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COMMONWEALTH OF PENNSYLVANIA	:	COURT OF COMMON PLEAS CENTRE COUNTY, PA
v.	:	
	:	NO. CP-14-CR-2421-2011
	:	CP-14-CR-2422-2011
GERALD A. SANDUSKY	:	
Defendant	:	
	:	

PETITIONER'S REPLY TO COMMONWEALTH'S BRIEF IN OPPOSITION TO POST-CONVICTION RELIEF ACT PETITION

Petitioner, Gerald A. Sandusky ("Petitioner" or "Sandusky"), through counsel, files this Reply to Commonwealth's Brief in Opposition to Post-Conviction Relief Act Petition. In support, Sandusky avers the following:

INTRODUCTION

The Commonwealth voluntarily elected to file an Answer to Sandusky's PCRA Petition, but it does not answer Petitioner's Petition in paragraph-by-

paragraph form by admitting or denying the facts pleaded therein, which obscures the disputed issues of fact. Instead, and although styling it as a "response," the Commonwealth files a Brief in which it materially misstates the law concerning the timeliness of Sandusky's claims without addressing the merits of multiple issues raised therein, and misrepresents facts throughout its Brief in Opposition.

The Commonwealth misconstrues the law as it relates to timeliness. The Commonwealth erroneously contends that Sandusky's PCRA petition is facially untimely in its entirety and does not distinguish between his claims that relate to the actions of resentencing counsel that occurred during and after he was re-sentenced, and those claims that pertain to his original trial. That is, Sandusky's ineffectiveness claims concerning re-sentencing/remand counsel (Claims IV and V) were timely brought within one year of completion of his re-sentencing and no exception to the one-year time bar is required for those claims because they involve issues related to representation that occurred during the re-sentencing proceedings after completion of Sandusky's original PCRA.

Sandusky's claims related to R.R. (Claim I), Frank Fina and Joseph McGettigan's control over S.P.'s settlement funds and the prosecution team's post-trial civil representation of S.P. (Claim II), and their manipulation of S.P. and S.P.'s mother's testimony (Claim III) are based on newly-discovered facts and/or governmental interference. As will be detailed below, those newly-discovered

fact/governmental interference claims are timely where the information was not previously available since the witnesses were not willing to come forward previously and Sandusky is not permitted to contact witnesses.

Regarding Sandusky's claims that the statute of limitations had expired for his convictions for Unlawful Contact of Minor (Claim VII), the Commonwealth forwards no argument that the statute of limitations had not expired.[1] Similarly, the Commonwealth provides no argument related to the statute of limitations having expired as to Indecent Assault, Corruption of Minors and Endangering the Welfare of Children Charges at Counts 12, 14, 15, 20, 22, 23, 30, 31, 32, 34, 35 (Claim VIII). In addition, the Commonwealth does not address Sandusky's arguments as it relates to the unconstitutionality of the time-bar as to the statute of limitation claims or his *Brady*-Gillim claim where prior PCRA counsel was ineffective in failing to raise these issues.

Since the Commonwealth's response disputes issues of fact concerning, at minimum, Sandusky's diligence and the newly-discovered facts relating to R.R. and McGettigan and Fina's profiting from S.P.'s allegations and their manipulation of S.P. and S.P.'s mother's testimony, an evidentiary hearing is mandated by the rules

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[1] The Office of Attorney General has previously conceded in at least one other PCRA matter that the Unlawful Contact with a Minor crime has a two-year statute of limitations. It is, therefore, beyond dispute that the statute of limitations for the Unlawful Contact with a Minor counts had expired before Sandusky was charged.

of procedure and Pennsylvania appellate law. In addition, questions of fact exist as to why Sandusky's re-sentencing counsel did not timely forward arguments during re-sentencing concerning the McChesney diary and Juror Laura Pauley and the civil questionnaire forms that showed that the accusers were undergoing therapy to enhance their memory. Lastly, questions of fact exist as to the strategic basis or lack thereof for why prior counsel did not seek relief relative to those counts for which the statute of limitations had expired.

Because there are myriad factual disputes, Sandusky is entitled to an evidentiary hearing.

Claim I: After-Discovered Evidence Based on R.R. Recantation is Timely and Raises Issues of Fact.

Sandusky's first claim in his Petition is based on the recantation of R.R., alleged Victim 10. The Commonwealth initially erroneously contends that Sandusky failed to plead a timeliness exception, but its actual argument is that Sandusky does not prove within his Petition that he exercised diligence in establishing the new-fact exception. While the case law is legion that state that a petitioner has the burden to plead and prove his claims, it is axiomatic that a petitioner does not *prove* his claims through his actual Petition. Rather, the purpose of the petition is to present material issues of fact that could entitle the petitioner to relief. *See e.g.,* Pa.R.Crim. P. 908(A)(2)(a court "shall order a hearing" when the petition "raises material issues of fact."); *Commonwealth v. Brown*, 141 A.3d 491,

507 (Pa. Super. 2016). In order to prove a claim or claims, a petitioner must be granted an evidentiary hearing and be afforded the opportunity to present witnesses and other evidence. *See Commonwealth v. Brown*, 2026 PA LEXIS (Pa. 2026) (decided January 28, 2026).

