



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

COMMONWEALTH OF

v.

GERALD A. SANDUSKY,

PETITIONER.

CP-14-CR-2421-2011

CP-14-CR-2422-2011

HONORABLE SENIOR JUDGE  
JOHN M. CLELAND

*TYPE OF PLEADING:*

ADDENDUM TO GRAND JURY  
LEAK CLAIM

*FILED ON BEHALF OF:*

PETITIONER, GERALD A. SANDUSKY

*COUNSEL FOR PETITIONER:*

ALEXANDER H. LINDSAY, JR. ESQUIRE  
Pa. Supreme Court Id. No. 15088

J. ANDREW SALEMME, ESQUIRE  
Pa. Supreme Court Id. No. 208257

THE LINDSAY LAW FIRM  
110 EAST DIAMOND STREET, STE. 300  
BUTLER, PENNSYLVANIA 16001

PHONE 724.282.6600

FAX: 724.282.2672

Email: al.lindsay186@gmail.com

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CENTRE COUNTY, PA

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COMMONWEALTH OF PENNSYLVANIA	:	CP-14-CR-2421-2011
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	:	
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ADDENDUM TO GRAND JURY LEAK CLAIM

AND NOW COMES, Petitioner, Gerald A. Sandusky, by and through his counsel, Alexander H. Lindsay, Jr., Esq., and J. Andrew Salemme, Esq., and the Lindsay Law Firm, P.C., and files this Addendum to his Grand Jury Leak Claim and avers the following.

On June 15, 2016, the PCRA Court granted an evidentiary hearing as to certain claims raised by Mr. Sandusky in his PCRA petitions. One of the claims related to trial counsel's ineffectiveness for not moving to quash the presentments based on the grand jury process being tainted by governmental misconduct via the unlawful leak of grand jury information. In Mr. Sandusky's May 6, 2015 and March 7, 2016 petitions, he included information in the factual recitation of his petitions concerning the Office of Attorney General's placing the grand jury presentment online, despite at that time it still being under seal, and that presentment containing factually inaccurate and prejudicial information regarding Mr. McQueary's grand jury testimony. Specifically, on page 19 of the May 2015 petition, in paragraphs 88 and 89, Mr. Sandusky averred that the presentment was posted on a website by mistake and that Sara Ganim discovered the mistaken posting. This same information was included on page 76 of the most recent amended

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petition.<sup>1</sup>

However, these facts were not expressly included in the discussion of Mr. Sandusky's ineffectiveness claim regarding prosecutorial and/or governmental misconduct pertaining to the leak of grand jury information. Accordingly, Mr. Sandusky files this addendum in order to be able to present evidence of the unlawful leak of the grand jury presentment and its inclusion of factual erroneous information itself at the evidentiary hearing.

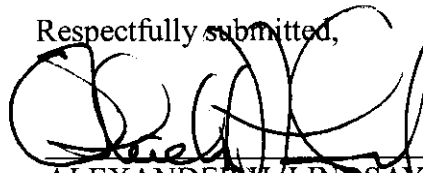
Preliminarily, no witness could have leaked the presentment by placing it online. Only a member of the Office of Attorney General could have caused the presentment to be made available online when it was still supposed to be under seal. Thus, the Commonwealth's argument, as it pertains to the other aspect of Mr. Sandusky's claim, does not apply to the leak of the actual presentment itself. Trial counsel were or should have been aware that the presentment was unlawfully leaked by being placed online and that Sara Ganim discovered the mistaken posting. The presentment contained factually inaccurate information to the extent that it provided that Mr. McQueary actually observed a victim being subjected to anal intercourse. Mr. McQueary, who had not actually testified before the grand jury that issued the presentment, his prior testimony having been read, did not testify in that manner. Thus, the Commonwealth was well aware that the presentment was inaccurate when it was submitted for approval.

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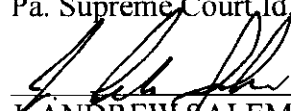
<sup>1</sup> Petitioner is not raising a new or different claim. Nonetheless, to the extent that the PCRA Court would consider this an amendment of the petition, Pa.R.Crim.P. 905 permits the amendment of a petition at any time and provides that amendment should be freely allowed to achieve substantial justice. In *Commonwealth v. Brown*, 2016 PA Super 73, the Superior Court distinguished two Supreme Court cases that addressed the raising of entirely new claims in unauthorized supplements, stating that in those cases, "the issue was the addition of supplemental claims. In this case, there were no claims added by Appellant's supplement. Instead, Appellant only sought to supplement the record for claims that had been properly pled in the amended PCRA petition." *Brown, supra* at \*13 n.12. Herein, Mr. Sandusky is not presenting a new claim, but presenting additional facts and argument in support of a claim that was pled with facts that were also previously pled.

The unlawful release of the presentment, with factually incorrect information, created a media firestorm surrounding Mr. Sandusky, resulting in highly prejudicial and inaccurate information being dispersed. Further, that Ms. Ganim was immediately aware of the information being placed online, suggests that one of her sources for prior stories related to the allegations, notified her of the pending presentment being released and therefore was a person within the OAG. Trial counsel could have no reasonable basis for not moving, at least, to quash the charges based on the allegations of S.P. and R.R., which only came after the initial grand jury presentment had been improperly released by the prosecution. This is because the premature release of such information constitutes prosecutorial misconduct and created the narrative that Mr. Sandusky raped a child in a public shower. The McQueary episode was used by other accusers to make additional allegations not previously made. Had the presentment not been improperly made available, it is possible that the OAG could have corrected the mistaken averments related to what Mr. McQueary did and did not observe.

Respectfully submitted,



ALEXANDER V. LINDSAY, JR. ESQ.  
Pa. Supreme Court Id. No. 15088



J. ANDREW SALEMME, ESQ.  
Pa. Supreme Court Id. No. 208257

THE LINDSAY LAW FIRM  
110 East Diamond Street, Suite 301  
Butler, Pennsylvania 16001  
Phone: 724.282.6600  
Fax: 724.282.2672  
*Attorneys For Gerald A. Sandusky*

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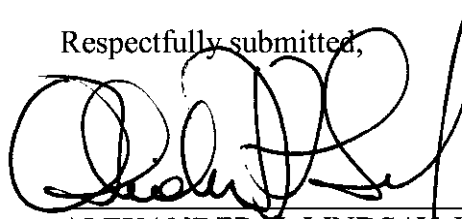
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12<sup>th</sup> day of July, 2016 he caused an exact copy of the foregoing document to be served in the manner specified, upon the following:

Via First Class Mail

Assistant Attorney General Jennifer Peterson  
Office of the Attorney General – Criminal Prosecutions Section  
16<sup>th</sup> Floor Strawberry Square  
Harrisburg, PA 17120

Respectfully submitted,



ALEXANDER H. LINDSAY, JR., ESQ.  
Pa. Supreme Court Id. No. 15088  
110 East Diamond Street, Suite 301  
Butler, Pennsylvania 16001  
Phone: 724.282.6600  
Fax: 724.282.2672  
*Attorney For Gerald A. Sandusky*