



# Third Circuit Court Denies Penn State Football Coaches' Claim

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The United States Court of Appeals for the Third Circuit (the “Third Circuit”) recently affirmed the U.S. District Court’s decision to grant Penn State University’s motion to dismiss claims made by two former Penn State football coaches. Coaches Jay Paterno and William Kenney sued Penn State in 2014, claiming they were denied due process of law when they were fired from the University in 2011.

Jay Paterno and William Kenney worked as assistant coaches at Penn State University for approximately 20 years. They both worked under Head Coach Joe Paterno, and alongside Gerald Sandusky. In 2011, Sandusky was fired from Penn State University for sexual misconduct and later convicted of child sexual abuse. In 2011, the Penn State Board of Trustees voted to terminate Head Coach Joe Paterno for failing to adequately address Sandusky’s misconduct. In 2012, the University hired William O’Brien to replace Joe Paterno as Head Coach. O’Brien released Jay Paterno and William Kenney from their coaching positions, and the University subsequently terminated their employment with the institution. Jay Paterno and William Kenney filed suit against Penn State on July 21, 2014, alleging federal and state law violations in connection with their respective terminations.

Paterno and Kenney claim that Penn State deprived them of their liberty interest in their reputations due to their loss of property interest in their NCAA and Penn State rights caused by their termination. They claim that the University’s execution of the NCAA Consent Decree, press conferences, statements from the NCAA and their terminations deprived them of their liberty interest in their reputations.

The NCAA Consent Decree included the statement, “Some coaches, administrators and football program staff members ignored the red flags of Sandusky’s behavior and no one warned the public about him.” Paterno and Kenney argue that they were harmed by the reference to “some coaches” and the implication that they were “complicit and/or turned a blind eye to the child sex abuse.” They claim that these statements and others deprived them of their liberty and property interests in their reputations and employment.

The Third Circuit affirmed the District Court’s decision to grant Penn State University’s motion to dismiss. The Court found that there was no reasonable nexus between the phrase “some coaches” and either Paterno or Kenney. Moreover, neither Paterno nor Kenney was able to introduce any evidence indicating that they were either specifically or implicitly named in this decree. The Court also found that Paterno and Kenney failed to establish that any of these statements were made “in connection” with their terminations. The Court reasoned that the Consent Decree was issued six months after they were fired, which greatly diminished the connection between these occurrences. The Consent Decree statements, therefore, did not establish the creation or

dissemination of false and defamatory statements.

*If you have any questions or concerns regarding education or employment related issues, please contact Hayley B. Dryer at [HDryer@cullenanddykman.com](mailto:HDryer@cullenanddykman.com) or at 516-357-3745.*

*Thank you to Victoria Jaus, a law clerk at Cullen and Dykman, for her assistance with this blog post.*

\*Please note that this is a general description of law and does not constitute legal advice.