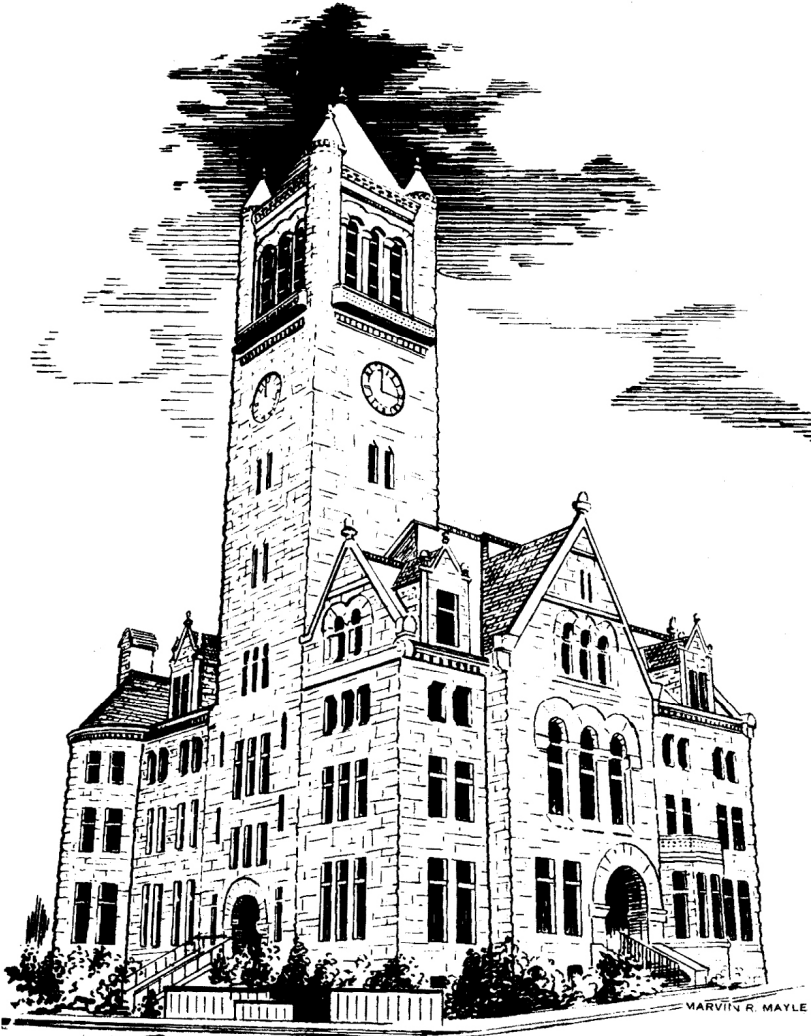


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

PATRICK T. BALLON, late of Luzerne Township, Fayette County, PA ⁽³⁾

Executrix: Bertha Ann Ballon
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Anthony Dedola

DONALD R. JONES, a/k/a DONALD R. JONES, SR., late of Washington Township, Fayette County, PA ⁽³⁾

Executrix: Lily Farquhar
c/o 300 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Richard C. Mudrick

HAROLD RAY KING, SR., late of Bullskin Township, Fayette County, PA ⁽³⁾

Executrix: Ashley Dawn Ghrist
c/o Molinaro Law Offices
141 West Peach Street
P.O. Box 799
Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

MARGARET REGINA SIMON, a/k/a MARGARET R. SIMON, late of Luzerne Township, Fayette County, PA ⁽³⁾

Executor: David M. Simon
c/o Zebley Mehalov & White, P.C.
18 Mill Street Square
P.O. Bo 2123
Uniontown, PA 15401
Attorney: Mark M. Mehalov

THOMAS E. STEPHENS, a/k/a THOMAS EDWARD STEPHENS, late of Perry Township, Fayette County, PA ⁽³⁾

Executrix: Cynthia Howser
P.O. Box 299
Perryopolis, PA 15473
c/o 300 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Richard C. Mudrick

Second Publication

SUSAN JOYCE ADAMS, late of South Union Township, Fayette County, PA ⁽²⁾

Executor: Keith Adams
c/o Adams & Adams
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

DEBORAH D. GHRIST, late of South Union Township, Fayette County, PA ⁽²⁾

Personal Representative: Michelle Nicola
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

EDWIN PAUL HAINES, JR. a/k/a EDWIN P. HAINES, JR., late of Wharton Township, Fayette County, PA ⁽²⁾

Administratrix: Nicole L. Fazenbaker
c/o 39 Francis Street
Uniontown, PA 15401
Attorney: Jack R. Heneks, Jr.