Rule 908 mandates a hearing where genuine issues of material fact are raised, and it cannot reasonably be disputed that genuine issues of material fact exist based on R.R.'s affidavit wherein he recants his claim that Sandusky abused him, and he indicates that he was improperly coached by Joseph McGettigan. R.R. specifically indicated that, "[t]hroughout the pretrial process, I was told--both directly and indirectly--that trauma may have fragmented my memory, and that I could safely affirm details I did not fully recall. I was assured this was common and even expected." (Exhibit J to PCRA Petition, ¶ 7). According to R.R., he was coached extensively and asked to revisit and reframe his allegations. (*See id.* at ¶ 10). He set forth that he "was misled repeatedly during the process, particularly by prosecutor Joe McGettigan." (*Id.* at ¶ 16).

There is no requirement to prove one's claims via the Petition itself, and any such requirement would be nonsensical as the Petition itself is not evidence and would contain hearsay. The statute itself outlines that "a second or subsequent petition shall be filed within one year of the date the judgment becomes final, unless *the petition alleges* and the petitioner proves...." 42 Pa.C.S. § 9545(b)(1) (emphasis

added). Accordingly, the legislature distinguished between the allegations in the petition and the proof element. Yet the Commonwealth glides over the critical distinction between pleading and proof and argues that Sandusky must prove his claim via the Petition itself. This is obviously wrong and untenable as a pleading is not proof, though Sandusky's petition attached relevant documents in support thereof that can be utilized at a hearing as evidentiary proof. Sandusky has pleaded both the new-fact and governmental interference timeliness exceptions, and since the Commonwealth disputes Sandusky's diligence, questions of fact plainly exist that entitle him to a hearing.

Importantly, under the plain language of the new-fact exception, a claim is timely where "the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence[.]" 42 Pa.C.S. § 9545(b)(1)(ii). The timeliness exception does not require that a petitioner establish that he is entitled to relief. Rather, the exception requires only that the facts that the claim are based on were unknown and could not have been learned through the exercise of due diligence. *Commonwealth v. Bennett*, 930 A.2d 1264 (Pa. 2007). Due diligence only requires reasonable efforts. *Commonwealth v. Davis,* 86 A.3d 883, 891 (Pa. Super. 2014); *see also Commonwealth v. Shiloh*, 170 A.3d 553 (Pa. Super. 2017). In this respect, courts:

> must be attentive to each petitioner's "circumstances," *Wilson*, 426 F.3d at 660 (quoting *Schlueter*, 384 F.3d at 74), and in particular

> "take into account that prisoners are limited by their physical confinement," *Moore*, 368 F.3d at 940. *See also Ross*, 712 F.3d at 802 (explaining that due diligence does not "expect Herculean efforts on the part of a lay person who is a convicted and incarcerated prisoner").

Bracey v. Superintendent Rockview SCI, 986 F.3d 274, 293 (3d Cir. 2021). As argued in *Commonwealth v. Burton*, 158 A.3d 618, 637 (Pa. 2017):

> obtaining information from outside of prison also is difficult because inmates often cannot afford to pay for the necessary phone calls, stationery, envelopes, postage, and copying fees, and because DOC policy prohibits inmates from sending mail to former inmates or parolees, or telephoning a judge, criminal justice official, prosecutor, or court administrator without prior approval.

What is more, whether due diligence was exercised is a fact inquiry. *See e.g. Bennett*, 930 A.2d at 1274; *Commonwealth v. McCoy*, 2025 Pa. Super. Unpub. LEXIS 1410 (reversing for evidentiary hearing on whether petitioner exercised due diligence in obtaining newly-discovered facts); *Commonwealth v. Burton*, 121 A.3d 1063, 1071 (Pa. Super. 2015). An evidentiary hearing is warranted on Sandusky's diligence alone.

Notably, Sandusky exercised due diligence in obtaining the R.R. affidavit. First, Sandusky himself could not contact R.R. Second, R.R. was unwilling to volunteer this information previously. R.R. only agreed to provide the information on June 30, 2025. Sandusky was diligent.

Furthermore, Sandusky alleged the governmental interference timeliness

exception.[2] R.R. has alleged that Joseph McGettigan was instrumental in R.R. forwarding the false allegations against Sandusky. These prosecutorial misconduct facts were withheld by the government, and to the extent that they are disputed, they entitle Sandusky to a hearing.[3]

Claim II: McGettigan and Fina's Profiting from S.P.'s Abuse Allegations.

Sandusky's second claim is also timely and raises disputed questions of fact. In the present case, after the Superior Court affirmed Sandusky's judgment of sentence on September 19, 2024, on October 2, 2024, A.Q., S.P.'s mother, provided a Declaration relative to her interactions with Prosecutors Frank Fina and Joseph McGettigan and provided documentation in support of her assertions. A.Q. had not been willing to come forward previously. Indeed, the Commonwealth cites her earlier negative sentencing testimony as support for rejecting Sandusky's claims. Further, the Commonwealth defends itself by asserting that at the time of trial, McGettigan and Fina had yet to begin running S.P.'s trust. However, S.P. unquestionably testified at trial that *he believed McGettigan was his attorney and that he was going to pay McGettigan*. (N.T., 6/14/12, at 225) (Q. "Did your mom

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[2] The governmental interference exception contains no diligence requirement, but courts have appeared to engraft one into the statute. Several justices on the Supreme Court of Pennsylvania have recognized this error. *Commonwealth v. Towles*, 300 A.3d 400 (Pa. 2023) (Wecht, J. concurring) and (Donohue, J. concurring).

