

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-1671-2021</b>
	:	
vs.	:	
	:	<b>CRIMINAL DIVISION</b>
<b>ERICK JOHNSON,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

This matter is before the Court on two separate Motions in Limine filed on June 5, 2023, by Jeana Longo, Esquire, on behalf of the Defendant. One motion seeks dismissal of Counts 1-10 of the Information and one motion seeks dismissal of all counts of the Information. Argument was held on June 6, 2023, prior to jury selection in this matter. Matthew Welickovitch, Esquire, appeared on behalf of the Commonwealth and Jeana Longo, Esquire, appeared on behalf of the Defendant. At the time of the argument, the Commonwealth made an oral Motion to Amend the Information.

**I. MOTION TO AMEND INFORMATION**

The Commonwealth’s Motion to Amend the Information was based on a closer review of the transcripts from the preliminary hearing and in interviews of each alleged victim. In said documents, the alleged victim N.H. testified that the sexual abuse by the Defendant continued until she was 12 years old. As N.H. was born in 1986, she would have turned 12 years old in 1998. Although Defendant’s counsel opposed the Commonwealth’s motion and indicated that the Commonwealth’s response to her Motion for a Bill of Particulars did not include allegations of any incidents occurring after 1996, the

Commonwealth argued that these transcripts were provided during discovery and from the beginning N.H. has maintained that the abuse occurred until sometime in 1998. After consideration, the Court finds that there is no indication that allowing the Information to be amended to allow for the extended timeframe in which the allegations of abuse to N.H. occurred would either be an unfair surprise to the Defendant or would it change the strategy of Defendant's counsel. Accordingly, the Commonwealth's Motion to Amend the Information to allow for the date range to be expanded with regard to N.H.'s claims is **GRANTED.**

## **II. MOTION TO DISMISS ALL COUNTS OF THE INFORMATION**

In his Motion to Dismiss, the Defendant argues that at the time these offenses were alleged to have been committed the prosecution must have been commenced within five years after it was committed, although there was an exception in 42 Pa.C.S. §5552(c)(3) which provided that the type of conduct alleged, when committed against a minor, must be brought for prosecution at "any time up to the period of limitation provided by law after the minor has reached 18 years of age." Defendant argues that the statute of limitations would have lapsed five years after the complainants reached 18 years of age. The Defendant further argues that imposing the current statute of limitations against the Defendant for offenses alleged to have occurred over twenty years before the current law was enacted would violate the *Ex Post Facto* Clause of the United States Constitution under *Stogner v. California*, 539 U.S. 607 (2003) (holding that the *Ex Post Facto* Clause bars states from applying extended statutes of limitations to persons for whom the previous limitations period has lapsed).

With respect to the allegations of rape, Defendant's counsel failed to point out that

the statute was amended several times between the limitation period in effect at the time the offenses were alleged to have occurred and the present statute of limitations. A careful review of the statutory history shows that the statute of limitations period for rape charges has never lapsed. In fact, in 2019, a legislative amendment was enacted which provides that there is no statute of limitations for rape and sexual assault. *See* 42 Pa.C.S. §5551(7). Accordingly, with respect to the allegations of rape contained in Counts 11-20 of the Amended Information, the Defendant's Motion to Dismiss is **DENIED**.

Although sexual assault is presently included in the group of offenses for which there is no statute of limitations, prior legislative amendments have created a "gap" in the statute of limitations period, which affects the victims in this case and, therefore, the Commonwealth's ability to prosecute these claims. Due to what may have been a legislative oversight, sexual assault was not added to the list of "exceptions" to the five year statute of limitations under 42 Pa.C.S. §5552(c)(3) until August 27, 2002. Prior thereto, prosecution for claims of sexual assault must have been commenced within five years of the date the offenses were committed. M.B.'s allegations of sexual assault ended sometime in 1996. Therefore, any prosecution of claims of sexual assault would have had to have been commenced by 2001. Accordingly, the charges of sexual assault filed in 2021 against the Defendant related to M.B. are well beyond the applicable statute of limitations period and therefore the Defendant's Motion to Dismiss is **GRANTED** with respect to Counts 1-5.

The circumstances surrounding N.H. allegations of sexual assault are more complicated. As previously stated, the statute of limitations was extended on August 27, 2002, which would have covered incidents occurring within the previous five years. As there

was testimony that the alleged assaults occurred until 1998, any allegations of incidents occurring between August 27, 1997 and an unknown end date in 1998 would not be barred by the statute of limitations. Therefore, the Defendant's Motion to Dismiss is **GRANTED IN PART and DENIED IN PART**. Counts 6-10 in the Amended Information pertaining to allegations which occurred *after* August 27, 1997 shall be permitted to proceed. Any of Counts 6-10 in the Amended Information pertaining to allegations which occurred *before* August 27, 1997, are **DISMISSED** as untimely pursuant to the statute of limitations.

### **III. MOTION TO DISMISS COUNTS 1-10 OF THE INFORMATION**

In this Motion, the Defendant argues that "sexual assault" was not a defined offense in the Pennsylvania Crimes Code until an amendment was passed on March 31, 1995, and effective May 30, 1995. The allegations include acts committed between 1992-1996, with an extension to 1998 for N.H.. Because they allege offenses that were not recognized by the Crimes Code during much of the timeframe the conduct is alleged to have occurred, the Defendant argues that Counts 1-10 of the information should be dismissed. As this Court has ruled that only acts of sexual assault alleged to have occurred after August 27, 1997, with respect to N.H. are permitted to proceed, the Defendant's Motion to Dismiss Counts 1-10 of the Information is **DISMISSED AS MOOT**.

### **ORDER**

**AND NOW**, this 8<sup>th</sup> day of **June, 2023**, for the reasons set forth above, the Court finds as follows:

1. The Commonwealth's Motion to Amend the Information is **GRANTED** to allow the claims with respect to N.H. to be extended to 1998.

2. The charges alleging rape with respect to both alleged victims were filed within the time permitted under the applicable statute of limitations. Therefore, the Defendant's Motion to Dismiss Counts 11-20 is **DENIED**.

3. With respect to the sexual assault claims related to M.B., these were barred by the statute of limitations and untimely filed. Therefore, the Defendant's Motion to Dismiss is **GRANTED** with respect to Counts 1-5 are **DISMISSED**.

4. With respect to sexual assault claims related to N.H., the Defendant's Motion to Dismiss is **GRANTED IN PART and DENIED IN PART**. Any sexual assault charges stemming from incidents alleged to have occurred prior to August 27, 1997, are barred by the statute of limitations and **DISMISSED** as untimely filed. Any sexual assault charges stemming from incidents alleged to have occurred after August 27, 1997, are considered to have been filed within the statute of limitations and the Commonwealth may proceed on those counts in the Amended Information.

By the Court,

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Ryan M. Tira, Judge

RMT/jel  
CC: DA (M. Welickovitch, Esq.)  
Jeana Longo, Esq.  
Gary Weber, Esq.  
Jennifer Linn, Esq.