JOAN HELINSKY, late of Dunbar Township, Fayette County, PA ⁽²⁾

Executor: Michael A. Helinsky
123 Aspen Road
Acme, PA 15610
c/o Snyder and Snyder Attorneys at Law, PLLC
17 North Diamond Street
Mt. Pleasant, PA 15666
Attorney: Marvin Snyder

RUSSELL B. MECHLING, JR., late of Hopwood, Fayette County, PA ⁽²⁾

Administratrix: Ellen Ulmer
311 Derrick Avenue
Uniontown, PA 15401

RICHARD K. SPARKS, late of Springfield Township, Fayette County, PA (2)
Executrix: Aimee Lynn Cain
 c/o 815A Memorial Boulevard
 Connellsville, PA 15425
Attorney: Margaret Zylka House

PATRICIA DOVONA REYNOLDS, a/k/a PATRICIA D. REYNOLDS, late of Georges Township, Fayette County, PA (1)
Administrator: Dustin Reynolds
 c/o 9 Court Street
 Uniontown, Pa 15401
Attorney: Vincent J. Roskovensky, II

First Publication

GEORGE EDWARD BAILEY, a/k/a GEORGE E. BAILEY, late of Connellsville, Fayette County, PA (1)
Executor: Gregory E. Bailey
 1435 Spyglass Hill
 Greensburg, PA 15601
 c/o Fike, Cascio and Boose
 Scull Building
 124 North Center Avenue
 P.O. Box 431
 Somerset, PA 15501-0431
Attorney: Lois W. Caton

JOSEPH STRYCUDA, a/k/a JOSEPH M. STRYCUDA, late of Luzerne Township, Fayette County, PA (1)
Executor: Jon R. Paulovich
 c/o Webster & Webster
 51 East South Street
 Uniontown, PA 15401
Attorney: Webster & Webster

HOLLY L. SUNDIN, late of Bullsken Township, Fayette County, PA (1)
Administrator: Ronald M. Sundin
 136 White Bridge Road
 Mt. Pleasant, PA 15666
 c/o Pribanic & Pribanic, LLC
 1735 Lincoln Way
 White Oak, PA 15131
Attorney: Sherie P. Cannin

JOHN G. HALL, a/k/a JOHN GARY HALL, late of North Union Township, Fayette County, PA (1)
Executrix: Rachele F. Hall
 111 Runaround Road
 Dunbar, PA 15431
 c/o Dellarose Law Office, PLLC
 99 East Main Street, Suite 101
 Uniontown, PA 15401
Attorney: Melinda Deal Dellarose

LEGAL NOTICES

FICTITIOUS NAME REGISTRATION

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on September 18, 2020 for two men and a wheelbarrow at 301 Water Street Belle Vernon, PA 15012. The name and address of each individual interested in the business is James Lucy at 301 Water Street Belle Vernon, PA 15012. This was filed in accordance with 54 Pa.C.S. 311.

GEORGE NOVAK, a/k/a GEORGE NOVAK, JR., late of North Union Township, Fayette County, PA (1)
Executor: David P. Novak
 c/o Higinbotham Law Offices
 45 East Main Street, Suite 500
 Uniontown, PA 15401
Attorney: James Higinbotham

EMMALOU PLETCHER, late of Springfield Township, Fayette County, PA (1)
Executor: Roger Pletcher
 c/o 208 South Arch Street
 Connellsville, PA 15425
Attorney: Richard A. Husband

SHERIFF'S SALE

Date of Sale: January 21, 2021

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, January 21, 2021, at 2:00 p.m. in Courtroom Number Five at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (2 of 3)

James Custer
Sheriff Of Fayette County

No. 1568 of 2019 GD
No. 153 of 2020 ED

PNC Bank, National Association
Plaintiff,
vs.

