

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

ANTHONY SPINELLI, JR.,
Appellant,

v.

No. CP-14-MD-1010-2015

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.



OPINION AND ORDER

Kistler, J.

Presently before the Court is the Appeal of Denial of Private Criminal Complaint filed by Anthony Spinelli, Jr., Appellant, on June 3, 2015. A hearing on the Appeal was held on October 22, 2015. For the following reasons, the decision of the Office of Attorney General is OVERRULED.

BACKGROUND

On October 6, 2015, Appellant filed a Private Criminal Complaint by first class mail on Stacy Parks Miller, District Attorney for Centre County, Pennsylvania, and Kathleen G. Kane, Attorney General for the Commonwealth of Pennsylvania. Although Ms. Parks Miller gave no formal notice of recusal, the Office of Attorney General assumed jurisdiction over the matter. Appellant asserts he is the victim of criminal offenses committed by Gerald A. Sandusky. Specifically, Appellant alleges Sandusky committed the following crimes: Involuntary Deviate

Sexual Intercourse (18 Pa.C.S.A. § 3123(a)), Sexual Assault (18 Pa.C.S.A. § 3124.1), Indecent Assault (18 Pa.C.S.A. § 3126(a)(1)-(2)), and Corruption of Minors (18 Pa.C.S.A. § 6301(a)(1)(ii)). After the denial of his Private Criminal Complaint by the Office of Attorney General, Appellant sought review in this Court pursuant to Pennsylvania Rule of Criminal Procedure 506.

DISCUSSION

I. Standing

As a preliminary matter, during the hearing on the instant appeal, Appellant raised the issue of standing as related to Mr. Sandusky. Appellant argued that should this Court decide, as a matter of law, that the statute of limitations has not expired, this decision will be binding on Mr. Sandusky in a potential future criminal action. This, Appellant argued, would deny Mr. Sandusky his constitutional right to due process. In response, the Office of Attorney General argued that Mr. Sandusky is not being denied due process because a ruling regarding the statute of limitations is a legal determination that a case can go forward, and as a matter of course, these determinations are not done in open court or with notice to a defendant. In this regard, we agree with the Office of Attorney General. Although Mr. Sandusky is the accused in the instant case, the legal determinations as to the manner in which exceptions to the statute of limitations are applied could potentially have an impact on more individuals than just Mr. Sandusky. While the method of application may be decided as a matter of law, Mr. Sandusky will not be foreclosed from arguing factual aspects of a statute of limitations defense in a potential future prosecution.

II. Statute of Limitations

Pursuant to Pennsylvania law, a private criminal complaint must set forth a *prima facie* case of criminal conduct. *In re Private Complaint of Adams*, 764 A.2d 577 (Pa. Super. 2000).

“The district attorney must investigate the allegations of a properly drafted complaint to enable the exercise of his discretion concerning whether to approve or disapprove the complaint.” *In re Wilson*, 879 A.2d 199, 211 (Pa. Super. 2005). When a complaint has been denied, the complainant may seek review in the Court of Common Pleas. Pa.R.Crim.P. 506. Upon review, the Court must first identify whether the prosecutor’s denial was based upon a legal evaluation of the complaint, or upon policy considerations. *Wilson*, 879 A.2d at 212. When the decision to deny the complaint is legal one, the trial court conducts a *de novo* review, whereas when the decision is based on policy considerations, the trial court accords deference to the decision and should not interfere absent bad faith, fraud, or unconstitutionality. *Id.*

After a review of Appellant’s Private Criminal Complaint, and an investigation, which included a meeting with Appellant, the Office of Attorney General denied the Complaint on the basis that the statute of limitations for bringing the alleged charges had passed. This is a purely legal decision, and therefore, this Court reviews the denial *de novo*. In its letter denying the Private Criminal Complaint, the Office of Attorney General explained that the public employee exception, 42 Pa.C.S.A. § 5552(c), would have to be applied twice, and “that type of stacking appears to be prohibited by the statute as written.” This Court does not agree.

The alleged offense in the complaint took place in June of 1988. Because the specific date of the offense could not be determined, the Office of Attorney General used June 30, 1988 at the offense date. The Court sees no reason to disturb this decision. 42 Pa.C.S.A. 5552 governs the applicable statute of limitations for the offenses alleged in Appellant’s Private Criminal Complaint. At the time of the alleged offense, the statute of limitations was five (5) years after the commission of the offense. *See* Act 199 of 1984. Thus, the statute of limitations expired on June 20, 1993. However, on February 19, 1991, before the original statute of limitations had

expired, Act 208 of 1990 became effective. Act 208 of 1990 tolled the statute of limitations, still five (5) years, from beginning to run on sexual crimes committed against minors until the child turned eighteen (18) years of age. 42 Pa.C.S.A. § 5552(c)(3). It also added the public employee exception, which provides that if the otherwise applicable statute of limitations has expired, prosecution may nevertheless commence for “[a]ny 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 a 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.”

