

C O U R T O F C O M M O N P L E A S

LACKAWANNA COUNTY

COMMONWEALTH OF PENNSYLVANIA

- vs -

THOMAS GERVASI

X
X
X
X
X
X
X
X
X
X

No. 10 CR 440

TRANSCRIPT OF PROCEEDINGS
OF GRAZIER HEARING

BEFORE: HONORABLE MARGARET BISIGNANI MOYLE

DATE: March 12, 2015

PLACE: Lackawanna County Family Center
Courtroom 5; via videoconference
200 N. Washington Avenue
Scranton, Pennsylvania 18503

A P P E A R A N C E S

For the Commonwealth: MARK GIANOTTI, ESQUIRE
Assistant District Attorney

For the Defendant: KURT LYNOTT, ESQUIRE

Lorissa M. Senczakowicz
Official Court Reporter

1 THE COURT: Mr. Gervasi, can you
2 hear us?

3 MR. GERVASI: Yes, I could.

4 THE COURT: Okay. All right. I'm
5 going to ask you to put the caption on the
6 record.

7 ATTY. GIANOTTI: Yes, Your Honor.
8 It's Commonwealth v. Thomas Gervasi. The
9 case is docketed at 10 CR 440. This is the
10 time and date scheduled by the Court to
11 address the defendant's --

12 MR. GERVASI: I can't hear him, Your
13 Honor.

14 THE COURT: Twist the microphone.
15 Okay. Can you move your chair closer, too?

16 ATTY. GIANOTTI: I will, Your
17 Honor. It's Commonwealth v. Thomas Gervasi.
18 The case is docketed to 10 CR 440. It's the
19 time and date scheduled by the Court for a
20 Grazier Hearing.

21 THE COURT: The record should
22 reflect that the defendant is participating
23 in these proceeding via videoconference.
24 The defense attorney, Attorney Lynott, is,
25 also, present.

1 ATTY. LYNOTT: I know you were just
2 going to ask me if I had a copy of
3 something, Judge. I'm not sure --

4 THE COURT: The motion to -- Mr.
5 Gervasi, you sent a motion to my Court -- my
6 chambers asking that I allow you to
7 represent yourself and have Attorney Lynott
8 dismissed; is that correct?

9 MR. GERVASI: Yes, it is.

10 THE COURT: Okay.

11 ATTY. LYNOTT: If I could respond,
12 Judge. I don't believe I ever got a copy of
13 the actual motion. I did receive a letter
14 from Mr. Gervasi advising me that I was no
15 longer required. I was, also, informed on
16 the way in here by Assistant District
17 Attorney Gianotti that there was, I believe,
18 an amended petition has been filed that I
19 have not been provided a copy of. But,
20 again, my understanding, from speaking with
21 Mr. Gianotti, is that I may actually be
22 included in the amended petition, which
23 clearly, if he's now claiming that I have
24 some sort of ineffectiveness, I can't
25 represent him and be against him in the same

1 proceeding. I have not seen that. My
2 understanding is that sometime at the end of
3 February a pro se petition was filed, but,
4 obviously, that, also, falls under the world
5 of hybrid representation.

6 But, like I said, I have a letter
7 that says you weren't required. I believe
8 your office contacted me to advise me that
9 the motion was filed and a Grazier Hearing
10 was -- I did get the order scheduling
11 today's hearing.

12 THE COURT: That's what we're here
13 for today. We're here for a Grazier
14 Hearing, sir. It's a hearing for the Court
15 to determine if you should be permitted to
16 represent yourself. We're going to get to
17 that in a moment. I just want to put the
18 procedural history on the record, so that
19 the record is clear.

20 Mr. Gervasi, you were convicted at
21 trial by a jury of your peers of arson and
22 endangering persons and several related
23 offenses. This case proceeded to sentencing
24 on or about March 20, 2012.

25 Your case was appealed and your last

1 appeal was denied by the Pennsylvania
2 Supreme Court on February 27th of 2014. At
3 that time, you filed a petition for post
4 conviction relief and then, Attorney Lynott,
5 you were appointed; is that correct?

6 ATTY. LYNOTT: If I could, Judge?

7 THE COURT: Go ahead.

8 ATTY. LYNOTT: It appears from my
9 record, July 28th of 2014, the petition was
10 filed. I was then subsequently appointed on
11 August, I believe, 4th. I then --

12 MR. GERVASI: That's right.

13 ATTY. LYNOTT: Subsequent to that, I
14 then, actually, filed an amended petition
15 and then the Commonwealth had filed an
16 answer. We were waiting to have an
17 evidentiary hearing and then all of this
18 transpired. But we were -- that, I believe,
19 is all of the filings and procedural history
20 in the case.

21 THE COURT: Right. At some point
22 after the Commonwealth filed an answer, my
23 chambers was notified by Mr. Gervasi that he
24 wanted to have you removed as counsel and on
25 February 20th of 2015, an amended petition

1 for post conviction relief; a pro se
2 petition was filed by Mr. Gervasi.

3 First things first, sir, before I
4 can address your petition to have
5 Attorney Lynott removed as your attorney. I
6 must ask you a series of questions under
7 oath to determine if you should be permitted
8 to represent yourself. So, at this point,
9 I'm going to ask you to raise your right
10 hand and be sworn.

11
12 **THOMAS GERVASI**, having been called
13 as a witness and being duly sworn testifies
14 as follows:

15 *****

16
17 THE COURT: Okay. Sir, I'm going to
18 ask you a series of questions to make sure
19 that I am satisfied that you can represent
20 yourself and to make sure that I'm satisfied
21 that you understand all of your rights and
22 what rights you're waiving here today.
23 Okay. And that you're doing so voluntarily.
24 Do you understand that?

25 MR. GERVASI: Yes, I do.

1 THE COURT: Sir, you've made a
2 request to proceed without a lawyer
3 representing your interests. Do you
4 understand that you have the right to have a
5 lawyer represent you?

