



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA

ANTHONY SPINELLI, JR.,
Appellant

v.

KATHLEEN G. KANE, ATTORNEY
GENERAL, COMMONWEALTH OF
PENNSYLVANIA, LAWRENCE M. CHERBA
EXECUTIVE DEPUTY ATTORNEY GENERAL,
COMMONWEALTH OF PENNSYLVANIA,
LAURA A. DITKA, CHIEF DEPUTY ATTORNEY:
GENERAL, COMMONWEALTH OF
PENNSYLVANIA,
Respondents

NO. CP-14-MD-1010-15

2015 JUL -3 11:10:22

Counsel of Record:

Steven P. Passarello, Esq.
616 Hileman Street
Altoona, PA 16602
(814) 944-9800
ID No. 63233

Daniel J. Kiss, Esq.
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ID No. 205920

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

ANTHONY SPINELLI, JR., :
Appellant :

v. :

NO. CP-14-MD-1010-15

KATHLEEN G. KANE, ATTORNEY :
GENERAL, COMMONWEALTH OF :
PENNSYLVANIA, LAWRENCE M. CHERBA :
EXECUTIVE DEPUTY ATTORNEY GENERAL, :
COMMONWEALTH OF PENNSYLVANIA, :
LAURA A. DITKA, CHIEF DEPUTY ATTORNEY: :
GENERAL, COMMONWEALTH OF :
PENNSYLVANIA, :
Respondents :

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APPEAL OF DENIAL OF PRIVATE
CRIMINAL COMPLAINT

AND NOW, comes ANTHONY SPINELLI, JR., by and through his counsel, the Law Office of Steven P. Passarello, Esq., P.C., who files this Appeal of Denial of Private Criminal Complaint, the following of which is a more specific statement thereof:

1. The Petitioner is ANTHONY SPINELLI, JR., an adult individual represented by the Law Office of Steven P. Passarello, Esq., P.C. and hereafter referred to as the "Victim".
2. The Respondent is GERALD A. SANDUSKY, an adult individual currently housed in the State Correctional Facility at Greene, who was formerly employed by the Pennsylvania State University as a football coach and professor.

3. That the Victim in this matter first reported an incident to authorities on or about December 6, 2011.
4. The Victim was interviewed and found credible by members of the Pennsylvania State Police, who referred the matter to then Attorney General Linda L. Kelly on December 9, 2011. No further action was taken on said matter.
5. A Private Criminal Complaint, attached hereto as "Exhibit A", was filed by first class mail on October 6, 2014 on Stacy Parks Miller, District Attorney for Centre County, Pennsylvania and Kathleen G. Kane, Attorney General for the Commonwealth of Pennsylvania.
6. While no formal notice of recusal was sent to the Victim or the undersigned by District Attorney Parks Miller, the Office of the Attorney General assumed jurisdiction over the matter.
7. On April 17, 2015 Senior Deputy Attorney General Laura Ditka and Agent Anthony Sassano met with undersigned counsel, the Victim and members of his family. At the conclusion of the meeting, it was stated to the Victim that he was 100% credible and it would be the recommendation to Attorney General Kane to approve the Private Criminal Complaint.
8. On May 20, 2015 the Victim and the undersigned were informed by written letter that the Attorney General had not approved the Private Criminal Complaint solely over concerns of the applicability of the pertinent Statute of Limitations and not quality, quantity or credibility of the evidence. By way of further averment, the letter states:

"We reviewed all the facts of your allegations and found you to be compelling." Said denial letter is attached hereto as "Exhibit B".

9. That **42 Pa.C.S.A.5552** details the applicable Statute of Limitations that governs the offenses at issue.
10. The Statute of Limitations at the time of the offense was five (5) years from the date of the offense. See: **Act 199 of 1984**.
11. That **Act 208 of 1990** extended the Statute of Limitations in two manners. First, it tolled the Statute of Limitations to cease running on sexual crimes committed against minors until the child turned eighteen (18) years of age. Second, the public employee section was added, which states:

“Any offense committed by a public officer or employee in the course of or in connection with his office or employment at any time when the defendant is in public office or employment or within five years thereafter, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than eight years.”
12. That **Act 86 of 2002** extended the Statute of Limitations to twelve (12) years from the date of a minor child turning eighteen (18) years of age for sexual crimes committed against minors.
13. That **Act 179 of 2006**, the current version of the applicable statute of limitations, extended the applicable time limit as follows, “any sexual offense committed against a minor who is less than eighteen (18) years of age any time up to the later of the period of limitation provided by law after the minor has reached 18 years of age or the date the minor reaches fifty (50) years of age.
14. The Pennsylvania Legislature has addressed the issues of the applicability of a modified or extended statute of limitations:

“Whenever a limitation or period of time, prescribed in any statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before a statute repealing such statute takes effect, and the same or any other limitation is prescribed in any other statute passed by the same General Assembly, the time which has already run shall be deemed part of the time prescribed as such limitation in such statute passed by the same General Assembly” 1 Pa.C.S.A. 1975.