Roger Albaugh, AKA Roger W. Albaugh;
Joanna Albaugh, AKA Joanna R. Albaugh
Defendants.

ALL that certain parcel of land lying and being situate in the Township of Washington, County of Fayette, and Commonwealth of Pennsylvania, known as 302 Center Street, Belle Vernon, PA 15012 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 41-05-0329

BEING the same premises which Joanna R. Cerini, an individual, married, by Deed dated January 7, 2012 and recorded in and for Fayette County, Pennsylvania in Deed Book 3174, Page 1956, granted and conveyed unto Roger W. Albaugh, married.

RAS Citron, LLC - Attorneys for Plaintiff
Robert Flacco, Esquire, ID. No. 325024
132 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
855-225-6906
rflacco@rasnj.com

No. 213 of 2018 GD
No. 186 of 2020 ED

HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR
FREMONT HOME LOAN TRUST 2006-C,
MORTGAGE- BACKED CERTIFICATES,
SERIES 2006-C
Plaintiff

v.

ALBERT CELLURALE;
KATHY CELLURALE
Defendant(s)

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN SOUTH UNION TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA:

BEING KNOWN AS: 112 DUALL DRIVE HOPWOOD (SOUTH UNION TOWNSHIP), PA 15445

BEING PARCEL NUMBER: 34-12-0091
IMPROVEMENTS: RESIDENTIAL PROPERTY

Andrew J. Marley, Esquire
Stern & Eisenberg, PC
1581 Main Street, Suite 200
The Shops at Valley Square
Warrington, PA 18976
Phone: (215) 572-8111

No. 796 of 2020 GD
No. 182 of 2020 ED

**HSBC Bank USA, N.A., as Indenture Trustee
for the registered Noteholders of Renaissance
Home Equity Loan Trust 2007-1**

**v.
Althea M. Cowan**

By virtue of Writ of Execution No 796 of 2020 GD/182 of 2020 ED, HSBC Bank USA, N.A., as Indenture Trustee for the registered Noteholders of Renaissance Home Equity Loan Trust 2007-1 v. Althea M. Cowan, 3121 Richey Road, Bullsken Township, Connellsville, PA 15425, Tax Parcel No. 04-25-010101. Improvements thereon consisting of a Residential Dwelling, sold to satisfy judgment in the amount of \$121,988.91.

Phelan Hallinan Diamond & Jones, LLP

No. 2401 of 2019 GD
No. 161 of 2020 ED

**PNC Bank, National Association
Plaintiff**

**v.
Matthew C. Craig
Defendant(s)**

By virtue of a Writ of Execution No. 2019-02401, PNC Bank, National Association v. Matthew C. Craig, owner(s) of property situate in the UPPER TYRONE TOWNSHIP, Fayette County, Pennsylvania, being 110 Penn Avenue, Connellsville, PA 15425-6021.

Parcel No.: 39-07-0131
Improvements thereon: RESIDENTIAL DWELLING

No. 1997 of 2019 GD
No. 157 of 2020 ED

**THE UNITED FEDERAL CREDIT UNION,
Plaintiff,
vs.
ELIZABETH H. CRUTCHMAN,
Defendant.**

ALL that certain tract situate in the City of Uniontown, Fayette County, Pennsylvania, described as Tax Parcel No. 38-01-0283 and more particularly described in deeds recorded in the Office of the Recorder of Deeds for Fayette County in Deed Book Volume 1163, page 159 and Record Book 3229, page 1722.

The street address of the property is 226 North Gallatin Avenue, Uniontown, Fayette County, Pennsylvania 15401.