6 MR. GERVASI: Yes; I do, Your Honor.
7 If I could explain, the deadline, I believe;
8 I read the Act. The deadline, as I read it,
9 makes me file all additional or all
10 petitions by -- within one year, which would
11 be February 26th or February 27th of this
12 year. So, at the point where I realized
13 that I was losing some specific issues that
14 were subjects of relief through Mr. Lynott
15 or Attorney Lynott, I decided to -- that
16 I was forced to -- that I had to file this
17 amended petition pro se at this time. So,
18 yes, I don't need Mr. Lynott to represent me
19 at this time.

20 THE COURT: All right. Well,
21 there's a whole host of questions here. I
22 understand your explanation and we'll talk
23 about that a little bit later.

24 MR. GERVASI: All right.

25 THE COURT: Do you understand

1 that -- so you understand that you have the
2 right to have a lawyer represent you during
3 these proceedings, correct?

4 MR. GERVASI: Yes, I do.

5 THE COURT: And that the Court had
6 appointed Attorney Lynott to represent you,
7 you understand that, correct?

8 MR. GERVASI: I understand that and
9 I appreciate that.

10 THE COURT: And you understand that
11 Attorney Lynott was appointed to represent
12 you at no costs to you. Do you understand
13 that?

14 MR. GERVASI: Yes, I do, ma'am.

15 THE COURT: Okay. Have you thought
16 this matter through and are you sure you
17 want to proceed without a lawyer?

18 MR. GERVASI: Well, like I said in
19 my petition, I would be happy to have a
20 qualified attorney. I just don't feel that
21 Mr. Lynott was representing all of my needs.
22 If you read the explanation in my petition
23 that I filed on the 20th of February, you
24 would see that. I don't want to get into it
25 now. I don't think we need to.

1 THE COURT: Okay. All right. I
2 understand -- all right. Do you understand
3 that Attorney Lynott has experience in
4 handling these matters, specifically, PCRA
5 matters?

6 MR. GERVASI: All right. Just to
7 explain my position a little bit. We had --
8 I had never spoken to Mr. Lynott, by the
9 way, in six and a half or seven months it's
10 been. I sent him several letters and I got,
11 one, usually one sentence answers from him.
12 On somewhere around February -- I'm sorry,
13 somewhere around middle of September or
14 something, I sent him a slew of additional
15 amendments for my petition and he kind of
16 disregarded those and, then, he told me that
17 he would look through the amendments and
18 choose the ones that he felt were relevant
19 and file his amended petition based on that.

20 I never gave him the right to file
21 that without my permission. In fact, I sent
22 him a written letter instructing him that I
23 need to review what the petition says before
24 he files it. He disregarded that and just
25 filed his generalization of some of the

1 issues that I had raised and nothing new in
2 that whole time period.

3 After that, we had a couple
4 correspondents back and forth and, at some
5 point, I discussed with Martha, my estranged
6 wife, and Mary Ellen, who I had been living
7 with for 12 years, now, or something, that I
8 needed to remove him. And they kind of
9 disagreed and wanted to speak with him.

10 With that, they called him and a
11 letter transpired about me having to give
12 him the right to speak with him. We did all
13 of that. They spoke with him. I called him
14 back that night and they both agreed that we
15 should retain him as an attorney and they
16 gave me their reasons why. He explained to
17 them why he should remain on the case.

18 With that, I reviewed the Act again
19 and I sent him specific items in the Act
20 that showed that he wasn't telling -- wasn't
21 being totally honest with them. So, with
22 that, we all decided that, that this has to
23 proceed.

24 At that point, I knew I had a
25 deadline of February 27th, so on February

1 20th we filed an amended petition. I hope
2 that explains.

3 THE COURT: It does. It does
4 explain it. But I just need to make sure
5 that you understand what the ramifications
6 are of discharging Attorney Lynott. I
7 understand that you do not agree with the
8 tact or the approach that Attorney Lynott
9 has made so far in your case; is that
10 correct?

11 MR. GERVASI: Exactly.

12 THE COURT: Okay. Do you understand
13 that the Constitution of the United States
14 guarantees that you have the right to have
15 an attorney to advise and represent you at
16 all times, including during postconviction
17 relief proceedings. Do you understand that,
18 sir?

19 MR. GERVASI: Yes, I do.

20 THE COURT: Do you understand that
21 the attorney that's been appointed by the
22 Court to represent you has a degree in law
23 and that he has studied for years to become
24 a lawyer and he's actually been trained by
25 working as a lawyer for many years. Do you

1 understand that, sir?

2 MR. GERVASI: I agree with that and
3 I know that. And I, also, know that my
4 trial attorney has a similar degree and that
5 didn't go too well.

6 THE COURT: Okay. Sir, do you
7 understand that no one, not even the Court,
8 can take away your right to have
9 representation here today?

10 MR. GERVASI: The only person who
11 can take away my right to representation is
12 me is the way I understand it.

13 THE COURT: That's exactly right.
14 You are correct, sir. Have you ever
15 represented yourself in a criminal action
16 before?

17 MR. GERVASI: Not in a criminal
18 action, no.

19 THE COURT: In a civil action you
20 have?

21 MR. GERVASI: Well, I went to a
22 Magistrate a few times and represented
23 myself and I had, you know, a hundred
24 arbitrations with the union issues, but
25 nothing to this degree.

1 THE COURT: All right. Well, that
2 does matter though that you did represent
3 yourself in some other proceedings, so you
4 have some understanding of the system. Sir,
5 do you understand that if I do allow you to
6 represent yourself from this point forward,
7 you would be held to the same standard as an
8 attorney in your presentation. Do you
9 understand that?

10 MR. GERVASI: I understand that.

11 THE COURT: And you would be held
12 to -- you would have to follow the same
13 rules of evidence and the rules of criminal
14 procedure and the rules of appellate
15 procedure as an attorney would. Do you
16 understand that as well, sir?

17 MR. GERVASI: Yes, I understand
18 that.

19 THE COURT: Do you understand that
20 the Court, that means, I, will not be able
21 to function as your lawyer during these
22 proceedings and I will not be able to give
23 you any legal advice or assistance should
24 you request it?

