to hear a
23 child cry. It was said that I threatened the alleged victim
24 to prevent them from testifying during trial. My question to
25 the prosecuting attorney's office and you, Your Honor, how can

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1 you threaten someone in a short period of time? They
 2 testified that nothing was said. My wife did, excuse me, she
 3 heard that nothing was said, so how can a threat in a
 4 15-second window be a threat?

5 THE COURT: Anything else?

6 DEFENDANT CRAMER: No, I think that's it, Your Honor.

7 THE COURT: Ms. Comstock, anything further on behalf of
 8 the defendant?

9 MS. COMSTOCK: No, Your Honor.

10 THE COURT: Let's go off the record.

11 (A DISCUSSION WAS HELD OFF THE RECORD)

12 THE COURT: Anything further from the State?

13 MS. HAMNER: No, thank you, Your Honor.

14 THE COURT: We had discussion off the record, but just
 15 to make it clear, I do recall and show that State's Exhibit
 16 101 was admitted. That was the prior from the Circuit Court
 17 of Saline County that's referenced in the second amended
 18 Information; is that correct, Madam Prosecutor?

19 MS. HAMNER: Yes, sir.

20 THE COURT: Is that your recollection as well, Ms.
 21 Comstock?

22 MS. COMSTOCK: Yes, Your Honor.

23 THE COURT: I do show it was admitted into evidence in
 24 this case outside the hearing of the jury. Is that your
 25 recollection, Madam Prosecutor?

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1 MS. HAMNER: It is, Your Honor.

2 THE COURT: Ms. Comstock?

3 MS. COMSTOCK: It is, Your Honor.

4 THE COURT: Based upon that admission, I am going to
5 find beyond a reasonable doubt that the defendant has been
6 convicted of an offense under Chapter 566 of the Revised
7 Statutes of Missouri in that on or about April 30, 1998, the
8 defendant was convicted of the crime of child molestation in
9 the first degree in the Circuit Court of Saline County
10 Missouri in Case CR498-15F.

11 Ms. Comstock, I do show that I had previously ruled on
12 your post-trial motions.

13 MS. COMSTOCK: I see that. I had forgotten.

14 THE COURT: Counsel, is there any legal reason why
15 sentence should not be pronounced at this time?

16 MS. COMSTOCK: No, Your Honor.

17 THE COURT: I have previously accepted the jury's
18 verdict in this case. I ordered the Sentencing Assessment
19 Report, I've had the opportunity to review the Sentencing
20 Assessment Report and to consider the arguments of counsel
21 here today, the victim impact, and the statements of
22 Mr. Cramer made here today.

23 Having considered all that evidence, allocution is
24 granted. It is the judgment and sentence of this Court the
25 defendant serve a term of life imprisonment in the Missouri

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1 Department of Corrections without eligibility for probation or
2 parole. That's provided by Section 566.067.1 of the Revised
3 Statutes of Missouri.

4 Mr. Cramer, it's my obligation now to notify you of
5 some rights that you have under the Missouri Rules of Criminal
6 Procedure. You have the right to file an appeal in this case.
7 If you're unable to pay for the costs of that appeal, you have
8 the right to apply for -- the right to appeal in forma
9 pauperis or leave to proceed in forma pauperis. Your attorney
10 can explain that to you.

11 MS. COMSTOCK: May I approach?

12 THE COURT: You already got that?

13 MS. COMSTOCK: I do. I have a motion and proposed
14 order.

15 THE COURT: Show motion to proceed in forma pauperis is
16 filed today. Does the State have any position?

17 MS. HAMNER: No, Judge.

18 THE COURT: That motion is sustained. As I understand
19 it, Ms. Comstock, if the defendant intends to file appeal,
20 that notice of appeal is filed by your office, then there's an
21 appellate division of the public defender's office that would
22 handle that appeal; is that correct, Ms. Comstock?

23 MS. COMSTOCK: That's correct, Judge. I would need a
24 certified copy of the sentence and judgment, if I could get
25 that today, and then I will make sure that the notice of

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1 appeal is timely filed.

2 THE COURT: Mr. Cramer, it's now my duty to advise you
3 of your rights under Rule 29.15 of the Missouri Rules of
4 Criminal Procedure. You have the right, sir, to file a motion
5 to vacate or set aside the sentence imposed here today if you
6 believe the sentence imposed here today violates the
7 constitution of this State, the constitution of the United
8 States or any law of this State, that the Court when imposing
9 the sentence was without jurisdiction to do so or that the
10 sentence imposed was in excess of that authorized by law.

11 You have 180 days from the date of your delivery to the
12 Department of Corrections to file that motion. Forms would be
13 made available to you at no charge to you, there's no charge
14 for filing the motion. Any claims you might have for
15 ineffective assistance of counsel must be joined in the motion
16 or they are waived.

17 Counsel, can you take one of our Rule 24.035
18 acknowledgements and modify that to reflect it's a Rule 29.15
19 acknowledgment, please?

20 (A DISCUSSION WAS HELD OFF THE RECORD)

21 THE COURT: Ms. Comstock, have you had the opportunity
22 to discuss defendant's rights under Rule 29.15 with him?

23 MS. COMSTOCK: Yes, Judge.

24 THE COURT: And you took our Rule 24.035 acknowledgment
25 and amended the caption to reflect it's a 29.15

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1 acknowledgment; is that correct?

2 MS. COMSTOCK: That's correct.

3 THE COURT: Mr. Cramer, do you understand your rights
4 under Rule 24.035?

5 DEFENDANT CRAMER: Yes.

6 THE COURT: Did you affix your signature to the second
7 page of the acknowledgment as evidence of that fact?

8 DEFENDANT CRAMER: Yes, I did.

9 THE COURT: Are you going to tender that at this time,
10 counsel?

11 MS. COMSTOCK: I am, Judge. I do have a lien request
12 for public defender services.

13 THE COURT: I'll show the acknowledgment filed.
14 Mr. Cramer, I'm going to grant your attorney a lien in the sum
15 of \$125. She can explain that to you further.

16 Sir, I am now going to question you about the
17 effectiveness of the assistance of counsel that you received
18 in this case. You've been represented by Ms. Comstock and Mr.
19 Simon of the public defender's office in this case; is that
20 correct?

