

Commonwealth v Jones

COMMONWEALTH OF PENNSYLVANIA v. CHRISTOPHER JONES, Defendant
Court of Common Pleas of the 39th Judicial District,
Franklin County Branch
Criminal Action No. 1072-2010

HEADNOTES

Ineffective Assistance of Counsel

1. To prove ineffective assistance of counsel claims, a defendant must prove, by a preponderance of the evidence: (1) that the claim is of arguable merit; (2) that counsel had no reasonable strategic basis for his or her action or inaction; and (3) that but for the errors or omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different.
2. Where there are multiple instances of deficient performance by counsel, prejudice may be based upon counsel's cumulative errors yet failed ineffectiveness claims may not collectively warrant relief if they fail to do so individually.
3. The Court sitting in a PCRA hearing, no different than a jury, can take into consideration the legal construct of false in one, false in all, in which a court is free to believe all, part, or none of a witnesses' testimony based upon a possible or intentional falsehood. A defendant's failure to openly discuss all of the information and advice that he was given prior to making his plea, causes the Court to question the underlying veracity of the defendant's statements as to any discussions he may have had with his attorney.

Guilty Plea in the Context of PCRA Proceedings

1. In order to succeed on an ineffectiveness claim in the context of a guilty plea, the defendant must show a causal nexus between counsel's ineffectiveness and the involuntary or unknowing plea such that it caused the defendant to be unlawfully induced into making the guilty plea.
2. A defendant who pled guilty to a criminal offense may seek post-conviction relief if it is determined that his plea was unlawfully induced and the defendant is innocent of the charges. In order to successfully withdraw a plea based on unlawful inducement, the defendant must prove that the plea was the result of manifest injustice, meaning that it was involuntary or given without knowledge of the charge.
3. Where a defendant agreed to all the terms of the plea agreement in a guilty plea colloquy, including that fact that the Court had full discretion to sentence the defendant under the sentencing guidelines, the defendant will be found to have entered into the plea knowingly and voluntarily. Although a defendant may be dissatisfied with the Court's sentence, there is no guarantee in an open plea that the Court would sentence the defendant to particular sentence.

Newly Created Defense known as the "Castle Doctrine"

1. The defense of the "Castle Doctrine" creates a presumption that the actor has a right to use deadly force to protect himself from death, serious bodily injury, kidnapping, or sexual intercourse by force or threat.
2. A person may not be entitled to the Castle Doctrine defense if one of the four statutory exceptions is present. Under one of the exceptions, if the person against whom the force is used has the right to be in or is a lawful resident of the dwelling, the defense is not available.
3. Where there is no language authorizing retroactive application of a statute and there is only an effective date, such as in the case of the Castle Doctrine exception, the statute may not be applied to actions occurring prior to the effective date.

Failure to Submit Evidence in Support of PCRA Issues Results in Waiver

1. Although an issue may be raised in a PCRA Petition, if there is no evidence in support of that issue produced at

hearing, the Court cannot consider the issue and it is deemed waived.

Homicide by Misadventure

1. Homicide by misadventure involves the accidental killing of another, where the slayer is doing a lawful act, unaccompanied by any criminally careless or reckless conduct.
2. When a person shoots a gun without reasonable care or due regard for the lives of others, they have committed an unlawful act such that they would not be entitled to the charge of homicide by misadventure.
3. Failure to advise of possible defense of homicide by misadventure is not ineffective assistance of counsel where the factual circumstances surrounding the defendant's unreasonable decision suggest that the defense would not have been available.
4. Where a defendant's intentional actions exhibit recklessness and gross negligence such that they fall squarely within the definitions of involuntary and voluntary manslaughter, the defense of homicide by misadventure is inapplicable. The defense of homicide by misadventure is only available if there is a showing of reasonableness or due care on the part of the defendant.

LEGAL POINTS

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To prove ineffective assistance of counsel claims, a defendant must prove, by a preponderance of the evidence: (1) that the claim is of arguable merit; (2) that counsel had no reasonable strategic basis for his or her action or inaction; and (3) that but for the errors or omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different.