[3] The Commonwealth seems to suggest that R.R. told the truth at trial, but is lying now. But there is no reason for R.R. to lie now about having made false allegations.

tell you she was going to get a lawyer?" A. "No, you're my lawyer." Q. "Are you going to pay me?" A. "Yeah, I'm going to try.").

In light of McGettigan and Fina's profiteering off of S.P. after the trial, S.P.'s trial testimony appears in a whole new light. Pointedly, these facts alone warrant an evidentiary hearing to establish exactly when McGettigan and Fina discussed assisting S.P. with obtaining a civil lawyer and/or a civil settlement, what they discussed with S.P. during trial, and their interactions with civil counsel for S.P. prior to Sandusky's original sentence. That is, when did McGettigan and Fina begin to discuss a civil suit with S.P.? Did McGettigan and Fina refer S.P. to his civil attorneys? Did McGettigan and/or Fina receive any type of referral fee? Did McGettigan and Fina have an expectation during trial that they would receive renumeration from S.P., if not, why did S.P. testify that he believed McGettigan was his attorney and that S.P. would get him paid? How much did McGettigan and Fina receive in compensation from S.P. based on his settlement? The Commonwealth does not even attempt to answer any of these questions and does not provide an affidavit from McGettigan or Fina--likely because that would establish obvious disputed issues.[4]

The Commonwealth's assertion that McGettigan and Fina's highly irregular (and likely unprecedented) running of a multi-million dollar trust for a former

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[4] Since the Commonwealth's filing, Mr. McGettigan has passed away.

witness in their most famous trial only occurred after Sandusky's conviction itself raises questions of fact. Sandusky is entitled to a hearing.

Claim III: Prosecutorial Misconduct and the Manipulation of S.P. and S.P.'s Mother's Testimony.

Sandusky's third issue also is timely raised under both the governmental interference and new-fact exceptions and raise questions of fact. Sandusky has provided the affidavit of A.Q., S.P.'s mother. A.Q. testified at trial. Her affidavit asserts that Joseph McGettigan manipulated her testimony and that her son's trial testimony was, at best, unreliable and highly inaccurate. Sandusky only learned of this information after his latest direct appeal was denied. Sandusky could not have obtained the information earlier where A.Q. had not been willing to provide the information. What is more, the Commonwealth withheld its manipulation of her testimony and the testimony of S.P.

The Commonwealth's response makes much of the fact that S.P. himself has not agreed to come forward. Of course, McGettigan and Fina and McGettigan's wife may very well still control S.P.'s finances, which would provide a powerful incentive for him not to come forward. And questions of fact abound: Did McGettigan and/or Fina coach S.P.? Did they inform him that he could affirm details that he did not remember? Did McGettigan and Fina know that Sandusky's basement was not soundproof, contrary to S.P.'s blatantly false testimony, and did they intentionally mislead the jury? Did McGettigan and Fina know that S.P. and

Aaron Fisher claimed to have been abused at the Sandusky house during the identical weekend periods but claimed to have been alone, rendering their allegations improbable if not impossible?[5]

Further, as it relates to the distinct merits based after-discovered evidence test, A.Q.'s assertions that the Commonwealth manipulated testimony and improperly coached S.P., is not evidence that is solely impeachment evidence but goes to the heart of S.P.'s allegations against Sandusky. Indeed, it has already been revealed that other accusers told McGettigan changes in allegations and that he did not disclose that evidence in violation of *Brady*. (PCRA Court Opinion, 10/18/17, at 40) ("there is no question that the victims' late revelations were useful for impeachment purposes or that the Commonwealth failed to disclose them...the Court does not condone the Commonwealth suppressing evidence under any circumstances"). If S.P. made various statements to McGettigan and/or Fina that were inconsistent with his initial statements and grand jury testimony that were not revealed, they violated *Brady*. *Brady* after-discovered evidence may entitle a person to relief even if it is impeachment evidence. But, here, the evidence is not solely impeachment evidence.

The after-discovered evidence test does NOT prohibit the granting of a new

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[5] Aaron Fisher's mother also disclosed after trial that Fisher testified inaccurately at trial as to the frequency in which he spent time with Sandusky. (*See* Exhibit O to PCRA Petition, Parlato Affidavit and Attached Screenshots). This evidence was unavailable at the time of trial.

trial based on evidence that incidentally impeaches the credibility of a witness. Rather, it only precludes a new trial if such after-discovered evidence is to be used ***solely*** for impeachment purposes. *Commonwealth v. Small*, 189 A.3d 961, 972 (Pa. 2018). Logic and reason dictate that any after-discovered evidence that is sufficient to warrant a new trial will necessarily and inevitably impeach a witness or some evidence.