21 DEFENDANT CRAMER: well, mostly it was just Ms.
22 Comstock.

23 THE COURT: But you mentioned Mr. Simon earlier. Did
24 he represent you for a portion of the case?

25 DEFENDANT CRAMER: No, he didn't represent me, he just

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1 sat in on some of the actual counsel --

2 THE COURT: So you were represented by Ms. Comstock in
3 this case?

4 DEFENDANT CRAMER: Yes.

5 THE COURT: Did she do everything that you asked her to
6 do?

7 DEFENDANT CRAMER: I do not feel that she's done
8 everything that she possibly could have done, as I stated in
9 my --

10 THE COURT: We'll talk about that in a minute. With
11 regard to what you asked her to do, did she do everything you
12 asked her to do?

13 DEFENDANT CRAMER: No.

14 THE COURT: What did she fail to do that you asked her
15 to do?

16 DEFENDANT CRAMER: For the life of me, I cannot come up
17 with anything. I tried to write down some things. I just
18 feel she didn't listen to me in what I asked her to do.
19 Mostly I never intended for this crime to go to trial. I
20 really expected for it to turn out to be just a misconduct
21 charge and be reduced. I talked with Ms. Comstock about that
22 several times and --

23 THE COURT: You understand your defense attorney -- not
24 just Ms. Comstock, but any defense attorney -- they don't
25 control what the State files; that decision is the

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1 prosecutor's, not defense counsel. Do you understand that?

2 DEFENDANT CRAMER: Yes, I understand that. That's just
3 one of the things that I can think of.

4 THE COURT: Okay, other than that, anything you asked
5 Ms. Comstock to do that she did not do?

6 DEFENDANT CRAMER: No, not that I can think of off the
7 top of my mind.

8 THE COURT: Did she make a complete investigation in
9 this matter and discuss potential defenses that you may have?

10 DEFENDANT CRAMER: As far as I know, yes.

11 THE COURT: And, in fact, did you disclose the names of
12 potential witnesses that you might have wanted called in this
13 case to her?

14 DEFENDANT CRAMER: I didn't have any.

15 THE COURT: All right. Was there any other
16 investigation you wanted her to do that she didn't do?

17 DEFENDANT CRAMER: The only thing that she hasn't done
18 is for today, the dean from the college was supposed to be
19 here to speak about my good character. Gary Lee, my old
20 probation officer from Camden County, was supposed to be here.
21 Mr. Armstrong that deals with the -- I don't know if he still
22 does, but he used to deal with the MOSOP program, he was
23 supposed to be here, and all those people were supposed to
24 talk in my behalf. Terry Harmon was supposed to talk in my
25 behalf today as well, and they're not here.

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1 THE COURT: Did you share that information with Ms.
2 Comstock?

3 DEFENDANT CRAMER: I have. In fact, she cannot even
4 remember Terry Harmon's name. I mentioned her name several
5 times to her.

6 THE COURT: All right. And do you know whether or not
7 your attorney attempted to contact those folks or not?

8 DEFENDANT CRAMER: Well, she told you while ago that
9 she has talked to Ms. Harmon, apparently, because she knew
10 about the MOSOP and my trying to get help and stuff like that.
11 I had mentioned that one-on-one help is what I need. I don't
12 need MOSOP, I need one-on-one therapy. This group setting
13 thing is -- that's not what I need. My problem is not an
14 actual sex-related problem, my problem is that I have a bunch
15 of emotional dysfunctions that have been implied into my life,
16 and I need to correct those emotional dysfunctions.

17 THE COURT: And were you able in general, the
18 information that you wanted me to hear today -- and I take it
19 that some of these folks would have simply just reiterated
20 what you told me in your statement; is that correct? In other
21 words, they wouldn't have given me a lot of new information?

22 DEFENDANT CRAMER: I don't know what they would have
23 said, to be honest. I know that the dean would have probably
24 implied that I've came and talked to him in his office on one
25 occasion. He gave me a number to contact, someone out of Jeff

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1 City, about getting into a therapy group. But again, I was
 2 unable to contact the place because I didn't have the finances
 3 to do the group and it was going to be too much for me to
 4 afford.

5 THE COURT: So you can't tell the Court today what
 6 information these folks would have provided?

7 DEFENDANT CRAMER: I do not have any idea, Your Honor.

8 THE COURT: Okay. As you sit here today, is there
 9 anything else you want Ms. Comstock to do that she has not
 10 done?

11 DEFENDANT CRAMER: No, not really. I think enough's
 12 been done. I've been convicted of a crime that wasn't
 13 committed, according to the victim. They testified to that in
 14 their own words in trial, and I'm still being sent to prison
 15 for a life term that I don't deserve.

16 THE COURT: You mentioned something about Section
 17 491.075 as it related to Ms. Comstock's trial conduct. What
 18 is that claim, sir?

19 DEFENDANT CRAMER: Well, I'm not -- I can't remember.
 20 I've read over it several times from the 2001 or 2002 books,
 21 whatever the jail has. They're roughly outdated, but it
 22 references 491.075 and it takes you to 492.034 about their
 23 testimony's not admitted into a trial if the victim doesn't
 24 testify from hearsay, so --

25 THE COURT: Okay. And the victim testified.

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1 DEFENDANT CRAMER: I was just trying to show you that I
2 have researched the law a little bit and I came across that,
3 and that's the reason that I'm asking for the mistrial or the
4 acquittal due to a matter of material --

5 THE COURT: My recollection is that the victim in this
6 case did testify.

7 MS. COMSTOCK: Judge, she testified, but she did not
8 testify to any facts relating to being sexually abused, that
9 she did not make any -- she didn't identify Mr. Cramer in the
10 courtroom, she didn't say in court that --

11 THE COURT: So what's the claimed error that you made?

12 MS. COMSTOCK: Well, the claimed error was that it's
13 improper shifting of the burden to the defense to expect then
14 that defense counsel gets up and should be required to
15 question the child further than the State after she refused to
16 answer the State's questions, the burden shouldn't then be
17 shifted to the defense counsel to get up and to try to solicit
18 her testimony regarding alleged sexual abuse. She failed to
19 answer any questions regarding alleged sexual abuse from the
20 State --

21 THE COURT: So what's the claimed error you made?

22 MS. COMSTOCK: So I believe then that the 491, the
23 video of the kids' Harbor interview should not have been
24 admitted.

25 THE COURT: That's an alleged error of the Court.

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1 what's the alleged error that Mr. Cramer believes you as
 2 counsel made? And if there is none with regard to that issue,
 3 we'll move on. I understand there's perhaps some argument he
 4 wishes to make at the appellate level, but that sounds like a
 5 claim that this Court made an error, not that your counsel
 6 made an error. My inquiry right now is about what your
 7 counsel did for you and whether or not you have a complaint
 8 about how your counsel handled the issues surrounding 491.075.
 9 It sounds like your counsel is making argument that the Court
 10 made an error.