Where there are multiple instances of deficient performance by counsel, prejudice may be based upon counsel's cumulative errors yet failed ineffectiveness claims may not collectively warrant relief if they fail to do so individually.

The Court sitting in a PCRA hearing, no different than a jury, can take into consideration the legal construct of false in one, false in all, in which a court is free to believe all, part, or none of a witnesses' testimony based upon a possible or intentional falsehood. A defendant's failure to openly discuss all of the information and advice that he was given prior to making his plea, causes the Court to question the underlying veracity of the defendant's statements as to any discussions he may have had with his attorney.

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A defendant who pled guilty to a criminal offense may seek post-conviction relief if it is determined that his plea was unlawfully induced and the defendant is innocent of the charges. In order to successfully withdraw a plea based on unlawful inducement, the defendant must prove that the plea was the result of manifest injustice, meaning that it was involuntary or given without knowledge of the charge.

Where a defendant agreed to all the terms of the plea agreement in a guilty plea colloquy, including that fact that the Court had full discretion to sentence the defendant under the sentencing guidelines, the defendant will be found to have entered into the plea knowingly and voluntarily. Although a defendant may be dissatisfied with the Court's sentence, there is no guarantee in an open plea that the Court would sentence the defendant to particular sentence.

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The defense of the "Castle Doctrine" creates a presumption that the actor has a right to use deadly force to protect himself from death, serious bodily injury, kidnapping, or sexual intercourse by force or threat.

An actor asserting the defense of the "Castle Doctrine" is only entitled to the presumption of the right to use deadly force immediately to protect himself from death, serious bodily injury, kidnapping or sexual intercourse by force or threat as long as one of four exceptions is not presented, one of which is that "the person against whom the force is used has the right to be in or is a lawful resident of the dwelling, [or] residence ...such as an owner or lessee."

Where there is no language authorizing retroactive application of a statute and there is only an effective date, such as in the case of the Castle Doctrine exception, the statute may not be applied to actions occurring prior to the effective date.

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Although an issue may be raised in a PCRA Petition, if there is no evidence in support of that issue produced at hearing, the Court cannot consider the issue and it is deemed waived.

Homicide by Misadventure

Homicide by misadventure or mistake involves a homicide, i.e., a killing of one person by another by accident, and must be unaccompanied by any unlawful conduct. The definition established by the Pennsylvania Supreme Court defined homicide by misadventure as follows: "Homicide by misadventure (which is excusable) is the accidental killing of another, where the slayer is doing a lawful act, unaccompanied by any criminally careless or reckless conduct."

Three elements entered into the defense of excusable homicide by misadventure: (1) the act resulting in death must be a lawful one; (2) it must be done with reasonable care and due regard for the lives and persons of others; (3) the killing must be accidental and not intentional or without unlawful intent or without evil design or intention on the part of the slayer. All these elements must concur, and the absence of any one of them will result in guilt.

When a person shoots a gun without reasonable care or due regard for the lives of others, they have committed an unlawful act such that they would not be entitled to the charge of homicide by misadventure.

Failure to advise of possible defense of homicide by misadventure is not ineffective assistance of counsel where the factual circumstances surrounding the defendant's unreasonable decision suggest that the defense would not have been available.

Where a defendant's intentional actions exhibit recklessness and gross negligence such that they fall squarely within the definitions of involuntary and voluntary manslaughter, the defense of homicide by misadventure is inapplicable. The defense of homicide by misadventure is only available if there is a showing of reasonableness or due care on the part of the defendant.

OPINION

Meyers, J.

OPINION IN SUPPORT OF ORDER OF COURT DENYING DEFENDANT'S PETITION FOR POST-CONVICTION COLLATERAL RELIEF

The Petitioner, Christopher T. Jones, is currently serving a sentence in State Correctional Institute Rockview for the offense of voluntary manslaughter. On January 6, 2011, the Defendant appeared before the Court. His parents and the family of Kristin Runyon were present. Mr. Jones entered an open guilty plea to the offense of voluntary manslaughter for the shooting death of his wife, Kristin Runyon. Mr. Jones was represented by his privately retained counsel, David S. Keller, Esquire. On March 31, 2011, the Court having received a pre-sentence investigation report, various letters on behalf of the Defendant, and hearing the testimony of multiple parties, including the victim's family, sentenced the Defendant to 72 to 168 months of incarceration in a State Correctional facility. The sentence was within the standard range of the sentencing guidelines. The Commonwealth not proessed the involuntary manslaughter count which had been filed with the voluntary manslaughter count. Neither Mr. Jones nor his counsel filed a post-sentence motion for reconsideration of his sentence or notice of appeal. The Defendant's direct appeal rights were waived.

