

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
KEVIN ROBINSON	:	
	:	
Appellant	:	No. 3198 EDA 2025

Appeal from the PCRA Order Entered December 1, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-009186-2017

BEFORE: BOWES, J., OLSON, J., and McLAUGHLIN, J.

MEMORANDUM BY OLSON, J.:

FILED SEPTEMBER 22, 2026

Appellant, Kevin Robinson, appeals from the order entered on December 1, 2025, dismissing his first petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

We briefly summarize the facts and procedural history of this case as follows. On November 30, 2018, a jury convicted Appellant of third-degree murder, carrying a firearm without a license, carrying a firearm on the public streets of Philadelphia and possessing an instrument of crime.¹ On August 14, 2019, the trial court sentenced Appellant to 16 to 32 years of imprisonment for third-degree murder with a concurrent sentence of three to six years of imprisonment for carrying a firearm without a license and no further penalty for the remaining charges. **See** Sentencing Order, 8/14/2019,

¹ 18 Pa.C.S.A. §§ 2502(c), 6106, 6108, and 907, respectively.

at *1. In a published opinion filed on September 4, 2020, this Court affirmed Appellant's judgment of sentence. **See Commonwealth v. Robinson**, 239 A.3d 154 (Pa. Super. 2020).² Our Supreme Court denied further review. **See Commonwealth v. Robinson**, 251 A.3d 777 (Pa. 2021). On June 17, 2022, Appellant filed a timely, *pro se* PCRA petition. On January 7, 2025, Appellant filed a counseled, amended PCRA petition. On October 28, 2025, the PCRA court filed a notice pursuant to Pa.R.Crim.P. 907, advising Appellant that it intended to dismiss Appellant's amended PCRA petition without an evidentiary hearing. On November 13, 2025, counsel for Appellant responded to the PCRA court's Rule 907 notice to dismiss. By order entered on December 1, 2025, the PCRA court dismissed Appellant's PCRA petition. This timely, counseled appeal resulted.³

On appeal, Appellant presents the following issues for our review:

- I. Did the PCRA court err by concluding that Appellant's PCRA [p]etition lacked merit?

² In reviewing our Court's 2020 decision in **Commonwealth v. Robinson**, 239 A.3d 154 (Pa. Super. 2020), we note that the prior panel quoted the trial court's opinion regarding judgment of sentence and incorrectly stated that the trial court sentenced Appellant "to sixteen to thirty-two years imprisonment for firearms not to be carried without a license. No further penalty was imposed for the remaining charges." **Robinson**, 239 A.3d at 156.

³ On December 5, 2025, Appellant filed a notice of appeal. On December 9, 2025, the PCRA court directed Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied timely on December 16, 2025. On January 29, 2026, the PCRA court issued an opinion pursuant to Pa.R.A.P. 1925(b).

- II. Was trial counsel ineffective for failing to call a defense witness that would have changed the outcome of the case?

Appellant's Brief at 6.

In sum, Appellant's argument is that the PCRA court erred in concluding that trial counsel was not ineffective for failing to call a defense witness at trial. Since Appellant combines both listed issues in a single argument section of his brief, we will examine them together. Appellant claims that trial counsel was ineffective for failing to call Appellant's friend, Terry Roberts, as a defense witness at trial.⁴ **Id.** at 16-21. Appellant argues:

Roberts was with [Appellant] on the day of the shooting. He and [Appellant] are seen in surveillance video from [a] 7/11 [store] before the shooting occurred. [] Roberts would have corroborated in detail the story [Appellant] told the police [after the shooting, that the victim] repeatedly threatened and assaulted [Appellant] prior to the shooting [and Appellant] feared for his life.

Id. at 19. Appellant posits that Roberts was available and willing to testify at trial and trial counsel had no reasonable basis not to call Roberts as a witness. **Id.** Appellant further contends that he "was prejudiced by trial counsel's decision" because "[i]f Roberts [had] testified, [Appellant] also would have testified ... that he acted in self-defense, which is exactly what he told police during his [post-arrest] interview." **Id.** Instead, Appellant asserts that "[t]rial counsel insisted on arguing that [Appellant] was not the shooter even though [Appellant] told police he was." **Id.** Appellant maintains that "[h]ad [] Roberts testified, the trial court would have instructed the jury on

⁴ In support of this claim, Appellant affixed an affidavit from Roberts to his amended PCRA petition.

the less serious charge of voluntary manslaughter based upon [Appellant's] fear of [the victim and] the outcome of trial would have been different[.]" **Id.** at 20. Appellant argues that the trial court further erred by failing to hold an evidentiary hearing to hear testimony from Roberts, because "[t]rial counsel is deceased[,] never testified in any hearing on this matter[, and] is unable to explain his actions" or trial strategy. **Id.** Accordingly, Appellant argues that "[t]he PCRA court should [have], at the very least, hear[d] testimony from [] Roberts [to] make a determination as to his credibility." **Id.** at 21. Hence, Appellant claims that he is entitled to a new trial or an evidentiary hearing on his PCRA claim. **Id.**