For example, if a rape victim testifies against an individual that a jury convicts, but DNA evidence conclusively establishes that the convicted person was not responsible, that DNA evidence incidentally impeaches the victim. Similarly, if a visual recording established that a wrongfully accused person was not at the scene of a crime, such evidence would impeach testimony by a witness that was used to convict the defendant. The same is true where a victim recants his or her testimony. Such recantation necessarily impeaches his or her prior testimony. Of course, in the first two examples, the after-discovered evidence only incidentally impeaches the witness while refuting the reliability of the witness. And in the latter instance, courts have granted new trials based on recantations.

Under the faulty position espoused by the Commonwealth, a new trial could never be awarded based on after-discovered evidence since such evidence necessarily incidentally impeaches testimony and evidence that led to a conviction. Imagine the scenario where a person claims that she witnessed the crime in question

and testifies that the defendant was responsible. Subsequently, seven witnesses come forward and provide information that the supposed eyewitness was with them at the time and not at the scene and one of those witnesses has a cell phone video to confirm that the witness was not present. Such evidence plainly and unequivocally impeaches the credibility of the first witness--but to deny a re-trial would be a gross miscarriage of justice. That is why the after-discovered evidence test's reference to impeachment evidence was historically aimed at evidence that *impeached the character of a witness*--not evidence that incidentally and generically impeaches.

For example, in *Commonwealth v. Flanagan*, 7 Watts & Serg. 415 (Pa. 1844), the Supreme Court reasoned that the after-discovered evidence, testimony therein, must not be solely for the purpose of impeaching a testifying witness but must go to the merits of the case. On this issue, the *Flanagan* Court opined,

> a great deal of testimony has been given, which does not establish independent facts, material to the issue; but its only effect is to impeach the credit of some of the witnesses examined on the former trial. But the rule of law is, that the testimony must go to the merits of the case, and must not be merely for the purpose of impeaching the testimony of the witnesses.

Id. at 423. Notably, the *Flanagan* Court relied on *People ex rel. Oelricks v. Superior Court of City of New York*, 10 Wnd. 285 (1833), in discussing impeachment and after-discovered evidence. That Court had held:

> With respect to granting *new trials on the ground of newly discovered testimony*, there are certain principles which must be considered settled. 1. The testimony must have been discovered since

> the former trial. 2. It must appear that the new testimony could not have been obtained with reasonable diligence on the former trial. 3. It must be material to the issue. 4. It must go to the merits of the case, and not to impeach the character of a former witness. 5. It must not be cumulative. 4 *Johns. R.* 425. 5 *id.* 248. It cannot be denied in this case that the testimony offered was material to sustain the point of defence; and that it is not liable to the objection that it goes to impeach the plaintiff's witness. Russell says nothing about the character of the witness Heckscher, but contradicts the fact sworn to by him.

Id. at 292 (italics in original) (bold added). The case cited by the *Oelricks* Court, *Shumway v. Fowler*, 4 Johns. 425 (N.Y.Sup. 1809), posited, "A new trial is not to be granted, merely on the discovery of new evidence, *which would impeach the character of a witness* at the trial." (emphasis added).

Accordingly, courts distinguished between impeaching the character of a witness and impeachment as to material facts. In the latter situation, the evidence was not considered to be solely for impeachment. *See also Commonwealth v. Mosteller*, 284 A.2d 786 (Pa. 1971) (after-discovered recantation evidence from a victim, while impeaching the victim's earlier testimony, also was material factual testimony that contradicted facts sworn by that person and was exculpatory in nature); *Commonwealth v. Krick*, 67 A.2d 746 (Pa. Super. 1949) (same). Evidence that is exculpatory is, by definition, not solely impeachment evidence. Evidence that S.P. did not actually visit Sandusky on all the occasions he claimed he was abused is not just impeachment evidence, but is exculpatory information.

Pointedly, Attorney McGettigan's course of conduct in manipulating testimony of witnesses including but not limited to A.Q., S.P., R.R. (and Ronald Petrosky) along with the already-court determined failures of McGettigan to disclose known changes in witnesses' testimony, raises significant questions concerning prosecutorial malfeasance.

The Commonwealth's further defense that R.R. and S.P.'s were two of eight purported victims is also a non-sequitur. A person might be guilty of one crime, but not another. Based on the Commonwealth's arguments, Sandusky would need to obtain recantations from a majority of the accusers to even be entitled to an evidentiary hearing. But that is not the standard, and the Commonwealth's purported overwhelming evidence is a farce. The evidence of criminal conduct by Sandusky was the testimony of the accusers. There was no physical evidence of abuse. All of the accusers' accounts changed over time, some drastically. None of the accusers originally made sexual allegations against Sandusky. Sandusky was acquitted of the charges related to Mike McQueary. The janitor who purportedly told another janitor that he saw Sandusky abuse a mysterious boy *provided a recorded statement that he did not witness Sandusky abuse anyone*--but trial counsel did not present that evidence. In the civil questionnaires attached to Sandusky's PCRA petition, virtually all of the accusers who testified against Sandusky and some that did not claimed to be the mysterious "Victim 8".

