

**IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

CP-22-CR-0003614-2013

CP-22-CR-0003615-2013

CP-22-CR-0003616-2013

COMMONWEALTH OF PENNSYLVANIA

v.

TIMOTHY MARK CURLEY,

GRAHAM BASIL SPANIER,

GARY CHARLES SCHULTZ,

Defendants

COMMONWEALTH SENTENCING MEMORANDUM

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania

LAURA ANN DITKA
Chief Deputy Attorney General
Attorney ID #52476

PATRICK J. SCHULTE
Deputy Attorney General
Attorney ID #93619

Office of Attorney General
564 Forbes Ave – 6th Floor
Manor Complex
Pittsburgh, PA 15219
(412) 565-5467

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COMMONWEALTH OF PENNSYLVANIA : CP-22-CR-0003614-2013
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 v. : CP-22-CR-0003615-2013
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 :
 GRAHAM BASIL SPANIER :
 :
 GARY CHARLES SCHULTZ, :
 Defendants :

DAUPHIN COUNTY
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COMMONWEALTH SENTENCING MEMORANDUM

AND NOW, comes the Commonwealth of Pennsylvania, by and through Attorney General JOSH SHAPIRO, Chief Deputy Attorney General LAURA ANN DITKA and Deputy Attorney General PATRICK J. SCHULTE, and hereby submits this Sentencing Memorandum, and it support thereof, avers the following:

**1. SENTENCING FACTORS THE COURT SHOULD CONSIDER WITH
RESPECT TO ALL THREE DEFENDANTS**

a. Victim Impact

The crime that these defendants committed has had a profound effect on the children who were victimized by Jerry Sandusky. The defendants helped to facilitate this victimization through their conspiracy of silence. The child who was assaulted in the February 2001 shower incident and all of Sandusky's victims that followed were particularly harmed as timely, appropriate action against Sandusky could have prevented their victimization. Their lives have been turned upside down. For most (if not all) of them, these children's first intimate experience was being molested by a sixty year old pedophile. They will never forget Sandusky's touch. They will never forget Sandusky's smell. These children have been sentenced to a lifetime of

tortured memories that all victims of child sexual assault carry with them – haunted regularly by feelings of pain, fear, self-blame, disgust and shame. These feeling have been compounded by the supporters of these defendants who refer to these young men as “so called victims” and frauds who are only out for money. During the pendency of these proceedings, their lives have been marred by conspiracy bloggers showing up on their property to harass them, publishing photographs of their automobiles on social media, and revealing their identities. The vibrancy and hopefulness of those children before they were molested by Sandusky can never be restored. Physical injuries heal but the emotional scars left behind by sexual abuse last forever.

We will never know the true impact of this crime on the child assaulted in the February 2001 incident. To this day, that child’s identity is still in question – in part because these defendants failed to make child protective services aware of the incident.

The defendants had the opportunity to stop Sandusky in his tracks. They chose a path of appeasement instead. No amount of restitution nor period of incarceration for the defendants will ever make these victims whole. That is how devastating the impact this crime has been on these victims and the parents--caretakers who believed they were providing an opportunity to their children only to learn that they were unwittingly providing access to a pedophile..

b. Deterrence

Another recognized goal of sentencing is general deterrence. *Commonwealth v. Bell*, 901 A.2d 1033, 1036-37 (Pa.Super. 2006). The sentence imposed on these defendants should show that the protection of children is of utmost importance. When parents send their children to Pennsylvania’s educational institutions – whether they are there to learn or just to visit – those children deserve protection, care and support above all else. It should be the number one priority of our educational institutions and those that are employed by them. The sentences for the

above-captioned defendants should show others that there are no competing considerations when it comes to the protection of the most vulnerable amongst us – our children.

c. Protection of the Community

The general deterrence factor that the Commonwealth urges this Honorable Court to consider is inextricably related to the future protection of the community. If others take a more protective role towards the welfare of children by virtue of the sentence imposed upon these three administrators, the children of Pennsylvania's communities will be safer and more secure.

