

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
MAR 06 2020
S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Kristi C. Curtis, Circuit Court Judge

Case No.: 2016-CP-26-7859

Armando K. Chestnut #228621,..... Petitioner,

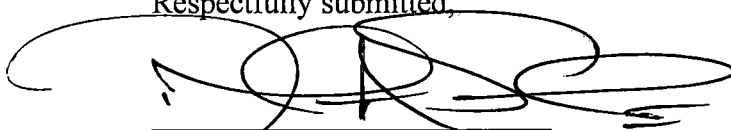
v.

State of South Carolina,..... Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Kristi C. Curtis, February 4, 2020, order, denying the Applicant's Petition for post-conviction relief. Undersigned counsel received notice of entry of the order on February 13, 2020. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Daniel A. Selwa, II
604 16th Avenue North
Myrtle Beach, SC 29577
Attorney for the PCR Applicant

March 3, 2020

Other counsel of record:

Alan Wilson, Attorney General

Jacob A. Isenberg, Assistant Attorney General

Post Office Box 11549

Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
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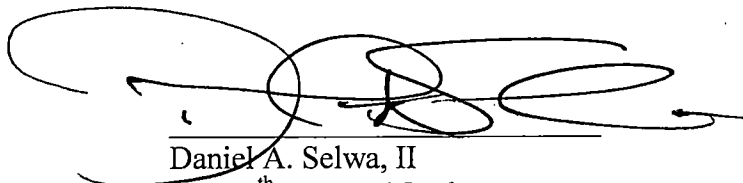
Armando K. Chestnut #228621,..... Petitioner,

v.

State of South Carolina,..... Respondent.

PROOF OF SERVICE

I, Daniel A. Selwa, II, certify that I have served the within Notice of Appeal on the Respondent, the State of South Carolina, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to his attorney of record, Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this 3 day of March 2020.



Daniel A. Selwa, II
604 16th Avenue North
Myrtle Beach, SC 29577
Attorney for the PCR Applicant



ALAN WILSON
ATTORNEY GENERAL

February 13, 2020

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MAR 06 2020

S.C. SUPREME COURT

Daniel A. Selwa, II, Esquire
516 29th Avenue North
Myrtle Beach, SC 29577

**Re: Armando K. Chestnut, #228621 v. State of South Carolina
2016-CP-26-7859**

Dear Mr. Selwa:

Enclosed please find a copy of the **Order of Dismissal** for the above-captioned post-conviction relief application; signed by the Honorable Kristi C. Curtis, Presiding Judge for the Fifteenth Judicial Circuit.

Sincerely,

Jacob A. Isenberg
Assistant Attorney General

JAI/ec
Enclosure

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

RECEIVED

MAR 06 2020

S.C. SUPREME COURT

ARMANDO K. CHESTNUT, #228621,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:


Daniel A. Selwa, II, Esquire
516 29th Avenue North
Myrtle Beach, SC 29577

This 13th Day of February, 2020.

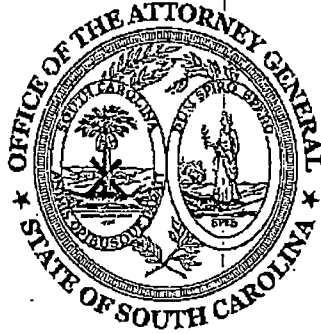


EVA COOK
LEGAL ASSISTANT FOR RESPONDENT

SWORN to before me this 13th Day of February, 2020.



Notary Public for South Carolina.
My Commission Expires: 8/9/28



RECEIVED

MAR 06 2020

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

February 7, 2020

The Honorable Renee N. Elvis
Clerk of Court, Horry County
Post Office Box 677
Conway, SC 29528-0677

Re: Armando K. Chestnut, #228621 v. State of South Carolina
2016-CP-26-7859

FILED
HORRY COUNTY
2020 FEB 11 A 8:21
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

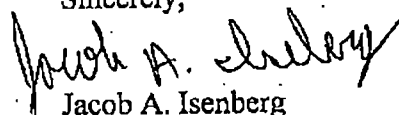
Dear Ms. Elvis:

Enclosed please find the original **Order of Dismissal** signed by the Honorable Kristi C. Curtis in the above-captioned case, for filing in your office.

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Should you have any questions, please do not hesitate to contact me at (803) 734-3737.

