

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 08-01577

PRESENT: SMITH, J.P., CENTRA, FAHEY, PERADOTTO, AND PINE, JJ.

IN THE MATTER OF THE THIRD REPORT OF
THE SENECA COUNTY SPECIAL GRAND JURY OF
JANUARY 2007.

SOLE NAMED PUBLIC OFFICIAL, APPELLANT;

MEMORANDUM AND ORDER

R. MICHAEL TANTILLO, SPECIAL DISTRICT
ATTORNEY OF SENECA COUNTY, RESPONDENT.

GEIGER AND ROTHENBERG, LLP, ROCHESTER (DAVID ROTHENBERG OF COUNSEL),
FOR APPELLANT.

R. MICHAEL TANTILLO, SPECIAL DISTRICT ATTORNEY OF SENECA COUNTY,
CANANDAIGUA, RESPONDENT PRO SE.

Appeal from an order of the Seneca County Court (Dennis F. Bender, J.), dated March 6, 2008. The order accepted Report Number 3 of the January 2007 Seneca County Special Grand Jury and directed the filing of the report as a public record.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law and the report is sealed.

Memorandum: This is an appeal by a public official of Seneca County from an order directing that a grand jury report be filed as a public record. As we determined in our decision in *Matter of Second Report of Seneca County Special Grand Jury of January 2007* (___ AD3d ___ [Feb. 6, 2009]), County Court erred in ordering the filing because the instructions of the special prosecutor concerning the public official's duties were vague and inadequate, and thus the grand jury was improperly "permitted to substitute its judgment for that of the public official[]" without any indication that the public official failed to act in accordance with the prescribed duties of the position (*Matter of Reports of Grand Jury of County of Montgomery Impaneled on Apr. 30, 1979*, 100 AD2d 692, 692; see *Matter of June 1982 Grand Jury of Supreme Ct. of Rensselaer County*, 98 AD2d 284, 285).

Entered: February 11, 2009

JoAnn M. Wahl
Clerk of the Court