On March 2, 2012 the Defendant filed a post-conviction relief act petition. Initially, a hearing was scheduled for May 1, 2012 at 9:00 a.m. but due to Defendant's counsel's failure to ensure the Defendant was present for the hearing, the matter was continued to July 13, 2012. At the conclusion of the hearing, defense counsel requested an opportunity to brief the matter. The Court granted the request. Both the Commonwealth and the Defendant were provided an opportunity to brief the matter. The Court considered the briefs and determined the matter is now ready for opinion and decision.

DISCUSSION

OVERVIEW:

Defendant and his counsel have asserted that prior counsel, David S. Keller, Esquire, was ineffective in his representation of the Defendant in multiple ways. The Court will lay out a general overview of the issue of ineffective assistance of

counsel followed by a review of each issue hereafter. The Court will address both the law and the facts the Court deems relevant in reaching its conclusions.^[1]

In *Commonwealth v. Kimble*, 683 A.2d 666 (Pa. Super. 1996), rev'd 724 A.2d 326 (Pa. 1999), the Pennsylvania Supreme Court held that "PCRA does not create a higher burden on the defendant to show ineffective assistance of counsel than the standard for providing ineffectiveness on direct appeal." *Kimble*, at 322. To prove his ineffectiveness claims against Attorney Keller, Mr. Jones must prove by a preponderance of the evidence:

- (1) that the claim is of arguable merit; (2) that counsel had no reasonable strategic basis for his or her action or inaction; and (3) that but for the errors or omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different. *Id.*

The Pennsylvania Supreme Court has pointed out that "where there are multiple instances of deficient performance by counsel, prejudice may be based upon counsel's cumulative errors." *Commonwealth v. Johnson*, 966 A.2d 523, 532 (Pa. 2009). But the Supreme Court has also held that "no number of failed ineffectiveness claims may collectively warrant relief if they fail to do so individually." *Commonwealth v. Washington*, 927 A.2d 586, 617 (Pa. 2007) (citing *Commonwealth v. Williams*, 896 A.2d 523, 548 (Pa.2006)).

Under 42 Pa. C.S.A. §9543 (a)(2)(iii), Mr. Jones, as a defendant who pled guilty to a criminal offense, may seek post-conviction relief if it is determined that his plea was unlawfully induced and the defendant is innocent of the charges. In order to successfully withdraw the guilty plea on the grounds that the plea was unlawfully induced, the defendant must prove that the "plea was the result of manifest injustice." *Commonwealth v. Holbrook*, 629 A.2d 154, 158 (Pa. Super. 1993). To meet this standard, the defendant must establish that the plea was "involuntary or given without knowledge of the charge."

Issue No. 1. Was Attorney Keller ineffective for failing to anticipate and advise the Defendant of the newly created defense commonly referred to as the "Castle Doctrine"?

Mr. Jones admitted he shot and killed his wife on March 7, 2010. He entered an open guilty plea on January 6, 2011 and was sentenced on March 3, 2011. The portion of 18 Pa. C.S.A. §505(b), commonly referred to as the "Castle Doctrine," became effective on August 29, 2011. The relevant language states:

(2.1) Except as otherwise provided in paragraph (2.2) an actor is presumed to have a reasonable belief that deadly force is immediately necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat if both of the following conditions exist:

(i) The person against whom the force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered and is present within, a dwelling, residence occupied vehicle; or in the person against whom the force is used is or is attempting to unlawfully and forcefully remove another against that other's will from the dwelling, residence or occupied vehicle.

(ii) The actor knows or has reason to believe that the unlawful and forceful entry or act is occurring or has occurred.