Claim IV: Ineffectiveness of Re-sentencing Counsel in Failing to Timely Present the McChesney Information and Juror Laura Pauley.

Claim V: Ineffectiveness of Re-sentencing Counsel in Failing to Timely Present Civil Questionnaire Forms.

Sandusky's fourth and fifth claims are timely. These claims relate to the actions/inaction of re-sentencing counsel in either failing to forward or untimely raising claims of after-discovered evidence after the case was twice remanded for re-sentencing proceedings. The Commonwealth claims that Sandusky's judgment of sentence was final on July 1, 2014. This is true in part. That is, the statement is accurate for those claims that pertain to Sandusky's trial and original direct appeal. But it is obviously wrong as to the actions of re-sentencing counsel that occurred during re-sentencing proceedings after remand from the Superior Court, and the very cases that the Commonwealth misreads establishes that fact.

For example, the *Commonwealth v. McKeever*, 947 A.2d 782 (Pa. Super. 2008) decision stands for the unremarkable position that the federal grant of *habeas* relief for some convictions does not reset the clock for finality of the judgment of sentence for other convictions that are not vacated. *Id.* at 785-786. *McKeever* does not speak to raising claims of ineffectiveness based on resentencing counsel's actions or inaction during proceedings that occur *after and as a result of re-sentencing proceedings*. That is, Sandusky could not have contested re-sentencing counsel's inaction during the original PCRA proceedings because they had not yet

occurred nor could he have raised the relevant claims of re-sentencing counsel's *ineffectiveness* on direct appeal. Moreover, a petitioner can challenge, within one year of the finality of the re-sentencing proceedings, matters that occurred during the resentencing proceedings. *Commonwealth v. Lesko*, 15 A.3d 345, 374 (Pa. 2011).

Instantly, Sandusky's re-sentencing counsel learned, after the matter had been sent back for re-sentencing following the original PCRA appeal, of:

> a photocopy of a diary allegedly maintained by Kathleen McChesney in her capacity as a member of the investigative team led by Louis Freeh, Esquire ("the Freeh team"), which was appointed by the Penn State Board of Trustees to conduct an independent inquiry into events surrounding Appellant's crimes; (2) "summaries" of alleged emails to and from various members of the Freeh team; and (3) an affidavit from Appellant's trial counsel concerning his responses to this alleged information.

Commonwealth v. Sandusky, 2021 Pa. Super. Unpub. LEXIS 1279, *15-16.

This after-discovered evidence included evidence related to a juror that was selected for trial and had been interviewed by the Freeh Group--Laura Pauley. Specifically, on March 10, 2020, Attorney Lindsay received a summary of an interview by the Freeh Group with Juror 0990, Laura Pauley, who was selected for Sandusky's trial. Sandusky requested Attorney Lindsay to file a motion for new trial under Pa.R.Crim.P. 720 on or about March 16, 2020--immediately before the COVID-19 lockdowns. Re-sentencing counsel did not do so, but raised the issue in a Pa.R.A.P. 1925(b) Concise Statement. Then, on appeal, Attorneys Lindsay and

Lauer filed a motion for new trial based on after-discovered evidence with the Superior Court on May 9, 2020, that included the McChesney diary issue pertaining to the Freeh Group and prosecution team collaboration, potential grand jury leaks, and the Juror 0990-Laura Pauley issue.

On May 13, 2021, the Superior Court ruled the after-discovered evidence related to the McChesney diary and Juror 0990 claims were not "promptly" raised under Pa.R.Crim.P. 720 and declined to reach the merits of those claims (as a direct result of ineffective assistance of prior appellate counsel). It did not treat the relevant non-promptly filed after-discovered evidence motion as a PCRA petition.[6] Instead, it considered the motion as having been filed under Rule 720(c)'s provision related to after-discovered evidence. The actions or inaction by re-sentencing counsel in

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[6] A subsequent panel of the Superior Court treated a different after-discovered evidence motion filed under Pa.R.Crim.P. 720(c), following a remand for a hearing on a restitution issue, as a timely filed PCRA petition raising different after-discovered evidence, though it did not actually engage in any timeliness discussion relative to the PCRA. At the time of the filing of the later filed after-discovered evidence motion, re-sentencing counsel continued to represent Sandusky. The two Superior Court rulings are inconsistent. That is, if Sandusky's after-discovered evidence claim related to the McChesney diary and Laura Pauley were claims that should have been brought in a PCRA petition because they were filed after Sandusky's original judgment of sentence was final--then *they would not have been untimely* since Sandusky would have had one year from their discovery to timely file a petition under the PCRA, and raising the issues on direct appeal would have actually been premature. However, the trial court and Superior Court treated the motion as a post-sentence motion and not a PCRA petition and the panel found that it was not promptly filed under Rule 720. Notably, the OAG did NOT argue in Sandusky's latest appeal that his after-discovered evidence motion filed under Rule 720 was a PCRA petition, nor did the trial/re-sentencing court treat it as such. Instead, the Superior Court panel *sua sponte* reached that conclusion without any briefing on that issue by the parties, found the motion for new trial based on after-discovered evidence was a "timely" PCRA petition, but rejected Sandusky's arguments that he was entitled to an evidentiary hearing on his claims and found those claims failed to meet the after-discovered evidence test.

failing to "promptly" file the after-discovered evidence claim occurred during the re-sentencing proceedings and the appeal related thereto, and the panel did not treat the claims as a PCRA petition. Therefore, those claims did not exist at the time of Sandusky's original trial and sentence and transpired during subsequent re-sentencing proceedings and appeal therefrom. Similarly, Sandusky did not learn of the civil questionnaires until his re-sentencing proceedings.