Sincerely,


Jacob A. Isenberg
Assistant Attorney General

JAI/ec

Enclosure

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Armando K. Chestnut,)
 S.C.D.C. No. 228621,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

RECEIVED

Case No.: 2016-CP-26-07859

MAR 06 2020

S.C. SUPREME COURT

ORDER OF DISMISSAL

FILED
 HORRY COUNTY
 REHEE N. ELMIST
 CLERK OF COURT
 HORRY COUNTY S.C.
 : 2020 FEB 11 A 8:21

This matter comes before the Court by way of an application for post-conviction relief filed by Armando K. Chestnut ("Applicant") on December 7, 2016. Respondent made its return on or about October 24, 2017. The Court convened an evidentiary hearing into the matter on Monday, November 26, 2018, at the Horry County Government & Justice Center in Conway, South Carolina. Applicant was present at the hearing and represented by Daniel A. Selwa, II, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Barbara W. Pratt, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, the pleadings and amendment, and the case law submitted by the parties at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the August 2012 term of the Horry County Grand Jury for murder (2012-GS-26-03115); attempted murder (2012-GS-26-03116); pointing and presenting a firearm (2012-GS-26-03117); and assault and battery by mob, second degree, serious bodily injury (2012-GS-26-03118). Barbara W. Pratt, Esq. represented Applicant at trial. Bradley C. Richardson and Michael Travis Hyman, Esqs., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On July 15, 2013, Applicant proceeded to trial before the Honorable Steven H. John and a jury. On July 19, 2013, the jury found Applicant guilty of the lesser-included offense of voluntary manslaughter (-03115); as indicted for attempted murder (-03116); as indicted for pointing and presenting (-03117); and of the lesser-included offense of assault and battery, second degree (-03118). Pursuant to S.C. Code Ann. § 17-25-45, Judge John sentenced Applicant to imprisonment for concurrent terms of life without the possibility of parole.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Robert M. Dudek, Esq., who raised the following issue:

Whether the court erred by refusing to grant a new trial where it erroneously gave a Belcher instruction that the jury could infer malice from the use of a deadly weapon where self-defense was a verdict option, and the judge's later instruction that "if there's self-defense, there's no inference that can be associated with the use of a deadly weapon," was hopelessly confusing, and exacerbated rather than cured the prejudice?

By opinion filed June 1, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Chestnut, Op. No. 2016-UP-227 (S.C. Ct. App. filed June 1, 2016). The Remittitur was issued on June 17, 2016.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Asst. [of] Counsel"
2. "Due Process"

By filing by and through PCR counsel on October 17, 2018, Applicant amended his application to raise the following grounds for relief (excerpted verbatim):

1. "Trial Counsel Waived Petitioner's Right to an Immunity Hearing"
 - a. "Trial counsel's waiver of Petitioner's right to an immunity hearing pursuant to 16-11-440(c), Trial Transcript 42/12 - 43/10, was ineffective assistance of counsel that resulted in prejudice to Petitioner."
 - b. "Trial counsel stated that this was a 'matter of strategy' and stated, 'we do not believe that it would add anything to this particular case that we would not be able to ask in a later motion.' *Id.*"
 - c. "Trial counsel's advice to petitioner to waive his right to a 'stand your ground' hearing was ineffective assistance of counsel. Trial counsel's statement that it would not add anything that 'we would not be able to ask in a later motion' was incorrect and indefensible."
2. "Trial Counsel Allowed Jurors to Believe Incorrectly that Petitioner had a Duty to Retreat"
 - a. "Trial counsel's waiver of Petitioner's rights under S.C. Code Section 16-11-440(c) was ineffective assistance of counsel that resulted in prejudice to Petitioner because the jurors were informed by the Court, and the prosecutor argued in his closing, *that Petitioner had a duty to retreat.*" (emphasis original)
 - b. "Pursuant to the plain language of 16-11-440(c), if Petitioner: 1) was attacked in a place where he had a right to be, then 2) he had the right to stand his ground and meet force with force, including deadly force, if 3) he reasonably believed it was necessary to prevent death or great bodily injury to himself or another person."
 - c. "There was more than sufficient testimony and evidence presented at the trial from which the jurors could have concluded that Petitioner and Petitioner's friend Thoros were in a place where they had the right to be and that Petitioner stood his ground and met force with deadly force with the reasonable belief that it was necessary to prevent death or great bodily injury to himself or Thoros."
 - d. "By waiving Petitioner's substantial rights under 16-11-440(c), trial counsel caused the jurors to believe that Petitioner had a duty to retreat pursuant to the older common law definition of self defense *that had been replaced by 16-11-440(c).*" (emphasis original)

- e. "There was no valid trial strategy employed by trial counsel that could possibly justify subjecting Petitioner to a duty to retreat, *when he did not have a duty to retreat pursuant to 16-11-440(c)*. Although trial counsel could have corrected this 'in a later motion,' she did not."
3. "Trial Counsel Failed to Object to the Prosecutor's Argument that Petitioner had a Duty to Retreat"
 - a. Cites to Trial Transcript pp. 891-92.
4. "Trial Counsel Failed to Object to the Court's Jury Instruction that Petitioner had a Duty to Retreat"
 - a. Cites to Trial Transcript pp. 927-31.