25 MR. GERVASI: I understand that.

1 THE COURT: How far did you go in
2 school, sir?

3 MR. GERVASI: Twelfth Grade and I
4 had, you know, a host of after, you know,
5 college credits and stuff in different areas
6 and trainings.

7 THE COURT: But you understand that
8 lawyers have a three year law degree in
9 order to get the license that's required to
10 practice law?

11 MR. GERVASI: I understand that.

12 THE COURT: Sir, do you understand
13 that if you represent yourself here today;
14 if I allow you to proceed pro se, you will
15 be prohibited from claiming in the future
16 that you were ineffective in representing
17 yourself?

18 MR. GERVASI: I understand that. As
19 long as I'm not blocked by anyone from
20 pursuing the areas that I need to pursue. I
21 understand that fully.

22 THE COURT: Okay. Do you understand
23 that you will be treated no differently by
24 this Court or by any Appellate Court if
25 you're representing yourself, than if you

1 had a lawyer representing you?

2 MR. GERVAS

3 THE COURT:

4 postconviction rel
5 a very technical an
6 the law?

7 MR. GERVAS:

8 THE COURT:

9 in your best positi
10 to go forward representing yourself in this
11 action?

12 MR. GERVASI: I feel, at this point,
13 I have no choice, but to represent myself.
14 I have no choice, but to submit my thing, as
15 I did, in a timely fashion. Would I have
16 liked to have the best lawyer in the land?
17 Absolutely, I would've, but the time
18 restraints restricted me from doing that
19 and, you know, other things restricted me
20 from doing that.

21 THE COURT: Sir, do you understand,
22 though, that if Attorney Lynott were allowed
23 to remain on your case, he would've been
24 able to educate you or discuss with you
25 possible avenues of defense and possible

1 avenues to proceed?

2 MR. GERVASI: I understand that,
3 Your Honor. However, I didn't want to get
4 into this too much. But there's clear
5 issues that were presented or not presented
6 or things that happened during my trial and
7 prior to my trial that were blatant mistakes
8 and intentional mistakes, I feel, by my
9 trial attorney and the prosecutors. And the
10 things that they did are so blatant and so
11 clear in the Act that Mr. Lynott didn't want
12 to represent in the PCRA. I have no choice
13 but to relieve him of his duties, just so I
14 could protect those issues by my deadline.

15 ATTY. LYNOTT: And, Judge, I don't
16 want to turn this into a tennis match, but
17 if I could answer?

18 THE COURT: Sure.

19 ATTY. LYNOTT: Again, my knowledge
20 of what he's asking to claim and what he's
21 allowed to claim under the PCRA is the
22 reason that my amended petition was filed
23 the way it was. Although Mr. Gervasi may
24 have claims or things he has claims, some of
25 those claims could've been previously

1 litigated and should've been covered by his
2 appeal and to include them in this would've
3 been fruitless and meritless. But, that's
4 why I didn't include certain things that
5 were raised by him. I raised what I
6 believed were applicable under the PCRA and
7 what issues had merit that the Court would
8 discuss.

9 THE COURT: I understand that. Sir,
10 that would've been my next question.
11 Attorney Lynott is trained in the law. His
12 responsibility is to review the requested
13 allegations or concerns that you wanted him
14 to raise. But lawyers are prohibited from
15 raising or alleging frivolous or
16 nonmeritorious claims. So, he's trained in
17 the law. He looks at what you're asking him
18 to do and he's telling you, "look, you can't
19 pursue this avenue for this reason."

20 MR. GERVASI: Well, he didn't -- I'm
21 sorry.

22 THE COURT: Sorry, Mr. Gervasi.
23 Okay. So, sir, that's what I'm trying to
24 tell you. Sir, Attorney Lynott has an
25 obligation to review the information that

1 you want to proceed on and he has an
2 obligation to weed out what has been
3 litigated before, which lacks merit or is
4 unsustainable.

5 MR. GERVASI: I realize that, Your
6 Honor. If you want to get into the issues
7 of Mr. Lynott, it's a very small amount of
8 issues. Most of my issues, like I said in
9 my original PCRA, 90 percent of the reason
10 I'm in here is because I was misrepresented
11 by Paul Walker and his associates and 10
12 percent is because of the prosecution and
13 the actions they took.

14 All I'm saying -- my only grievance
15 with Mr. Lynott is that he didn't address
16 the specific issues that I feel are relevant
17 and didn't even explain why those issues
18 aren't relevant and didn't even allow me to
19 review his amended petition before he did
20 it.

21 When the woman had the meeting with
22 Mr. Lynott and explained some things to him,
23 and asked him specific questions that I
24 would want them to ask him, so they would
25 have the same feeling as me, he never

1 reviewed -- I have them written down on my
2 thing here. He never reviewed the
3 discovery. He complained that it was 2000
4 pages. And, by the way, my trial attorney
5 never reviewed the discovery either and he
6 had three years to do it. Anyway, he never
7 reviewed the discovery. He never reviewed
8 the hearing transcripts. He never reviewed
9 the witness statements or the investigative
10 reports. He never reviewed the history of
11 the witnesses. He never reviewed the
12 qualifications of prosecutorial experts, one
13 of whom got on the stand and lied through
14 his teeth and that was over a six month
15 period. It was too much work. It was too
16 much stuff to read. And my first letter to
17 him, when I told him -- I think I started
18 the letter out by saying, "welcome aboard.
19 I'm sure you're pouring through the
20 thousands of pages." There's no way that a
21 PCRA Attorney is going to be able to file a
22 petition on a case unless he reviews the
23 case.

24 Now, I don't care if it took him two
25 years to do it. It doesn't matter to me.

1 I'm probably going to be here for two more
2 years anyway. But for him to just say -- to
3 just cherry-pick out my issues and just put
4 them down without even allowing me to review
5 them or explain to me why they're not
6 relevant, I have no choice but to tell him
7 he has to go. And I have to file that in
8 the one year period. That's where we stand
9 here. Maybe he's right. But if they don't
10 explain it to me why he's right and just
11 disregards it and then just tells untruths
12 to two of the smartest people I know, Martha
13 and Mary Ellen, and then I prove to them by
14 sending them copies of the law that he
15 didn't tell them the truth, what am I
16 supposed to do, except dismiss him?