15. It is well settled law that when the Statute of Limitations is modified by legislation it will not resurrect an expired claim, but any case still within an applicable statute of limitations will be subject to the modification. See: **Commonwealth v. Harvey, 542 A.2d 1027 (Pa.Super.1988):**

“[W]hen a new period of limitations is enacted, and the prior period of limitations has not yet expired, in the absence of language in the statute to the contrary, the period of time accruing under the prior statute of limitations shall be applied to calculation of the new period of limitations.”

See Also: **Commonwealth v. Riding, 68 A.3d 990 (Pa.Super.1990); Commonwealth v. Johnson, 553 A.2d 897 (Pa.1989); Commonwealth v. Duffy, 96 Pa. 506 (Pa.1880).**

16. The Victim’s date of birth is December 26, 1971, causing the Victim to turn eighteen (18) on December 26, 1989.
17. The Statute of Limitations from **Act 208 of 1990** would have expired on December 26, 1994 but for the public employment clause added in that same Act.

18. That GERALD A. SANDUSKY retired from his duties as an assistant coach for the Pennsylvania State University Football Program in 1999; however, he remained employed by the University as a professor emeritus and further had his own office on campus with nearly unlimited access to campus facilities.
19. On November 5, 2011, GERALD A. SANDUSKY was arrested and charged with other criminal conduct.
20. On November 6, 2011 the Pennsylvania State University banned GERALD A. SANDUSKY from campus.
21. The public employment exception permits tolling of the Statute of Limitations by at the minimum five (5) years after employment ceased to a maximum of eight (8) years after the applicable Statute of Limitations has expired.
22. Contrary to the reasoning of the Attorney General, no double counting is necessary. The Statute of Limitations is tolled by the public employment exception until no less than five (5) years after public employment and no more than eight (8) years beyond the applicable Statute of Limitations.
23. That **Act 86 of 2002** extended the Statute of Limitations until December 26, 2001. This extension is warranted since the public employment exception tolled the Statute of Limitations from beginning to run until 1999 at the earliest.
24. Eight (8) years after the expiration of the applicable Statute of Limitations results in the statute of limitations expiring on December 26, 2009 as a result of the extension provided to the Victim in **Act 86 of 2002**. By way of further averment, the clock on the eight year expiration would reset upon the passage of **Act 86 of 2009** due to the Victim still being within the applicable public employment tolling exception and the applicable Statute of Limitations being

extended until December 26, 2001 due to **Act 86 of 2002**. To the extent that there should not be double counting on the Statute of Limitations, the Victim would concur that the years 1999 and 2000 would count against the December 26, 2009 date, bringing the applicable date to December 26, 2007.

25. That **Act 179 of 2006** then becomes applicable to the matter as a result of the Statute of Limitations being extended to December 26, 2009 (or December 26, 2007 depending on the arithmetic), which further extended the Statute of Limitations expiration date until December 26, 2021 and causing this matter to not be in violation of the applicable Statute of Limitations and thus ripe for prosecution.

26. Using November 5, 2011 as the date GERALD A. SANDUSKY'S public employment ended, the applicable Statute of Limitations due to the public employment exception would not expire until November 5, 2016, although the Statute of Limitations would continue to not expire until December 26, 2021 due to **Act 179 of 2006**.

27. The Victim has provided ample authority and evidence on two separate grounds showing that the applicable statute of limitations has not expired in this matter.

28. Since no other objection to prosecution has been raised by Attorney General Kathleen G. Kane, there exists no further reason to disapprove the Private Criminal Complaint.

WHEREFORE, it is respectfully requested that this Honorable Court, as a matter of justice, issue an Order, directing and decreeing that the Office of the Attorney General, by and through Attorney General Kathleen G. Kane, shall reinstate the charges as levied in the attached private criminal complaint and transmit the private criminal

complaint to the issuing authority as required in Rule 506 of the Pennsylvania Rules of Criminal Procedure thus commencing prosecution of this matter.

