

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

KRISTOPHER M. PRINCE,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD74478

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: January 15, 2013

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable Kevin M.J. Crane, Judge

JUDGES

Division Two: Hardwick, P.J., and Smart and Mitchell, JJ.

CONCURRING.

ATTORNEYS

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Columbia, MO

Attorney for Appellant,

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Jefferson City, MO

Attorneys for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

KRISTOPHER M. PRINCE,)
)
) **Appellant,**)
v.) **OPINION FILED:**
) **January 15, 2013**
STATE OF MISSOURI,)
)
) **Respondent.**)

WD74478

Boone County

Before Division Two Judges: Lisa White Hardwick, Presiding Judge, and James M. Smart, Jr., and Karen King Mitchell, Judges

Kristopher M. Prince appeals, after an evidentiary hearing, the denial of his post-conviction Rule 29.15 motion. Prince argues that the motion court clearly erred in denying his claims of ineffective assistance of trial counsel based on trial counsel's alleged failure to: (1) investigate evidence related to Prince's mental health and functioning; (2) request a change of judge at trial based upon the trial judge's acquaintance with Prince's grandfather; and (3) request a no-adverse-inference instruction following Prince's decision not to testify in his penalty phase. Prince also argues motion court error in: (1) denying his change of judge motion; and (2) adopting the State's proposed findings of fact and conclusions of law.

AFFIRMED.

Division Two holds:

1. Prince's claim of ineffective assistance of counsel for failing to investigate mental health evidence fails because he failed to demonstrate either that counsel had any reason to investigate his mental health or that the evidence counsel allegedly should have discovered would have aided or improved his position at the penalty phase.
2. Prince's claim that counsel was ineffective for failing to seek a change of judge is without merit insofar as counsel's decision not to seek a change of judge was based upon reasonable trial strategy with which Prince agreed.

3. Prince's final claim of ineffective assistance, based upon counsel's decision not to request a no-adverse-inference instruction related to Prince's decision not to testify in his penalty phase, is also without merit in that counsel's decision was based upon reasonable trial strategy with which Prince agreed. Additionally, Prince failed to demonstrate any resulting prejudice from the instruction's absence.
4. The motion court did not err in denying Prince's post-conviction change of judge motion because Prince failed to provide any legitimate reason requiring a change of judge.
5. Prince's claim that the motion court erred in adopting the State's proposed findings of fact and conclusions of law is not preserved in light of the fact that Prince never filed a motion to amend the judgment under Rule 78.07(c). In any event, his claim would not warrant relief, even if preserved, because Prince failed to identify any independent evidence demonstrating that the court failed to thoughtfully and carefully consider each of his claims.

Opinion by: Karen King Mitchell, Judge

January 15, 2013

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