

FILED
COURT OF APPEALS
DIVISION II
2018 MAY 25 PM 1:32
STATE OF WASHINGTON
BY Chad
DEPUTY

95898-0

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

In re the Personal Restraint of
CORY LEWIS,
Petitioner.

No. 49006-4-II
(cons. with 50076-1-II)
MOTION FOR DISCRETIONARY REVIEW
RAP 13.5A

A. IDENTITY OF MOVANT

COMES NOW Cory Lewis, Pro Se, and asks this Court to accept review of the Court of Appeals decision as designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Mr. Lewis seeks review of the Court of Appeals Division II decision denying the underlying Personal Restraint Petition (PRP) filed in consolidated Case Nos. 49006-4-II and 50076-1-II on the 24 day of April 2018. A copy of the decision is attached hereto as Appendix (App.) 1.

C. ISSUE PRESENTED FOR REVIEW

1. A trial Court abuses its discretion when its decision is based upon untenable grounds or untenable reasons. Where the trial Court based its findings that Mr. Lewis' homicide charge was not justified contrary evidence notwithstanding, did the trial Court abuse its discretion?

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D. STATEMENT OF THE CASE

The statement of the case is that as set forth in the PRP at ¶¶14 through 35, and all of which is incorporated by reference as if set forth in full herein.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. The Trial Court Abused Its Discretion When It Found That Mr. Lewis' Homicide Charge Was Not Justified.

In denying Mr. Lewis' PRP, Division II opined that the trial Court's finding that Mr. Lewis' self-defense claim was overcome by the State was not an abuse of discretion. App. 1, pp. 14-15. The Court's decision is in conflict with the State Supreme Court's decision in In re Marriage of Littlefield, 133 Wn.2d 39, 940 P.2d 1362 (1997).

In Littlefield, the Supreme Court laid out a clear meaning for purposes of analyzing an "abuse of discretion" claim.

A trial Court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)(citing In re Marriage of Kovacs, 121 Wn.2d 795, 801, 854 P.2d 629 (1993); and In re Marriage of Wicklund, 84 Wn.App. 763, 770 n.1, 932 P.2d 652 (1996)).

"A Court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." Littlefield, 133 Wn.2d at 47(citing State v. Rundquist, 79 Wn.App. 786, 793, 905 P.2d 922 (1995)(citing WASHINGTON STATE BAR ASS'N, WASHINGTON APPELLATE PRACTICE DESKBOOK §18.5 (2d ed. 1993)), review denied, 129 Wn.2d 1003, 914 P.2d 66 (1996). A trial

Court's decision is manifestly unreasonable if it takes a view no reasonable person would take. Mayer v. Sto Industries, Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006) ("...the Court's decision is 'manifestly unreasonable' if 'the Court, despite applying the correct legal standard to the supported facts, adopts a view "that no reasonable person would take."'" (citing State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting State v. Lewis, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990))). Questions of law are reviewed de novo. Mayer, 156 Wn.2d at 684 (citing In re Firestorm 1991, 129 Wn.2d 130, 135, 916 P.2d 411 (1996); also citing Washington State Physicians Insurance Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (noting that "[a] trial Court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law"))).

Here, the Court seemingly disregarded the pertinent facts surrounding Mr. Lewis' claim of self-defense.

At trial, the Court heard testimony that in November 2013, Mr. Page and Mr. Lewis became roommates. See PRP Attachment C, Report of Proceedings ("RP"), (3-17-16), p. 37. Mr. Lewis and Mr. Page had a mutual friend, Mookie, who had been renting a room in the same residence as Page. RP (3-17-16), pp. 12-13. However, after Page became angry and tried to choke Mookie, Mookie moved out and Lewis moved in. RP (3-17-16), pp. 12-13.