RESPECTFULLY SUBMITTED:

The Law Offices of Steven P. Passarello, Esq., P.C.

By:



Steven P. Passarello, Esquire
616 Hileman Street
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PA I.D. #63233

By:



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PA I.D. #205920

COUNTY OF: CENTRE



CRIMINAL COMPLAINT

Magisterial District Number:
49-2-01

MDJ Name: Hon.
Leslie A. Dutchcot

Address: 1524 West College Avenue
State College, PA 16801

Telephone: (814)237-4981

COMMONWEALTH OF PENNSYLVANIA
VS.

DEFENDANT:

NAME and ADDRESS

Gerald A. Sandusky

SCI Green
175 Progress Drive
Waynesburg, PA 15370

Docket No.:

Date Filed:

OTN:

(Above to be completed by court personnel)

(Fill in defendant's name and address)

Notice: Under Pa.R.Crim.P. 506, your complaint may require approval by the attorney for the Commonwealth before it can be accepted by the magisterial district court. If the attorney for the Commonwealth disapproves your complaint, you may petition the court of common pleas for review of the decision of the attorney for the Commonwealth.

Fill in as much information as you have.

Defendant's Race/Ethnicity <input checked="" type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Hispanic <input type="checkbox"/> Unknown	Defendant's Sex <input type="checkbox"/> Female <input checked="" type="checkbox"/> Male	Defendant's D.O.B. 1/26/44	Defendant's SID (State Identification Number)
Defendant's A.K.A. (also known as) N/A	Defendant's Vehicle Information Plate Number State Registration Sticker (MM/YY)		Defendant's Driver's License Number State

I, Anthony Spinelli, Jr.

(Name of Complainant-Please Print or Type)

do hereby state: (check appropriate box)

- I accuse the above named defendant who lives at the address set forth above
 I accuse the defendant whose name is unknown to me but who is described as _____
 I accuse the defendant whose name and popular designation or nickname is unknown to me and whom I have therefore designated as John Doe

with violating the penal laws of the Commonwealth of Pennsylvania at University Park, Pennsylvania
(Place-Political Subdivision)

in Centre County County on or about June 1988

Participants were: (if there were participants, place their names here, repeating the name of the above defendant)

Gerald A. Sandusky

Defendant's Name:
Docket Number:



PRIVATE CRIMINAL COMPLAINT

2. The acts committed by the accused were:
(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. A citation to the statute allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section and subsection of the statute or ordinance allegedly violated. The age of the victim at the time of the offense may be included, if known. In addition, social security numbers and financial information (e.g. PINS) should not be listed. If the identity of an account number must be established, list only the last four digits. 204 Pa.Code §§ 213.1 - 213.7.)

18 Pa.C.S.A. 3123 (A) Involuntary Deviate Sexual Intercourse (Felony 1) – 2 counts. A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant by forcible compulsion. To Wit: The Defendant did engage in oral sex with the Victim on two occasions utilizing superior physical, intellectual, moral, emotional, or psychological force, either expressed or implied.

18 Pa.C.S.A. 3124.1 Sexual Assault (Felony 2) –2 counts. Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent. To Wit: The Defendant did engage in oral sex with the Victim on two occasions without consent.

18 Pa.C.S.A. 3126 (A) (2) Indecent Assault (Misdemeanor 1) – 3 counts. A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and the person does so by forcible compulsion. To Wit: The Defendant did engage in oral sex with the Victim on two occasions and did penetrate the anus of the Victim on one occasion utilizing superior physical, intellectual, moral, emotional, or psychological force, either expressed or implied.

18 Pa.C.S.A. 3126 (A) (1) Indecent Assault (Misdemeanor 2) – 3 counts. A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and the person does so without the complainant's consent. To Wit: The Defendant did engage in oral sex with the Victim on two occasions and did penetrate the anus of the victim with his finger on one occasion all without the Victim's consent.

18 Pa.C.S.A. 6301 (A) (1) (ii) Corruption of Minors (Felony 3) – 1 count. Whoever, being of the age of 18 years and upwards, by any course of conduct in violation of Chapter 31 (relating to sexual offenses) corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of an offense under Chapter 31 commits a felony of the third degree. To Wit: The Defendant did engage in a course of conduct by engaging in oral sex with the Victim on two occasions.

On or about the listed dates and times, the victim Anthony Spinelli Jr. was invited by the Pennsylvania State University Football Program to attend a week long summer football camp sponsored by the University and with instruction by the coaching staff of the football program. The victim was a sophomore at Leominster High School in Leominster, Massachusetts. His date of birth is 12/26/1971 making him 16 at the time of the sexual assault. The Victim was housed in an University dormitory, ate meals in an University Cafeteria, and had access to other University Facilities.