11 DEFENDANT CRAMER: Maybe it's that I'm making the error
 12 thinking it's her that made an error whenever it actually is
 13 the Court; and if that's the case, maybe it's my fault.

14 THE COURT: That's why I'm asking you the questions.

15 DEFENDANT CRAMER: I don't know. I'm not legally smart
 16 enough to quite understand it all.

17 THE COURT: Okay. So any other thing you want to tell
 18 me about the representation you have received from Ms.
 19 Comstock?

20 DEFENDANT CRAMER: No.

21 THE COURT: Are you satisfied with that representation?

22 DEFENDANT CRAMER: As far as I can be.

23 THE COURT: All right. If you want, I'll have Ms.
 24 Comstock step out of the courtroom and I can inquire of you
 25 further about the representation you've received from Ms.

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1 Comstock.

2 DEFENDANT CRAMER: No. The only thing that Ms.
3 Comstock has done, as I explained to you from my paper, is
4 that she tried tricking me into signing a plea agreement
5 before Judge Moore. It was for 20 or 22 years. I don't even
6 remember -- the numbers changed.

7 THE COURT: But there was no plea accepted in this
8 case?

9 DEFENDANT CRAMER: No.

10 MS. COMSTOCK: Judge Moore had it and we went in front
11 of Judge Moore and Judge Moore declared a mistrial, and that's
12 how it was assigned to this Court.

13 THE COURT: Okay.

14 THE COURT: And nobody ever brought a plea before this
15 Court?

16 MS. COMSTOCK: No.

17 THE COURT: All right. Although there could have been
18 a possibility prior to this trial of that; is that correct,
19 counsel?

20 MS. COMSTOCK: Yes.

21 THE COURT: Anything further on this issue then,
22 Mr. Cramer?

23 DEFENDANT CRAMER: I don't know what to say.

24 THE COURT: Anything else you want to tell me about the
25 representation you received from Ms. Comstock?

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1 DEFENDANT CRAMER: That's the only thing I really have,
2 Your Honor. If something comes up, I guess I'm just going to
3 have to live with it.

4 THE COURT: I think you'll recall we talked about this
5 at the trial, too, I questioned you then.

6 DEFENDANT CRAMER: Right.

7 THE COURT: So these are your opportunities to tell the
8 Court about the representation you received.

9 DEFENDANT CRAMER: I just, as I said, and I will say it
10 again, I just feel like I'm being railroaded by the judicial
11 system from an unethical point of view about this whenever the
12 victim clearly stated that they couldn't remember if anything
13 occurred or not. That, to me, call it a loophole, if you
14 will, but I should be walking home.

15 THE COURT: All right. Anything else about the
16 representation you received from your counsel?

17 DEFENDANT CRAMER: No.

18 THE COURT: All right, I'll let the record reflect that
19 the Court has inquired of the defendant as to the
20 effectiveness of the assistance of counsel he's received. I
21 do not find any probable cause to believe the defendant has
22 received ineffective assistance of counsel.

23 Anything further regarding this matter from State?

24 MS. HAMNER: No, Your Honor.

25 THE COURT: Anything further from the defendant?

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MS. COMSTOCK: No, Your Honor.

THE COURT: That will conclude the record.

[THAT CONCLUDES THE RECORD]

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C E R T I F I C A T E

I, Susanne E. Moon, Certified Court Reporter, Certified Real-time Reporter, and Registered Professional Reporter, certify that I am the official court reporter for Division II of the Camden County Circuit Court; that on August 5, 2013, February 3-6, 2014, and July 23, 2014, I was present and reported all of the proceedings in STATE OF MISSOURI, Plaintiff, vs. JOHN SCOTT CRAMER, Defendant, Case Number 10CM-CR02002-01. I further certify that the foregoing 389 pages contain a true and accurate transcript of the proceedings.

In compliance with Supreme Court Rule 84.18, I further certify that the cost of preparing this transcript is as follows:

390 Pages @ \$2.60 per page ----- \$1,104.00

Susanne Moon

Susanne E. Moon, RPR, CRR, CCR #473

Transcript completed: October 20, 2014

390

Susanne E. Moon, RPR, CRR, CCR No. 473

Official Court Reporter

26th Judicial Circuit of Missouri

App. 49

JOHN SCOTT ALLEN CRAMER,
Movant,
v.
STATE OF MISSOURI,
Respondent.

)
)
)
) Case No. 15CM-CR00215
)
)
)

**POST-CONVICTION RELIEF HEARING
FEBRUARY 27, 2020**

APPEARANCES

For the Movant:	For the Respondent:
Ms. Heather Davis Public Defender 1000 W. Nifong Building 7, Suite 100 Columbia, MO 65203	Ms. Sherrie Hamner Asst. Prosecuting Attorney One Court Circle Camdenton, MO 65020

Monnie S. Mealy, Certified Court Reporter #0538
26th Judicial Circuit, Division II
State of Missouri

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I N D E X

Thursday, February 27, 2020

WITNESS: JOHN SCOTT ALLEN CRAMER	PAGE
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Reporter's Certificate	18

E X H I B I T S

MOVANT'S EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
Exhibit 1	Complete Trial Transcripts	4	4
Exhibit 2	Deposition of Karie Comstock	5	5
Exhibit 3	Affidavit of Sam Buffaloe	5	5

(Exhibits were retained by the Court.)

TRANSCRIPT OF PROCEEDINGS

THE COURT: Court calls Case No. 15CM-CC00215, John Scott Allen Cramer versus the State of Missouri. This is the Circuit Court of Camden County. Today's date, February 27, 2020.

The Movant is present in the courtroom with Counsel, Ms. Heather Davis. State of Missouri is represented by Assistant Prosecuting Attorney Ms. Sherrie Hamner.

The matter comes before the Court today for trial with regard to the Movant's Amended Motion filed under Rule 29.15 on or about December 16 of 2015. Ms. Davis, are there any preliminary matters from the Movant at this time?

MS. DAVIS: Yes, your Honor. My client's actually waiving Paragraph 9-G of the Amended Motion.

THE COURT: All right. Anything else?

MS. DAVIS: We would ask the Court to take judicial notice of the underlying criminal case as well.

THE COURT: And that case number is?

MS. DAVIS: 10CM-CR02002-01.

THE COURT: Any objection to that, Ms. Hamner?

1 MS. HAMNER: No objection.

2 THE COURT: Court will take judicial
3 notice of Court's file 10CM-CR02002-01, which also
4 would include the trial transcripts, which would
5 have been filed as part of the record on appeal in
6 that case, correct, Counsel?