It is well settled law that when the statute of limitations is modified by new legislation it will not resurrect an expired limitations period. *Commonwealth v. Harvey*, 542 A.2d 1027, 1031 (Pa. Super. 1988). However, the rule of construction codified in 1 Pa.C.S. § 1975, applying specifically to statutes of limitation, “provides that when 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.” *Id.* at 1030-31. Thus, because the original statute of limitations had not yet expired when Act 208 of 1990 became effective, Appellant gets the benefit of the new legislation tolling the five year statute of limitations from beginning to run until he turned eighteen (18). Appellant was born on December 26, 1971, so under the first amended version of § 5552, the statute of limitations did not expire until December 26, 1994. However, the Office of Attorney General, although not conceding this fact during the hearing, admitted in its letter to Appellant that “it could be argued that Sandusky was a public officer or employee.” If Mr. Sandusky is a public employee, and it appears the Office of Attorney General analyzed the statute of limitations under that assumption, Appellant can take advantage of the

extra eight years provided for in the public employee exception, and the statute of limitations would not have expired until December 26, 2002. While neither party provided argument or legal basis in support or against the conclusion that Mr. Sandusky is a public employee, this Court finds persuasive the conclusion of the Pennsylvania State Employees' Retirement Board that, at least for the purposes of the Public Employee Pension Forfeiture Act (434 P.S. §§ 1311-1315), Mr. Sandusky was a public employee from 1969 until at least 2009. *In Re: Account of Gerald A. Sandusky*, Opinion of the State Employees' Retirement Board dated 12/18/14 at 110. Given that certain consequences of the Forfeiture Act are a result of a criminal conviction, this Court sees no reason to otherwise define or apply the term "public employee" for purposes of the statute of limitations.

On August 28, 2002, Act 86 of 2002 became effective, amending § 5552 to provide for a twelve (12) year statute of limitations to begin running when a victim turned eighteen (18). This amendment occurred before the first amended statute of limitations would have expired on December 26, 2002. As such, Appellant again gets the benefit of the second amended statute of limitations. However, under this amendment, the statute of limitations would have expired on December 26, 2001, when Appellant turned thirty (30) years of age. It is at this point that the Office of Attorney General believes the final statute of limitations had expired, and the alleged crimes were no longer capable of being prosecuted. The Office of Attorney General asserts that Appellant is not entitled to use the public employee exception a second time because "that type of stacking appears to be prohibited by the statute as written." This Court does not agree. As stated above, the public employee exception provides that it shall not "extend the period of limitation *otherwise applicable* by more than eight years." (Emphasis added.) On August 28, 2002, the statute of limitations *otherwise applicable* was twelve years past the victims eighteenth

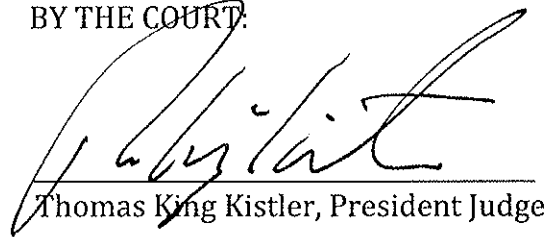
birthday. This Court sees no reason Appellant would not be entitled to use the public employee exception with the second amended statute when he was previously entitled to under the first amended statute at the time the amendment was made. This is not “stacking” of the exception period to extend the otherwise applicable statute of limitations beyond eight years. The exception period, although applied twice, was never applied twice under the same applicable statute of limitations. This Court finds that the application of the public employee exception to the second amended statute of limitations is not prohibited by the statute as written.

On January 29, 2007, the last amendment relevant to Appellant’s case, Act 179 of 2006, became effective and extended the statute of limitations to the date on which a victim turns fifty (50) years of age. Because this Court finds that Appellant is entitled to use the public employee exception a second time, the second amended statute of limitations would not have expired until December 26, 2009. The third amendment to § 5552 was made before that date, and therefore, Appellant also gets the benefit of the third statute of limitations. The current statute of limitations will not expire until December 26, 2021. Appellant filed his Private Criminal Complaint on October 2, 2014. Based on the foregoing reasoning, the Court finds that criminal prosecution for the alleged crimes is not time barred by the statute of limitations, and therefore, the denial of Appellant’s Private Criminal Complaint by the Office of Attorney General is OVERRULED.

ORDER

AND NOW, this 28th day of October, 2015, upon review of the Appeal of Denial of Private Criminal Complaint filed by Anthony Spinelli, Jr., the denial of the Private Criminal Complaint is hereby OVERRULED. The Office of the Attorney General is hereby directed to resume evaluation of whether the allegations set forth establish a *prima facie* case for the crimes charged. If a *prima facie* case has been established, the Office of Attorney General shall transmit the Private Criminal Complaint to the issuing authority as required by Rule 506 of the Pennsylvania Rules of Criminal Procedure.

BY THE COURT:



Thomas King Kistler, President Judge