Seized and taken in execution as the property of Elizabeth H. Crutchman, defendant, in the action filed by the United Federal Credit Union in the Court of Common Pleas of Fayette County, Pennsylvania at No. 1997 of 2019, G.D.

No. 2803 of 2020 GD
No. 160 of 2020 ED

**CORNING FEDERAL CREDIT UNION,
Plaintiff,
v.
CATARINA J. DELGIACCO,
Defendant.**

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF CATARINA J. DELGIACCO OF, IN AND TO:

ALL THE FOLLOWING DESCRIBED REAL ESTATE SITUATED IN THE BOROUGH OF BROWNSVILLE, COUNTY OF FAYETTE, COMMONWEALTH OF PENNSYLVANIA. HAVING ERECTED THEREON A DWELLING KNOWN AND NUMBERED AS 426 GREEN STREET, BROWNSVILLE, PA 15417. DEED BOOK VOLUME 2665, PAGE 160, PARCEL NUMBER 02-10-0233.

No. 2199 of 2019 GD
 No. 151 of 2020 ED

Caliber Home Loans, Inc.
Plaintiff,
 vs.

Ronald L. Haney, as Believed Heir and/or Administrator of the Estate of Lloyd Haney, Jr., AKA Lloyd Haney, AKA Lloyd W. Haney, Jr.; Lloyd W. Haney, III, as Believed Heir and/or Administrator of the Estate of Lloyd Haney, Jr., AKA Lloyd Haney, AKA Lloyd W. Haney, Jr.; Jennie R. Moran, as Believed Heir and/or Administrator of the Estate of Lloyd Haney, Jr., AKA Lloyd Haney, AKA Lloyd W. Haney, Jr.; Unknown Heirs and/or Administrators of the Estate of Lloyd Haney, Jr., AKA Lloyd Haney, AKA Lloyd W. Haney, Jr.
Defendants.

ALL that certain parcel of land lying and being situate in the City of Uniontown, County of Fayette, and Commonwealth of Pennsylvania, known as 64 Bailey Avenue, Uniontown, PA 15401 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 38040595

BEING the same premises which Betherin Mechling, unmarried, by Deed dated August 27, 2018 and recorded in and for Fayette County, Pennsylvania in Deed Book 3385, Page 510, granted and conveyed unto Lloyd Haney, no marital status shown.

Phelan Hallinan Diamond & Jones, LLP

No. 1942 of 2019 GD
 No. 149 of 2020 ED

PNC Bank, National Association,
Plaintiff
 v.
Jason L. Smith, II,
Defendant(s)

By virtue of a Writ of Execution No. 1942 OF 2019, PNC Bank, National Association v. Jason L. Smith, II, owner(s) of property situate in the CONNELLSVILLE TOWNSHIP, Fayette County, Pennsylvania, being 407 West Blake Avenue, Connellsville, PA 15425-1612.

Parcel No.: 06-03-0021

Improvements thereon: RESIDENTIAL DWELLING

KML LAW GROUP, P.C.
 Suite 5000
 701 Market Street
 Philadelphia, PA 19106-1532
 (215) 627-1322

No. 262 of 2020 GD
 No. 162 of 2020 ED

MTGLQ INVESTORS, L.P.
2001 Ross Avenue, Suite 2800
Dallas, TX 75201

Plaintiff
 vs.

DEBRAH A. SMODIC
Mortgagor(s) and Record Owner(s)
119 Cross view Acres
Mcclellandtown, PA 15458
Defendant(s)

ALL THAT CERTAIN LOT OF LAND SITUATE TN TOWNSHIP OF GERMAN, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 119 CROSSVIEW ACRES, MCCLELLANDTOWN, PA 15458 TAX PARCEL #15-36-43-15

IMPROVEMENTS: A RESIDENTIAL DWELLING

SOLD AS THE PROPERTY OF:
 DEBRAH A. SMODIC

BARLEY SNYDER
 Shawn M. Long, Esquire
 Court I.D. No. 83774
 126 E. King Street
 Lancaster, PA 17602
 717.299.5201

No. 529 of 2020 GD
 No. 159 of 2020 ED

MID PENN BANK, SUCCESSOR BY MERGER TO THE SCOTTDALE BANK & TRUST COMPANY,

Plaintiff
 v.

