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JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs. **CP-14-CR-2421-2011**

CP-14-CR-2422-2011

GERALD A. SANDUSKY

OPINION pursuant to 1925(a)

Petitioner timely appeals from the September 8, 2026 order dismissing his third Post-Conviction Act Petition filed on September 26, 2025. The Court notes that an opinion and order denying the petition was initially issued on February 27, 2026. The Court subsequently vacated the Order denying the PCRA petition on March 13, 2026 and then filed the Rule 907 Notice of Intent to Dismiss. Counsel for Petitioner then objected to the Notice to Dismiss on March 18, 2026. After considering counsel's briefs, the court then issued an order which limited an evidentiary hearing to the sole issue of whether R.R. had in fact recanted his testimony presented at trial. The Court also found that there were no other genuine issues concerning any material fact so no legitimate purpose would be served by any further proceedings on the remaining issues raised. An evidentiary hearing was scheduled for September 8, 2026. On September 3, 2026, the court was

formally advised by counsel that Petitioner 's counsel had withdrawn the claim concerning R.R. After colloquy by video conferencing with Petitioner, the Court then dismissed the PCRA petition in its entirety.

Reviewing the history of this case, on June 22, 2012, a jury found the defendant, Gerald A. Sandusky (hereinafter "Sandusky"), guilty of sexually violating ten juvenile male victims over a period of several years. The trial court subsequently imposed a term of thirty (30) to sixty (60) years incarceration in a state correctional institution. Sandusky appealed to Superior Court on February 21, 2013. Superior Court affirmed the judgment of sentence on October 2, 2013. The Supreme Court denied allowance of appeal on April 2, 2014. The initial PCRA petition was filed on April 2, 2015. An amended PCRA petition followed on May 6, 2015. After recusal of the trial court, Judge Foradora presided and decided the PCRA claims on October 18, 2017. Superior Court affirmed but remanded for re-sentencing in light of ***Alleyne vs. United States,* 570 U.S. 99 (2013)** on February 5, 2019. Thereafter, the court resentenced Sandusky on November 23, 2019. While the sentence was on direct appeal, counsel filed with Superior Court a Motion for a New Trial based on newly discovered evidence on May 9, 2020. On May 13, 2021, Superior Court denied the claims of after discovered evidence as the information was not promptly raised but remanded on the narrow issue concerning a judgment entered for what was determined to be the costs of prosecution and not restitution. The trial court

then received additional claims of after discovered evidence and subsequently reformed the amount of the costs of prosecution but denied all other claims on June 27, 2023. Superior Court affirmed the trial court order on September 19, 2024. Sandusky alleges that his judgment of sentence then became final on October 19, 2024. He files this third PCRA claiming newly discovered facts, governmental interference or a constitutional challenge and assesses that it is timely filed because it was filed within one year of the Superior Court's affirmance of Post Conviction Relief on the issue of costs.

Analysis

The first question that the court addresses is whether this petition is timely filed. The sentence became final on May 13, 2021 when Superior Court affirmed the Judgment of Sentence but remanded on the narrow issue of whether a judgment entered in Centre County was actually a part of restitution as the Court had only entered restitution for $1,706.81 as part of the sentence but Centre County had entered judgment in the amount of $95,047.88 which they attributed to restitution. The limited remand addressed only court costs and not any other aspect of sentence. On remand, the court determined that the amount was a matter of court costs and not restitution. Restitution may have been considered a part of sentencing but court costs are not considered a part of a sentence that is usually controlled by the court. Similarly, the Pennsylvania Supreme Court held that:

> Our decision in ***Commonwealth v. Nicely,* 536 Pa. 144, 638 A.2d 213 (1994),** also supports today's ruling. There, the Court held: "[t]he imposition of costs in a criminal case is not part of the sentence, but rather is incident to the judgment." *Id.* at 217. In support of this pronouncement, ***Nicely*** cited the Superior Court's then sixty-five-year-old decision in ***Commonwealth v. Cauffiel*, 97 Pa. Super. 202 (1929),** which similarly noted: "[t]he liability of a defendant for costs is not a part of the penalty imposed by the statutes which provide for the punishment of these offenses. Such liability is an incident of the judgment, arising out of our statutes providing for the payment of costs in criminal proceedings[.]" ***Cauffiel*, 97 Pa. Super. at 205-06**. Given the longstanding law in Pennsylvania providing that costs spring automatically from the judgment of guilt, **Rule 706(C)** was not intended to transform the automatic imposition of costs at judgment to a discretionary assessment at sentencing. *See* ***Commonwealth v. Lopez*, 280 A.3d 887 (Pa. 2022)**

The instant matter was ultimately appealed but affirmed on September 19, 2024. Thus, as the court characterizes the finality of sentence to have occurred on May 13, 2021, any PCRA claim should have been filed within one year of the date this judgment became final. **See 42 Pa.C.S.A 9545 (b)(1).** Since this petition was filed more than four years later, the Court considers this petition to be untimely filed. As such, the matter is time-barred. ***Commonwealth v. McKeever*, 947 A.2d 782 (Pa.Super. 2008), *Commonwealth v. Taylor*, 65 A.3d 462 (Pa.Super. 2013)**

As the Court recognizes this PCRA petition is untimely filed, the jurisdictional time-bar can only be overcome if the petitioner alleges and proves one of the three statutory exceptions provided under 42 Pa.C.S.A.§9545 (b)(1): (1) interference by government officials in the presentation of the claim; (2) newly discovered facts; and (3) an after recognized constitutional right. A petition invoking an exception to the

jurisdictional time-bar must be filed within one year of the date that the claim could have been presented.

On appeal, Petitioner claims that the PCRA court erred in denying him an evidentiary hearing on after discovered evidence that Prosecutors Joseph McGettigan (now deceased) and Frank Fina profited from abuse allegations made by S.P. and assisted him in procuring a civil attorney and in setting up a trust fund for S.P. in which Fina served as a trustee along with McGettigan's paramour. There is no evidence that any of the prosecutors were actively engaged in the civil litigation nor had a financial interest while prosecuting the defendant in 2012. The documentation in Petitioner's exhibits indicates that three years after the trial concluded, a trust was set up in which Frank Fina was one of three individuals on the Trust Protective Committee. Again, this behavior occurred post-trial and there is no indication that the behavior was antecedent behavior. As such it would not have affected the outcome of the trial. Thus, the Court concluded there was no basis for an evidentiary hearing as the behavior alleged occurred post-trial.

The next claim is that the prosecution manipulated the testimony of S.P. and S.P.'s mother to promote the prosecution's theory. The after-discovered "evidence" is a 2024 affidavit from SP's mother. This affidavit is based upon inadmissible hearsay and is sought only to impeach the credibility of S.P. Significantly, there is no supporting affidavit from S.P. After discovered evidence in this case must be

producible and admissible at time of trial. ***Commonwealth vs. Abu-Jamal*, 941 A.2d 1263 (Pa. 2008)**. S.P.'s mother's 2024 affidavit about events that occurred some thirteen years earlier can only be characterized as opinion testimony that would have served to impeach her son's testimony. As it is not necessarily factual testimony, such testimony would not likely have advanced a changed verdict given the number of victims who testified. As such the court properly limited this claim as a claim not requiring an evidentiary hearing.

The next claim is that re-sentencing counsel was ineffective for failing to timely present after-discovered evidence of the photocopy of a diary maintained by Kathleen McChesney in her capacity as a member of an investigative team led by Louis Freeh, Esquire and "summaries of emails to and from various members of the Freeh team and evidence concerning the Freeh team's interview of an individual who became a Sandusky juror." The Superior Court previously declined to address this claim because it was not promptly raised. As neither the diary entries or email summaries could have been admissible in trial, this after-discovered evidence would have failed even if promptly raised by counsel. Superior Court previously opined:

> Within the context of ***Rule 720(c)***, it is the movant's burden to produce evidence sufficient to satisfy each of the four prongs of the rule, as discussed *supra*. ***See Castro***, 93 A.3d at 821 n. 7 (citing ***Commonwealth v. Pagan***, 597 Pa. 69, 950 A.2d 270, 292 (2008)). After careful review of the record, party briefs, and the PCRA court's opinion, we conclude that Sandusky fails to satisfy the requirements of both the third and fourth prong of ***Rule 720(c)***, such

that the PCRA court properly denied him an evidentiary hearing. ***Commonwealth v. Sandusky*, 324 A.3d 551 (Pa.Super. 2024)**

Again, the diary excerpts and summaries would be hearsay and could not have been admitted at trial. As such, counsel could not be deemed ineffective for failing to present "evidence" which is not admissible. ***Commonwealth v. Cousar*, 638 Pa. 171 (2017)** The first PCRA court also addressed the claim regarding the juror and quoted ***Commonwealth v. Briggs*, 12 A.3d 291 (Pa. 2011)** as cited next that

> [T]he pivotal question in determining whether an impartial jury may be selected is not whether prospective jurors have knowledge of the crime being tried, or have even formed an initial opinion based on news coverage they had been exposed to, but, rather, whether it is possible for those jurors to set aside their impressions or preliminary opinions and render a verdict solely based on the on the evidence presented to them at trial. Id.

The fourth claim addresses information discovered post-trial based upon civil questionnaire forms of various alleged victims in which reference was made to repressed memory therapy. Counsel was permitted to address these claims at trial and thoroughly litigated this matter in both the trial and his first and second PCRA petitions. This Court is unpersuaded that petitioner has not had the opportunity to litigate this claim. Superior Court opined that receiving therapy would not necessitate a new trial as counsel had ample opportunity to explore this at time of trial and in the first PCRA proceeding. "This fact alone is not indicative of undue influence or suggestion, nor does it imply the use of a discredited repressed memory

therapy by Shubin, MacNab, or anyone else. To award an evidentiary hearing on nothing more than the occurrence of a common result of appropriate psychological therapy, that is, a patient's eventual acknowledgment of a difficult traumatic event, would unacceptably lower the standard for obtaining a hearing to simply having requested one. ***Commonwealth v. Sandusky*, 324 A.3d 551 (Pa. Super. 2024.)**

The next after discovered evidence claim is that the prior PCRA counsel was ineffective for failing to present a ***Brady*** claim related to the Commonwealths failure to disclose the role that therapist Michael Gillum played as a *de facto* member of the prosecution team. Proving a ***Brady*** violation requires the determination of three issues. First petitioner must establish that the evidence at issue was either exculpatory or could have been used to impeach a witness. Second, that the information was deliberately or inadvertently suppressed by the Commonwealth and third, petitioner suffered prejudice because of it. ***Commonwealth v. Paddy***, 15 A.3d 431 (Pa. 2011). Prejudice is found when there is reasonable probability that the result of the proceeding would have been different if it had been provided to the defense. The Court is again not persuaded that therapist Michael Gillum's role was unbeknownst to counsel as prior PCRA counsel questioned Gillum at the first PCRA proceeding where he credibly stated, "I don't deal with repressed memory [and] I don't work with anyone who claims to have repressed memories or anything along

those lines." (PCRA 1 transcript, 3/24/2017, p. 159). The Court finds no merit in this argument and as such denied the request for an evidentiary hearing.

The PCRA court may dismiss a petition without conducting an evidentiary hearing when the court is satisfied that there are no genuine issues concerning any material fact, the defendant is not entitled to postconviction collateral relief, and no legitimate purpose would be served by any further proceedings. ***See*** **Pa.R.Crim.P. 907** comment for summary dismissal; ***see also Commonwealth v. Johnson***, 139 A.3d 1257, 1273 (Pa. 2016). The Court is satisfied that even if the Court finds that the claims are not untimely, the above-referenced analysis addresses the Court's reasoning that all claims listed above should be dismissed without hearing.

No further opinion shall issue.

BY THE COURT,

Maureen A. Skerda

Maureen A. Skerda, S.J.
Specially Presiding