Upon arrival, the victim was introduced to the coaching staff, including the named Defendant Gerald A. Sandusky. The Defendant introduced himself to the Victim and despite being a large and somewhat physically intimidating man, the Defendant acted in a friendly, interested, and supportive manner towards the Victim.

After a morning football practice several days into the camp, the Victim needed to wrap his throwing shoulder in ice between the morning and afternoon practices. The Defendant assisted in wrapping the Victim's shoulder. The Defendant then told the Victim that the Defendant had souvenirs in his office to give to the Victim. The Victim accompanied the Defendant to his office, which was in a large building on University Property but isolated from the football camp program, activities, participants, and coaching staff who were

administering the camp. Upon arrival in the Defendant's Office, the Defendant complimented the Victim on his good football arm and the potential he had for the Penn State Football Program. The Victim indicated to the Defendant that he had suffered a mild groin injury earlier that day in practice and asked the Defendant what he should do about it. The Defendant stated the Victim would need exercise and the Defendant would put a cream called Atomic Balm on the injured area. The Victim was wearing an athletic strap, spandex compression shorts, and his practice pants. The Victim first was told by the Defendant to remove his practice pants. The Defendant then began to massage the upper inner thigh of the Victim. The Defendant then told the Victim to remove his spandex compression shorts so that the Atomic Balm could be applied. The victim did so and the Defendant massaged the Victim's groin area. This caused the Victim's penis to become visibly erect which caused the Victim great embarrassment. The Defendant assured the Victim this was normal and not to be embarrassed. The Defendant then moved the athletic strap to the side and placed the Victim's penis into his mouth. The Defendant performed oral sex upon the Victim until ejaculation. The Victim was confused and bewildered during this act and at no time consented to the act. Due to the Defendant's physical size and stature as well as his role as instructing coach of the camp, the Victim felt unable to stop the act or to stop the Defendant. After ejaculation, the Defendant then advised the Victim that this was something that should stay between the two of them.

The following morning, the Defendant approached the Victim after practice and asked the Victim to come back to the Defendant's office to retrieve the souvenirs that the Defendant had promised the Victim the day before. While in the Defendant's office, the Victim indicated to the Defendant that the Victim had put Atomic Balm on his groin area before that morning's practice but had used too much and an uncomfortable burning sensation resulted. The Defendant told the Victim the best way to remove the cream was to shower and advised the Victim that he should proceed to the locker room and shower located within the building that contained his office. The Victim went to the shower and upon seeing the Defendant leave, removed his clothes and began showering. The Defendant returned and entered the shower after removing his clothes. The Defendant then approached the Victim and began to wash the Victim's genitals with soap. The Defendant then manually masturbated the Victim until the Victim became erect. Kneeling down upon one knee the Defendant then began to perform oral sex upon the Victim by placing the Victim's erect penis into his mouth. While this was occurring, the Defendant put his arm around the Victim and inserted a finger into the Victim's anus. The Victim then ejaculated. Again the Victim felt confused and bewildered during the act. The Victim did not give consent but was unable to stop the Defendant due to his physical size and stature as coach. After the Victim ejaculated the Defendant told the Victim that it was all ok and as long as the Victim did not tell anyone no one would know. The Defendant then told the Victim to take care and left the shower.

The Victim left the football camp the following day and has had no contact with the Defendant since. The Victim did not come forward with the abuse suffered at the hands of the Defendant until December 6, 2011. He reached out to the Pennsylvania State Police, requesting an investigation into his case. Two Pennsylvania State Police Troopers interviewed the Victim in Massachusetts and found the Victim to be credible. On December 9, 2011 the matter was also referred to then Pennsylvania Attorney General Linda L. Kelly. To this date, no action has been taken on this case or further contact with the Victim made, despite the Victim reaching out to Pennsylvania Law Enforcement multiple times.

All of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act of Assembly, or in violation of _____ and _____ of the _____

- 3. I ask that process be issued and that the defendant be required to answer the charges I have made.
- 4. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.

10-2-2014 Date
Anthony Spivelli Signature of Complainant

Office of the Attorney for the Commonwealth Approved Disapproved because: _____
(Name of Attorney for Commonwealth-Please Print or Type) (Signature of Attorney for Commonwealth) (Date)

AND NOW, on this date _____ I certify that the complaint has been properly completed and verified.