2. COMMONWEALTH V. TIMOTHY MARK CURLEY, CP-22-CR-3614-2013

a. Summary of the Plea Agreement

On March 13, 2017, Timothy Mark Curley (hereinafter referred to as "Curley") pled guilty to one (1) count of Endangering the Welfare of Children, 18 Pa.C.S. §4304(a)(2), graded as a misdemeanor of the first degree. As part of the plea agreement, the Commonwealth withdrew one (1) count of Endangering the Welfare of Children, 18 Pa.C.S. §4304(a)(1), graded as a felony of the third degree, and one (1) count of Criminal Conspiracy, 18 Pa.C.S. §903(a), graded as a felony of the third degree. Furthermore, the grading of the charge to which Curley pled guilty was reduced from a felony of the third degree to a misdemeanor of the first degree.

Curley agreed to give truthful testimony in the trial of *Commonwealth v. Spanier, CP-22-CR-0004615-2013*, as an aspect of the plea agreement.

There is no agreement as to Curley's sentence. The Commonwealth has agreed to refrain from making a sentencing recommendation as it relates to Curley's sentence, but for agreeing to allow Curley to serve his sentence under home confinement should incarceration be a component of the defendant's sentence. The Commonwealth only agrees to the condition in the preceding

sentence upon medical proof that the defendant could not tolerate incarceration due to a medical condition.

The plea agreement did not prohibit the Commonwealth from suggesting factors this Honorable Court should consider, and as such those factors are discussed *infra*.

b. Sentencing Guidelines

The Commonwealth used the procedure for determining the guideline sentence as outlined in 204 Pa.Code §303.2 in determining Curley's sentencing guideline range. Curley has zero Prior Record Score points as described in 204 Pa.Code §§303.4-303.8. The Offense Gravity Score for the crime to which Curley pled guilty (Endangering the Welfare of Children, 18 Pa.C.S. §4304(a)(2), graded as a misdemeanor of the first degree) is five (5) points. *See* 204 Pa.Code §303.15. Thus, Curley's sentencing guideline range as prescribed by the Basic Sentencing Matrix in 204 Pa.Code §303.16 is as follows:

Mitigated Range -- Restorative Sanctions

Standard Range -- Restorative Sanctions up to and including nine (9) months total confinement

Aggravated Range -- Twelve (12) months total confinement

c. Factors this Honorable Court should consider in determining Curley's sentence

The Supreme Court of Pennsylvania has recognized retribution as a legitimate sentencing goal. *Commonwealth v. Williams*, 539 Pa. 249, 652 A.2d 283, 285 n. 1 (1994). Curley needs to be punished for the crime to which he pled guilty. While Curley deserves credit for taking responsibility for his actions in the form of admitting his guilt, his repeated claims of memory lapses around critical events surrounding this crime was nothing short of bizarre. The Commonwealth asserts that the astonishing forgetfulness that Curley demonstrated during his

testimony during the trial of *Commonwealth v. Spanier* was simply not credible. Any reasonable person in the place of Curley during the crucial time period between May 1998 and June of 2001 could not possibly have forgotten the details of events that Curley failed to remember absent a medical condition affecting one's memory.

The Commonwealth's position is that Curley's testimony in the *Spanier* trial was designed to protect those who deserved to share blame with Curley for the decisions that led to the colossal failure to protect children from Sandusky. His "forgetfulness" also allowed him to save face in a room full of supporters who publicly called this trial a "witch hunt" and fraudulent prosecution. Mr. Curley's memory was markedly more clear in his statement to investigators a mere week before his testimony.

While Curley alone could have taken steps to put Sandusky under investigation in 2001, he alone cannot take the blame for what happened. Others with authority, power and influence shared the information about what Mike McQueary witnessed in the Lasch Building in February 2001. Curley, however, is the person who spoke to Second Mile and relayed no reportable information that would have allowed them to protect the children in their program. He failed to mention to Dr. Raykovitz that the 2001 incident was the second time Sandusky had drawn unwanted attention for showering with children. To conclude otherwise after a review of the evidence in this matter would be manifestly unreasonable. Thus, Curley needs to be punished in a manner commensurate with his participation in this crime.