STRONGARM ENTERPRISES, LLC AND J. ERIC SHOTTS, individually,
Defendants

Mid Penn Bank, successor by merger to The Scottsdale Bank & Trust Company v. Strong Arm Enterprises, LLC and J. Eric Shotts, individually

No. 529 of 2020

Property Address: 203 Railroad Street, Borough of Dawson, Fayette County,

Pennsylvania 15428

Parcel ID Number: 07-03-0003

Judgment Amount: \$8,965.59

BEING the same premises which Mary E. Hodgkiss and Nicholas A. Hodgkiss by Deed dated October 20, 2009 and recorded November 3, 2009 in the Office of the Recorder of Deeds in and for Fayette County Pennsylvania in Record Book 3108, Page 1655, granted and conveyed unto Strong Arm Enterprises, LLC.

No. 1316 of 2020 GD

No. 155 of 2020 ED

**Nationstar Mortgage LLC d/b/a Mr. Cooper
PLAINTIFF
vs.**

**Michele Tardivo and Robert Tardivo
DEFENDANTS**

All that certain piece, parcel or lot of ground situate, lying and being in Luzerne Township, Fayette County, Pennsylvania, in the plan of lots of the Village of Isabella, as recorded in the Recorder's Office of said county, in Plan Book Volume 8 at Page 60, having erected thereon a two story frame double dwelling numbered 118-120, in said plan; said parcel or lot of ground being bounded and described as follows:

514 Second Street, Isabella, PA 15447

Tax ID; 19-33-0035

Leon P. Haller, Esquire
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17104
(717) 234-4178

No. 71 of 2020 GD

No. 86 of 2020 ED

**PENNSYLVANIA HOUSING FINANCE
AGENCY,
PLAINTIFF**

vs.

**EDWARD S. WAGNER,
DEFENDANT**

By virtue of a Writ of Execution No. 71 OF 2020 GD, PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs EDWARD S. WAGNER, Defendant(s)

Real Estate: 1501 SUN STREET,
CONNELLSVILLE, PA 15425

Municipality: TOWNSHIP OF

CONNELLSVILLE

Dimensions: 180 x 140 and being Lot Nos. 33, 34 and 35, Poplar Grove Plan of Lots, Plan Book 1, page 178

See Deed Book: 3124, page 843

Tax Parcel #: 06-03-0071

Improvement thereon: a residential dwelling house as identified above

TO BE SOLD AS THE PROPERTY OF EDWARD S. WAGNER UNDER FAYETTE COUNTY JUDGMENT NO. 71 OF 2020 GD.

KML LAW GROUP, P.C.

Suite 5000

701 Market Street

Philadelphia, PA 19106-1532

(215) 627-1322

No. 429 of 2020 GD

No. 163 of 2020 ED

LAKEVIEW LOAN SERVICING, LLC

5151 Corporate Drive

Troy, MI 48098

Plaintiff

vs.

ERIC R. WEAVER

Mortgagor(s) and Record Owner(s)

170 Horseshoe Bend Road

Acme, PA 15610

Defendant(s)

ALL THAT CERTAIN LOT OF LAND SITUATE IN TOWNSHIP OF BULLSKIN, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 170 HORSESHOE BEND ROAD, ACME, PA 15610

TAX PARCEL #04-14-0198

IMPROVEMENTS: A RESIDENTIAL DWELLING

SOLD AS THE PROPERTY OF: ERIC R. WEAVER

****End Sheriff's Sale****

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, December 7, 2020, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2617-0840	ROBERT B. GIGLIOTTI	Carmine V. Molinaro, Jr. and Lionel Giliotti, Executors
2619-0710	LEOLA F. BRODERICK	Robert J. Broderick, Executor
2619-0908	PAUL KRUMANACKER	Donald Lee Krumanacker, Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, December 21, 2020, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division (2 of 2)

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
	:	
v.	:	
	:	
KELI MARIE BRUMLEY,	:	No. 832 of 2017
Defendant.	:	Honorable President Judge John F. Wagner, Jr.