_____ (Magisterial District) _____ (Issuing Authority)
AOPC 411B-10 Page 3 of 3

SEAL



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA 17120

16TH FLOOR
STRAWBERRY SQUARE
HARRISBURG, PA 17120
(717) 787-3391

KATHLEEN G. KANE
ATTORNEY GENERAL

May 20, 2015

Anthony Spinelli
c/o Steven P. Passarello, Esquire
Daniel J. Kiss, Esquire
616 Hileman Street
Altoona, PA 16602

Re: Private Criminal Complaint Regarding Gerald Sandusky

Dear Mr. Spinelli:

The Office of Attorney General is in receipt of your Private Criminal Complaint filed October 2, 2014. Your complaint went to the Centre County District Attorney's Office on October 8, 2014 and was forwarded to the Office of Attorney General on October 10, 2014. Pursuant to that complaint Agent Sassano and I met with you on April 17, 2015. It is our understanding that you had sent a letter to the State Police in 2011 and the belief was the statute of limitations had expired. We reviewed all the facts of your allegations and found you to be compelling. However, a further review of the statute of limitations brings us to the same conclusion that the case is time barred. Let me run through the reasoning.

Your date of birth is December 26, 1971.

You were assaulted on an unknown date in June of 1988. For our calculations we will use the final day of June – June 30, 1988.

On June 30, 1988 the statute of limitations was 5 years after the commission of the offense. This makes the statute run On June 30, 1993.

Before the statute expired in June of 1993, the statute of limitations was amended to be 5 years beyond the victim's 18th birthday. (This changed in February of 1991.) Because the earlier statute had not expired, you are entitled to the new statute which would take you to Dec 26, 1994. The statute would then run, but, it could be argued that Sandusky was a public officer or employee and that would extend the statute 8 years or until December 26, 2002.

Anthony Spinelli
May 20, 2015
Page Two

On December 22, 2002, four days before the statute would run, the statute was again extended to 12 years beyond a victim's 18th birthday (the age of 30). Again, because the statute had not expired we would get that new statute. Anthony, you turned 30 on December 26, 2001. That means we are out of time.

To get you to the January 4, 2006 extension of the statute of limitations we would *again* have to apply the public employee exception. The problem with that is that the statute, 42 Pa. C.S.A. §5552(c)(2), clearly states, and I quote, "Any offense committed by a public officer or employee in the course of or in connection with his office or employment or within five years thereafter, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than eight years."

The exception would have to be applied twice to get you to age 50. That type of stacking appears to be prohibited by the statute as written.

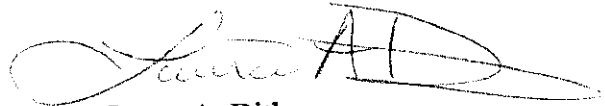
The statute of limitations has run. I understand that this has been a very hard and taxing process for you. I forwarded you the contact for the Boston Area Rape Crisis Center (BARCC) and hope those services give you some peace. The Office of Attorney General is bound by the statutes of the Commonwealth and as such can't move forward on your case. Sadly, it was run when you finally disclosed your abuse in December 2011.

Best of luck to you and your family as you move forward.

Very truly yours,



Lawrence M. Cherba
Executive Deputy Attorney General
Director, Criminal Law Division



Laura A. Ditka
Chief Deputy Attorney General
Criminal Prosecutions Section

CERTIFICATE OF SERVICE

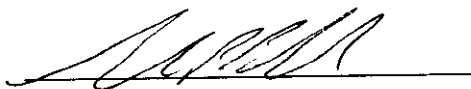
I, **STEVEN P. PASSARELLO, ESQUIRE**, and I, **DANIEL J. KISS, ESQUIRE** hereby certify that a true and correct copy of the foregoing document was served on the following individuals by first class mail on the date listed below:

KATHLEEN G. KANE, ESQUIRE
ATTORNEY GENERAL OF PENNSYLVANIA
OFFICE OF THE ATTORNEY GENERAL
16th Floor, Strawberry Square
Harrisburg, PA 17120

LAWRENCE M. CHERBA, ESQUIRE
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16th Floor, Strawberry Square
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LAURA A. DITKA, ESQUIRE
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By:



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By:



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(814) 944-8075 (fax)
PA I.D. #205920

DATE: 6/3/15

VERIFICATION

I, **ANTHONY SPINELLI**, verify that the statements made in this foregoing Petition are true and correct to the best of my knowledge. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

6-03-2015
DATE

Anthony Spinelli
ANTHONY SPINELLI