Page had a history of anger problems reaching back to his childhood. RP (3-17-16), p. 17, RP (3-16-16), pp. 35-39, 45, 48-49, 54, 56. Page would "go off" on people for no good reason. RP (3-16-16), p. 39. Page admitted to his therapist that he felt anger and fury a lot, often "going from 0 to 60." RP (3-16-16), pp. 48-49. Page reported himself as violent

and aggressive. RP (3-16-16), p. 49. Page's anger management problems led to his being expelled from Tacoma Community College. RP (3-16-16), p. 45. He was also fired from his job due to a confrontation at work. RP (3-16-16), p. 52.

One day in September 2014, Page became irate that Lewis and his children ate all the cheese in the house. RP (3-17-16), p. 16. After the children left, Page followed Lewis into another room, belligerently yelling at him. RP (3-17-16), p. 17. Page provoked a fist fight in which Lewis engaged to defend himself. RP (3-17-16), p. 17. Lewis ended up having to go to the hospital by ambulance and was treated for a dislocated shoulder. RP (3-17-16), p. 17. After this, Lewis stopped having his kids come over to the house and began looking for a new place to live. RP (3-17-16), p. 18.

On December 8, 2014, Lewis arrived home and went to his room to work on his music. RP (3-17-16), p. 21. Page called Lewis into his room and began to yell and belittle Lewis for no apparent reason. Page cursed at Lewis, calling him a "little bitch." RP (3-17-16), p. 23. Lewis did not understand what had set Page off. RP (3-17-16), p. 24. Page wanted to get into another fist fight with Lewis, but Lewis said he did not want to. RP (3-17-16), p. 25.

At one point, Page picked a gun up from off his bed and started waiving it around. RP (3-17-16), p. 23. Page eventually pointed the gun directly at Lewis. RP (3-17-16), p. 25. As Lewis went into the hallway, Page said, "I'll clap you right now." RP (3-17-16), p. 25. Lewis interpreted this to mean that Page would shoot him. RP (3-17-16), p. 25.

Page continued to get into Lewis' face, spitting on him as Lewis went back to his room. RP (3-17-16), p. 26. Page paced back and forth,

screaming at Lewis and saying he could do whatever he wanted to Lewis. RP (3-17-16), p. 26. Page followed Lewis back to his room and demanded Lewis return some clothing that Page had given Lewis. RP (3-17-16), p. 26. Page continued to waive his gun. RP (3-17-16), p. 27. After Page pointed the gun at Lewis, Lewis quickly gave the clothing back. RP (3-17-16), p. 26.

After Page left Lewis' room, Lewis grabbed his own gun and went in the hallway to leave. RP (3-17-16), p. 27. In order to leave the residence, however, he had to pass by Page's bedroom door. RP (3-17-16), p. 28. As Lewis left his room, he saw Page facing away just inside the doorway entrance of Page's room. RP (3-17-16), p. 29. Page began to turn back toward Lewis. RP (3-17-16), p. 29. Lewis testified he feared Page was going to shoot him and fired two shots at Page, which eventually resulted in Page's death. RP (3-17-16), pp. 30, 32-33; RP (3-15-16), p. 95.

Lewis left the residence in a panic and did not return until December 11, 2015. RP (3-17-16), pp. 30, 33. In the meantime, he threw the gun away in Snake Lake. RP (3-17-16), p. 31. After he returned to the apartment, Lewis called 911 and reported that he had come home to find his roommate lying on the floor, possibly dead. RP (3-3-16), pp. 46-47. When police came to investigate, Lewis denied knowing anything about Page's death. RP (3-7-16), pp. 26-29.

The record, as found by the trial judge himself, belies the conclusion that there was no reasonable belief on the part of Mr. Lewis that Mr. Page intended to inflict death or personal injury upon Mr. Lewis during the events leading to Mr. Page's death. The trial judge specifically found in convicting Mr. Lewis that Mr. Lewis and Mr. Page

had:

- (a) an acrimonious relationship marked on occasion by fist fights;
- (b) that Mr. Page prevailed in the fist fights, one of which resulted in Mr. Lewis having a separated shoulder and seeking emergency assistance; and
- (c) on the night in question, Mr. Page was looking to have a fist fight with Mr. Lewis.

