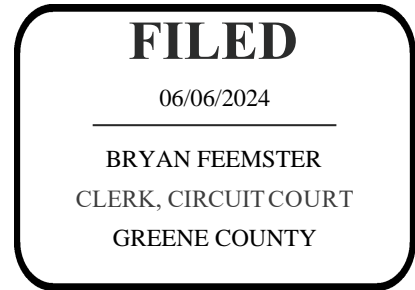


**IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI**

HOWARD ROBERTS,            )  
Movant,                        )  
                                      )  
vs.                                )  
STATE OF MISSOURI,        )  
Respondent.                    )

Case No. 2031-CC00165



**AMENDED ORDER AND JUDGMENT**

Pending before the Court is a petition for post conviction relief filed by the Movant, Howard Roberts. Following the filing of that petition, a hearing was conducted. At that hearing, all of the parties were present including the Movant.

On April 18, 2024, the Court issued its decision in that matter. In that decision, the Court denied the Movant’s request to vacate his conviction. However, the Court did vacate the sentence and ordered the matter to be set for sentencing. The Court also ordered the Movant to be released on bond pending resentencing. As of this date, the Department of Corrections has failed to comply with this Court’s Order and Movant continues to remain incarcerated.

On May 20, 2024, Movant filed a Motion with this Court to amend the judgment previously entered. On that same date, the State of Missouri filed a notice of appeal. However, since the motion to amend was still pending, the notice of Appeal was premature and this Court still retains jurisdiction over the matter. On June 4, 2024, the State filed its suggestions in opposition to Movant’s request to amend the judgment.

The Court has reviewed all of the pleadings and evidence in this matter. Following that review, the Court does believe that Movant’s conviction and sentence should be vacated and that Movant is entitled to a new trial.

Specifically, the Court finds that the allegations set forth in Claims 6 and 7 relating to the testimony of Mr. Cebulak and the stipulation agreed to by Movant's criminal trial counsel are well taken. The Court finds that trial counsel was ineffective for failing to properly object to both the introduction of that testimony and the arguments of the State concerning the Movant's bankruptcy. In addition, the Court finds that trial counsel was ineffective by agreeing to the stipulation concerning the bankruptcy.<sup>1</sup>

Because of these errors by counsel, the Court finds that Movant was severely prejudiced and was denied effective counsel at trial. In short, the Court finds that but for those errors by trial counsel, Movant might have very well been acquitted by the jury.

The Court further finds that Movant was denied effective assistance of counsel by trial counsel's failure to introduce evidence of Movant's expenditures of the funds received by him from the victim. During the trial, the continuing theme presented by the State was that the entire business of Movant was a sham and that he basically took money from the victim and did not use it to further the business and promote the product.

However, during the hearing on the post conviction motion, counsel for Movant presented a wide variety of exhibits which were not introduced at trial. Although the Court questions the legitimacy of some of those exhibits,<sup>2</sup> the Court finds that a number of those documents, together with testimony of several corroborating witnesses would have been admissible at trial and would have provided an effective challenge to the State's claim that

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1 The Court finds that trial counsel failed to properly investigate and research the issues relating to the bankruptcy and that his failure to do so severely prejudiced the Movant. The Court does not find that the State knowingly presented false testimony on that issue. .

2 The Court is not suggesting that Movant's PCR counsel was aware of the questionable nature of several of the documents. However, the Court does have some concern over the genuineness of several of the documents admitted at the PCR hearing and takes note of the issues raised by the State. In the end though, it is likely that the Court would have allowed the admission of that evidence and would have left it up to the jury to decide the legitimacy of the documents. However, since they were never presented at trial, the jury was denied that opportunity and Movant was severely prejudiced by the ineffective assistance rendered by trial counsel.

Movant's business venture was nothing more than a sham. Thus, the admission of those documents and corroborating testimony could have very well convinced a jury that Movant was innocent and that he was operating a legitimate business with the funds that he received.<sup>3</sup>

By failing to properly properly investigate Movant's business and seek the introduction of those records and testimony, trial counsel did not provide Movant with effective assistance at trial and Movant was severely prejudiced at trial by that ineffective assistance.

In summary, the cumulative errors by trial counsel severely prejudiced the Movant and led to him being denied the effective assistance at trial as he was entitled under standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). As such, Movant is entitled to a new trial in this matter and the conviction and sentence is hereby vacated.

Since Movant's conviction and sentence is now vacated, this matter will be reset for a new trial. In the interim, Movant is hereby ordered to be **immediately released** from the Department of Corrections. Pending that new trial, Movant is hereby released on his own recognizance and shall report to the 31<sup>st</sup> Circuit pretrial service office for supervision within 96 hours following his release from the Department of Corrections. While on pretrial supervision, Movnat shall comply with all lawful directives of the Pretrial Services officer and shall have no contact with the victim's family or the State's witnesses. The Clerk is hereby directed to immediately notify the Department of Corrections of this Order and Judgment by providing the Department with a copy of this Order and Judgment via fax and/or mail.

If the State pursues its appeal or if Movant appeals this decision, Movant shall remain free under the same terms and conditions of release as set forth herein unless the Court of Appeals directs this Court to impose further conditions of release.

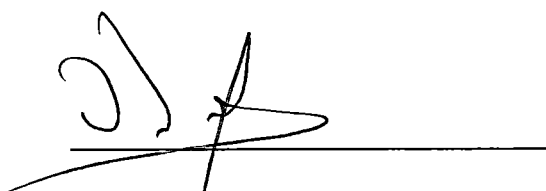
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<sup>3</sup> Although trial counsel claims that he was unaware of a number of those documents and witnesses, the Court finds that he had a duty to properly investigate the operation and legitimacy of the business. Thus, he was ineffective by failing to do so which resulted in substantial prejudice to the Movant at trial.

## JUDGMENT

Movant's petition for post-conviction relief is granted in part for the reasons set forth herein and the conviction and sentence is hereby vacated. Movant is ordered to be **immediately released** from the Department of Corrections and the matter will be reset for trial at a date to be determined.

**DONE AND ORDERED THIS 6TH DAY OF JUNE, 2024.**

A handwritten signature in black ink, consisting of stylized initials and a surname, positioned above a horizontal line.

**David C. Jones**  
**Senior Circuit Judge**