

SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

In re: Fortieth Statewide Investigating Grand Jury, Petition of: M.L.

No. 77 WM 2018 (Pa. July 6 2018) · No. No. 77 WM 2018 · Decided July 6, 2018

SUMMARY

The Supreme Court of Pennsylvania issued a per curiam order addressing M.L.’s petition challenging a supervising judge’s June 5, 2018 order concerning findings in the Fortieth Statewide Investigating Grand Jury report. The Court established an expedited briefing schedule, directed the filing and review of sealed and redacted briefs, denied oral argument, and ordered that the matter be submitted on the briefs.

CASE DETAILS

COURT	Supreme Court of Pennsylvania, Western District
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Pennsylvania
DECIDED	July 6, 2018
DOCKET	No. 77 WM 2018
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review of a June 5, 2018 order by the supervising judge of the Fortieth Statewide Investigating Grand Jury, which was certified for appellate review under Pa.R.A.P. 3331(a)(5).
PRECEDENTIAL VALUE	Procedural order; merits issues unresolved
PARTIES	M.L. v. Office of Attorney General

TOPICS

[appellate procedure](#) [appellate jurisdiction](#) [criminal procedure](#) [due process](#)

PRACTICE AREAS

[appellate procedure](#) [criminal procedure](#) [constitutional law](#) [grand jury proceedings](#)

QUESTIONS PRESENTED

1. Whether the grand-jury report's finding that M.L. witnessed child sexual abuse by a fellow priest and failed to report it to law enforcement was false and unsupported by a preponderance of the evidence.

2. Whether the supervising judge violated M.L.'s rights to reputation and due process under Article I, Sections 1, 9, and 11 of the Pennsylvania Constitution by denying him a pre-deprivation hearing.
3. What briefing and submission procedures should govern the expedited consideration of M.L.'s petition for review.

HOLDINGS

1. Because the Office of Attorney General indicated that it had not fully developed its counter-argument and requested an opportunity for additional briefing, the matter would be considered after full expedited briefing by the parties.
2. The Office of Attorney General's request for oral argument was denied, and the matter was ordered submitted on the briefs.
3. The parties were required to submit unredacted briefs under seal and contemporaneous redacted versions for public docketing, subject to review and objection concerning grand-jury secrecy.

FACTUAL BACKGROUND

The underlying dispute concerns a grand-jury report alleging that M.L. witnessed child sexual abuse by a fellow priest and failed to report it to law enforcement. M.L. contended that the finding was false and unsupported by a preponderance of the evidence and that he was denied a pre-deprivation hearing before publication or disclosure of the report. The Supreme Court did not decide the merits of those claims in this order.

PROCEDURAL HISTORY

M.L. challenged the supervising judge's June 5, 2018 order and identified claims concerning the sufficiency of a grand-jury report's findings and alleged violations of reputation and due-process rights. The Supreme Court ordered expedited full briefing, established deadlines and procedures for sealed and redacted briefs, denied the Office of Attorney General's requests for oral argument, and directed that the matter be submitted on the briefs.

DISPOSITION

other

OPINION

PER CURIAM.

IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT IN RE: FORTIETH STATEWIDE: No. 77 WM 2018 INVESTIGATING GRAND JURY: PETITION OF: M.L.: ORDER PER CURIAM AND NOW, this 6th day of July, 2018, upon consideration of the Petition for Review, and in light of the Office of Attorney General's indication that it has not fully developed the merits of its counter-argument and its request to submit additional briefing should this dispute proceed beyond the initial filings, this matter is to be considered by the Court upon full briefing by the parties on an expedited basis.

Petitioner is challenging a June 5, 2018 order which the supervising judge certified for appellate review. See Pa.R.A.P. 3331(a)(5). As identified in Petitioner's General Statement of Objections to the Order, with some rephrasing by this Court, Petitioner is presenting the following appellate claims: 1. Whether the Report's finding that Petitioner witnessed child sexual abuse by a fellow priest and failed to report that abuse to law enforcement is false and not supported by a preponderance of the evidence.

2. Whether the supervising judge violated Petitioner's fundamental rights to his good reputation and due process of law under Article I Section 1, 9, and 11 of the Pennsylvania Constitution by denying him a pre-deprivation hearing. Petitioner's brief is due by 2:00 p.m. on July 10, 2018. At that time, Petitioner shall present an unredacted brief, which shall be filed under seal.

Simultaneously, to ensure as much public access as possible without violating grand jury secrecy, Petitioner shall submit a redacted version of the brief suitable for public docketing. The Office of Attorney General, as the opposing party, shall review Petitioner's redacted brief and, no later than 2:00 p.m. on July 13, shall file a letter with the Prothonotary, either certifying that the Office of Attorney General agrees that the redacted brief does not violate grand jury secrecy or objecting to the release of the redacted version of the brief on the basis that it allegedly violates grand jury secrecy.

In the event the Office of Attorney General certifies that it agrees that Petitioner's redacted brief does not violate grand jury secrecy, the document shall be immediately docketed for public view. If the Office of Attorney General objects to the release of the redacted version, such objections shall be immediately forwarded to the supervising judge for his prompt consideration and disposition.

The Office of Attorney General's appellate brief shall be due by 2:00 p.m. on July 13, 2018. At that time, the Office of Attorney General shall present an unredacted brief, which shall be filed under seal. Simultaneously, the Office of Attorney General shall submit a redacted version of the brief suitable for public docketing. Petitioner, as the opposing party, shall review the redacted brief.

Following that review, and no later than 2:00 p.m. on July 17, 2018, Petitioner shall file a letter, either certifying agreement that the Office of Attorney General's redacted brief does not violate grand jury secrecy or identifying with specificity any aspects of the redacted version which Petitioner believes violate such secrecy.

In the event Petitioner certifies agreement that the Office of Attorney General's redacted brief does not violate grand jury secrecy, the document shall be immediately [77 WM 2018] - 2 docketed for public view. In the event Petitioner objects to the release of the redacted version, such objections

shall be immediately forwarded to the supervising judge for his prompt consideration and disposition.

The parties are cautioned against instigating unnecessary ancillary litigation regarding the production of redacted versions of the brief suitable for public docketing, and any such ancillary litigation will not delay this Court's resolution of the challenges to the Report. Any amicus curiae briefs, regardless of which side they support, shall be due by 2:00 p.m. on the fourth business day following the public disclosure of Petitioner's or the Office of Attorney General's redacted brief, whichever occurs later.

In consideration of the timeliness concerns, the parties will not be permitted to submit reply briefs. Service of all submissions must be made at the time of filing via e- filing, fax, e-mail, or personal delivery. Requests for changes to the briefing schedule will not be entertained, and no extensions will be granted. Consistent with the expedited treatment of this matter, the request of the Office of Attorney General to proceed to oral argument, which it has made in several of its answers, is DENIED.

This matter will be submitted on the briefs. The instant order is unsealed. [77 WM 2018] - 3