7 MS. DAVIS: That's correct, your Honor.

8 THE COURT: All right. All right.
9 Anything else?

10 MS. DAVIS: We do have three exhibits I'd
11 like to admit.

12 THE COURT: Uh-huh.

13 MS. DAVIS: The first one is Movant's
14 Exhibit 1. It is the copy of the complete
15 transcripts.

16 THE COURT: All right. Any objection?

17 MS. HAMNER: No objection.

18 THE COURT: Exhibit 1 is admitted.

19 (Movant's Exhibit 1 was offered and
20 admitted into evidence.)

21 MS. DAVIS: Movant's Exhibit 2, which is a
22 copy of the deposition from Karie Comstock.

23 THE COURT: Any objection?

24 MS. HAMNER: No objection.

25 THE COURT: Two is admitted.

1 (Movant's Exhibit 2 was offered and
2 admitted into evidence.)

3 MS. DAVIS: Movant's Exhibit 3, which is
4 affidavit of Sam Buffaloe.

5 THE COURT: And he was Appellate Counsel;
6 is that correct?

7 MS. DAVIS: That is correct, your Honor.

8 THE COURT: Any objection?

9 MS. HAMNER: No objection.

10 THE COURT: Exhibit 3 is admitted.

11 (Movant's Exhibit 3 was offered and
12 admitted into evidence.)

13 THE COURT: You can tender those to the
14 Court at this time if you have them.

15 MS. DAVIS: Thank you, your Honor.

16 THE COURT: All right. Any other
17 preliminary matters?

18 MS. DAVIS: No, your Honor. I just have
19 one witness.

20 THE COURT: Okay. Any preliminary matters
21 from the State?

22 MS. HAMNER: No, your Honor.

23 THE COURT: Movant prepared to proceed to
24 trial at this time?

25 MS. DAVIS: Yes, your Honor.

1 THE COURT: State prepared to proceed to
2 trial at this time?

3 MS. HAMNER: Yes, your Honor.

4 THE COURT: It's a civil case. I guess
5 you have the right to make opening if you want.

6 MS. DAVIS: No, thank you, your Honor.

7 THE COURT: Do you desire opening,
8 Ms. Davis?

9 MS. DAVIS: No, your Honor.

10 THE COURT: State desire opening?

11 MS. HAMNER: No, your Honor.

12 THE COURT: All right. Ms. Davis, you may
13 call your first witness.

14 MS. DAVIS: John Cramer.

15 THE COURT: Sir, if you'd step forward,
16 raise your right hand to be sworn.

17 JOHN CRAMER,
18 being first duly sworn to testify the truth, the whole
19 truth, and nothing but the truth, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. DAVIS:

22 THE COURT: All right. Have a seat. Sir,
23 would you state your full name, spelling your last
24 name for the record, please?

25 MR. CRAMER: John Scott Allen Cramer,

1 C-r-a-m-e-r.

2 THE COURT: Counsel, you may inquire.

3 MS. DAVIS: Thank you, your Honor.

4 Q (By Ms. Davis) John, where are you
5 currently incarcerated?

6 A Western Missouri Correctional Center.

7 Q What did Trial Counsel tell you about your
8 parole eligibility prior to trial?

9 A There was no conversation about parole
10 abilities.

11 Q Counsel didn't tell you anything one way
12 or another?

13 A No.

14 Q And that was prior to you rejecting the
15 plea offer by the State?

16 A Yes.

17 Q If you had known that you could
18 potentially receive a life sentence without the
19 possibility of parole if found guilty at a trial,
20 would you have rejected the State's plea offer?

21 A No.

22 Q When, if at all, did Counsel talk to you
23 about lesser included offenses?

24 A There was never a change in the 20 or 22
25 plea -- 22-year plea agreement from my two weeks of

1 being incarcerated in the Camden County Jail.

2 Q Did you talk to Trial Counsel about
3 potential charges that the State should have
4 charged you with that weren't as bad as what you
5 were charged with?

6 A Yeah. Because the -- that was one of the
7 things that I tried to communicate with her on a
8 regular basis was that the severity of the crime
9 didn't add up to the -- even the 20 or 22 years
10 that was being offered. It just didn't make sense.

11 Q Did you talk to her about conceding any
12 part of the charge that the State made against you
13 in the Information?

14 A I don't even understand what conceded
15 means, to be honest with you right at this minute.

16 Q Did you agree to say that you did anything
17 that the State was saying you did?

18 A No. As a matter of fact, when
19 Ms. Comstock done her closing argument, she
20 speculated that I had committed the crime as a
21 tactic to get the crime lowered to a Class B
22 instead of a Class A for less time.

23 Q And you did not agree to that?

24 A No. I told her I didn't want her to do
25 that because it made me look like I was guilty.

1 Q You have a prior conviction from 1998; is
2 that correct?

3 A Yes, I do.

4 Q Who was your probation officer for that
5 case?

6 A I had two probation officers. One, I
7 cannot remember. She was out of Columbia. And I
8 had Gary out of Camden County here. I can't
9 remember his last name.

10 Q What if -- excuse me. What, if any,
11 possible treatment did you discuss with Gary?

12 A I had contacted him and I had also
13 contacted the person that conducts the program
14 itself because that was the direction that he told
15 me to go about as contacting them directly because
16 he was unable to help me.

17 I spoke with Ms. Harmon about it, also,
18 and she told me to contact Gary, which put me in
19 contact with the person over the program. I went
20 to his office, and they wanted to charge \$150 per
21 session. And my wife and I were just not able to
22 afford that at the time.

23 Q And what program were you wanting to get
24 into?

25 A The -- the -- to get back into the sex

1 offender program for treatment. Even if I could --
 2 and I brought this up to Ms. -- or Mr. Hayden on
 3 the day of sentencing that I feel like that I don't
 4 need the actual program as a group. What I need to
 5 focus on is getting self-help, a one-on-one person
 6 to help me. That's just the way I feel that would
 7 be best benefit for me.

8 Q And that program that you were unable to
 9 pay for, would that program have gotten you the
 10 help that you were trying to get?

11 A I believe so. Yes.

12 Q Why did you want Counsel to actually
 13 present that information to the Court at
 14 sentencing?

15 A Because I thought that it would help
 16 Mr. Hayden understand whenever he was doing the --
 17 the sentence that he would take into account that I
 18 had actually been seeking prior help before I had
 19 ever been arrested.

20 As a matter of fact, to go in to a new
 21 person and trying to get help, while I was enrolled
 22 in college, I spoke with the Dean of the college
 23 and tried to get help through them while I was
 24 there, also.

