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December 27, 2017

The Honorable Daniel E. Shearouse  
Clerk of Court  
The Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, SC 29211

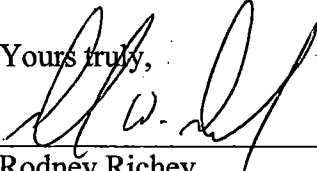
Re: Prince Devin Snipes v. State of South Carolina  
Case No: 2016-CP-11-0564

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please clock and file the copies and return them to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

  
\_\_\_\_\_  
Rodney Richey

RWR/  
enclosures

cc: Valerie Garcia Giovanoli, Esquire

**RECEIVED**  
JAN 02 2018  
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

HONORABLE GRACE GILCHRIST KINE

2016-CP-11-0564

PRINCE D. SNIPES, SCDC# 356225

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RECEIVED**

**JAN 02 2018**

**S.C. SUPREME COURT**

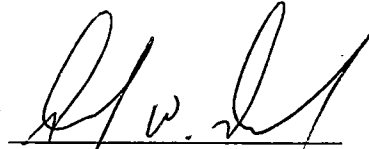
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**NOTICE OF APPEAL**

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Prince D. Snipes appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Grace Gilchrist Kine, Circuit Judge on September 18, 2017 an Order issued on December 18, 2017 and filed on December 21, 2017.

The Appellant received notice of the judgment on December 23, 2017.



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Attorney for Applicant

Other Counsel of Record:  
Valerie Garcia Giovanoli, Esquire  
Office of Attorney General State of SC  
Post Office Box 11549  
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

HONORABLE GRACE GILCHRIST KINE

2016-CP-11-0564

PRINCE D. SNIPES, SCDC# 356225

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

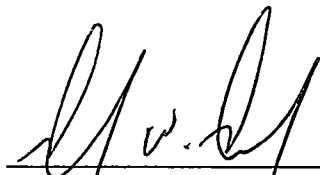
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**AFFIDAVIT OF SERVICE**

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I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on December 27, 2017, addressed to their attorney of record, Valerie Garcia Giovanoli, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: December 27, 2017



Rodney W. Richey, Esquire  
Attorney for the Appellant  
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(864) 467-0503  
Attorney for John C. Hayes, III

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

Prince D. Snipes, #356225,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2016-CP-11-0564

**ORDER OF DISMISSAL  
WITH PREJUDICE**

BRANDY W. MOBBEE

2017 DEC 21 AM 10:40

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Prince Snipes (Applicant) on August 11, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on September 18, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Shawn Campbell, Esquire, (Counsel) also testified. This Court had before it a copy of the Cherokee County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, a pre-trial hearing transcript, the trial transcript, Applicant's direct appeal records, the PCR application, and Respondent's return.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Cherokee County. Applicant was indicted at the July 2012 term of the Grand Jury for Cherokee County for murder and possession of a firearm during the commission of a violent crime (2012-GS-11-0608). Applicant was represented

by Shawn Campbell, Esquire. Applicant proceeded to trial and on July 17, 2013, Applicant was convicted by a jury for murder and possession of a firearm during commission of a violent crime. The Honorable J. Derham Cole sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. An appeal was perfected by David Alexander, Esquire, of the South Carolina Office of Appellate Defense, who submitted an Anders brief. The South Carolina Court of Appeals affirmed Applicant's conviction on March 2, 2016. State v. Snipes, Op. No. 2016-UP-124 (S.C. Ct. App. 2016). The Remittitur was issued March 18, 2016.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
  - a. "Trail counsel was ineffective for failure to argue and request for an immunity hearing, under the Protection of Persons, people and property Act, Castle Doctrine, and or Stand Your Ground Laws"
  - b. Trial counsel was ineffective for failing to request the Judge during Voir Dire of jury whether any member of the jury panel contribute money or is a member of MADD, SAAD, Citizens Against Violence (CAVE) or any other group that lobbies on behalf of victims rights or tougher penalties for criminals [or] whether any contribute money to any law enforcement Organization..."
  - c. "Sentencing counsel was ineffective for failing to inform applicant during sentencing, that he could make a motion under rule 29, post trial motions for Reconsideration and Reduction of Sentence[...] and failing to file the motion..."
2. "Denied Due Process of Law"
  - a. "Applicant was denied due process when his counsel and the trial court failed to inform him, if he chose not to testify, the judge would instruct and order the jury not to use his not testifying against him."<sup>1</sup>

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<sup>1</sup> Applicant also alleges IAC based on trial counsel's failure to inform him of this.