Applicant requests relief as follows:

- "Petitioner requests that this Court vacate Petitioner's sentence and order a new trial."

At the evidentiary hearing, Applicant proceeded forward on the allegations as set forth in the October 17, 2018, amendment.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a

just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced 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, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

Applicant presents his claims as four distinct allegations in the amendment. However, because of the closely related character of claims 2, 3, and 4, they are addressed together in Subsection 2, below.

1. Waiver of Right to Immunity Hearing

Applicant alleges Counsel was ineffective in waiving his right to an immunity hearing under S.C. Code Ann. §§ 16-11-440(C) and 16-11-450. The "Protection of Persons and Property Act" ("the Act") provides that "[a] person who uses deadly force as permitted by the provisions

of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force[.]” S.C. Code Ann. § 16-11-450. The Act further provides, in part, that:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C). “A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard[.]” State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (citing State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011)).

Where a defendant seeks treatment under § 16-11-440(c), it is not enough for a defendant to establish that he was “not engaged in an unlawful activity” and was in a “place where he has a right to be.” Rather, “[c]onsistent with the Castle Doctrine and the text of the Act, *a valid case of self-defense must exist*, and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity” save the duty to retreat. Id., 406 S.C. at 371, 752 S.E.2d at 266 (emphasis added). Notwithstanding the Act or other provisions of law, in order to establish self-defense, the defendant must show (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) he had no other probable means of avoiding the danger. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). “Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to

take the life of the assailant in self-defense.” Douglas v. State, 332 S.C. 67, 73, 504 S.E.2d 307, 310 (1998) (citing State v. Long, 325 S.C. 59, 480 S.E.2d 62 (1997)).

After jury selection at trial, Counsel informed the trial court that she had discussed with Applicant whether to pursue a pre-trial hearing to invoke S.C. Code Ann. § 16-11-440(C), reviewed with him State v. Marin, 404 S.C. 615, 745 S.E.2d 148 (Ct. App. 2013), and decided they would waive the pre-trial hearing. (Tr. 42-43). Counsel explained:

The reasons for the waiver, first of all, we do not believe that it would add anything to this particular case that we would not be able to ask in a later motion. We also feel it's a matter of strategy, Your Honor, and my client understands that he is giving up the right to have the Court determine whether he's entitled to immunity. But as I've explained to him, he's not giving up his right to present the idea of self-defense and defense of others to the jury throughout the trial.

(Tr. 43, ll. 2-10). The trial court had Applicant sworn, and thereafter thoroughly explained the purpose of the pre-trial hearing in question, confirmed Applicant had discussed the subject with Counsel, and confirmed Applicant wished to waive the hearing. (Tr. 43-46).

An exhaustive five day trial followed, the facts of which are adequately summarized in the filings from the direct appeal, not again here restated.

At the PCR evidentiary hearing, Applicant testified he waived his right to an immunity hearing upon the advice of Counsel. Applicant claimed he did not know what it was, and expressed the hearing would have been “a bench trial I guess.” Applicant could not recall Counsel explaining the Act to him, but did recall that she told him she had a different strategy. Applicant opined she was instead unprepared for an immunity hearing.

Applicant testified to his version of what occurred on the night in question. Applicant recalled that he went to the bar with a co-worker, where they enjoyed drinks while watching a game of pool. An argument broke out and the “guy with dreads” attacked Applicant's friend with a poolstick. Security then removed the attackers from the bar. Applicant recalled he then

went to his car to get cigarettes when he saw the same individuals attacking Thoro. Applicant, armed with a gun, moved to rescue Thoro, and Applicant admitted he shot one person in the elbow. Applicant noted that investigators never matched the deadly shot to his own gun. Applicant testified he feared Thoro was in great danger, explaining that his "whole hoodie was bloody."

Applicant opined that the use of deadly force was justified, and that he felt he could have won an immunity hearing. Applicant explained he had known Counsel his entire life, trusted her, and that she was a good lawyer who would do right by him. However, Applicant claimed she never explained her strategy to him.