25 Q Were there any other issues you wanted the

1 Court made aware of?

2 A What do you mean?

3 Q Other than what's in the Amended.

4 MS. HAMNER: I'm going to object. I
5 believe that -- I believe that all claims of
6 ineffective assistance of Counsel have to be stated
7 in that Amended and cannot be added.

8 MS. DAVIS: No further questions, your
9 Honor.

10 THE COURT: All right. Cross? That's
11 sustained.

12 CROSS-EXAMINATION

13 BY MS. HAMNER:

14 Q Mr. Cramer, you stated that you had
15 communicated with Ms. Comstock on numerous
16 occasions leadsing up to trial; is that correct?

17 A It was hard for us to communicate, but,
18 yes, we did communicate at least three or four
19 times.

20 Q Well, you stated that you --

21 A Yeah. Yeah. Right.

22 Q Numerous times, you had asked her about
23 these things?

24 A Yes.

25 Q And you had gone over paperwork with her

1 regarding the case, correct?

2 A There was never any paperwork we actually
3 went over. The only thing that she -- that she and
4 I talked about was the amount of time that I was
5 facing, which was the plea agreement, because I was
6 trying to get her to come and speak with the
7 Prosecution's Office about a possible lesser amount
8 of time. There was never any talk about a life
9 sentence at all without the possibility of parole.

10 Q You received your charging documents,
11 though, correct?

12 A Yes.

13 Q Okay. And you do recall rejecting that
14 plea agreement in a hearing in front of Judge
15 Hayden; is that correct?

16 A I -- I believed that I fired Ms. Comstock
17 in front of Judge Moore. Is it Moore? And I was
18 trying to get her to -- to basically step out of
19 the way for a new attorney to take place. I don't
20 recall doing it in front of Mr. Hayden. I think I
21 done it in front of Mr. Moore.

22 Q But you rejected in front of the Court the
23 22-year offer?

24 A I think so. I --

25 Q You wouldn't dispute it if that was part

1 of the transcript?

2 A Yeah.

3 Q Do you recall that -- do you recall going
4 over the range of punishment with the Court?

5 A No, not really. At the time of
6 sentencing, I didn't even understand what the life
7 sentence was. I thought a life sentence was 30
8 years.

9 Q It was part of the Amended Information,
10 though, correct, about what the range of punishment
11 was?

12 A That was never -- I mean, it may have been
13 went over. But at the time, I may have just not
14 understood what was going on due to the extreme
15 circumstances.

16 Q And it was also part of the Second Amended
17 Information, correct, for the range of punishment?

18 A I -- I'm just saying I don't know.

19 Q Okay. You mentioned that you had told
20 Ms. Comstock that you did not want her to argue for
21 an attempt; is that correct?

22 A Yes.

23 Q You heard her give that closing argument,
24 though, correct?

25 A Correct. I did.

1 Q Okay. And after that, at the end of the
2 trial, the Court discussed with you any complaints
3 you had with Ms. Comstock, correct?

4 A Yes.

5 Q And you didn't bring it up at that time,
6 correct?

7 A I think I did, actually. I -- I know I
8 told the Court that I had tried to fire her on
9 numerous occasions, that I was not happy with her
10 being my attorney at any one point.

11 Q But you didn't bring up the -- the issue
12 with the closing argument; is that correct?

13 A I don't recall that, to be honest.

14 Q You were again asked at sentencing if you
15 had any complaints of Ms. Comstock; is that
16 correct?

17 A That was where I brought up my issues. I
18 -- I --

19 Q You also didn't bring up the closing
20 argument at that time either, correct?

21 A I'm going to say no. I don't recall,
22 though.

23 Q And you talked about the information that
24 you wanted included in the sentencing from Gary
25 Lee --

1 A Yes.

2 Q -- is that correct? But Ms. Comstock
3 actually did argue that at sentencing; is that
4 correct? She didn't call the witness. But did she
5 argue that at sentencing?

6 A What? That I had tried to get help
7 through Gary Lee?

8 Q Yes.

9 A It seems like it was brought up at
10 sentencing. But I wanted it to be presented before
11 the jury. The jury never heard anything about my
12 request for any type of help.

13 Q But you don't dispute it was brought up at
14 sentencing?

15 A Yes.

16 Q In fact, you've stated here earlier that
17 you brought it up to Judge Hayden?

18 A Yes, I did. I know I brought it up, too.

19 MS. HAMNER: No further questions.

20 THE COURT: Redirect?

21 MS. DAVIS: No, your Honor.

22 THE COURT: All right. Sir, thank you for
23 your testimony. You may step down. Any further
24 evidence from the Movant other than State's
25 Exhibits 1, 2 and 3 -- or excuse me -- other than

1 Movant's Exhibits 1, 2 and 3 and the trial
2 testimony here today?

3 MS. DAVIS: No, your Honor.

4 THE COURT: All right. Movant rests. Any
5 evidence from the State?

6 MS. HAMNER: No, your Honor.

7 THE COURT: Go off the record.

8 (Discussion off the record.)

9 THE COURT: All right. Let's go back on
10 the record in Case No. 15CM-CC00215. Movant waives
11 closing argument at this point in time?

12 MS. DAVIS: Yes, your Honor.

13 THE COURT: State of Missouri waives
14 closing argument at this time?

15 MS. HAMNER: Yes, your Honor.

16 THE COURT: We've had a discussion, then,
17 about how much time Counsel needs to file Proposed
18 Findings of Fact and Conclusions of Law, along with
19 a Proposed Judgment with the Court.

20 And the Court understands that the parties
21 are requesting 45 days in which to accomplish that
22 task. Is that correct, Ms. Davis?

23 MS. DAVIS: Yes, your Honor.

24 THE COURT: Is that correct, Ms. Hamner?

25 MS. HAMNER: Yes, your Honor.

1 THE COURT: All right. The parties are
2 granted 45 days to file Proposed Findings of Fact
3 and Conclusions of Law along with a Proposed
4 Judgment with the Court, at which time this Court
5 will take the matter under advisement.

6 I do show that the -- the Court has
7 retained Movant's Exhibits 1, 2 and 3. Is there
8 anything else that we need to take up on the record
9 at this time on behalf of the Movant?