(2.2) The presumption set forth in paragraph (2.1) does not apply if:

(i) the person against whom the force is used has the right to be in or is a lawful resident of the dwelling, residence or vehicle, such as an owner or lessee;

(ii) the person sought to be removed is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the protective force is used;

(iii) the actor is engaged in a criminal activity or is using the dwelling, residence or occupied vehicle to further a criminal activity; or

(iv) the person against whom the force is used is a police officer acting in the performance of his official duties and the actor using force knew or reasonably should have known that the person was a police officer.

The Defendant's claim that Attorney Keller was ineffective for failing to advise him of the possible defense of the "Castle Doctrine" fails in two ways. First, an actor asserting the defense of the "Castle Doctrine" is only entitled to the presumption of the right to use deadly force immediately to protect himself from death, serious bodily injury, kidnapping or sexual intercourse by force or threat as long as one of four exceptions is not presented, one of which is that "the person against whom the force is used has the right to be in or is a lawful resident of the dwelling, [or] residence ...such as an owner or lessee." 18 Pa. C.S.A. §505(b). Clearly Kristin Runyon, Mr. Jones' wife was lawfully entitled to be within the parties' home at the time she was killed by the defendant. In reviewing the notes from the PCRA hearing Mr. Jones offered no evidence to support this claim set forth in his petition. Under both analysis of the law and the factual record, Mr. Jones' claim must fail.

The second reason Defendant's claim must fail is because there is no language requiring or authorizing retroactive applicability of the defense to offenses that were committed prior to the effective date of the statute. Generally, "no statute shall be construed to be retroactive unless clearly and manifestly so intended by the General Assembly." 1 Pa.C.S.A. § 1926. In *Petrovick v. Commonwealth Dep't of Transp.*, 741 A.2d 1264 (1999), the Commonwealth Court instructed the trial court to "not even engage in retroactivity discussion when the statutory amendment states the effective date." As previously stated, Mr. Jones shot and killed his wife on March 7, 2010. The amendment to the statute creating the castle doctrine exception did not become effective until August 29, 2011. Mr. Jones is trying to claim a defense that was not available when he committed the crime and was not available at any time during his direct appeal period. As such, this defense cannot be raised on collateral review without the Court engaging in retroactive application of the amendment in violation of ex post facto clauses of the United States and Pennsylvania Constitutions.

Issue No. 2. A. Was Attorney Keller ineffective in his representation of the Defendant by advising him that photographs of his lifeless wife, Kristin Runyon, would be seen by the jury?

First, this claim must fail for a very simple reason: no photographs were provided to the Court at the PCRA hearing to evaluate this claim. In the absence of any evidence within the record, the Court cannot consider the issue and the issue is deemed waived.

Even if photographs had been presented to the Court, the advice given by Attorney Keller to Mr. Jones of the possibility of the introduction of photographs was not unreasonable or an act of manifest injustice in light of a litany of appellate cases which have upheld trial courts' decisions to permit the jury to see photographs of victims of varying degrees of murder. See *Commonwealth v. Marinelli*, 690 A.2d 303, 216-17 (Pa. 1997); *Commonwealth v. Robinson*, 864 A.2d 460, 501 (Pa. 2004); *Commonwealth v. Dotter*, 589 A.2d 726 (Pa. Super. 1991); *Commonwealth v. Chasten*, 275 A.2d 305 (Pa. 1971); *Commonwealth v. Martinez*, 380 A.2d 747 (Pa. 1977); *Commonwealth v. Funk*, 29 A.3d 28 (Pa. Super. 2011); *Commonwealth v. Powell*, 241 A.2d 119 (Pa. 1968); *Commonwealth v. Mollett*, 5 A.3d 291 (Pa. Super. 2010); *Commonwealth v. Woods*, 311 A.2d 582, 583 (Pa. 1973).

Although this Court has doubts as to the veracity of the Defendant's claims regarding Mr. Keller's advice that was given to him, the Court finds that if Mr. Keller had advised Mr. Jones that the Commonwealth would not be able to introduce any pictures of Kristin to the jury, that would have been an arguably unreasonable position given the likelihood that some photographs would have been admissible under Pa. Rule of Evidence 403. For the foregoing reasons, Mr. Jones' claim that Attorney Keller was ineffective in his advice on this issue, and induced him into an unknowing and involuntary plea, is without merit.