17 ATTY. LYNOTT: Judge, again, I don't
18 want to make it a quid pro quo, but, again,
19 I met with the two ladies this year. The
20 amendment was filed back in September. What
21 happens is, Mr. Gervasi's paramour calls me
22 and says she wants to meet with me. There
23 was a letter exchange that says, I can't
24 meet with anybody without your approval.
25 Under the Rules of Ethics, I can't discuss

1 your case, so we took care of that and we
2 arranged it. I met with them. In no way,
3 shape, or form would I tell them that there
4 are 2000 pages of discovery because A., I
5 know under the law there is no discovery in
6 a PCRA. I don't have 2000 pages of
7 discovery that I would've reviewed, so
8 that -- wherever that statement came from is
9 inherently false. That's the problem at
10 this point and I will speak up in my defense
11 at this point.

12 The problem in my defense is that
13 you're being told information that is
14 completely untrue and not factual.

15 Secondly, in October, when I amended
16 the petition, I advised Mr. Gervasi that
17 some of his issues were repetitive. And,
18 so, you don't have to raise the same issues
19 six times with the Judge. You can
20 streamline them into shorter, smaller,
21 issues.

22 Again, now, as I said, from my
23 information, there's a PCRA that I'm
24 included in. There's clearly a disconnect,
25 regardless at this point, to my

1 representation. But I would've never told
2 him anything about discovery because I don't
3 have discovery because it's not allowed in a
4 PCRA.

5 THE COURT: Do you think he was
6 referring to have you review -- I think one
7 of his claims is that Paul Walker is
8 ineffective for not reviewing the discovery
9 in the initial trial.

10 ATTY. LYNOTT: I think what he's
11 saying is that he -- I represented that I
12 didn't read the 2000 pages of discovery --

13 THE COURT: Right.

14 ATTY. LYNOTT: I don't have the 2000
15 pages of discovery because there's no
16 obligation for Mr. Gianotti to provide it to
17 me in a PCRA.

18 THE COURT: Right. Did you want to
19 say -- go ahead, sir.

20 MR. GERVASI: Yes. I absolutely
21 want to say something; just three things.
22 First of all, there's a negative connotation
23 to the word paramour. I've lived with Mary
24 Ellen and we own property together for 12
25 years. There's no animosity between myself

1 and my wife. We parted on good terms.
2 Mr. Lynott brings up paramour, just like the
3 defense did in the Superior Court Case;
4 paramour. They keep saying that word. Mary
5 Ellen is my domestic partner. The only
6 reason why we're not married is because me
7 and Martha didn't work out the divorce
8 agreement yet.

9 ATTY. LYNOTT: And I apologize, but
10 that's the phrase I use, Judge.

11 THE COURT: Sir, that is the phrase
12 that is used throughout the whole court
13 system. In Family Court, paramour is used.
14 There's no negative connotation as far as
15 I'm aware. I, myself, use it. We don't use
16 domestic partner, we use paramour. All
17 right. Go ahead.

18 MR. GERVASI: Here's the first
19 letter I sent to Mr. Lynott -- every letter
20 I send is registered returned receipt, so
21 maybe he didn't read this; "welcome aboard.
22 Due to the time constraints placed upon us
23 by the Court and with very few days, we have
24 to act. I've begun to develop a few
25 additional issues to amend my petition; July

1 28th. I assumed you read the PCRA Petition
2 I filed pro se and reviewed the decree. I
3 understand you have very little time to
4 review the thousands upon thousands of pages
5 of transcripts, statements, depositions, and
6 evidence." And then it goes on to say for
7 the 6-year-old case and, you know, I feel
8 sorry for the guy for all the stuff he has
9 to read. So, he can't say he didn't have
10 this. It's a letter with return receipt --

11 ATTY. LYNOTT: I'm not saying that I
12 didn't have the letter. I'm saying that I
13 don't have the discovery, Judge. Clearly,
14 you can see by Mr. Gervasi's testimony and
15 his letter; in one hand he's saying we got
16 little time, we got little time, lets move,
17 lets move. But in the same right, you're
18 not doing anything. We can't have it both
19 ways. So we're clear, I never represented
20 to anybody that I had 2000 pages of anything
21 because I do not because it is not allowed
22 in a PCRA.

23 THE COURT: All right. Sir, so we
24 have to get back on track then.

25 MR. GERVASI: Okay.

1 THE COURT: The question then is
2 what I started off by asking you -- so you
3 understand that Attorney Lynott has a
4 responsibility to look at what it is that
5 you're asking him to file, to file only the
6 claims that he believes in good faith are
7 meritorious and have not been previously
8 litigated, and that he's here, today, saying
9 that, that's what he did. But you're still
10 not satisfied, correct?

11 MR. GERVASI: Right. Like I said in
12 the beginning, the issue doesn't lie with
13 Mr. Lynott. He just wasn't doing what I
14 feel he should be doing and his job
15 certainly is to review the case and to find
16 the issues why a PCRA is relevant or why the
17 petition is relevant for relief.

18 If you don't know what the case said
19 or what happened during the case, if you
20 don't review it, how would you know? And
21 it's evident in the petition that he filed;
22 the amended petition that he filed, because
23 there was nothing new in there that I didn't
24 have in my original petition. As a matter
25 of fact, it was less.

1 THE COURT: All right.

2 MR. GERVASI: Now, some of those
3 issues weren't relevant and I understand
4 that fully. But the problem here lies with
5 Paul Walker and his Law Firm, that's who
6 misrepresented me and that'll come up at the
7 evidentiary hearing why. And, like I said,
8 there's issues of prosecutorial misconduct
9 and a host of things with the prosecution.
10 But 90 percent lies on the lack of Mr.
11 Walker and his associates.

