

IN THE
MISSOURI SUPREME COURT

STATE OF MISSOURI,)

Respondent,)

vs.)

ED T. REUSCHER, III,)

Appellant.)

No. 73463

MOTION TO REMAND FOR A NEW TRIAL

Comes now the State of Missouri, respondent herein, by and through Jeremiah W. (Jay) Nixon, Attorney General, and Cheryl A. Caponegro, Assistant Attorney General, and submits as follows:

1. That appellant was convicted of murder in the first degree in the Circuit Court of Clay County and was sentenced to death;
2. That this Court affirmed appellant's conviction and sentence, State v. Reuscher, 827 S.W.2d 710 (Mo. banc 1992), *cert. denied*, 113 S.Ct. 114 (1992);
3. That this Court also affirmed the denial of postconviction relief, Reuscher v. State, 887 S.W.2d 588 (Mo. banc 1984);
4. That appellant then filed in this Court on or about January 16, 1995, his Motion to Recall the Mandate;
5. That on March 21, 1995, this Court entered an Order appointing the Honorable C. David Darnold as a Master to conduct a hearing to determine whether trial counsel was ineffective for misinforming appellant as to the date on which the transcript in his direct appeal

was filed thereby jeopardizing appellant's ability to timely file a motion for postconviction relief alleging claims of ineffective assistance of counsel;

6. That the Master, Judge Darnold, heard evidence on June 20, 1995;

7. That in his findings of fact and conclusions of law filed December 1, 1995, Judge Darnold found that trial counsel, Robert Duncan, prevented appellant from filing a timely motion for postconviction relief pursuant to Rule 29.15 by failing to notify appellant of the date of the filing of the direct appeal transcript;

8. That on February 20, 1996, this Court entered an Order in which appellant's motion was treated as a petition for habeas corpus and in which this Court granted appellant sixty days in which to file a pleading which would encompass any issues he might have raised in a postconviction relief proceeding pursuant to Rule 29.15;

9. That also in its February 20, 1996, Order, this Court appointed the Honorable Charles B. Blackmar as Special Master for the proceedings on the petition;

10. That on or about April 19, 1996, appellant filed his motion alleging grounds for modifying, vacating or setting aside his judgment, conviction and sentence;

11. That the Special Master, Judge Blackmar, heard evidence on the motion on August 19-20, 1996;

12. That on November 21, 1996, Judge Blackmar entered his report in which he found that trial counsel was laboring under an actual conflict of interest and that appellant was prejudiced thereby; that trial counsel was constitutionally ineffective for advising appellant to plead guilty to an unrelated sodomy charge which was later used as a statutory aggravating

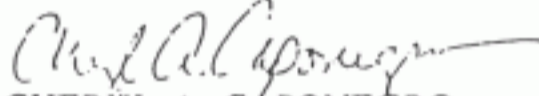
circumstance; and that trial counsel was constitutionally ineffective for failing to investigate appellant's mental state at the time of the offense;

13. That on January 9, 1996, this Court set a briefing schedule;
14. That on or about February 10, 1996, appellant filed his brief;
15. That, having reviewed the record and appellant's brief, respondent finds no basis on which to challenge the report of the Special Master as clearly erroneous.

WHEREFORE, respondent submits that appellant's case should be remanded for a new trial.!

Respectfully submitted,

JEREMIAH W. (JAY) NIXON !
Attorney General


CHERYL A. CAPONEGRO
Assistant Attorney General
Missouri Bar No. 41569

P.O. Box 899
Jefferson City, Missouri 65102
(573) 751-3321

Attorneys for Respondent

CERTIFICATE OF SERVICE:

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 26th day of February, 1997, to:

Sean D. O'Brien
Missouri Capital Punishment Resource Center
5319 Rockhill Road
Kansas City, MO 64110


CHERYL A. CAPONEGRO



Supreme Court of Missouri

en banc

March 25, 1997

State of Missouri,)	
)	
)	Respondent,
vs.)	
)	No. 73463
)	Cir.Ct. #CR190-17F
<u>Ed Theodore Reuscher III</u> a/k/a Butch Reuscher,)	
)	
)	Appellant.

ORDER

Respondent, State of Missouri's motion for remand for new trial sustained. Judgment of conviction and sentence ordered vacated. Petitioner ordered discharged to the custody of the Sheriff of Clay County, Missouri to await further proceedings.



 John C. Holstein, Chief Justice

STATE OF MISSOURI—SCT.:

I, THOMAS F. SIMON, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the order of said court, entered on the 25th day of March 1997, as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court. Done at office in the City of Jefferson, State aforesaid, this 25th day of March, 1997.


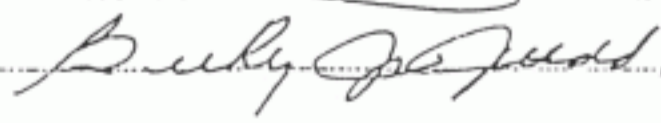
 Clerk.
 D. C.

Exhibit "57"