

IN THE CIRCUIT COURT OF JACKSON COUNTY,
AT KANSAS CITY

<p>MISSOURI FILED</p> <p>DIVISION 10</p> <p>01-Feb-2017 10:02</p> <p>CIRCUIT COURT OF JACKSON COUNTY, MO</p> <p>BY <u>Emily Kissea</u></p>

STATE OF MISSOURI)
 Petitioner,)
)
)
 v.)
)
 KEITH L CARNES)
 Respondent.)

Case No. 16CR03006321-02
 Division 10

**JUDGMENT DISMISSING DEFENDANT’S MOTION FOR NEW TRIAL
 BASED UPON NEWLY DISCOVERED EVIDENCE AND
 PERJURED TESTIMONY**

On this 30th day of January, 2017, the Court considers Defendant’s Motion for New Trial Based Upon Newly Discovered Evidence and Perjured Testimony filed herein on November 16, 2016. In November 2005, following a bench trial, Judge Gene Martin found Defendant guilty of murder in the first degree and armed criminal action. In March 2006, Judge Martin sentenced Defendant to concurrent life sentences. Defendant filed a notice of appeal in September 2006. In January 2008, the Missouri Court of Appeals issued a mandate affirming the judgment and sentences. *See State v. Carnes*, 241 S.W.3d 344 (Mo.App. 2007).

A motion for new trial filed some eleven years after entry of judgment and sentence raises the question of the circuit courts’ authority to hear such motion. Defendant relies upon four authorities for his assertion that Missouri law permits this Court to exercise its authority and grant him an evidentiary hearing on his motion: *State v. Terry*, 304 S.W.3d 105 (Mo. banc 2010); *State v. Coffman*, 647 S.W.2d 849 (Mo.App. 1983); Rule 29.11; and Rule 29.12.

Rule 29.11 governs motions for new trial in felony and misdemeanor cases and provides such motions “shall be filed within fifteen days after the return of the verdict”. The court may

grant one additional extension, not to exceed ten days. “The time limitations in Rule 29.11 are mandatory.” *State v. Yates*, 982 SW2d 767, 769 (Mo.App. 1998). The circuit courts’ authority beyond these mandatory time limits is more fully discussed in *State v. Nylon*, 311 SW3d 869, 876 (Mo.App. 2010), as follows:

The Missouri rules do not provide a means to order the granting of a new trial for newly discovered evidence outside of the time limits imposed by Rule 29.11. *Terry*, 304 S.W.3d at 107–09. Despite the lack of a provision in the rules, this Court has the “responsibility to avoid a ‘perversion of justice.’ ” *Terry*, 304 S.W.3d at 110 (*quoting State v. Williams*, 673 S.W.2d 847, 848 (Mo.App. E.D.1984)). *Appellate courts* also “have the inherent power to prevent miscarriages of justices” in certain cases of newly discovered evidence. *State v. Mooney*, 670 S.W.2d 510, 515–16 (Mo.App. E.D.1984). To exercise this power, **the appellate court** may, in limited circumstances, dismiss the appeal and remand the case to the trial court to allow the appellant to file an amended motion for new trial. *Terry*, 304 S.W.3d at 111–12. *The exercise of this power, however, remains in the discretion of the appellate court.* *Id.*

Id. at 876 (emphasis added) (citing *State v. Terry*, 304 S.W.3d 105 (Mo. banc 2010)).

As set forth in *Nylon*, this Court does not have authority to grant relief for a new trial for newly discovered evidence outside the fifteen day time limit imposed by Rule 29.11. *Nylon* relies heavily upon *Terry*, one of the cases cited by Defendant in support of his motion. As noted above, *Terry* similarly holds that the circuit court’s exercise of authority is limited by the mandatory time constraints of Rule 29.11 and “an appellate court has the inherit power to prevent a miscarriage of justice or manifest injustice.” 304 S.W.3d at 109. Rule 29.11 and *Terry* do not permit this Court authority to hear Defendant’s motion.

Defendant also relies upon *State v. Coffman*, 647 S.W.2d 849 (Mo.App. 1983). *Coffman* involved a motion to vacate filed by defendant before sentencing but after the fifteen days allowed for motions for new trial by Rule 29.11. The *Coffman* court held, “[e]ven though *Coffman*’s motion was untimely, under Rule 29.13(b) the court, with the consent of the

defendant, could have ordered a new trial on its own initiative *before judgment was entered and a sentence was imposed.*” *Id.* at 851 (emphasis added). Rule 29.13, relied upon in *Coffman*, provides the circuit courts authority to grant a new trial “before the entry of judgment and imposition of sentence but not later than thirty days after the verdict of the jury is returned.” The present action was initiated over ten years *after* judgment was entered and sentence imposed. *Coffman*, and its reliance upon Rule 29.13, does not permit this Court authority to hear Defendant’s motion.

Finally, Defendant relies upon Rule 29.12 as authority for this Court to hear his motion. Rule 29.12(b) provides, “[p]lain errors affecting substantial rights may be considered in the discretion of the court when the court finds that manifest injustice or miscarriage of justice has resulted therefrom.” However, “Rule 29.12 makes no provision for independent motions to enforce claims of plain error.” *State v. Massey*, 990 SW2d 201, 204 (Mo.App. 1999). “Rule 29.12(b) does not provide a basis for an independent motion.” *State v. Green*, 232 SW3d 672 (Mo.App. 2007). Rule 29.12 does not provide separate authority for circuit courts to review claims of manifest injustice or miscarriage of justice as alleged by Defendant. Rule 29.12 does not permit this Court authority to hear Defendant’s motion.

This Court lacks authority to hear Defendant’s Motion for New Trial Based Upon Newly Discovered Evidence and Perjured Testimony filed herein on November 16, 2016. As such, Defendant’s motion is dismissed with prejudice.

01-30-2017
Date


HONORABLE PATRICK WILLIAM
CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was duly delivered on:

30th day of January, 2017 to:

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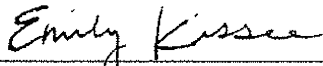
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