Our Supreme Court has previously determined:

Under the PCRA, collateral relief is afforded to individuals who prove that they are innocent of the crimes of which they were convicted, and those receiving illegal sentences. A petitioner is eligible for PCRA relief only when he proves by a preponderance of the evidence that his conviction or sentence resulted from one or more of the circumstances delineated in 42 Pa.C.S.A. § 9543(a)(2). One of the grounds enumerated in 42 Pa.C.S.A. § 9543(a)(2) involves claims alleging ineffective assistance of counsel. Thus, the PCRA provides relief to those individuals whose convictions or sentences resulted from ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. [Our Supreme] Court has interpreted this to mean that in order to obtain relief on a claim alleging ineffective assistance of counsel, a petitioner must prove that: (1) the claim underlying the ineffectiveness claim has arguable merit; (2) counsel's actions lacked any reasonable basis; and (3) counsel's actions resulted in prejudice to petitioner. A chosen strategy will not be found to have lacked a reasonable basis unless it is proven that an alternative not chosen offered a potential for success substantially greater than the course actually pursued. Prejudice in the context

of ineffective assistance of counsel means demonstrating that there is a reasonable probability that, but for counsel's error, the outcome of the proceeding would have been different.

* * *

Finally, [the] standard of review in an appeal from the denial of PCRA relief is whether the findings of the PCRA court are supported by the record and free of legal error.

Commonwealth v. Cox, 983 A.2d 666, 678–679 (Pa. 2009) (internal citations, quotations, and ellipses omitted). “A defense attorney's failure to call certain witnesses does not constitute *per se* ineffectiveness.” **Id.** at 693 (citation omitted). To prove that trial counsel provided ineffective assistance for failing to call a witness, a petitioner must demonstrate:

(1) the witness existed; (2) the witness was available to testify for the defense; (3) counsel knew of, or should have known of, the existence of the witness; (4) the witness was willing to testify for the defense; and (5) the absence of the testimony of the witness was so prejudicial as to have denied the defendant a fair trial.

Commonwealth v. Brown, 196 A.3d 130, 167 (Pa. 2018) (citation omitted). In the absence of proof indicating an issue of ineffective assistance of counsel has arguable merit, an evidentiary hearing is not required on a collateral claim for failing to call a trial witness. **Cox**, 983 A.2d 679 (citation omitted).

Appellant asserts that Robert’s testimony was important in establishing Appellant’s justification defense. Our Supreme Court has stated:

To prevail on a justification defense, there must be evidence that the defendant (a) reasonably believed that he was in imminent danger of death or serious bodily injury and that it was necessary to use deadly force against the victim to prevent such harm; (b) that the defendant was free from fault in provoking the difficulty which culminated in the slaying; and (c) that the defendant did

not violate any duty to retreat. The Commonwealth sustains its burden of disproving self-defense if it proves any of the following: that the slayer was not free from fault in provoking or continuing the difficulty which resulted in the slaying; that the slayer did not reasonably believe that he was in imminent danger of death or great bodily harm, and that it was necessary to kill in order to save himself therefrom; or that the slayer violated a duty to retreat or avoid the danger.

The derivative and lesser defense of imperfect belief self-defense is imperfect in only one respect—an unreasonable rather than a reasonable belief that deadly force was required to save the actor's life. All other principles of justification [] must be satisfied to prove unreasonable belief voluntary manslaughter. Thus, for example, if the defendant was not free from fault, neither self-defense nor imperfect self-defense is a viable defense.

Commonwealth v. Sepulveda, 55 A.3d 1108, 1124–1125 (Pa. 2012)

(internal citations, quotations, footnote, and original brackets omitted).

Here, the PCRA court concluded that Appellant's PCRA claim, on its face, lacked arguable merit and that an evidentiary hearing was unwarranted because "Roberts' proposed testimony would not support a viable justification or imperfect self-defense strategy." PCRA Court Opinion, 1/29/2026, at 7. More specifically, the PCRA court opined:

Roberts' proposed testimony could not plausibly establish that [Appellant] acted in self-defense. Roberts admits he did not see the shooting and was not present when it occurred. Although Roberts attests to witnessing the decedent assault [Appellant] in the past, and to advising [Appellant] of the decedent's threats to kill [Appellant], Roberts does not attest to knowing that [Appellant] was in imminent danger of death or serious bodily injury and that deadly force against the unarmed decedent was required to prevent such harm. Moreover, Roberts' affidavit flatly contradicts his statements to detectives [seven] years earlier, when Roberts averred he was unaware of any "problems,

fight, or arguments” between [Appellant] and the decedent and that they “was all cool with each other.”^[5]

Nor could Roberts plausibly establish that [Appellant] reasonably believed he faced imminent danger of harm and that deadly force was necessary to prevent the harm.

* * *

The [PCRA court determined that the] Commonwealth’s [trial evidence,] video [surveillance] footage [played for the jury,] show[ed] the decedent walking away from [Appellant] with no weapon. The video show[ed] no physical altercation before [Appellant] approached the unarmed decedent from behind and shot him four times. In his statement to detectives, [Appellant] confirmed that he knew the decedent was unarmed when he shot him.