Issue No. 2. B. Was Attorney Keller ineffective in his representation of the Defendant by advising him that the Commonwealth may use evidence of alleged marital discord and possible divorce at trial to convict the defendant?

Again, this claim must fail because there is no evidence in the PCRA hearing record to support Mr. Jones' claim. Moreover, under Pa. Rule of Evidence 403, the question of the admissibility of such evidence is discretionary with the court. Although such evidence likely would not be probative under Rule 403, this Court finds nothing in the record that the introduction of such evidence was a factor to compel the Defendant to enter a plea to voluntary manslaughter.

Issue No. 3. Was Mr. Keller ineffective by failing to advise the Defendant that the voluntary and involuntary manslaughter counts would merge in the event he was convicted of both counts at trial, and misadvised Mr. Jones as to the advantages of the plea agreement and the length of sentence he would face for a plea to involuntary manslaughter or in any way unduly pressured the Defendant to plead guilty?

In this instance, the Court does not believe that it needs to recite the entire guilty plea colloquy. However, at the PCRA hearing on cross-examination, the Defendant acknowledged that he completed the written guilty plea colloquy (Guilty Plea

Transcript p. 4). Furthermore, he acknowledged that he was represented by counsel and was satisfied with his representation (Guilty Plea Transcript p. 5). He indicated, at the time of the plea, that he understood the nature of the charge to which he was pleading guilty. Furthermore, the Court asked him whether or not there was a factual basis for the plea (Guilty Plea Transcript p. 8). The Defendant announced to the Court the basis for his entry of the plea; specifically that he fired one shot from a handgun which struck his wife, killing her in the early morning hours of March 7, 2010 (Guilty Plea Transcript p. 9). The Defendant was specifically questioned by the Court as to whether or not he understood that he had a right to a trial by jury or judge (Guilty Plea Transcript p. 6). The Defendant answered the question in the affirmative (Guilty Plea Transcript p. 6). The Court asked the Defendant if he understood that he was presumed innocent until proven guilty. The Defendant answered in the affirmative. The Defendant acknowledged in both the written plea colloquy and during the oral colloquy that he was aware of the permissible range of sentences for the offenses charged (Guilty Plea Transcript p. 7). He also acknowledged that there was no plea agreement except for the nol pros of the involuntary manslaughter charge and that the Court was not bound by any other terms of the plea agreement, and that it was in essence "an open plea," meaning the court had full discretion to sentence the Defendant in accordance with the sentencing guidelines (Guilty Plea Transcript p. 8).

The Defendant, again, in order to succeed in his claim of ineffective assistance of counsel as an inducement to plead guilty, must show that counsel's performance questions the reliability of the manner in which the Defendant's guilty plea was determined and, furthermore, that ineffectiveness of counsel may constitute unlawful inducement if the defendant establishes a "causal nexus" between counsel's ineffectiveness and the claimed involuntary or unknowing plea.

During the PCRA hearing, Mr. Keller testified that he never advised the Defendant of the nature or length of the sentence, and he never advises clients of the nature or length of sentence in a case where the plea is open. This Court finds Mr. Keller to be credible on this point. By a letter dated July 22, 2012, which was offered as Commonwealth's Exhibit 1, Mr. Keller clearly outlined the possible penalties for voluntary manslaughter and involuntary manslaughter. He did not indicate that, if convicted at trial, Mr. Jones could be sentenced to consecutive sentences. He also asked Mr. Jones to permit him to explore a plea with the Commonwealth. There is nothing within the letter in which Mr. Keller assures Mr. Jones of a sentence of four years of incarceration. Furthermore, based upon the testimony at the PCRA hearing, this Court accepts Mr. Keller's version of events. In consultations with the Defendant, Mr. Keller did not assure the Defendant that he would receive only a sentence of four years. In fact, the Defendant acknowledged in the plea colloquy that the court would not be bound by any sentence (Guilty Plea Transcript pp. 7-9). A review of the transcript of proceedings of the guilty plea on January 6, 2011 reveals that Assistant District Attorney Sulcove clearly advised the Court that the Commonwealth would not be pursuing a mandatory minimum of 5 to 10 years for a weapon enhancement. Furthermore, Ms. Sulcove specifically indicated the correct guideline range of 54 to 72 months for sentencing. The Court also asked whether or not the Commonwealth had advised the Defendant of the weapons enhancement that would normally apply in this instance. Under the terms of the oral plea colloquy, Mr. Jones was asked whether or not he understood that the count of voluntary manslaughter carried a maximum penalty of 20 years of incarceration and a \$25,000 fine. He understood that. He also understood the penalty for involuntary manslaughter. The Defendant was asked whether or not he understood the standard guideline range and also twice he was asked whether or not by pleading guilty he was facing a possible sentence of 20 years and a \$25,000 fine.