12 THE COURT: Okay. So, if you -- I
13 have to continue now in my questioning.
14 Sir, we will be having an evidentiary
15 hearing in this matter based on the
16 petition; the amended petition that you
17 filed. Do you understand that during that
18 evidentiary hearing, the rules of evidence
19 will govern. Do you understand that?

20 MR. GERVASI: Yes, I do.

21 THE COURT: So, even though you're
22 not trained as a lawyer, do you understand
23 that you will be held to the same standard.
24 You'll have to rely on the same evidentiary
25 ruling or the same evidentiary rules as the

1 prosecution in the hearing. Do you
2 understand that?

3 MR. GERVASI: Yes; I'm aware of
4 that, ma'am.

5 THE COURT: And if you falter
6 because you don't understand the rules or
7 you missed a rule, you falter; you die on
8 your sword. Do you understand that, sir?

9 MR. GERVASI: I understand that
10 fully.

11 THE COURT: Later on, you would not
12 be able to claim that you didn't understand,
13 that you're not a lawyer, that you were
14 ineffective, you would be denied all of
15 those complaints. Do you understand that,
16 sir?

17 MR. GERVASI: Yes, ma'am, I do.

18 THE COURT: Okay. Sir, do you
19 consider yourself to be in good mental and
20 physical health?

21 MR. GERVASI: Well, yeah, I'm pretty
22 good physically. Mentally, it's not the
23 best, but we're hanging in there.

24 THE COURT: For purposes of
25 representing yourself, you feel that you're

1 competent, correct?

2 MR. GERVASI: I'm very focused on
3 it, ma'am.

4 THE COURT: Okay. I mean, do you
5 understand -- are you being treated in the
6 prison for any mental illness?

7 MR. GERVASI: No, I'm fine.

8 THE COURT: Are you taking any
9 medication?

10 MR. GERVASI: No, I'm fine.

11 THE COURT: Okay. And have you
12 being diagnosed as having any mental
13 disorder?

14 MR. GERVASI: No, I have not.

15 THE COURT: Okay. So, do you
16 understand that the Court is not going to
17 appoint another lawyer to represent you free
18 of charge?

19 MR. GERVASI: I understand that. I
20 understand that's a possibility, yes.

21 THE COURT: And do you understand
22 that if you wanted a lawyer from this point
23 forward, the only way you would get one is
24 if you hired a lawyer to represent you?

25 MR. GERVASI: Yes. Or if you felt

1 it was in the interest of justice, but I
2 understand that.

3 THE COURT: Okay. Do you have any
4 questions about anything we've been
5 discussing here today; as far as you
6 representing yourself?

7 MR. GERVASI: No; I don't, except
8 for -- oh, yes, I do, as a matter of fact.

9 THE COURT: Go ahead.

10 MR. GERVASI: I have a couple of
11 questions for the Court. I have -- if you
12 had read my PCRA Petition, I have about 31,
13 maybe it's 29 -- it's 31, now, people that I
14 need to depose.

15 THE COURT: Wait. Okay. We're just
16 talking about representing yourself.

17 MR. GERVASI: Okay. That's right.

18 THE COURT: Right. First, we have
19 to dispose of that. Do you have any
20 questions about you representing yourself
21 here today?

22 MR. GERVASI: No, I don't.

23 THE COURT: Okay. Do you -- is
24 there anything that you want me to explain
25 further?

1 MR. GERVASI: No. I think I'm
2 pretty clear on that.

3 THE COURT: On the issue of you
4 representing yourself?

5 MR. GERVASI: No. I'm clear on
6 that.

7 THE COURT: Okay. Are you here
8 today freely and voluntarily asking the
9 Court to allow you to represent yourself?

10 MR. GERVASI: Yes, I am.

11 THE COURT: Okay. Sir, I do find
12 that you are here today freely and
13 voluntarily asking the Court to allow you to
14 represent yourself. I'm going to grant your
15 request. I'm going to discharge Attorney
16 Lynott.

17 From now on, you'll be proceeding
18 pro se, unless you hire a lawyer or under
19 the very extremely -- under the extreme
20 circumstance that I felt it was appropriate.

21 ATTY. LYNOTT: Judge, can I break
22 in? I think it's a natural breaking point.

23 THE COURT: Yes.

24 ATTY. LYNOTT: For clarification, I
25 did receive several letters recently from

1 Mr. Gervasi asking that his file be turned
2 over immediately. Obviously, until this
3 order comes about, I am not able to do
4 that --

5 THE COURT: Yeah.

6 ATTY. LYNOTT: At this point in
7 time, I have copied the contents of the
8 file. But I just wanted to put on the
9 record that I wanted to --

10 THE COURT: Don't leave.

11 ATTY. LYNOTT: No, I'm not leaving.
12 I'm just saying, I didn't want to turn it
13 over to cover myself. I haven't turned
14 anything over to him, yet, because I'm still
15 his lawyer, until this moment.

16 THE COURT: Okay. The next issue
17 does have to do with the content of the
18 lawyer's file. So, I'm going to ask
19 Attorney Lynott to remain just for that.
20 Mr. Gervasi, then, I just want to make sure,
21 so we're going to proceed on your amended
22 PCRA Petition, not the amended PCRA Petition
23 that Attorney Lynott filed on your behalf in
24 2014, correct?

25 MR. GERVASI: Correct.

1 THE COURT: Okay. So we do have
2 another issue. Now, that you are
3 representing yourself, the first order of
4 business is that my chambers -- I was
5 contacted by two jurors in the case, sir,
6 and I understand that the Court
7 Administrator's Office was contacted by
8 jurors. Attorney Gianotti, do you have
9 anything?

10 ATTY. GIANOTTI: Yes, Your Honor.
11 Our office was contacted by two jurors as
12 well. I spoke with one, personally, and ADA
13 Fisher, I believe, spoke with another.