3. COMMONWEALTH V. GARY CHARLES SCHULTZ, CP-22-CR-3616-2013

a. Summary of the Plea Agreement

On March 13, 2017, Gary Charles Schultz (hereinafter referred to as "Schultz") pled guilty to one (1) count of Endangering the Welfare of Children, 18 Pa.C.S. §4304(a)(2), graded

as a misdemeanor of the first degree. As part of the plea agreement, the Commonwealth withdrew one (1) count of Endangering the Welfare of Children, 18 Pa.C.S. §4304(a)(1), graded as a felony of the third degree, and one (1) count of Criminal Conspiracy, 18 Pa.C.S. §903(a), graded as a felony of the third degree. Furthermore, the grading of the charge to which Schultz pled guilty was reduced from a felony of the third degree to a misdemeanor of the first degree.

Schultz agreed to give truthful testimony in the trial of *Commonwealth v. Spanier*, CP-22-CR-0004615-2013, as an aspect of the plea agreement.

There is no agreement as to Schultz's sentence. The Commonwealth has agreed to refrain from making a sentencing recommendation as it relates to Schultz's sentence.

The plea agreement did not prohibit the Commonwealth from suggesting factors this Honorable Court should consider in fashioning Schultz's sentence, and as such those factors are discussed *infra*.

b. Sentencing Guidelines

The Commonwealth used the procedure for determining the guideline sentence as outlined in 204 Pa.Code §303.2 in determining Schultz's sentencing guideline range. Schultz has zero Prior Record Score points as described in 204 Pa.Code §§303.4-303.8. The Offense Gravity Score for the crime to which Schultz pled guilty (Endangering the Welfare of Children, 18 Pa.C.S. §4304(a)(2), graded as a misdemeanor of the first degree) is five (5) points. See 204 Pa.Code §303.15. Thus, Schultz's sentencing guideline range as prescribed by the Basic Sentencing Matrix in 204 Pa.Code §303.16 is as follows:

Mitigated Range – Restorative Sanctions

Standard Range – Restorative Sanctions up to and including nine (9) months total confinement

Aggravated Range – Twelve (12) months total confinement

c. Sentencing Factors Specific to Schultz

Schultz should be given credit in terms of his willingness to accept responsibility by virtue of his guilty plea and for his expression of remorse on the witness stand in Spanier's trial.

Schultz, however, needs to answer for his failure to protect the welfare of Sandusky's victims, including the child in the shower in February 2001 and the victims that followed. Schultz had the chief of Penn State's campus police as a subordinate. He had the ability to direct a Sandusky investigation upon learning of the 2001 incident. The campus police obviously knew how to conduct an investigation of Sandusky in that they ran one in 1998. When Schultz became frustrated with how the 2001 plan to deal with Sandusky was going, he owed it to the children who attended and visited the University to be stronger. His frustration never amounted to action. The fact that Schultz never followed up with Curley and/or Spanier as to the status of the Sandusky situation was a puzzling dereliction of duty.

Of particular concern during Schultz's testimony in the Spanier trial was Schultz's seeming unwillingness to acknowledge that what McQueary reported to him about the 2001 shower incident was sexual in nature. It defies common sense, using the standard of a reasonable person, to interpret what Mike McQueary reported to Schultz as anything but a sexual assault—especially considering Schultz's knowledge of the 1998 incident.