Furthermore, in page 10 of the guilty plea transcript, line 11, at the conclusion of the proceedings Mr. Keller went on to state that he had reviewed the plea colloquy in detail "at length and repeatedly with Christopher and also his parents who were present, and I believe that his plea was entered voluntarily, knowingly, intelligently, and that he has allocuted to the Court there is nothing further to be said." The Court then in turn asked "Mr. Jones, are your attorney's representations to the Court accurate?" The Defendant indicated yes. The Court further asked whether or not the Defendant believed that he had an adequate opportunity to fully discuss the decision with his counsel. Mr. Jones said "yes, Your Honor." The Court could not find anywhere within the PCRA hearing or any other transcript or evidence or information that Mr. Keller ever unduly pressured the Defendant to plead guilty, advised the Defendant that if convicted he would be sentenced to both counts of voluntary manslaughter or involuntary manslaughter, either consecutively or concurrently, or that he would receive a sentence of four years of incarceration. The Court finds that the claim made by Mr. Jones is wholly without merit.

Issue No. 4. Whether Mr. Keller was ineffective for failing to advise the Defendant of a potential defense of arguable merit that was available to him prior to the time of entry of his plea. Specifically, the defense of homicide by misadventure. Commonwealth v. Jones, 640 A.2d 1330, 1335 (Pa. Super. 1994).

The Defendant asserts that Mr. Keller was ineffective in his representation because he failed to advise Mr. Jones that he could have requested and been granted the opportunity to ask a jury to find that he committed the crime of homicide by misadventure which could have resulted in an acquittal. The Court's overall view is that this claim is founded on various

statements made by Mr. Jones during his police interview, Mr. Keller, and statements at sentencing asserting that Mr. Jones' action on the night of March 7, 2010 was an "accident". Merriam-Webster.com Dictionary defines the noun "Accident" as "1.a. an unforeseen and unplanned event or circumstance; b. lack of intention or necessity; 2.a. an unfortunate event resulting especially from carelessness or ignorance." Merriam-Webster Dictionary.com. Those definitions are layman's descriptions of the term accident, they are not equivalent to the legal definition of homicide by misadventure. During his interviews with police, the Defendant stated the shooting of Kristin Runyon was an accident. The Court agrees that Mr. Keller at sentencing described the shooting in a similar manner. (The court recalls that Mr. Keller was particularly impassioned during his advocacy for Mr. Jones at sentencing, as is expected and required of defense counsel at a sentencing proceeding. Commonwealth v. Cherry, 467 Pa. 160, 354 A.2d 894 (Pa. 1976)). The Defendant and his PCRA's counsel emphasis on the references to an accident in this case are misplaced.

As set forth in Commonwealth v. Pavillard, 41 Pa. 571, 220 A.2d 807 (Pa. 1966), homicide by misadventure or mistake involves a homicide, i.e., a killing of one person by another by accident, and unaccompanied by any unlawful conduct. The Court in Pavillard went on to recite the definition as established by the Pennsylvania Supreme Court in Commonwealth v. Flax which defined homicide by misadventure as follows: "Homicide by misadventure (which is excusable) is the accidental killing of another, where the slayer is doing a lawful act, unaccompanied by any criminally careless or reckless conduct. Three elements entered into the defense of excusable homicide by misadventure:

- (1) the act resulting in death must be a lawful one;
- (2) it must be done with reasonable care and due regard for the lives and persons of others;
- (3) the killing must be accidental and not intentional or without unlawful intent or without evil design or intention on the part of the slayer." Pavillard, 41 Pa. at 574, 220 A.2d at 809.