14 THE COURT: Okay. Is there anything
15 you want to say before I --

16 ATTY. GIANOTTI: Obviously, our
17 concerns are this, I did have an opportunity
18 to read the letter that was provided to
19 Attorney Fisher and the juror that he spoke
20 with. The juror that I spoke with on the
21 phone read verbatim her letter; they were
22 identical. There was nothing in the letter
23 that was any threatening or any type of
24 language like that.

25 Our concern is, generally, the same

1 concern that was held by the jurors that
2 called us was that their information was
3 made public and it was not to their
4 knowledge. Their biggest concern was,
5 although the letter does not have any
6 threats enclosed, at least the juror that I
7 spoke to indicated to me that it produced a
8 chilling effect for her, in the sense that
9 she can say from this point forward, she
10 would be unwilling to even sit on the jury
11 given the nature of the information that was
12 disclosed to -- either from defense counsel
13 or to Mr. Gervasi. We're not aware of how
14 the information was actually conveyed to
15 Mr. Gervasi.

16 I could say it wasn't from our
17 office. I'm aware that there were two lists
18 that were provided. One to us during trial
19 and one to Attorney Walker. From there, our
20 file wouldn't have followed the defendant's
21 appeal or anything like that, so those are
22 the concerns that I think --

23 MR. GERVASI: Ma'am, he has to speak
24 up a little bit. I'm not catching
25 everything he's saying.

1 THE COURT: What do you want him to
2 repeat.

3 MR. GERVASI: What I'm hearing so
4 far, if I summarize it and it's correct --
5 there's a court reporter there, correct?

6 THE COURT: Yes.

7 MR. GERVASI: Okay. He's saying
8 that jurors got letters from me, which they
9 did. I hope they all did. And I got some
10 back, as a matter of fact. And he's saying
11 that there was nothing threatening in the
12 letter. What the letter says, Your Honor,
13 is that --

14 THE COURT: I have the letter.
15 Stop. Stop. I have the letter. I have the
16 letter. The first --

17 MR. GERVASI: All I could say --

18 THE COURT: Stop. The first order
19 of business is, how did you get the list?

20 MR. GERVASI: The list of jurors
21 from the jury selection day.

22 THE COURT: You have a list of the
23 names and addresses of the jurors on the day
24 that we selected the jury?

25 MR. GERVASI: Yes. I went -- when

1 they had the -- when they chose the amount
2 of people that would be selected from -- I
3 went down to the -- I don't know what office
4 it was. Paul Walker told me to go down and
5 get a copy of the jurors list. I went down
6 and they told me that I wasn't allowed to
7 have it. I told Paul Walker that, then he
8 came down with me and we got a list of all
9 the jurors. And then the day of jury
10 selection, I just corresponded their
11 addresses with their names.

12 THE COURT: Because on May 10th of
13 2012; after you were sentenced, I received a
14 call -- on the days leading up to May 10th
15 of 2012, would that be right? What was the
16 date of the conviction; 2011?

17 MR. GERVASI: The conviction was
18 11'.

19 THE COURT: Okay. So, at some point
20 after your sentencing, Mary Ellen Gray went
21 to the Clerk of Judicial Records and asked
22 for the names and addresses of the jurors,
23 which is not public information. It is not
24 entered into evidence. It is not filed of
25 record as a court document.

1 At that time, the Clerk of Judicial
2 Records called my chambers and asked what
3 should they do. At that time, I sent a
4 letter to Attorney Walker and to Assistant
5 District Attorney William Fisher that
6 states, "I write to inform you that
7 Pennsylvania Common Law Right of Access to
8 criminal trials does not extend to the names
9 and addresses of empanelled jurors.
10 Therefore, such information cannot be
11 disclosed to the public. I, also, directed
12 the Clerk of Judicial Records to not release
13 the information to Ms. Gray. Now --

14 MR. GERVASI: All right.

15 THE COURT: Now, this information,
16 sir, the first thing I'm going to do is I'm
17 going to ask you to return the list to the
18 Court. It should not be in your possession.
19 It does sound like you got it through the
20 course of your trial, so I'm not going to
21 allege that there's any wrongdoing on your
22 part. But I'm going to ask you to return
23 the list to me without making a copy; that's
24 the first thing.

25 The second thing is, I'm going to

1 ask you to not release the names or the
2 addresses of the jurors to anyone, including
3 Mary Ellen Gray, Martha Gervasi, any of your
4 other family members.

5 MR. GERVASI: Okay.

6 THE COURT: If you want to -- I'm,
7 also, going to order that you are prohibited
8 from any further attempts to contact these
9 individual jurors, unless you approach the
10 Court, first, and ask for permission telling
11 me the content of your correspondents.

12 MR. GERVASI: All right.

13 THE COURT: Now, the -- finally, I'm
14 going to make the letter that was sent to
15 the jurors a copy -- I'm going to put a copy
16 of it in the record today. It's Court's
17 Exhibit No. 1.

18 A number of the jurors expressed
19 fear and concern that you, sir, had their
20 home addresses and to who were you
21 disseminating that information. So, it's
22 not public record. It's not in evidence.
23 It's not an official court record. You have
24 no right to have that information. You have
25 no right to disseminate that information.

1 And your family members have no right to
2 have that information. Are you going to
3 comply with the Court's request?

4 MR. GERVASI: Yes. I have -- I have
5 two copies here and I think there's copies
6 in my files that I got from my appellate
7 attorneys, so I'll find every copy I can and
8 send it to you.

9 THE COURT: Yes. Send it back to my
10 chambers and you're prohibited from
11 disclosing that information to your family
12 members. Do you understand that, sir?

13 MR. GERVASI: The names and
14 addresses; yes, I understand that.

15 THE COURT: Attorney Lynott, before
16 you turn over any files --

17 ATTY. LYNOTT: I have no juror list.
18 I have nothing of that nature in my file,
19 Judge.

20 THE COURT: Okay. All right. So,
21 Attorney Lynott, then, that concludes what
22 we needed you here for. You are now
23 excused.