This PCRA petition is the first opportunity to raise those re-sentencing counsel ineffectiveness claims, and they have been raised within one year of the completion of Sandusky's re-sentencing. Accordingly, as to Claims 5 and 6, Sandusky's judgment of sentence became final on October 19, 2024. 42 Pa.C.S. §9545(b)(3). Claims 4 and 5 are facially timely.

In the alternative, finding such claims to be untimely results in the time-bar being unconstitutional as applied as it would entirely foreclose Sandusky from raising his re-sentencing counsels' ineffectiveness that occurred during the original re-sentencing and re-sentencing appeal since ineffectiveness claims cannot be raised in a direct appeal, and a PCRA petition cannot be filed while an ongoing appeal is underway.

> *Claim VI: Prior PCRA counsel were ineffective in failing to present a Brady claim related to the Commonwealth's failure to disclose the role that therapist Michael Gillum played as a de facto member of the prosecution team.*
>
> *Claim VII: Trial and prior PCRA Counsel were ineffective in failing to challenge the two-year statute of limitations period for each Unlawful Contact*

of Minor count.

Claim VIII: Trial and prior PCRA counsel were ineffective in failing to raise a statute of limitations defense to the Indecent Assault, Corruption of Minors and Endangering the Welfare of Children Charges at Counts 12, 14, 15, 20, 22, 23, 30, 31, 32, 34, 35.

Sandusky acknowledges that his sixth through eighth claims, unlike Sandusky's first two claims, are not premised on newly-discovered facts or the governmental interference exception.[7] Instead, Sandusky alleges that applying the time-bar as jurisdictional as to these three issues renders the time bar unconstitutional as applied. The Commonwealth's response does not address Sandusky's arguments.

In short, applying the PCRA time-bar as jurisdictional in this matter would prevent Sandusky from asserting valid claims of PCRA counsel ineffectiveness, and the time-bar violates Sandusky's *due process right* to effective PCRA counsel.[8] The Pennsylvania Supreme Court has held that the right to counsel during initial PCRA review means "'an enforceable right' to the effective assistance of counsel." *Commonwealth v. Holmes*, 79 A.3d 562, 583 (Pa. 2013). Since, absent good cause or extraordinary circumstances, the Supreme Court's decision in *Commonwealth v.*

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[7] Sandusky's sixth claim does involve governmental interference, but the information was known during Sandusky's original PCRA proceedings; therefore, it is not pleaded under the governmental interference timeliness exception.

[8] The Commonwealth misconstrues Sandusky's position related to *Commonwealth v. Bradley*, 261 A.3d 381 (Pa. 2021). Sandusky did not argue that *Bradley* creates a timeliness exception for PCRA counsel ineffectiveness claims.

Grant, 813 A.2d 726 (Pa. 2002) requires petitioners to make allegations of ineffectiveness during the PCRA process, defendants have a constitutional *due process* right to counsel during first time PCRA proceedings and a corresponding constitutional right to effective assistance of counsel. *Cf. Coleman v. Thompson*, 501 U.S. 722, 754-757 (1991); *see also id.* at 773-774 (Blackmun, J., dissenting with whom Justice Marshall and Justice Stevens joined); *Commonwealth v. Figueroa*, 29 A.3d 1177 (Pa. Super. 2011); *Martinez v. Ryan*, 132 S.Ct. 1309 (2012).

In *Coleman*, the United States Supreme Court hinted that there may exist a constitutional right to post-conviction counsel where "state collateral review is the first place a prisoner can present a challenge to his conviction." This is because the post-conviction proceedings becomes the petitioner's single appeal as to ineffectiveness claims. *See Martinez*, 132 S.Ct. at 1315 (internal citations omitted). "Accordingly, by eliminating ineffectiveness claims from the ambit of direct review, *Grant* renders PCRA trial review as a first appeal as-of-right for trial counsel ineffectiveness issues." J. Andrew Salemme, *Guilty Until Proven Innocent: A Practitioner's & Judge's Guide to the Pennsylvania Post-Conviction Relief Act* (2017 ed., at 228). Sandusky had a constitutional due process right to effective PCRA counsel.

This is consistent with the Supreme Court's finding in *Commonwealth v. Turner*, 80 A.3d 754 (Pa. 2013), where the Court opined, "although 'states have no

constitutional obligation to provide a means for collaterally attacking convictions,' if they do, 'then such procedures must comport with the fundamental fairness mandated by the Due Process Clause.'"). *Turner*, *supra* at 764. (internal citations omitted). Thus, once a state decides that counsel is required for a first-time PCRA proceeding, due process compels that counsel act effectively.