All these elements must concur, and the absence of any one of them will result in guilt.

This Court has considered the PCRA hearing testimony of Mr. Jones, Mr. Keller, portions of Mr. Jones' statements to the police, and the letter offered by Mr. Keller in advance of Mr. Jones' plea which describes what happened on March 7, 2010. The evidence reveals Mr. Jones was at home sleeping in the marital bed which he shared with Kristin Runyon in the early morning of March 7, 2010. He was aware that Kristin was up frequently during the night and moved about the house as she had difficulty sleeping due to an injured arm. The Defendant and his wife had switched locations in bed so that she could sleep more comfortably while her arm recovered. The couple owned dogs which would bark at intruders or visitors to the home. The Defendant, allegedly, upon hearing what he believed to be an intruder, did not attempt to turn on the bedroom lights or lamps. He did not cry out a warning or listen for a response from the alleged intruder. He did not consider that the dogs did not bark as if disturbed by an intruder. Instead he grabbed his handgun, pointed it at a figure that he believed was moving at him quickly, and without confirming the location of his wife either within the bed or the room, pulled the trigger. The single shot struck her in the torso and proved fatal. It was only after the shot had been fired and Kristin Runyon had fallen to the floor that the Defendant turned on the lights to identify whom he had shot. Even if it is accepted by the Court that the Defendant had no intent to specifically shoot his wife, he did have the intent to shoot the person within his home. The shooting was done without reasonable care and without due regard for the lives and the persons of others, specifically Kristin Runyon. Taking into account all the reasons that should have alerted Mr. Jones to the possibility that the figure he thought was an intruder could have been his wife, his belief was not reasonable.

This Court finds that the Defendant's assertion that he should have been advised by Mr. Keller of the possibility of raising the defense of homicide by misadventure was required to make sure his plea to voluntary manslaughter was knowing and voluntary is misplaced. The Court cannot find that the act resulting in Kristin Runyon's death was lawful and that it was done with reasonable care and due regard for the lives and persons of others. The Defendant's actions exhibited at a minimum recklessness and gross negligence which squarely fall within the definition of involuntary manslaughter as laid out by Mr. Keller in his letter describing the charges against him. In addition, the Defendant's actions also squarely fit within the charge of voluntary manslaughter. First, Mr. Jones' actions reveal that he intentionally and knowingly killed another person. As correctly pointed out by Mr. Keller, the Defendant took into possession a deadly weapon, his handgun, and pointed it at the vital part of another person. Second, he did so with the belief that his killing was justified. The Defendant asserted he believed that it was an intruder who was within his home and he was looking to protect himself and his wife. Third, that the belief was unreasonable. This Court must concur with the advice of Mr. Keller in that the question of reasonableness would have to have been answered in the affirmative which the Court finds that it could not. Absent a showing of reasonableness or due care, the Defendant would not have been entitled to the jury charge of defense of homicide by misadventure.

The cumulative factors surrounding the Defendant's unreasonable decision on the night in question lead this Court to conclude that there was no prejudice to the Defendant based on Mr. Keller's failure to advise him of the defense of

homicide by misadventure as it would not have been available to the defendant. Thus, the fact that Mr. Keller did not advise him of this as a possible defense does not rise to manifest injustice and ineffective assistance of counsel.