24 ATTY. LYNOTT: Judge, for the
25 record, I can now comply with Mr. Gervasi's

1 request. I will send him the contents of my
2 file. Usually what I do, Judge, other than
3 the correspondents between the two of us;
4 because we both would have that, I will send
5 him the rest of the file upon returning to
6 my office today.

7 THE COURT: Okay. I am going to
8 write to the jurors and I'm going to advise
9 them of what's transpired here today. And
10 I'm going to direct them to notify my
11 chambers if they receive any further
12 communication or contact from anyone in the
13 community related to Mr. Gervasi or from Mr.
14 Gervasi himself. Sir, let's turn to your
15 amended petition. Okay?

16 MR. GERVASI: Sure.

17 THE COURT: Now, I do note on page
18 12 of your amended petition that you have
19 listed 38 individuals that you wish to call?

20 MR. GERVASI: Yes.

21 THE COURT: First of all, sir, you
22 did make a request to take depositions.
23 There is no discovery in PCRA Proceedings,
24 so your request to depose those individuals
25 is denied. And before I allow these

1 witnesses to be called by you, as witnesses
2 in your case, I'm going to direct that you
3 have 30 days from today's date to, in
4 writing, notify me a proffer of what you
5 anticipate each witness testifying to at the
6 PCRA Hearing.

7 The Commonwealth will then have 20
8 days to respond to that, then we will have
9 another hearing to determine who, if any, of
10 these 38 people you will be permitted to
11 call. Okay, sir? So, 30 days from today
12 you will send me a written proffer on what
13 it is that you anticipate these witnesses to
14 say and then the Commonwealth will respond
15 20 days from that day on whether they object
16 to having any of these witnesses called as a
17 witness. And then we'll have a hearing 10
18 days after that to determine and go over
19 this list to see who will be allowed to be
20 called as a witness during the PCRA Hearing.
21 Okay, sir?

22 MR. GERVASI: I understand what
23 you're saying, Your Honor, but I have to
24 speak with some of these people. I mean,
25 how can I possibly do that? Can we arrange

1 bail until the outcome of this hearing?

2 THE COURT: No bail until the
3 outcome of this hearing. No. No bail.
4 That request was denied and I'm denying it
5 again, today. I'm not sure, sir. Some of
6 these witnesses on this list are witnesses
7 who testified for the Commonwealth as named
8 victims. You're not paroled yet, but,
9 normally, when you are paroled, no contact
10 with victims is a condition of parole.

11 I'm not sure how the Commonwealth
12 feels about you contacting the victims in
13 the case from prison.

14 MR. GERVASI: Well, the reason for
15 the victims is because I wanted to put them
16 on the stand and ask them why they made one
17 statement weeks, for example, one statements
18 weeks after the fire, and then years after
19 the fire there's --

20 THE COURT: Sir, that's not PCRA.
21 You can ask Attorney Walker why he failed to
22 cross-examine the witnesses about prior
23 inconsistent statements. But the
24 evidentiary hearing that's coming up, we're
25 not going to relitigate the case. So, you

1 won't be able to question them about prior
2 inconsistent statements.

3 The whole point of a PCRA is to
4 show, you're trying to show to the Court,
5 that counsel was ineffective for failing to
6 point out these inconsistencies. It's not
7 to put the victims on the stand and to ask
8 them, why did you make these
9 inconsistencies. Do you understand? Right
10 off the bat, if that's your reason for
11 calling them, I'm going to tell you that
12 it's denied.

13 MR. GERVASI: Well, that's one of
14 the reasons. But, the second reason, were
15 they pressured into making these decisions
16 by prosecution.

17 THE COURT: Sir, we're here to
18 determine if Paul Walker was ineffective.

19 MR. GERVASI: I don't have the Act
20 in front of me. But there's a lot of issues
21 in the Act that has to do with prosecutors
22 not doing their job either.

23 THE COURT: I understand that.

24 MR. GERVASI: And if they're doing
25 something that circumvents the truth coming

1 out or excuse the truth, then that's a PCRA
2 issue, also.

3 THE COURT: But you have to have
4 some good faith basis. You have to have
5 some evidence tending to show that the
6 prosecutors did that. The prosecutors --
7 whatever, they threatened the witnesses to
8 get them to do that or they bribed them or
9 something like that. You can't just assume
10 that that happened and say I'm going to go
11 on a giant fishing expedition and call
12 everybody in and just start asking
13 questions.

14 The Act is very narrow in scope and
15 it's very narrow in what you're allowed to
16 do. I don't want to catch you off today by
17 asking you to explain these 38 witnesses.
18 We'll have a hearing in about 60 days.
19 Wherein, we'll take each witness, witness by
20 witness. You're going to submit a proffer
21 in writing telling me what it is you hoped
22 to have the witnesses testimony accomplish.

23 The prosecution will have the
24 opportunity to object and then I will make a
25 ruling on whether that witness will be

1 permitted to be called at the hearing.

2 Okay?

3 MR. GERVASI: I got you.

4 THE COURT: Anything else that we
5 need to address, today, gentlemen?

6 MR. GERVASI: I just wanted to bring
7 up -- even though you said no on the bail.
8 I just wanted to bring up the -- I'm going
9 to let that go. You're telling me that
10 we're having an evidentiary hearing in 30
11 days?

12 THE COURT: No. No. No. In 60
13 days we're going to have a status
14 conference, wherein we're going to decide if
15 you will be permitted to call these
16 witnesses during the PCRA Hearing because I
17 need to hear why you want to call them. I
18 have to give the prosecution an opportunity
19 to respond. And, then, I'll make a decision
20 on each witness; yes, they can be called as
21 a witness; no, they can't be called as a
22 witness. At that point, then, we'll
23 schedule the evidentiary hearing. Okay?

24 MR. GERVASI: Okay. And you don't
25 need those in advance, I could do that at

1 the status conference?

2 THE COURT: No. No. I need, in
3 writing, in 30 days from you a proffer.

4 MR. GERVASI: Oh good, I got it.

5 THE COURT: And then the
6 Commonwealth will respond, in writing, to
7 your proffer. And on your request for bail,
8 sir, I did have an opportunity to review
9 your request. And prior to coming to Court
10 today, I did have an opportunity to review
11 the Rules of Criminal Procedure as they
12 relate to bail after conviction.