4. COMMONWEALTH V. GRAHAM BASIL SPANIER, CP-22-CR-3615-2013

a. Reason for the Sentencing Proceeding

On March 24, 2017, following a trial by jury, Graham Basil Spanier (hereinafter referred to as "Spanier") was found guilty of one (1) count of Endangering the Welfare of Children, 18 Pa.C.S. § 4304(a)(1), graded as a misdemeanor of the first degree.¹

b. Sentencing Guidelines

The Commonwealth used the procedure for determining the guideline sentence as outlined in 204 Pa.Code §303.2 in determining Spanier's sentencing guideline range. Spanier has zero Prior Record Score points as described in 204 Pa.Code §§303.4-303.8. The Offense Gravity Score for the crime of which Spanier was found guilty (Endangering the Welfare of Children, 18 Pa.C.S. §4304(a)(1), graded as a misdemeanor of the first degree) is five (5) points. See 204 Pa.Code §303.15. Thus, Spanier's sentencing guideline range as prescribed by the Basic Sentencing Matrix in 204 Pa.Code §303.16 is as follows:

Mitigated Range – Restorative Sanctions

Standard Range – Restorative Sanctions up to and including nine (9) months total confinement

Aggravated Range – Twelve (12) months total confinement

c. Factors this Honorable Court should consider in determining Spanier's sentence

As has been stated in paragraph 1(a) of this memorandum, the victims that could have been spared if Spanier would have acted to protect them after February 2001 have been irreparably harmed. In particular as it relates to Spanier, the Commonwealth is reminded of a conversation had with one of Spanier's victims that was molested by Sandusky after the February 2001 shower incident. He is a graduate of Penn State University. He loves the school he graduated from. Despite all that occurred to him, he still enjoyed watching and cheering on the football team.

¹Spanier was acquitted of a second count of Endangering the Welfare of Children, 18 Pa.C.S. §4304(a)(2) and one (1) count of Criminal Conspiracy, 18 Pa.C.S. §903(a).

One thing, however, greatly bothered him. He has displayed prominently in his home office his degree from Penn State University. Over time he developed a visceral reaction to looking at his degree. The reason he became so dismayed was because each time he looked at it he noticed that it bore the name and signature of Spanier. He abhors the idea that the degree he worked so hard for also displays the name and signature of a person who contributed to his abuse.

He hopes when all is said and done that he might be able to get his degree replaced with one that bears the name of the current president of the University and not the one who could have prevented his molestation.

To date, Spanier has shown a stunning lack of remorse for his victims. While he has made various expressions of sympathy for Sandusky's victims in his various public statements and in testimony at prior legal proceedings, those statements have been completely divorced from taking any personal responsibility. Remorse without taking accountability is not remorse.

Spanier's first attempt at a public statement is perhaps the most telling. As evidenced during his trial, Spanier's first draft of a statement when the scandal broke was completely devoid of any expression of feeling whatsoever towards the victims. Instead, it was a full throated endorsement of his co-defendants, both of whom ultimately pled guilty to failing to protect these victims. Spanier's subordinates in the communications department were horrified by the lack of empathy in the first draft. After being advised by his communications team that he must at least acknowledge the existence of the victims, Spanier's second draft was a shallow and vain attempt. Instead of consulting with those versed in the field of child protection, Spanier instead consulted with his co-defendant's criminal attorneys before releasing his statement. This

was the approach from a man who claimed on a nationally televised interview that “no one is more in tune with child abuse” than he.

In his numerous interviews with media outlets prior to his trial, Spanier never once acknowledged any personal failure on his part, only wishing in hindsight that he had known more about Jerry Sandusky.² In these same interviews, Spanier indicated that he would never turn his back on the welfare of a child. To the contrary, the evidence adduced at Spanier’s trial showed beyond a reasonable doubt that Spanier did turn his back on children for the sake of his personal reputation. As of the date of the writing of this memorandum, there exists no legitimate expression of remorse for the effect Spanier’s conduct has had on his victims.