Finding Sandusky's sixth through eighth claims untimely because his prior PCRA counsel failed to present the claim results in no ability to vindicate his right to effective PCRA counsel.

And there is not even a legal dispute that Sandusky's ten Unlawful Contact with a Minor charges were brought after the expiration of the governing statute of limitations. In this respect, the Commonwealth charged Sandusky with two counts of Unlawful Contact with a Minor at CP-14-2421-2011 (Counts 4 and 10), and charged Sandusky with eight counts of Unlawful Contact with a Minor at CP-14-2422-2011 (Counts 4, 9, 13, 21, 25, 29, 33, and 38).

Pursuant to 42 Pa.C.S. § 5552, the statute of limitations period for Unlawful Contact with a Minor was two years. Statute of limitation claims ordinarily must be raised pre-trial. The Commonwealth charged Sandusky in November and December of 2011. The **latest** alleged criminal conduct purportedly occurred in **December of 2008**, more than two years before Sandusky was charged. The statute of limitation period for Unlawful Contact with a Minor clearly expired prior to the charges in this

matter. *See e.g., Commonwealth v. Moore*, 2014 Pa. Super. Unpub. LEXIS 455, *4 n.1; 42 Pa. C.S. § 5552(a); *Commonwealth v. Kelly Patz*, CR 334-2019 (37th Judicial District of Pennsylvania, Warren County Branch).[9] Sandusky's convictions and sentence should be vacated for all of the Unlawful Contact with a Minor charges.

Similarly, the statute of limitations expired for a host of other counts. The Commonwealth charged Sandusky with seven counts of Indecent Assault (Counts 3, 8, 12, 20, 24, 28, 37), and eight counts each of Corruption of Minors (Counts 5, 10, 14, 22, 26, 30, 34, 39) and Endangering the Welfare of Children (Count 6, 11, 15, 23, 27, 31, 35, 40) at CP-14-CR-2422-2011. Effective January 29, 2007, the statute of limitation period for Indecent Assault, Corruption of Minors and Endangering the Welfare of Children was amended to provide:

> If the period prescribed in subsection (a), (b) or (b.1) has expired, a prosecution may nevertheless be commenced for:
>
> (3) Any sexual offense committed against a minor who is less than 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 50 years of age. As used in this paragraph, the term "sexual offense" means a crime under the following provisions of Title 18 (relating to crimes and offenses):
>
> Section 3126 (relating to indecent assault)
>
> .....

---

[9] Petitioner attaches hereto a Court Order and an excerpt from the Trial Court Opinion in the *Patz* case, in which relief was afforded on the Unlawful Contact with Minor statute of limitation issue. (Appendix A). The Office of Attorney General was opposing counsel in the *Patz* matter, and, in fact, the attorney representing the OAG during the PCRA proceeding therein also was counsel of record in this matter until leaving the OAG in July of 2025.

Section 4304 (relating to endangering welfare of children).

Section 6301 (relating to corruption of minors).

Prior to January 29, 2007, the statute of limitation period for Indecent Assault, Corruption of Minors, and Endangering Welfare of Children was "any time up to the period of limitation provided by law after the minor has reached 18 years of age." *See* 2005 Pa. SB 1054 (approved by the Governor on November 29, 2006, effective within sixty days, i.e., January 29, 2007); *see also* History of 42 Pa.C.S. § 5552. For Indecent Assault, Corruption of Minors, and Endangering Welfare of Children, the ordinary statute of limitation period was two years.

Thus, if a person was over the age of 20 as of January 29, 2007, the statute of limitation period for Indecent Assault, Corruption of Minors, and Endangering Welfare of Children had expired. Alleged Victim 3, J.S., was born on January 1, 1987 and was twenty years old as of January 1, 2007--prior to January 29, 2007. The alleged conduct against J.S. occurred between June 1999 and December 2001. The statute of limitation period had expired at CP-14-CR-2422-2011 for Counts 12, 14, and 15 (related to J.S./Victim 3) prior to the legislature amending the statute of limitation period that went into effect on January 29, 2007.

Alleged Victim 4, B.S.H., was born on September 9, 1983 and was twenty as of September 9, 2003. Therefore, he was twenty years old prior to January 29, 2007. The alleged conduct against B.S.H. occurred between October 1996 and December

2000. The statute of limitation period had expired at CP-14-CR-2422-2011 for Counts 20, 22, 23, (related to B.S.H./Victim 4) prior to the legislature amending the statute of limitation period that went into effect on January 29, 2007.

Alleged Victim 6, Z.K., was born in 1986 and turned 20 prior to January 29, 2007. The alleged conduct against Z.K. occurred on May 3, 1998. The statute of limitation period had expired at CP-14-CR-2422-2011 for Counts 30 and 31 (related to Z.K./Victim 6) prior to the legislature amending the statute of limitation period that went into effect on January 29, 2007.