OPINION

Wagner, P.J.

October 6, 2020

Before the Court is the Appellant's Appeal of her Amended Petition for Post-Conviction Relief. After a hearing on the motion, the Court, on July 14, 2020, denied Appellant's issues related to the ineffectiveness of her counsel. On August 20, 2020, the Appellant filed an appeal of the order. Thereafter, the Court filed a Motion for a Concise Statement of Issues on Appeal and this opinion is in response to the concise issues raised.

CONCISE ISSUES

1. Did the Court abuse its discretion or err as a matter of law when it ignored and failed to address evidence of record that showed ineffective assistance of Appellant's Counsel that during the legal timeframe of 10 days after sentencing Appellant's Counsel failed to return Appellant's phone calls and failed to contact her in any way after being told by Appellant's family members that Appellant wanted to withdraw her plea and instead stand trial?
2. Did the Court abuse its discretion or err as a matter of law when it denied Appellant's request to vacate her nolo contendere guilty plea to third-degree murder and order a trial of the felony underlying the second degree homicide offense of which she was originally charged due to ineffective representation by Appellant's counsel?

BACKGROUND OF THE CASE

Appellant was charged with Criminal Homicide, Criminal Conspiracy to Commit Robbery, Recklessly Endangering Another Person, and Manufacture, Delivery, or Possession With Intent to Deliver; and Criminal Conspiracy. After an Omnibus Pretrial Motion, the Court dismissed one count of Criminal Conspiracy and the Manufacture, Delivery or Possession With Intent to Deliver charges. The remaining Criminal Conspiracy charge was amended to Conspiracy to Commit a Drug Delivery and the Crimi-

nal Homicide charge was amended to Third Degree Murder. A plea bargain was negotiated between the Appellee and the Appellant. Pursuant to the plea agreement, Appellant entered a nolo contendere plea to the Third Degree Murder, Recklessly Endangering Another Person and the amended Criminal Conspiracy charge and was sentenced at the Third Degree Murder charge to a term of incarceration of ten (10) to twenty (20) years. No appeal was filed in the case. A Petition for Post-Conviction Collateral Relief was filed, amended and a hearing was held on her claims of the ineffectiveness of her counsel. She alleged that her counsel failed to provide her with documentation that her counsel would testify against her, that he had failed to adequately advise her of the plea negotiations, failed to investigate whether her co-conspirator was going to testify against her; failed to inform her that she had a right to withdraw her plea and failed to advise her that she could appeal her sentence. After hearing, the Court issued an order denying the Appellant's PCRA motion.

FACTS OF CASE

On the evening February 26, 2017, Trisa Stickles sent a text to the Appellant requesting to purchase Xanax from the Appellant. After receiving the text, the Appellant told the others in her car that she was going to rob Stickles of her money. A meeting was set up and the Appellant parked near the scheduled location for the meeting. In the car with the Appellant was her boyfriend, Shawn Vaughn; his younger brother, Arsuan Patterson; and Arsuan's girlfriend; Autumn Saluga. Stickles drove her boyfriend, Mapstone, to the location and parked her car in the parking lot of a housing project in Uniontown. Appellant texted Stickles that she was counting the pills and to give Arsuan the money for the drugs. The Appellant directed Arsuan to go make the transaction. Arsuan went to the vehicle, sold Mapstone some "lean" but he did not have the requested Xanax pills. Mapstone would not turn over the money to Patterson for the pills until he received them. Patterson returned to Appellant's vehicle, she told him to go and take the money, she did not have any Xanax pills as she had informed Stickles. Patterson was provided his brother's gun and returned to Stickles vehicle. At Stickles' window, Patterson pulled out the gun and pointed it in the window demanding all their money. Mapstone told Stickles to go and the gun was fired into the vehicle. The bullet passed in front of Stickles and hit Mapstone. Stickles drove Mapstone to the hospital where he later died.