Spanier needs to be punished for choosing to protect his personal reputation and that of the university instead of the welfare of children. The evidence at Spanier’s trial showed that Spanier was presented with information about Jerry Sandusky’s bad behavior in 1998 and again in February 2001. When the defendant chose not to report the February 2001 incident (despite being armed with the knowledge of a strikingly similar incident less than three (3) years earlier), a calculation was made by Spanier – he was willing to assume the risk that Sandusky’s perversions would end on their own rather than risk the damage to his image that would accompany the publicizing of the information that Sandusky was under investigation for suspicious behavior involving young boys. Spanier made this calculation despite having a decorated background in family sociology, human development and family studies. He agreed to accept being “vulnerable for not having reported” to act “humanely” to a pedophile. Hoping the problem will go away on its own is not a valid plan of action.

² See Elliot, J. (2012, August 22) Interview by Josh Elliot, *ABC News*, New York, American Broadcast Company; Toobin, Jeffrey. “Former President Graham Spanier Speaks.” *New Yorker Magazine*, Aug. 22, 2012. Print; etc.

Furthermore, Spanier was the ultimate decision-maker when it came to reporting Sandusky. Curley indicated during the trial that had Spanier insisted that the 2001 shower incident be reported to child protective services, Curley would have complied. Spanier's co-defendants reported directly to him. In all likelihood, Spanier could have spared the victimization of multiple children had he chosen to stand up for the children he owed a duty to protect. Instead of standing up, Spanier chose to move on.

Spanier comes before this Honorable Court having not acknowledged in his pretrial public statements that he did anything wrong, despite a jury of his peers telling him otherwise. It is up to this Honorable Court to determine whether the defendant's position in this regard is one of defiance, arrogance, or a combination of both.

For the reasons set forth in paragraphs 1(b) and (c), *supra*, this Honorable Court should consider the sentencing principles of deterrence and protection of the community. Spanier's sentence should make it loud and clear that the protection of the welfare of Pennsylvania's children should never take a back seat to the reputation of one man ever again.

d. Sentencing Recommendation

Nothing short of a sentence that includes a period of jail time would be an appropriate sentence for Graham Spanier. The children that were endangered by Spanier's conduct now go by a new title – sexual assault survivors. That is a fact those victims will live with for the rest of their lives. If Spanier ordered an investigation into Sandusky's conduct after he was made aware of the February 2001 shower incident, it is highly likely that Spanier could have spared some if not all of the victims who were molested by Sandusky after 2001. The sentencing goals of deterrence, protection of the community, and retribution can only be achieved by a jail sentence in this matter. For all of the foregoing reasons, the only proper sentence for Spanier would be a

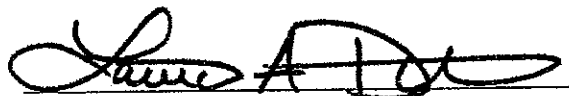
sentence at the high end of the standard range or aggravated range of the sentencing guidelines.

There is simply nothing mitigating about the harm he has caused and the nature of his crime.

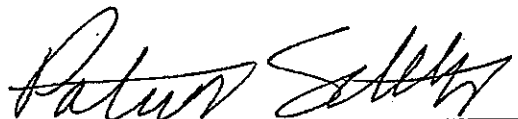
5. Conclusion

For all of the reasons discussed *infra*, the Commonwealth respectfully requests that this Honorable Court consider this sentencing memorandum in determining the appropriate sentence for the above-captioned defendants.

Respectfully Submitted,



Laura Ann Ditka
Chief Deputy Attorney General



Patrick J. Schulte
Deputy Attorney General

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: :
GARY CHARLES SCHULTZ, : :
Defendants : :

CERTIFICATE OF SERVICE

AND NOW, this 30th day of May, 2017, the undersigned has caused to be served upon
the following persons the within Sentencing Memorandum via email and/or First Class Mail:

Dauphin County Court Administration
101 Market Street
Harrisburg, PA 17101

Sam Silver, Esq.
1600 Market Street
Suite 3600
Philadelphia, PA 19103

Caroline Roberto, Esq.
429 4th Avenue
Suite 500
Pittsburgh, PA 15219

Thomas Farrell, Esq.
300 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219



Laura Ann Ditka
Chief Deputy Attorney General



Patrick J. Schulte
Deputy Attorney General