Alleged Victim 7, D.S., was born on November 10, 1984 and was twenty years of age as of November 10, 2004--prior to January 29, 2007. The alleged conduct against D.S. occurred between September 1995 and December 1996. The statute of limitation period had expired at CP-14-CR-2422-2011 for Counts 32, 34, 35 (related to D.S./Victim 7) prior to the legislature amending the statute of limitation period that went into effect on January 29, 2007. Sandusky's sentence should be vacated at Counts 12, 14, 15, 20, 22, 23, 30, 31, 32, 34, 35.

CONCLUSION

Claims I and II of Sandusky's Petition were timely filed within one year of discovery of the newly-discovered facts and/or governmental interference. Questions of fact exist as to Sandusky's diligence and as to McGettigan and Fina's actions regarding R.R., S.P. and A.Q. Claims IV and V are facially timely as they

involved issues related to representation by re-sentencing counsel and were brought within one year of the finality of the re-sentencing judgment of sentence, and raise questions of fact related to prior counsel's strategic basis or lack thereof for failing to bring forward the evidence at issue. In addition, finding those claims and claims VI through VIII as time-barred renders the time-bar unconstitutional as applied. And the statute of limitations clearly expired as to a host of counts.

This Court should set a scheduling status conference for the purposes of scheduling an evidentiary hearing or hearings.

Respectfully submitted:

TUCKER ARENSBERG, P.C.

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

Signature: /s/Jerry J. Russo

Name: Jerry J. Russo

Attorney No.: 55717

CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that on the 5th day of February, 2026 he caused an exact copy of the foregoing to be served in the manner specified upon the following:

Via First Class Mail, PACfile, and/or e-mail:

Office of Attorney General
Appeals & Legal Services Section
16th Floor, Strawberry Square
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Judge Maureen A. Skerda
37th Judicial District
Warren County Courthouse
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Warren, PA 16365

/s/J. Andrew Salemme

APPENDIX A

IN THE COURT OF COMMON PLEAS
OF THE 37TH JUDICIAL DISTRICT OF PENNSYLVANIA
WARREN COUNTY BRANCH
CRIMINAL

COMMONWEALTH OF PENNSYLVANIA

vs. **C.R. 334-2019**

KELLY PATZ,
Defendant.

ORDER

AND NOW, this 10th day of December, 2024, upon consideration of Petitioner's Post-Conviction Relief Act Petition and following argument thereon, for the reasons stated on the record, it is hereby **ORDERED** and **DECREED** that Defendant's Petition is **GRANTED IN PART** and **DENIED IN PART**.

Petitioner's argument that "[t]rial counsel was ineffective in not challenging a violation of the statute of limitations for the Unlawful Contact with a Minor count" is **GRANTED**. Petitioner's conviction on Count 7, Unlawful Contact with a Minor is hereby **VACATED**. As this affects the sentencing scheme previously imposed, Petitioner will be resentenced on January 31, 2025 at 3:00 p.m. in the Jackson Courtroom, Warren County Courthouse.

Petitioner's argument that "[t]rial counsel was ineffective in failing to object to the Order of Restitution to non-victim Derek Neddo" is **GRANTED**. The restitution amount will be revised at the time of sentencing.

All other arguments raised by Petitioner in his Post-Conviction Relief Act Petition are **DENIED** for the reasons stated on the record.

Petitioner shall have thirty (30) days following the date of this Order to file an appeal to the Superior Court of Pennsylvania.

BY THE COURT:

GREGORY J. HAMMOND, J.

> of the specified timeframe, Appellant has not identified the 'proof' or indicated whether or where he placed a contemporaneous objection to the admission of this 'proof' on the record.... This issue, is therefore, waived.

Id. at *14.

Fourth, Defendant claimed that "the trial court abused its discretion by allowing the Commonwealth to introduce testimony by two other victims of sexual assault that [Defendant] allegedly perpetrated pursuant to Pa. R.E. 404(b)(2)." ***Id.*** (internal quotations omitted). The Superior Court concluded that this Court did not abuse its discretion in permitting this testimony under the common plan or scheme exception of Pa.R.E. 404(b).

Defendant next asserted that his conviction of Unlawful Contact with a Minor was barred by the two-year statute of limitations. The appellate court found that because Defendant did not assert this issue prior to sentencing, this defense is deemed waived.[6] ***Id.*** at *20-21.

Similarly, in arguing that the Commonwealth presented insufficient evidence, the Superior Court determined that because Defendant failed to raise this challenge in his Rule 1925(b) statement, this issue was also waived. The Superior Court ultimately affirmed this Court's Judgment of Sentence on January 11, 2023.

On February 7, 2023, Defendant filed an Application for Relief and asserted that counsel of record had abandoned him. Defendant was granted an extension, and filed an Application for Reargument on February 27, 2023. A *Jette* letter was sent to counsel on March 8, 2023. Defendant again filed a "Motion for Clarification / To Proceed *Pro Se* / [a]nd File Reargument/Reconsideration." Defendant's Motion was denied by Order dated October 18,

[6] This issue was raised in the PCRA Petition which is the subject of this appeal. This Court determined that trial counsel's failure to raise this issue prior to sentencing amounted to ineffectiveness of counsel, and therefore, granted relief as to this issue.