10 MS. DAVIS: No, your Honor.

11 THE COURT: Anything else on the record at
12 this time from the State of Missouri?

13 MS. HAMNER: No, your Honor.

14 THE COURT: That will conclude the record.
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REPORTER'S CERTIFICATE

I, Monnie Suzanne Mealy, Certified Court Reporter for Division II of the Twenty-Sixth Judicial Circuit of Missouri, do hereby certify that I was present on February 27, 2020, and reported all of the proceedings in the case of JOHN SCOTT ALLEN CRAMER, Movant, v. STATE OF MISSOURI, Respondent, Case No. 15CM-CC00215. I further certify that the foregoing pages contain a true and accurate transcript of those proceedings.

Transcript completed this 27th day of February 2020.

/s/ Monnie S. Mealy

Monnie S. Mealy, RPR, CSR, CCR
CCR No. 0538
Official Court Reporter
Twenty-Sixth Judicial Circuit
Division II

In the Matter of:
JOHN S. CRAMER
v.
STATE OF MISSOURI

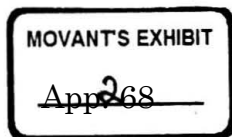
KARIE COMSTOCK

January 09, 2020



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IN THE CIRCUIT COURT OF CAMDEN COUNTY

STATE OF MISSOURI

JOHN S. CRAMER,

Movant,

v.

STATE OF MISSOURI,

Respondent.

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) Case No. 15CM-CC00215
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TELEPHONE DEPOSITION OF KARIE COMSTOCK

Taken on behalf of Movant

January 9, 2020

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KARIE COMSTOCK

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I N D E X

PAGE

EXAMINATIONS:

Direct Examination by Ms. Davis	5
Cross-Examination by Ms. Hamner	12

EXHIBIT INSTRUCTIONS:

None were marked or admitted.

KARIE COMSTOCK

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IN THE CIRCUIT COURT OF CAMDEN COUNTY

STATE OF MISSOURI

JOHN S. CRAMER,)	
)	
Movant,)	
)	
v.)	Case No. 15CM-CC00215
)	
)	
STATE OF MISSOURI,)	
)	
Respondent.)	

TELEPHONE DEPOSITION OF WITNESS, KARIE COMSTOCK,
produced, sworn and examined on January 9, 2020, between the
hours of 8:00 a.m. and 6:00 p.m. of that day at the offices of
Missouri Public Defender, Columbia, Missouri, before Lisa M.
Banks, Court Reporter, CCR No. 1081, in a certain cause now
pending in the Circuit Court of Camden County, State of
Missouri, wherein John S. Cramer is Movant and State Of Missouri
is Respondent.

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KARIE COMSTOCK

A P P E A R A N C E S

FOR THE MOVANT:

MS. HEATHER DAVIS

Missouri Public Defender System

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Columbia, Missouri 65203

573.777.9977

Heather.Davis@mspd.mo.gov

FOR THE RESPONDENT:

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Office of Camden County Prosecuting Attorney

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KARIE COMSTOCK

1 IT IS HEREBY STIPULATED AND AGREED BY and BETWEEN
2 Counsel for the Movant and Counsel for the Respondent that
3 this deposition may be taken by LISA M. BANKS, a certified court
4 reporter, CCR NO. 1081, thereafter transcribed into typewriting,
5 with the signature of the witness being expressly waived.

6 KARIE COMSTOCK,
7 of lawful age, having been produced, sworn, and examined on the
8 part of the Movant, testified as follows:

9 DIRECT EXAMINATION BY MS. DAVIS:

10 Q. Hi, Karie. Have you ever been deposed?

11 A. Yes.

12 Q. So you know that you'll need to answer out loud
13 so the court reporter can take everything down?

14 A. Yes.

15 Q. If I ask you a question that you don't
16 understand, just ask me to rephrase it and I'll do my best.
17 Okay?

18 A. Okay.

19 Q. Did you do anything to prepare for the
20 deposition today?

21 A. No.

22 Q. Did you speak to anybody?

23 A. I called Sherrie about ten minutes ago and told
24 her that I didn't have anything.

25 Q. And did you receive documents prior to today

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KARIE COMSTOCK

1 about this amended motion?

2 A. I received a motion when it was first filed. I
3 don't know if I have ever received an amended motion before. I
4 remember getting something when it was first filed.

5 Q. And prior to this deposition, did you look at
6 the amended motion?

7 A. I'm looking at it now basically.

8 Q. Do you know of any reason why we shouldn't do
9 this deposition today?

10 A. Well, the only thing I can tell you is I do not
11 have access to my case file, either the physical file or the
12 electronic file. So I will do my best to answer any questions
13 that you have, but, honestly, I do not remember a lot of this.
14 I've not read a transcript of the trial. I will do my best.

15 Q. Okay. And that's all we're asking, is for you
16 to do your best to recall.

17 Did you represent John Cramer in Camden County
18 Criminal Case No. 10CM-CR02002 --

19 A. Yes.

20 Q. -- on the charge of first-degree child
21 molestation?

22 A. Yes.

23 Q. Do you recall Camden County Sheriff's Detective
24 Donald Hines telling the court that Mr. Cramer invoked his right
25 to an attorney when Detective Hines tried to speak to him at the

KARIE COMSTOCK

1 jail?

2 A. I don't recall that.

3 Q. Would you have any reason to doubt the
4 transcripts if that was what was said occurred?

5 A. If that's what he said, I don't have any reason
6 to doubt that.

7 Q. Do you recall any trial strategy for not
8 objecting to Detective Hines's testimony?

9 A. Not that I can think of.

10 Q. During closing arguments did you assert
11 Mr. Cramer was a guilty of attempted first-degree child
12 molestation rather than first-degree child molestation?

13 A. You know, I read that in the petition, but I do
14 not remember that.

15 Q. Do you remember talking to Mr. Cramer prior to
16 your closing about you saying something along those lines?

17 A. There might have been some sort of conversation
18 there about saying maybe we should go for a lesser, but that --
19 honestly, I don't remember.

20 Q. Do you recall how Mr. Cramer took that news?

21 A. I don't.

22 Q. Prior to trial, did you discuss Mr. Cramer's
23 parole eligibility?

24 A. Yes.

25 Q. What did you tell him?

KARIE COMSTOCK

1 A. I don't remember what I told him, but I know
2 that we went over the fact that it was a sex offense and that he
3 was looking at serving more on it, but I don't remember without
4 looking at my notes what exactly it would have been. But I know
5 that because it was a sex offense that it's something I
6 definitely would have sat down and talked with him about.

7 Q. Did you tell him that he would be ineligible for
8 parole?

9 A. I don't remember if I told him ineligible or if
10 I told him it was 85 percent. I don't remember.

11 Q. Do you recall in the timeline for this case, was
12 that discussion prior to the State's offer of 22 years or after?

