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CCCPRO 201612

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA

COMMONWEALTH OF

v.

GERALD A. SANDUSKY,

PETITIONER.

CP-14-CR-2421-2011

CP-14-CR-2422-2011

2017 APR 10 PM 1:21

FILED FOR RECORD

TYPE OF PLEADING:

MOTION TO RECONSIDER
GRAND JURY LEAK ISSUE

FILED ON BEHALF OF:

PETITIONER, GERALD A. SANDUSKY

COUNSEL FOR PETITIONER:

ALEXANDER H. LINDSAY, ESQUIRE
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IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

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v.

GERALD A. SANDUSKY,

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HONORABLE JUDGE
JOHN FORADORA

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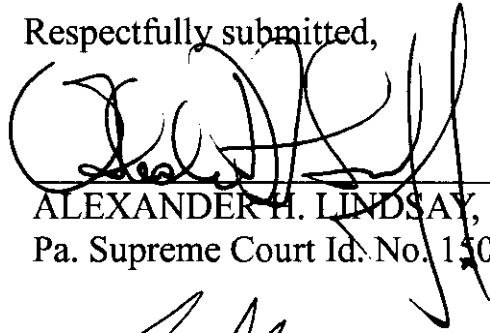
AND NOW COMES, Petitioner, Gerald A. Sandusky, by and through his counsel, Alexander H. Lindsay, Jr., Esq., and J. Andrew Salemme, Esq., and the Lindsay Law Firm, P.C., and files this Motion to Reconsider Grand Jury Leak Issue and avers the following:

1. On August 23, 2016, the Honorable Senior Judge John M. Cleland entered an Order directing the parties to brief issues concerning whether quashal of a grand jury presentment and charges based on the recommendation of such a presentment is an appropriate remedy for governmental misconduct during the grand jury process as well as to brief an issue relative to Petitioner's request for *in camera* review of therapy notes.
2. On September 1, 2016, Mr. Sandusky provided a brief articulating his position with respect to whether quashal could be an appropriate remedy.
3. The Commonwealth subsequently filed its responsive brief on September 13, 2016.
4. Thereafter, on October 17, 2016, Judge Cleland issued an Order denying Mr. Sandusky's grand jury leak claim and indicated that he would provide an opinion in support thereof at a later date.

5. Prior to his issuance of an opinion on that issue, Judge Cleland recused himself from this matter.
6. On March 21, 2017, Michael McQueary testified at the criminal trial of Dr. Graham Spanier.
7. During his testimony, Mr. McQueary testified that while at the Philadelphia airport, “The AGs called and said we are going to arrest folks and we are going to leak it out[.]” N.T. Graham Spanier Trial, 3/21/17, at 24.
8. This testimony related to the grand jury presentment being leaked prior to Mr. Sandusky’s arrest.
9. This new evidence warrants reconsideration of the grand jury leak issue and reopening of the record.
10. In addition to the leak of the presentment itself, Mr. Sandusky renews his request to call Sara Ganim and would ask that the Court reject any claim of privilege and permit counsel to inquire with Ms. Ganim as to whether any members of law enforcement and/or the prosecution team provided her with grand jury information based on the previously filed brief and in light of testimony adduced at prior PCRA hearings.¹

¹ The prior PCRA court indicated that it would consider rejecting any claim of reporter privilege if counsel could establish that quashal of charges was an appropriate remedy for violations of grand jury secrecy. It did not directly rule that quashal could not be a remedy, but *sub silentio* so ruled since it rejected Mr. Sandusky’s grand jury leaks claim without permitting him to present Ms. Ganim. Also, the prior PCRA court did not rule on the admissibility of retired Judge Barry Feudale’s former testimony or on whether Mr. Feudale would be permitted to testify with respect to the grand jury leak issue. In this respect, Petitioner renews his request that Judge Feudale’s prior testimony, before Grand Jury Judge Norman Krumenacker, to be admitted under seal and considered by this Honorable Court in examining the grand jury leak issue. In full disclosure, Judge Krumenacker did rule that former Judge Feudale could not be called as a witness in this PCRA matter, though no motion was filed before him, but argument on the issue was presented by the undersigned and Attorney Sam Stretton before Judge Krumenacker. A discretionary Petition for Review of that decision was denied by the Supreme Court, which declined to accept review and consider the merits of Petitioner’s arguments, which related to the non-waivable issue of jurisdiction.

Respectfully submitted,



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CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-14-CR-2421-2011
	:	CP-14-CR-2422-2011
	:	
v.	:	
	:	
GERALD A. SANDUSKY,	:	
	:	HONORABLE JUDGE
PETITIONER.	:	JOHN H. FORADORA, P.J.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of April, 2017 he caused an exact copy of the foregoing document to be served in the manner specified, upon the following:

Via Hand-delivery:

The Honorable John H. Foradora, P.J.
Jefferson County Courthouse
200 Main Street
Brookville, PA 15825

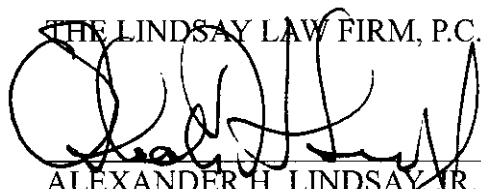
Via U.S. Mail:

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Respectfully submitted,

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