## SUMMARY OF TESTIMONY AT PCR

### I. Applicant testified to the following:

Applicant alleges his trial counsel failed to argue certain points in his trial. Applicant claims Counsel was ineffective for not requesting an immunity hearing pursuant to the Protections of Persons and Property Act (PPP Act) based on the castle doctrine. Applicant believes there was an abundance of evidence that would have supported immunity under the castle doctrine. Applicant also claimed Counsel was ineffective for failing to argue the previous threats made to him and his family by the victim.<sup>2</sup> Applicant testified he knew the victim and had received threatening phone calls from him.

Applicant testified his teenage step-son, D.M.<sup>3</sup>, was also present at the shooting and testified at trial the victim had threatened Applicant to come outside of his home or he would come in and get him. Applicant exited his trailer and saw Applicant outside with his hand in his waistband. Applicant thought he had a gun. Applicant believed Counsel was ineffective for only arguing self-defense because self-defense was not sufficient. Applicant also testified a claim of self-defense shifted the burden of proof to him and the castle doctrine would not shift the burden of proof.

Applicant testified there were jurors that testified they had family that worked for the fire department and other law enforcement agencies and that some had contributed money to victims' rights organizations and law enforcement. Applicant testified Counsel discussed post-trial motions with him and Applicant requested Counsel file a motion to reconsider or for reduction in his sentence, but Counsel failed to do so.

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<sup>2</sup> Immediately prior to trial, the Solicitor moved to keep evidence of prior threats made by the victim to Applicant and his family. Counsel successfully argued for the admission of such threats and the threats were subsequently admitted at trial. (Trial Tr. p. 46).

<sup>3</sup> D.M. was a minor at the time of trial.

Applicant denied ever having any pre-trial motion hearing, despite the record including a pre-trial motion to exclude evidence of prior bad blood and threats. When asked about the pre-trial hearing on July 16, 2013, Applicant responded he could not have a pre-trial hearing on that date because he was sentenced on July 13. Regardless, Applicant admitted the evidence of prior bad blood and threats from the victim was admitted into evidence at trial. Applicant also admitted the victim's body was found in the road and not on his property. He also admitted to shooting the victim in the head a point-blank range as well as shooting him in the back. Applicant explained that D.M.'s testimony was inconsistent with his because he was confused.

II. Counsel testified to the following:

Counsel has been practicing law for 16 years. He has practiced criminal law for over a decade. Counsel testified he reviewed the case several times with Applicant. Counsel considered the castle doctrine but did not pursue it because he did not feel the facts of Applicant's case would warrant immunity under the PPP Act. There was a major dispute as to where Applicant was at the time of the shooting. Because Counsel did not feel they would be successful at an immunity hearing, Counsel did not want to risk pre-trying his case and thus revealing his strategy at an immunity hearing. Counsel does not believe Applicant would have even gotten a hearing based on the castle doctrine, let alone prove by a preponderance of the evidence that he was entitled to immunity. Counsel explained the Applicant would have the burden of proof in an immunity hearing, but the burden of proof would be the State's to disprove a self-defense claim. Counsel also testified there is no duty to retreat in self-defense if you are on your own property.

Counsel did not request any additional voir dire questioning because he did not find it necessary. Counsel testified that some judges make it a standard part of their voir dire and some do not. Counsel does not believe Applicant would have benefitted from the additional question.

Counsel did discuss with Applicant his right to appeal his conviction, and in fact, filed his notice of appeal for him. However, he did not discuss post-trial motions with Applicant and Applicant never requested same. Counsel did not discuss it because he knew Judge Kelly would not reduce his sentence. Counsel further reasoned that he had nothing new to offer to Judge Kelly as a basis for requesting a reduction in sentence. Lastly, Counsel testified he cross-examined witness, Dorothy Boyd, on any inconsistencies in her testimony at trial compared to a pre-trial hearing in which her testimony was taken in anticipation of her not being available at trial.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient. Applicant has failed to do so.