The Appellant made three contradictory statements to the police. Her co-conspirator, Patterson, entered into a plea agreement in exchange for his cooperation against the Appellant. As part of Appellant's plea agreement, she also entered into an agreement to testify against Patterson if it became necessary in exchange for a ten (10) to twenty (20) year sentence to third degree murder.

PROCEDURAL HISTORY

When initially charged, the Appellant was charged with Criminal Homicide, Criminal Conspiracy to Commit Robbery, Recklessly Endangering Another Person, Manufacture, Delivery or Intent to Deliver a Controlled Substance and Criminal Conspiracy. She retained private counsel, Jeremy Davis, Esquire, who represented her throughout the proceedings. At the time of the Omnibus Pretrial Motion, the Commonwealth indicated that they were proceeding on the Criminal Homicide charge as Felony Murder or

Second-Degree Murder and not Murder in the First Degree. The Omnibus Pretrial Motion was granted as to one count of Criminal Conspiracy and the Manufacture, Delivery, or Possession With Intent to Deliver a Controlled Substance. The motion was denied as to the other charges.

Appellant was originally offered a plea bargain for ten (10) to twenty (20) years incarceration and the Petitioner rejected the offer. Thereafter, the Commonwealth, having negotiated a plea agreement with the co-defendant, changed the plea offer to twenty (20) to forty (40) years. Appellant rejected that offer as well. Appellant asserts that she received correspondence from her co-defendant that he was not going to testify against her, which she turned over to her counsel. Counsel stated that he reviewed the co-defendant's statements when he entered his plea. Subsequently, her counsel sent her a copy of the final offer from the Commonwealth and it was for a term of incarceration of ten (10) to twenty (20) years to a charge Third Degree Murder, the Criminal Conspiracy charge was amended to Criminal Conspiracy to Deliver a Controlled Substance, and Recklessly Endangering Another Person. After discussions with her counsel, Appellant decided to take the plea offer. She completed a written colloquy and was thoroughly questioned by the court. No direct appeal was filed in this case. At the time of the PCRA hearing on her post-conviction issues, she and her counsel both agreed that they were not seeking an appeal nunc pro tunc.

DISCUSSION

1. Did the Court abuse its discretion or err as a matter of law when it ignored and failed - to address evidence of record that showed ineffective assistance of Appellant's Counsel that during the legal timeframe of IO days after sentencing Appellant's Counsel failed to return Appellant's phone calls and failed to contact her in any way after being told by Appellant's family members that Appellant wanted to withdraw her plea and instead stand trial?

Appellant's allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused her to enter an involuntary or unknowing plea. *Commonwealth v. Mendoza*, 739 A.2d 303 (Pa. Super. 1999). The law does not require that the petitioner be pleased with the outcome of her decision to enter a guilty plea, all that is required is that the decision to plead guilty was knowing, voluntarily and intelligently made. *Id.*

When a claim of ineffectiveness is made, the claim is evaluated according to the three-prong performance and prejudice test established by *Commonwealth v. Pierce*, 527 A.2d 397 (Pa. 1984). To establish ineffectiveness of counsel, the Appellant must prove (1) that the issue underlying the claim has arguable merit and (2) that defense counsel's acts or omissions were not reasonably designated to advance her interests. Prejudice, the third prong, must be met by demonstrating that there is a reasonable probability that, but for counsel's errors or omissions, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984). To be entitled to relief, the Appellant must meaningfully discuss each of the three prongs. *Commonwealth v. Fears*, 86 A.3d 795 (Pa. 2014). Counsel is presumed to be effective. Counsel is accorded broad discretion to determine tactics and strategy. *Commonwealth v. Thomas*, 744 A.2d 713 (Pa. 2000). It is the Appellant's burden to establish the ineffective as-

sistance of her counsel. *Commonwealth v. Speight*, 677 A.2d 317 (Pa. 1996).

The Court in its determination of the ineffectiveness of trial counsel, found trial counsel to be credible. Statements made by the Appellant during her testimony at the PCRA hearing were directly and clearly contradicted by the evidence of her testimony at the time of her plea and the colloquy that was signed and submitted to the Court.