* * *

[Appellant] shot the decedent on a public street in broad daylight, and the video shows [Appellant] make no effort to retreat to avoid any altercation with the decedent. Indeed, the video shows [Appellant] following the unarmed decedent and shooting him four times in the back. Since Roberts was not present at the shooting scene [(which he admits in his PCRA affidavit)], he could not have witnessed anything contradicting the video showing [Appellant] shoot the unarmed decedent from behind, as the decedent attempted to walk away.

* * *

Accordingly, even with Roberts’ testimony, [Appellant] would not be entitled to a jury instruction on self-defense.

⁵ As the PCRA court later explained, the factual contradiction between Robert’s affidavit affixed to his PCRA petition and his prior statement to police does not raise a genuine issue of material fact that required a hearing. As explained at length below, the contradiction solely pertained to the past on-going relationship between Appellant and the victim but had no relevance to any alleged imminent threats that confronted Appellant on the day he shot the victim.

Id. at 10-12. The PCRA court also concluded that there was no evidence of imminent threat of death or serious bodily injury to Appellant because the unarmed victim was clearly walking away, Appellant was the sole aggressor, and Appellant violated his duty to safely retreat. **Id.** at 12-13 (“The video shows the decedent walking away from [Appellant], who followed the decedent and shot him several times in the back. Accordingly, Roberts’ testimony could not refute the video evidence showing [Appellant] choosing to shoot the decedent instead of walking away from the area. Therefore, even with Roberts as a witness – despite his not actually witnessing the shooting – [Appellant] [Appellant] would be entitled to no jury charge on justification or imperfect self-defense.”). Accordingly, the PCRA court concluded that an evidentiary hearing was unwarranted. **Id.** at 14.

Based upon our standard of review and applicable law, we conclude that the PCRA court’s determination that Appellant’s claim lacked arguable merit and that an evidentiary hearing was unnecessary is supported by the certified record. Here, Roberts attested to hearing the victim “threaten to kill or harm [Appellant] numerous times in the weeks before the shooting[,]” and that “months before the shooting” Roberts witnessed the victim physically assault Appellant and attempted “to set [Appellant’s] clothes on fire.” Roberts’ Affidavit, 8/14/2024, at ¶¶ 5-7. Moreover, Roberts claims that “before the shooting occurred ... [w]hile inside the 7/11 [store,] he told [Appellant] that [the victim] was threatening to kill [Appellant and then Appellant] immediately became nervous.” **Id.** at 8-9. However, Roberts does not aver that he

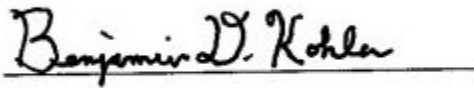
witnessed the shooting. Even if Appellant were nervous and the victim threatened him in the past, Roberts' proposed testimony does not support any version of a justification defense and does not refute the physical and eyewitness evidence presented at trial which showed that Appellant was the sole aggressor and did not attempt to safely retreat. Roberts does not purport to know whether Appellant believed he was in imminent danger when the shooting occurred. In fact, Roberts does not refute the fact that the victim was unarmed and walking away from Appellant. Had Roberts testified, the trial court would not have been justified in giving a jury instruction on self-defense or imperfect self-defense. Instead, Roberts' proposed trial testimony is flatly contradicted by the evidence the Commonwealth actually presented.⁶ Therefore, the absence of Roberts' testimony was not so prejudicial as to have

⁶ ***See Commonwealth v. Robinson***, 239 A.3d 154, 159–160 (Pa. Super. 2020) (“the admissible evidence collected against Appellant included: his own confession to shooting the decedent; an eyewitness's sworn statement to police identifying Appellant as the shooter; a witness who testified he saw Appellant wearing the green “PUMA” hooded sweatshirt the day before the shooting, and who identified Appellant as the man depicted on an in-store video wearing the same sweatshirt minutes before the shooting; a compilation of surveillance videos depicting a male in the green sweatshirt shooting the decedent and running in an alley where investigators would later retrieve the sweatshirt and a set of keys, subject each to testing, and find gunshot residue on the sweatshirt and Appellant's DNA on the keys; a police report that a search of Appellant's car uncovered the same type of ammunition as was used in the murder; and a police report that an investigation of Appellant's Facebook page revealed a photo of him in a green hooded sweatshirt with a “PUMA” logo on it.”); ***see also id.*** at 161 (the “trial record compris[ed] multiple sources, such as eyewitnesses, surveillance video, and Appellant, himself, offering his own voluntary confession, supplying direct identification evidence implicating Appellant as the decedent's shooter. Moreover, substantial circumstantial evidence corroborated such accounts.”).

denied Appellant a fair trial. Accordingly, we agree with the PCRA court that dismissal of Appellant's PCRA petition without an evidentiary hearing was proper. Hence, Appellant's current appellate issues lack merit.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/22/2026