13 A. I think that we had the discussion a number of
14 times about how much time he was looking at. I know that that
15 was something that -- I know that we came -- we talked
16 frequently about the amount of time he was looking at and how
17 much time he was going to have to serve. I know that came up
18 frequently.

19 Q. And within those discussions you talked about
20 his parole eligibility?

21 A. We talked about the fact that he was going to
22 have to serve a lot of his sentence. I can't -- like I said
23 though, I can't remember even without looking at it what the
24 range of punishment even was on it at this point. So I would
25 have to -- I would have to look to see. But I know that we

KARIE COMSTOCK

1 talked about the fact that it was a sex offense and it was in a
2 higher category. But I also always tell them that I cannot
3 guarantee anything once you're in the Department of Corrections,
4 it's up to them to determine. But I can tell them whatever the
5 statutory language says. But I'm -- usually I would have the
6 statutory language somewhere in my file.

7 Q. During the trial, why didn't you object to the
8 state playing the 911 call that Eunice Cramer made on the
9 grounds of improper bolstering?

10 A. Well, I know Eunice was there. I guess I didn't
11 think that it added -- I didn't think it was particularly
12 bolstering. I didn't think that it had that much of an effect.

13 Q. What, if anything, did you discuss with
14 Mr. Cramer about his prior convictions?

15 A. Well, I mean we talked about the fact that he
16 was already a registered sex offender. I know -- and I think
17 that because he was already a registered sex offender that may
18 have been where it had even further detrimental effect on his
19 eligibility for parole. He talked a lot about the fact that he
20 was a prior sex offender, how he had tried -- he wanted to get
21 additional help and he felt like the system had screwed him
22 over.

23 Q. So along those lines, did you talk to Mr. Cramer
24 about his attempts to get counseling or treatment and combat the
25 sexual deviancy impulses?

KARIE COMSTOCK

1 A. Yes.

2 Q. During that discussion, who did Mr. Cramer say
3 would be able to testify to his efforts to receive counseling or
4 treatment?

5 A. I specifically remember saying -- I think it was
6 the dean of the college he was going to, that he went to talk
7 to, some people at the school where he was going.

8 Q. Did he mention a Terri Hammon or Gary Lee to
9 you?

10 A. I'm familiar with the name Gary Lee. I don't
11 remember him mentioning either one of those. He was very
12 specific that he had gone to the dean of the college that he was
13 going to and had told them he wanted help. I know he did say
14 that he tried to go get help. Maybe that could have been Gary
15 Lee, but basically, he was told that he would have to pay for
16 the sex offender classes and he didn't have any money to pay for
17 them.

18 Q. Why didn't you call Gary Lee or the dean of the
19 college at the sentencing hearing for mitigation purposes?

20 A. Well, I remember thinking that if -- I didn't
21 think it was going to be helpful. I thought it would be more
22 damaging that he admitted that he was having all these thoughts
23 of reoffending previously. So I didn't think it would be
24 particular -- I didn't think it was going to be particularly
25 mitigating.

KARIE COMSTOCK

1 Q. Do you recall that during voir dire the Venire
2 Person 37 stated that the prosecutor, Ms. Hammon and her husband
3 bought and sold property with an agent in his office?

4 A. I remember -- I remember that there was
5 something said, but that -- it was not very clear as far as what
6 was said, and that -- basically, they didn't even have a lot of
7 facts as to it. So it was kind of -- it didn't seem like it was
8 an issue, especially compared to the other jurors that we had to
9 choose from. And I do remember that it was not a good jury
10 pool.

11 Q. So why didn't you strike that venire person from
12 the panel for cause or use a peremptory strike?

13 A. I'm not sure that we didn't try to strike them
14 for cause. I would have to look at the records to see if we
15 did, but I think, again, just in comparison -- I think that the
16 answers that they gave wasn't something that was like, oh, my
17 gosh, this person knows the prosecutor or is going to be
18 favorable. I think it was -- I didn't think it was that -- that
19 it appeared to be that big of a deal.

20 Q. At the pretrial hearing Cara Gerdiman testified
21 that she and the other employees of Kids Harbor attended
22 meetings with the prosecutor's office. Why didn't you bring
23 that fact up during trial?

24 A. I don't know if there was anything in there
25 about they attended meetings with the prosecutor's office. I

KARIE COMSTOCK

1 think those were the staffing meetings that I had asked her
2 about. I just -- I don't remember.

3 MS. DAVIS: I don't have any other questions.

4 MS. HAMNER: Karie, I have a couple of
5 questions.

6 THE WITNESS: Yes.

7 CROSS-EXAMINATION BY MS. HAMNER:

8 Q. I just want to make sure that I remember. You
9 don't recall the testimony from Detective Hines that you were
10 asked about previously; is that correct, specifically?

11 A. Right. I don't remember that. It might be
12 helpful if I looked at the trial transcript.

13 Q. So you don't remember how the testimony
14 specifically came in; is that fair?

15 A. No. Right, I don't.

16 Q. Sorry. Bad question.

17 Do you recall that ever -- the right to remain
18 silent ever being argued or an issue brought up at the trial?

19 A. No. But you know what, I'm thinking -- I just
20 am thinking about it just here the last 20 minutes or so, I
21 can't remember if -- I was trying to think of who even
22 second-chaired me on this case. It's possible I could have it
23 confused with another trial that I did, because it seems like
24 almost everything that gets to trial are sex cases. But there
25 may have been a discussion at counsel table about whether or not

KARIE COMSTOCK

1 we wanted to request a mistrial. And it had taken so long to
2 get to trial that we decided that we didn't think it had -- we
3 didn't want to draw more attention to it and -- I'm trying to
4 remember if it was Mr. Cramer or not or if it was another client
5 that basically said I don't want to ask for a mistrial. I want
6 to get a verdict. It may have been Mr. Cramer.

7 Q. Well, and that was my next question. Are there
8 times in trial where you don't object as part of trial strategy
9 to not bring attention to something that was said in passing?

10 A. Yes. And that's -- that's what I'm trying to
11 remember. There were two cases that I tried in about two year's
12 time that were both sex cases, and they had some issues, and I
13 was trying to remember if it was Mr. Cramer's trial where
14 basically we had a discussion at counsel table and said let's
15 just go with it, you know, everything else looks good, and we
16 didn't want to have to wait and delay and pick another jury and
17 have another trial date. So, yeah, there's definitely reasons
18 when we may decide not to object to something.