Finally, as an overall observation, this Court is charged in a PCRA hearing with determining which evidence to believe or not believe, and the Court finds that the testimony of the Defendant's counsel, Mr. Keller, regarding his meetings and advice given to the Defendant and his family throughout the proceedings, including sentencing, is credible. As previously pointed out, Mr. Keller emphasized to the Court at the guilty plea hearing that he had taken great efforts to review fully the plea with Mr. Jones and his family and that they were present to observe the plea. Now more than one year later, Mr. Jones and his family have claimed their dissatisfaction with Mr. Keller. The Court learned at the PCRA hearing the reasons why Mr. Keller was careful to point out to the Court at the plea hearing the efforts he had made to advise Mr. Jones of the ramifications of his decision to enter a plea to voluntary manslaughter. During cross-examination by the Commonwealth, Mr. Jones revealed that he and his family had concerns about Mr. Keller's advice regarding the acceptance of a plea offer versus going to trial. The Defendant was encouraged to seek a second opinion by Mr. Keller. Mr. Jones did so by consulting with William Costopoulos, Esquire, a well-known and experienced criminal defense lawyer within South Central Pennsylvania. The Defendant and his parents had an opportunity to consult on two occasions with Mr. Costopoulos about the decision to proceed with a plea and act in accordance with Mr. Keller's advice. Since Mr. Jones and his family were questioning his advice prior to the plea, in retrospect, Mr. Keller's assertions regarding the knowing and voluntary nature of Mr. Jones' plea have added significance. Mr. Jones' decision to enter a plea was informed by not one, but two competent defense attorneys.

The Defendant did not acknowledge his decision to consult with Mr. Costopoulos either in the petition for post-conviction relief or in his direct examination, but rather had to be confronted with those facts, presumably upon information related by his attorney, Mr. Keller, to the Commonwealth. The Defendant's lack of forthrightness in the contents of his PCRA motion and ultimately his testimony as to the advice and information that he utilized in deciding to enter into a plea agreement undermines the Defendant's credibility as to all of his claims regarding the advice that Mr. Keller gave to him and his family during their multiple meetings and consultations.

The Court sitting in a PCRA hearing, no different than a jury, can take into consideration the legal construct of false in one, false in all, in which a court is free to choose to believe all, part, or none of a witnesses' testimony based upon a possible or intentional falsehood. The Court finds the Defendant's failure to openly discuss all of the information and advice that he was given prior to making his plea, results in this Court questioning the underlying veracity of his statements as to any discussions he may have had with Mr. Keller. The Court finds that both the Defendant's testimony and his mother's testimony at the PCRA hearing are tinged with dissatisfaction because the sentence was not what had been hoped for, yet there was no guarantee at the time of the plea that the Court would sentence the Defendant to a particular sentence and the Defendant was aware of that at the time of the plea. The Court has reviewed the record and believes that the sentence entered was in accordance with the law, and that the Defendant and his family could have reasonably expected that the Court would impose such a sentence.

For the foregoing reasons, the Court will enter an order DENYING the Defendant's post-conviction relief.

ORDER

AND NOW THIS 15th day of November, 2012, upon consideration of the briefs and oral argument submitted by both parties, and upon the Court's independent review of the record, it appears to the Court that the Defendant is not entitled to post-conviction collateral relief for the reasons stated in the attached Opinion,

IT IS HEREBY ORDERED that the Petition for Post-Conviction Collateral Relief is DENIED. Pursuant to Pennsylvania Rule of Criminal Procedure 908(E), the Petitioner, Christopher Jones, is hereby advised that:

- (1) You have a right to appeal the decision of this Court within 30 days of the date of the date of this decision [Pa. R. Crim. P. 908(E); Pa. R. Crim. P. 910];
- (2) You have the right to assistance of counsel in preparation of the appeal. [Pa. R. Crim. P. 904(F)(2)]; and
- (3) If you cannot afford to pay an attorney to represent you in this appeal, you have a right to a court-appointed attorney and to be excused from the cost of filing and perfecting the appeal [Pa. R. Crim. P. 904(F)(2); Pa. R. Crim. P. 904(G)].

Pursuant to the requirements of Pa. R. Crim. P. 114 (B)(1), (2) and (C)(1), (2), the Clerk shall promptly serve this Order or court notice on each party's attorney, or the party if unrepresented; and shall promptly make docket entries containing

the date of receipt in the Clerk's office of the Order or court notice; the date appearing on the Order or court notice; and the date and manner of service of the Order or court notice.

^[1]The Court notes that neither the Defendant nor the Commonwealth petitioned for preparation of the PCRA hearing transcript for the benefit of this Court, and thus the Court is relying upon the notes taken at the time of the PCRA hearing, and such facts as may be acknowledged and consented to by counsel in their post-motions.