## I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18.

### *Castle Doctrine/Stand Your Ground*

This Court finds Applicant has failed to prove Counsel was ineffective for failing to request immunity under the Protections of Persons and Property Act. Although Applicant expressed he believed Counsel should have pursued such a defense, Applicant's belief is

mistaken and based on pure speculation that the defense would have had an effect on the outcome of Applicant's trial. Counsel testified credibly he considered the castle doctrine, but did not pursue it because he did not feel the facts of Applicant's case would warrant immunity under the PPP Act. There was a major dispute as to where Applicant was at the time of the shooting. Because Counsel did not feel they would be successful at an immunity hearing, Counsel did not want to risk pre-trying his case and thus revealing his strategy at an immunity hearing. Counsel does not believe Applicant would have even gotten a hearing based on the castle doctrine, let alone prove by a preponderance of the evidence that he was entitled to immunity. Counsel explained the Applicant would have the burden of proof in an immunity hearing, but the burden of proof would be the State's to disprove a self-defense claim. Counsel also testified there is no duty to retreat in self-defense if you are on your own property.

This Court finds Counsel's reasoning and decision not to pursue an immunity hearing was sound and supported by the law. Having considered the defense and the applicable law, he ultimately made the strategic decision to refrain from pursuing immunity under the PPP Act. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Counsel's strategic decision was based on sound professional judgment which will not be disturbed by this Court in hindsight of Applicant's conviction.

*Voir Dire*

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to request various additional jury voir dire questions. Counsel testified credibly he did not find the additional voir dire questions necessary. Counsel testified that some judges make it a standard part of their voir dire and some do not. Counsel does not believe Applicant would have benefitted from the additional question. This Court agrees.

This Court also notes Counsel's performance is measured by a standard of reasonableness based on prevailing professional norms. Requesting the additional voir dire Applicant discussed is not a prevailing professional norm. Therefore, Counsel's failure to request it does not constitute deficiency. Assuming *arguendo* Counsel was deficient, Applicant cannot prove it had any effect on the outcome of his trial. Therefore, Applicant has failed to prove this claim.

*Failure to advise of post-trial motions*

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to advise him of post-trial motions. Counsel testified credibly that he discussed with Applicant his right to appeal his conviction, and in fact, filed his notice of appeal for him. However, he did not discuss post-trial motions with Applicant and Applicant never requested same. Counsel did not discuss it because he knew Judge Kelly would not reduce his sentence. Counsel further reasoned that he had nothing new to offer to Judge Kelly as a basis for requesting a reduction in sentence.

The law does not require Counsel to advise Applicant of post-trial motions he believes have no basis or do not affect Applicant's rights to his detriment. Counsel was not deficient in this aspect. Here, not only did Counsel not see a basis for such post-trial motions, Applicant has

failed to demonstrate a basis for such motions. Therefore, any prejudice Applicant claims he suffered from Counsel's failure to advise him of and file post-trial motions is speculative at best.

*Failure to advise jury could not consider him not testifying*

This Court finds Applicant has failed to meet his burden of proof that either Counsel was ineffective for failing to inform him the trial court would tell the jury they could not consider the fact he did not testify at trial, if he decided not to, or that his due process rights were violated by not being informed by either Counsel or the trial court of this. Applicant failed to present any evidence in support of this contention. Furthermore, the record is clear it was Applicant's decision to testify after being fully informed of his Constitutional right that he did not have to. (Trial Tr. pp. 193-194). Applicant also told the trial court he had discussed the advantages and disadvantages of testifying and not testifying with Counsel. (Trial Tr. p. 194). Additionally, Applicant's theory was self-defense. This Court finds it very difficult to believe that had Applicant been informed of the jury charge regarding him not testifying, he would not have testified as to his self-defense claim. In fact, this Court sees no other way for him to have properly and effectively asserted his claim of self-defense without testifying. This Court also finds that had Applicant not testified, it would not have any effect on the jury's verdict. Therefore this Court finds no deficiency, no prejudice, and no violation of Applicant's due process rights.

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as


Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCR. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 10<sup>th</sup> day of December, 2017.



GRACE GILCHRIST KNIE  
Presiding Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina

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The Honorable Daniel E. Shearou  
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