RP (3-24-16), p. 12.

There was also evidence introduced at trial that:

- (a) Page had a history of anger problems reaching back to his childhood;
- (b) Page would "go off" on people for no good reason;
- (c) Page admitted to his therapist that he felt anger and fury a lot, often "going from 0 to 60";
- (d) Page was expelled from college due to his anger management problems;
- (e) Page had tried to choke his prior roommate Mookie; and
- (f) Page was fired from his job due to a confrontation at work.

RP (3-17-16), pp. 12-52.

There was further evidence introduced at trial showing that on December 8, 2014, the evening Mr. Page was slain, after Mr. Lewis came home from work Mr. Page:

- (a) called Mr. Lewis into his room and belittled Mr. Lewis for no apparent reason, calling Mr. Lewis a little bitch;
- (b) wanted a fist fight with Mr. Lewis; and
- (c) picked a gun up from off the bed and started waiving it around, pointing it at Mr. Lewis, threatening to "clap" Mr. Lewis;
- (d) spat on Mr. Lewis telling Mr. Lewis he could do whatever he wanted to do to Mr. Lewis, and continued to waive his gun at Mr. Lewis.

RP (3-17-16), pp. 21-26.

As there had been a cogent history of Mr. Page's assaultive and

felonious behavior against Mr. Lewis, the trial Court's finding that Mr. Lewis' homicide was not justified was based upon untenable grounds. This is so because the judge's factual finding that Mr. Lewis "did not have a reasonable belief of imminent danger of harm, injury, or death" is not supported by the record; indeed, the finding at issue is belied by the record.

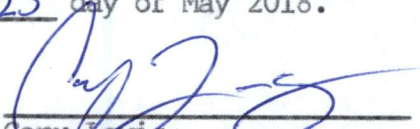
Because there is ample evidence to support Mr. Lewis' claim of self-defense, the trial Court abused its discretion in finding contrary. Because the trial Court abused its discretion here, the Appellate Court's decision denying Mr. Lewis' PRP is in conflict with Littlefield, 133 Wn.2d at 46-47 in that the record established here does not support the trial Court's finding. ("A Court's decision... is based on untenable grounds if the factual findings are unsupported by the record...."). As such, review is appropriate under RAP 13.4(b)(1).

F. CONCLUSION

The trial Court abused its discretion when it found that Mr. Lewis "did not have a reasonable belief of imminent danger of harm, injury, or death" because that finding was not supported by the record and is thus based on untenable grounds. Littlefield, 133 Wn.2d at 46-47.

Because the trial Court's decision was based on untenable grounds, the Appellate Court's decision denying Mr. Lewis' PRP is in conflict with the Supreme Court's decision in Littlefield, 133 Wn.2d at 46-47. This Court should accept review in accordance with RAP 13.4(b)(1). Mr. Lewis respectfully requests so.

Respectfully submitted this 23 day of May 2018.


Cory Lewis
SCCC, #890418, H4-B134U
191 Constantine Way
Aberdeen, WA 98520

FILED
COURT OF APPEALS
DIVISION II

2018 MAY 25 PM 1:31
STATE OF WASHINGTON

DECLARATION OF SERVICE BY MAIL

GR 3.1

BY _____
DEPUTY

I, Cory Lewis, declare and say:

That on the 23 day of May, 2018, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 49006-4-II & 50076-1-II

- * Motion for Discretionary Review
- * Declaration of Service by mail (GR 3.1)

addressed to the following:

* Court of Appeals
 Division II
 950 Broadway
 Ste 300
 Tacoma, WA 98402

* Pierce County Prosecuting Atty
 970 Tacoma Ave. S.
 # 946
 Tacoma WA
 98402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 23 day of May, 2018, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Signature [Handwritten Signature]

Print Name Cory Lewis

DOC 890418 UNIT H4B1344
 STAFFORD CREEK CORRECTIONS CENTER
 191 CONSTANTINE WAY
 ABERDEEN WA 98520

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