19 Q. And in this case, did you go over the charging
20 documents with Mr. Cramer?

21 A. I always go over the charging documents with my
22 clients. Always go over them with them, make sure that they
23 know -- and I know with Mr. Cramer in particular I remember
24 going over the charging documents and talking about that.

25 Q. Okay. So if the range of punishment is in a

KARIE COMSTOCK

1 charging document, that's something you would have gone over
2 with him?

3 A. Yes.

4 Q. And do you recall in this case plea discussions
5 happening up to the point of trial?

6 A. Yes.

7 Q. Even at trial?

8 A. I think they were like up to the morning of
9 trial that I remember.

10 MS. HAMNER: Okay. Give me just a minute
11 please.

12 THE WITNESS: Was there a question?

13 MS. HAMNER: Yes. I'm sorry trying to find
14 something in the transcript real quick.

15 THE WITNESS: Okay. I just wanted to make sure
16 I didn't miss something.

17 MS. HAMNER: My computer is running a little
18 slow.

19 BY MS. HAMNER:

20 Q. Do you recall making arguments at sentencing for
21 Mr. Cramer?

22 A. I don't remember a lot about the sentencing
23 argument.

24 Q. Okay. Do you recall arguing -- and you may not
25 -- but do you recall arguing during the sentencing that

KARIE COMSTOCK

1 Mr. Cramer was trying to get back into the MOSOP program and had
2 talked to the sex offender registry person?

3 A. Can you say that again?

4 Q. Yes. I'm sorry. Do you remember arguing at the
5 sentencing that Mr. Cramer was trying to get back into the MOSOP
6 program?

7 A. Honestly, I can't remember if we ended up
8 bringing that up or not.

9 Q. Okay. Fair enough.

10 A. So I'm not a hundred percent sure. I mean, if
11 it's in there I wouldn't be surprised. I don't know.

12 Q. Fair enough. And you said regarding the Venire
13 Person Number 37, you didn't remember specifics. Correct?

14 A. Right. I don't remember exactly what they said.
15 I just remember thinking it was not a good jury pool for the
16 defense, and that compared to the other people that we had, the
17 answers that were given still seemed acceptable and that person
18 still seemed like a better option than some of the others.

19 MS. HAMNER: I don't have any further questions.

20 MS. DAVIS: Karie, I don't have any other
21 questions either.

22 As you know, you do you have the right to look
23 over the transcript if you would like to or you can waive it.

24 THE WITNESS: I'll waive.

25 (OFF THE RECORD.)

KARIE COMSTOCK

(SIGNATURE WAIVED.)

CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Lisa M. Banks, CCR No. 1081



IN THE 26TH JUDICIAL CIRCUIT COURT, CAMDEN COUNTY MISSOURI

Judge or Division : KENNETH MICHAEL HAYDEN (34650) DIV2	Case Number : 10CM-CR02002-01 <input type="checkbox"/> Change of Venue from Offense Cycle No : H8003141
State Of Missouri vs. Defendant: JOHN SCOTT CRAMER (CRAJS0387) [REDACTED] [REDACTED] Alias: JOHN S CRAMER	Prosecuting Attorney/MO Bar No: BRIAN D KEEDY (33009) Defense Attorney/MO Bar No : KARIE ELIZABETH COMSTOCK (53938)
DOB : [REDACTED] SSN : [REDACTED] SEX : M	
Pre-Sentence Assessment Report Ordered	Appeal Bond Set Date : Amount :
Amended Judgment	

	Charge #	Charge Date	Charge Code	Charge Description
Original Charge:	1	03-Oct-2010	2210200	Child Molestatn-1st Deg-Prev Conviction Under Chpt 566/Dsply Deadly Weap/Ser Inj/Part Of Ritual Or Ceremony (Felony A RSMo: 566.067)
Amended To:	1	03-Oct-2010	2210300	Child Molestatn-1st Deg-Vic<12 W/Prev Cnvction Undr Ch 566 Or Ser Phys Inj/Dsply Ddly Weap Or Inst/Ritl Or Cermony (Felony A RSMo: 566.067)
Disposition:	06-Feb-2014	Jury Verdict-Guilty		
Order Date:	23-Jul-2014	Sentence or SIS :	Incarceration DOC	
Length :	999 Years	Start Date :	23-Jul-2014	
Text :	Deft sent to life imprisonment DOC, w/o possibility of probation or parole			

The court finds the defendant has pled or been found guilty of an offense for which probation and parole are not authorized.

The court informed the defendant of verdict/finding, asks the defendant whether (s)he has anything to say why judgment should not be pronounced, and finds that no sufficient cause to the contrary has been shown or appears to the court.

Defendant has been advised of his/her rights to file a motion for post conviction relief pursuant to Rule 24.035/29.15 and the court has found **No Probable Cause** to believe that defendant has received ineffective assistance of counsel.

The Court orders:

The clerk to deliver a certified copy of the judgment and commitment to the sheriff.

The sheriff to authorize one additional officer/guard to transport defendant to Department of Corrections.

The Defendant to register as a sex offender with the chief law enforcement official of the county or city not within a county in which (s)he resides within three (3) days of conviction, release from incarceration, or placement on probation.

That Judgment entered in favor of the State of Missouri and against the defendant for the sum of **\$68.00** for the Crime Victims Compensation fund. Judgment is **Not Satisfied**.

Judgment for the State of Missouri and against the defendant for appointed counsel services for the sum of **\$2,500.00**. Judgment is **Not Satisfied**.

Costs taxed against **Defendant**

The Court further orders:

23-Jul-2014 Defendant Sentenced

AUTHORIZE ADDITIONAL OFFICER - Yes; DELIVER CERTIF COPY OF JUDMT - Yes; 24.035/29.15
INEFFECT COUNSEL - No; ALLOCUTION - Yes; PROB/PAROLE NOT AUTHORIZED - Yes Court Finds
Deft to have been previously convicted under chapter 566.

So Ordered on: **10CM-CR02002-01 ST V JOHN SCOTT CRAMER**

Jul 28, 2014

Date

R. M. H.
Judge

I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.

(Seal of Circuit Court)

Issued on:

7/28/2014
Date

Jo McElmer by b.m.
Clerk

Supreme Court of Missouri
en banc
SC99075
SD36760

May Session, 2021

John Scott Cramer,
Appellant,

vs. (TRANSFER)

State of Missouri,
Respondent.

Now at this day, on consideration of Appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Southern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Betsy AuBuchon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session, 2021, and on the 29th day of June, 2021, in the above-entitled cause.



IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court, at my office in the City of Jefferson, this 29th day of June, 2021.

Betsy AuBuchon, Clerk

Christina Luna, Deputy Clerk