Counsel testified she did not consider pursuing immunity until the trial judge brought up the subject. Counsel recalled she was concerned that pursuing the hearing would have effectively forced her to present their defense case before ever drawing a jury, exposing Applicant and other witnesses to impeachment based upon any inconsistencies their trial testimony may have with the testimony during the immunity hearing. Counsel offered that it may have been bad advice to Applicant to waive his immunity hearing, but firmly asserted that she had a reason for giving the advice. On cross-examination, Counsel further noted that she was not sure whether Applicant would have prevailed upon an immunity hearing, and again emphasized that going forward with the hearing might have created a record neither she nor Applicant would have wanted. Counsel acknowledged that ultimately Applicant waived the immunity hearing on the record.

This Court finds Applicant has failed to meet his burden of showing any deficiency on the part of Counsel, or that but for the deficiency alleged, the outcome of trial would have been different. Counsel reasonably weighed the likelihood of prevailing upon the immunity hearing

against the strategic disadvantage of placing the defense case on the record prior to the prosecution presenting its case to the jury, and determined the more favorable course was to waive immunity, wait until after the State presented its case-in-chief, and only then seek to present the case for self-defense. Counsel articulated her strategic reasoning at the evidentiary hearing and, accordingly, this Court cannot find her to have performed deficiently.

Even if Counsel had requested a pre-trial determination of immunity under the “stand your ground” statute, the facts would not have established by a preponderance of the evidence that Applicant was entitled to immunity. The evidence presented at trial provided that Applicant was not an innocent bystander, but actively participated in the original instigation of the conflict at the pool table. Applicant took the time to prepare for further conflict by going to his car to stow away his phone and marijuana, and retrieve his gun.¹ Thoro, the person in whose defense Applicant now claims to have acted, initiated both the original conflict and the second engagement outside. No evidence was introduced at the trial or the evidentiary hearing to establish that Thoro was in fear for his life; to the contrary, that Thoro returned to the opposing group of combatants and reinitiated the confrontation reflects the absence of fear. Both Thoro and Applicant enjoyed ample opportunity to peaceably return to their vehicles and leave the premises. No evidence was ever recovered to show anybody fired a weapon other than Applicant, and the fight prior to the shooting was for the most part an unarmed fistfight.² Applicant fired upon a retreating individual and others, and proceeded to stomp an unconscious victim who was no longer a threat. This Court perceives no reasonable probability that Applicant could have established by a preponderance of the evidence that either he or Thoro, let

¹ Concurrently, this Court does not find credible Applicant's testimony at the evidentiary hearing that he was merely going back for cigarettes.

² Evidence did provide the original confrontation involved one person armed with a pool cue, and that Thoro was struck with a bottle during the second fight.

alone both, were without fault in bringing about the conflicts. Applicant has failed to meet his burden of showing he could have by a preponderance of the evidence established he or Thoro reasonably feared for either person's life. Applicant has failed to show prejudice under Strickland.

For all of these reasons, Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to Object to State's Closing, Jury Instruction regarding Duty to Retreat

Applicant additionally contends Counsel was ineffective in failing to object to the State's arguments in closing and the trial court's instructions to the jury that the final element of self-defense was that Applicant had no other probable way to avoid the danger of death or serious bodily injury than to act as Applicant did in the particular circumstances at issue.

The Act provides for true immunity, and conditions under which it may be asserted, but a claim for immunity must be decided prior to trial and is not an affirmative defense. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). As such, it is error to charge a jury with section 16-11-440(C). State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013). Nor is S.C. Code Ann. § 16-11-450(A) is to be charged to a jury; "it is a procedural subsection under which the circuit court may grant immunity from prosecution before a trial begins if the court finds the defendant acted lawfully in self-defense." State v. Marin, 404 S.C. 615, 625, 745 S.E.2d 148, 153-54 (Ct. App. 2013), aff'd as modified, 415 S.C. 475, 783 S.E.2d 808 (2016).

The Court finds Curry dispositive as to this claim. The Act did not obviate the applicability of the fourth prong of self-defense, and instruction thereon, in all self-defense cases. The conditions and provisions of the Act are limited to claims for total immunity, not modifications upon the traditional analysis of common law self-defense. As such, the State was

within its rights to argue, and the trial court was correct to instruct the jury that Applicant was subject to a "duty to retreat," as phrased by Applicant. No meritorious basis for objection existed, and thus Applicant cannot show deficiency on the part of Counsel. Applicant's claim for relief by way of this allegation is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 4th day of February, 2019. ²⁰²⁰

Kristi Curtis
KRISTI C. CURTIS
Presiding Judge
Fifteenth Judicial Circuit

Sunder, South Carolina