

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

<b>STATE OF MISSOURI,</b>	)	
<b>PLAINTIFF,</b>	)	
v.	)	<b>CASE NO.</b> _____
	)	<b>Division 6</b>
_____ ,	)	
<b>DEFENDANT.</b>	)	

**ACKNOWLEDGEMENT**

Under Missouri Supreme Court Rule 29.07(b)(4), I must inform you at this time that you have the right under Supreme Court Rule 24.035 to file a motion in this Court to vacate, set aside or correct the judgment of conviction or sentence entered against you if you claim that:

1. Your conviction or the sentence entered violates the Constitution and the laws of this State or the Constitution of the United States;
2. This Court was without jurisdiction to enter the sentence; or
3. The sentence entered was more than the highest sentence permitted by law.

This Rule provides the only method by which you may seek relief in this Court for the above listed claims. There is a form for you to use to file this motion known as Criminal Procedure Form No. 40. This form will be given to you now.

You can file this motion without paying a cost deposit.

If you file such motion, it must be filed with the Jackson County Circuit Court within One hundred eighty (180) days from today's date.

If you fail to file the motion within this time you will completely waive, that is, give up your right to proceed under this Rule.

If you file such motion, you must put in it every ground known to you for

vacating, setting aside or correcting the judgment and sentence. The motion must be sworn to. In it you must state that you have listed all grounds for relief known to you.

If you file your own motion, without an attorney, an attorney will be appointed for you if you are a poor person unable to pay for a lawyer.

The Rule allows an amended motion to be filed but it must be filed within certain strict time limits. These limits can be found in paragraph (f) of the Rule.

A written request for a hearing of the motion must be made on or before the date an amended motion is required to be filed. If no request for a hearing is timely made, a hearing will not be held.

You are entitled to file only one such motion.

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**I have read the above (or had it read and explained to me) and I understand it. I have received a copy of Form 40.**

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Date

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Defendant

Witnessed By: \_\_\_\_\_  
Attorney for Defendant

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MICHELLE L. COCAYNE  
Circuit Court Judge

**FORM NO. 40**  
**MOTION TO VACATE, SET ASIDE OR CORRECT THE JUDGMENT OR SENTENCE**

IN THE CIRCUIT COURT OF JACKSON COUNTY,  
STATE OF MISSOURI

\_\_\_\_\_  
(Full name of Movant )

Case No. \_\_\_\_\_

vs.

STATE OF MISSOURI,  
Respondent.

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**INSTRUCTIONS - READ CAREFULLY**

In order for this motion to receive consideration by the Circuit Court, it shall be in writing (legibly handwritten or typewritten), signed by the movant, and it shall set forth in concise form the answers to each applicable question. If necessary, movant may furnish an answer to a particular question on the reverse side of the page or an additional blank page. Movant shall make it clear to which question any such continued answer refers.

This motion must be filed in the Circuit Court which imposed sentence.

The movant is required to include in this motion every claim known to him for vacating, setting aside or correcting the conviction and sentence or it will be waived or abandoned. Be sure to include every claim.

Movants should exercise care to assure that all answers are true and correct.

If the motion is taken in forma pauperis, it shall include an affidavit setting forth information that establishes that movant will be unable to pay costs of the proceedings. When the motion is completed, the original and two copies shall be mailed to the Clerk of the Circuit Court from which the movant was sentenced.

**MOTION**

1. Place of detention: \_\_\_\_\_

2. Name and location of court which imposed sentence:  
\_\_\_\_\_

3. The case number and the offense or offenses for which sentence was imposed:  
\_\_\_\_\_

4. (a) The date upon which sentence was imposed and the terms of the sentence:  
\_\_\_\_\_

(b) The date upon which you were delivered to the custody of the department of corrections to serve the sentence you wish to challenge.

5. Check whether a finding of guilty was made:

(a) After a plea of guilty \_\_\_\_\_

(b) After a plea of not guilty \_\_\_\_\_

6. Did you appeal from the judgment of conviction? \_\_\_\_\_

7. If you answered 'yes' to (6), list

(a) the name of the court to which you appealed:  
\_\_\_\_\_

(b) the result in such court and the date of such result:  
\_\_\_\_\_

(c) the date the appellate court's mandate issued.  
\_\_\_\_\_

8. State concisely all the claims known to you for vacating, setting aside or correcting your conviction and sentence:

(a) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) \_\_\_\_\_  
\_\_\_\_\_

(c) \_\_\_\_\_  
\_\_\_\_\_

9. State concisely and in the same order the facts supporting each of the claims set out in (8), and the names and addresses of the witnesses or other evidence upon which you intend to rely to prove such facts:

(a) \_\_\_\_\_  
\_\_\_\_\_

(b) \_\_\_\_\_  
\_\_\_\_\_

(c) \_\_\_\_\_  
\_\_\_\_\_

10. Prior to this motion have you filed with respect to this conviction:

(a) Any motion to vacate judgment under Missouri Supreme Court Rules [24.035](#), [27.26](#) or [29.15](#)? \_\_\_\_\_

(b) Any petitions in state or federal courts for habeas corpus? \_\_\_\_\_

(c) Any petitions in the United States Supreme Court for certiorari? \_\_\_\_\_

(d) any other petitions, motions or applications in this or any other court? \_\_\_\_\_

11. If you answered 'yes' to any part of (10), list with respect to each petition, motion or application

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the name and location of the court in which each was filed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the disposition thereof and the date of such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

12. Has any claim set forth in (8) been previously presented to this or any other court, state or federal, in any petition, motion or application that you have filed?

13. If you answered 'yes' to (12), identify

(a) the claims that have been previously presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each claim was raised:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

14. If you have filed prior proceedings in any state or federal court involving this same sentence but did not raise therein one or more of the claims you now list in (8), state which were not raised in the earlier proceedings and why they were not raised in those proceedings:

(a) \_\_\_\_\_  
\_\_\_\_\_

(b) \_\_\_\_\_  
\_\_\_\_\_

(c) \_\_\_\_\_  
\_\_\_\_\_

15. Were you represented by an attorney at any time during the course of
- (a) your preliminary hearing? \_\_\_\_\_
  - (b) your arraignment and plea? \_\_\_\_\_
  - (c) your trial, if any? \_\_\_\_\_
  - (d) your sentencing? \_\_\_\_\_
  - (e) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
  - (f) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

16. If you answered 'yes' to one or more parts of (15), list

(a) the name and address of each attorney who represented you

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings at which each such attorney represented you

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

17. Are you now under sentence from any other court that you have not challenged? \_\_\_\_\_

18. If you are seeking leave to proceed in forma pauperis, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)? \_\_\_\_\_

\_\_\_\_\_  
Signature of Movant

I, \_\_\_\_\_, movant in this case, state that I have subscribed to the foregoing petition; that I know the contents thereof; that the above information is, to the best of my knowledge, true and correct; that I have listed every claim known to me for vacating, setting aside or correcting the conviction and sentence attacked in this motion; and that I understand that I waive any claim for relief known to me that I have not listed in this motion.

**FORMA PAUPERIS AFFIDAVIT**  
(See instructions page 1 of this form)

\_\_\_\_\_  
Signature of Movant

STATE OF MISSOURI     )  
  ) SS  
COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_, being first duly sworn upon my oath, depose and say that I have subscribed to the foregoing affidavit; that I know the contents thereof; and that the matters therein set forth are true.

\_\_\_\_\_  
Signature of Affiant

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(month) (day) (year)