

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.

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**OPINION IN RESPONSE TO MATTERS COMPLAINED OF ON APPEAL**

**Kistler, J.**

Respondents filed an appeal on November 24, 2015, of this Court’s Opinion and Order of October 28, 2015. On December 14, 2015, Respondents filed a Statement of Matters Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Respondents raise two matters complained of on appeal and upon review of Appellant’s Statement, the Court respectfully submits, pursuant to Pa.R.A.P. 1925(a), that this Court’s Opinion and Order of June 4, 2015 was correctly entered on that date for the reasons explained below.

Respondents’ first matter complained of on appeal is that this Court erred in concluding that the applicable statute of limitations had not run out in the instant case and overruling the denial of the private criminal complaint on that basis. First, the Court maintains that its conclusion regarding the “stacking” of the statute of limitations exceptions was correct for the reasons set forth in the Opinion and Order of October 28, 2015. The Court takes note of the

recent decision in *Gerald A. and Dorothy D. Sandusky v. Pennsylvania State Employees' Retirement Board*, No. 60 C.D. 2015, 2015 WL 7074848 (Pa. Commw. Ct. Nov. 13, 2015), which was not available to it at the time of the decision, and in which the Commonwealth Court found that Gerald Sandusky was not an employee of The Pennsylvania State University ("PSU") after 1999. Our holding in the Opinion and Order of October 28, 2015 that the statute of limitations had not run was premised on the fact that, at the time the third amendment to § 5552 was made, Mr. Sandusky's relationship with PSU classified him as a public employee under that statute for purposes of the enumerated exceptions. The Court now believes that if Mr. Sandusky's status as an employee terminated on June 29, 1999 upon his retirement, the statute of limitations for Mr. Spinelli's claims has indeed run.

Section 5552(c)(2) provides for a five year window after the public employment of a defendant has ended for a prosecution to commence if the otherwise applicable statute of limitations has expired. As explained in the Opinion and Order of October 28, 2015, Mr. Spinelli's first amended statute of limitations expired on December 26, 1994. In 1994, Mr. Sandusky was still an employee of PSU, and thus the exception gave Mr. Spinelli until December 26, 2002 to file his complaint. Prior to that date, the statute was again amended on August 28, 2002, after Mr. Sandusky retired, but within the five years permitted by the exception to commence a prosecution. Thus, Mr. Spinelli gets the benefit of this second amendment. The second amended statute of limitations, twelve years after a victim's eighteenth birthday, expired on December 26, 2001, again within five years of Mr. Sandusky's retirement. Since the exception provides that a prosecution must commence within five years after a defendant is in public employment, Mr. Spinelli had until June 29, 2004. The third amendment to the statute of limitations was not made until January 29, 2007. Thus, contrary to our holding on October 28,

2015, Mr. Spinelli does not get the benefit of the third amended statute of limitations because that amendment was not made until after the applicable limitations period had expired on June 29, 2004.

Significantly, this Court's current and former application of the statute of limitations and its exception is premised on the holdings of both the State Employees' Retirement Board and the Commonwealth Court with respect to Mr. Sandusky's employment status for purposes of the Public Employee Pension Forfeiture Act. Without guidance or authority from either party to this case, this Court found no reason to otherwise define or apply the term "public employee" for the purposes of applying the statute of limitations.

Respondents' second matter complained of on appeal is that this Court erred in ordering the Office of Attorney General to transmit the Private Criminal Complaint to the issuing authority if it should determine that the allegations set forth by Mr. Spinelli established a *prima facie* case. Respondents assert that such an order was an impermissible infringement on the OAG's authority to exercise prosecutorial discretion. In the instant case, the OAG's denial of Mr. Spinelli's private criminal complaint was based solely on legal conclusions regarding the statute of limitations, and was not policy-based, nor even based on the legal merits of the claims set forth. After reviewing the letter to Mr. Spinelli, this Court believed the evaluation of the complaint had not even reached the point where the OAG determined a *prima facie* case did or did not exist. This Court's intent was to remand the case for such a consideration, and it in no way intended to steer the evaluation in a specific direction.

The Court hopes this Opinion aids the Honorable Superior Court in this matter.

BY THE COURT:



Thomas King Kistler, Judge

Date: December 23, 2015