In her Amended PCRA Motion, Appellant asserted that her counsel failed to respond to her requests post trial to call her to discuss withdrawing her sentence and/or to file an appeal in a timely manner. Counsel disputes this statement. He testified that he had no messages from her after the trial. She asserts that her counsel failed to return her calls and failed to return the telephone calls of her mother and grandmother. Appellant admitted that she did not send counsel any written correspondence informing him of her change of mind. The mother testified that she had left messages for counsel but she did not testify that any of those messages informed him that Appellant wanted to withdraw her plea or have an appeal filed.

Appellant's grandmother did testify she had left a message for Appellant's counsel after the trial and that counsel had returned her telephone message. However, she testified that she spoke to him about Appellant's desire to leave the local prison. There was no discussion with counsel that the Appellant wanted to withdraw her plea. (N.T. pp. 30-31, 34-35). Appellant's grandmother, Cathy Brumley, testified that Appellant had only told her that she wished to leave the Fayette County Prison but there was no testimony that Appellant had even informed her grandmother that she wished to withdraw her plea. Counsel for the Appellant testified that he did not receive any messages from the Appellant post trial. Nor did he receive any message from Appellant's mother. He did receive and returned the telephone call of Appellant's grandmother. He further testified that he was never informed that Appellant wanted to withdraw her plea or wanted an appeal.

Appellant testified that she did not send any correspondence to counsel When he failed to return her telephone calls. Nor did Appellant provide any evidence, such as her telephone records during her incarceration to substantiate her statements that she attempted to contact him. Counsel is presumed effective and this court has determined him to be credible.

Appellant has failed to establish that she made calls to her attorney's office and that any calls from her family would have addressed her claim that she wanted to withdraw her plea. She had failed to establish that any lack of communication post-trial resulted in ineffective representation by her counsel. As a result, Appellant has failed to establish that her counsel was ineffective in his representation of her. Appellant's initial concise issue is without merit and provide her no relief.

1. Did the Court abuse its discretion or err as a matter of law when it denied Appellant's request to vacate her nolo contendere guilty plea to third-degree murder and order a trial of the felony underlying the second-degree homicide offense of which she was originally charged due to ineffective representation by Appellant's counsel?

The Court did not abuse its discretion or err when it denied the Appellant's request

to vacate her nolo contendere guilty plea to third degree murder and order a trial of the felony underlying the second-degree homicide offense. The Court could not order a trial on the charge of the felony underlying the second-degree homicide offence. This issue was never argued to the Court and any separation of the charges resulting from the actions of the Appellant and her co-conspirator on that evening could not be separated without resulting in double jeopardy. All criminal charges arising from the same transaction or incident must be tried together. Commonwealth v. Swint, 350 A.2d 851 (Pa. 1976). Appellant's last concise issue is without merit.

For the above stated reasons, this Court's Order in this case should be affirmed.

BY THE COURT:
WAGNER, P.J.

ATTEST:
Clerk of Courts

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

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ANNUAL MEMBERSHIP MEETING

The Annual General Membership meeting of the Fayette County Bar Association shall be held on Wednesday, December 9, 2020, at 1:30 pm in the Fayette County Courthouse, 61 East Main Street, Uniontown, PA 15401. Members are invited to present topics of concern or interest to the Association.

LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, December 9th** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics: **A Primer on Personal Injury**
- Presenters: James T. Davis, Esquire
Honorable Senior Judge Gerald R. Solomon

CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2012

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

**** All fees to be paid at the door ****

A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcb.org on or before Monday, December 7th.



Please join your colleagues of the
Fayette County Bar Association
for a

Christmas PARTY

December 3 at 5:00pm

UNIONTOWN COUNTRY CLUB

RSVP by Friday, November 27th
724-437-7994 or cindy@fcb.org

In support of the holiday season, please bring new, unwrapped toys
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Monetary donations payable to "CYS Advisory Board."



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