13 After I reviewed the rule and I
14 reviewed your request, sir, that's the basis
15 for my denial. Okay.

16 MR. GERVASI: Okay.

17 THE COURT: Anything else?

18 ATTY. GIANOTTI: Just briefly, Your
19 Honor?

20 THE COURT: Go ahead.

21 ATTY. GIANOTTI: The defendant made
22 some representations about the circumstances
23 under which he filed his amended petition
24 and, I think, for today's purposes, if we
25 don't give him an opportunity to file a more

1 complete one, since he indicated on the
2 record that he had filed it with some sort
3 of urgency because he was aware of what the
4 date was and there was some issues with
5 Attorney Lynott. I don't want this to raise
6 another PCRA issue against Attorney Lynott
7 somewhere down the road. So, if he's aware
8 that he has an opportunity and he's waiving
9 that issue and we're only proceeding on ones
10 that he's filed on February 20th.

11 THE COURT: So you don't have an
12 objection to me giving him additional time
13 to file any additional claims?

14 ATTY. GIANOTTI: As long as he makes
15 the motion; no, I don't.

16 THE COURT: Okay. Did you
17 understand what the Assistant District
18 Attorney was saying? If you want to amend
19 your amended petition; if you have any
20 additional claims that you just thought of,
21 but you failed to include, for example, I'll
22 let you do that within the 30 day timeframe.
23 So, within 30 days, if you have any
24 additional claims that you want the Court to
25 address, file those along with your written

1 proffer.

2 Now, we can, at the status
3 conference, maybe we should, go through all
4 of the claims, and narrow them down to the
5 claims that I think you can proceed on. Do
6 you want to do that? Do you want to respond
7 in writing?

8 ATTY. GIANOTTI: I would, Your
9 Honor. Traditionally, I would file a
10 response and ask that the Court summarily
11 dismiss them. But, if we could do it at a
12 court proceeding, I think it would be
13 better.

14 THE COURT: All right. So,
15 Mr. Gervasi, within 30 days you're going to
16 file -- if you have any additional claims
17 that you want addressed, you're going to
18 file it. The Commonwealth is going to file
19 a written response 20 days after that to
20 both your proffer and any amended complaint.
21 Has the Commonwealth filed an answer yet to
22 this; the amended petition?

23 ATTY. GIANOTTI: No. No, I have
24 not.

25 THE COURT: Now you'll have to.

1 ATTY. GIANOTTI: There is something,
2 Your Honor. Procedurally, there is already
3 an issue built into that. He's raised
4 ineffectiveness of Kurt Lynott, which, I
5 believe is --

6 THE COURT: Premature.

7 ATTY. GIANOTTI: It's premature.

8 THE COURT: We can't address that at
9 these proceedings; the ineffectiveness of
10 Kurt Lynott. I think procedurally we're not
11 allowed to, so we won't proceed on that
12 claim. But -- so the Commonwealth is going
13 to file an answer and then 10 days, roughly,
14 after all of the documents are in, I'm going
15 to schedule a status conference, wherein we
16 will review the witness list and the list of
17 claims. And, then, we'll try to figure out
18 where we're going to go from there and we'll
19 schedule the evidentiary hearing. Okay.
20 Anything else that we need to address today?

21 MR. GERVASI: I don't think so. Not
22 at this time, Your Honor.

23 THE COURT: All right.

24 ATTY. GIANOTTI: Your Honor, just so
25 we're clear, since I'm not sure of whether

1 or not Mr. Gervasi will be filing an
2 amended. Can the Commonwealth wait until we
3 receive a proffer and before we respond to
4 an amended PCRA; including the --

5 THE COURT: Did you hear that, sir?

6 ATTY. GIANOTTI: No, I can't. Is
7 that Mr. Gianotti?

8 THE COURT: Yes. Sir, normally the
9 Commonwealth, is required to respond. Well,
10 I could see why they didn't respond because
11 until today, we didn't know if you were
12 going to be proceeding pro se or by Attorney
13 Lynott. So, the Commonwealth, normally,
14 has, what is it, 20 days?

15 ATTY. GIANOTTI: I believe PCRA is
16 subject to court order.

17 THE COURT: Okay. Normally, the
18 Commonwealth they have to file a response to
19 your postconviction -- your amended
20 petition. I'm going to allow them to wait
21 until the 30 days expires before they file
22 their answer to your amended petition. In
23 the event that you may add to it. Do you
24 understand?

25 MR. GERVASI: Yes. So if I add to

1 it, then it'll be 30 days after that.

2 THE COURT: If you add to it. You
3 have 30 and they have 20. If you add to it,
4 you're going to do it in 30 days. So, in 30
5 days, they're going to answer everything;
6 the amended petition filed on February 20th
7 and anything you add to it in 30 days.
8 Okay. They have 20 days after that to file
9 an answer. Okay. Anything else?

10 MR. GERVASI: Right; 20 days after I
11 file my last amended -- in other words, they
12 have 20 days after that. So it's not 20
13 days from today, then 20 days from that
14 date. It's 20 days from the day that I file
15 my amended or just resubmit that.

16 THE COURT: That's right. You don't
17 even have to resubmit it. We already have
18 it. If you add to it, you have 30 days to
19 add to it and they have 20 days to answer.
20 Okay. All right. We'll see you all back
21 here in about 60 days. Thank you, everyone.

22 MR. GERVASI: Thank you very much.

23 THE COURT: Take care.

24 (WHEREUPON, the proceedings
25 adjourned.)

C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me of the above cause and that this copy is a correct transcript of the same to the best of my ability.



Lorissa M. Senczakowicz
Official Court Reporter

The foregoing record of the proceedings upon the above cause is hereby approved and directed to be filed.

COPY

3-26-15 Mon

Date

HONORABLE MARGARET BISIGNANI MOYLE

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