

The STATE of South Carolina
In The Supreme Court

RECEIVED

JUN 03 2013

Appeal From Lexington County
Court of Common Pleas

S.C. SUPREME COURT

R. Lee, Circuit Court Judge

Case No: 2012-CP-32-02794

State of South Carolina

Respondent

v

Sherwood A. Adams

Appellant (petitioner)

Notice of Appeal

Sherwood A. Adams #264887 appeals the order (Judgment) of the Honorable R. Lee. date April 25, 2013. Appellant receive written notice of entry of this order (Judgment) on May 10, 2013.

Sincerely,
S/A Adams
Sherwood A. Adams

The State of South Carolina
In the Supreme Court

Sherwood A. Adams
Applicant,

vs.

State of South Carolina
Respondent,

In The South Carolina
Supreme Court of Appeals.

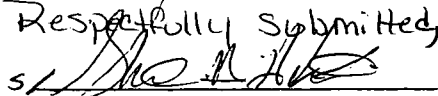
Case No. 2012-CP-32-02494

Application to Proceed in
Forma Pauperis

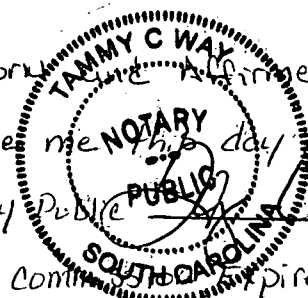
I, Sherwood A Adams, am the applicant in the above caption and in this case.

In support of my request to proceed without being required to prepay any fees or cost.

I state that because of my indigent status, I am unable to pay the cost of said proceedings or to give any security therefore.

Respectfully Submitted,

Sherwood A. Adams.

Sworn and Affirmed to
before me this day of 30th 2013
Notary Public Wey
My commission expires March 9, 2014



STATE OF SOUTH CAROLINA

COUNTY OF Richland

Sherwood A. Adams
APPLICANT,

Vs.

STATE OF SOUTH CAROLINA
RESPONDENT

IN The S.C Supreme Court
OF Appeals
~~IN THE COURT OF COMMON PLEAS~~

CASE # 2012-CP-32-02794

~~CERTIFICATE OF SERVICE BY MAIL~~

1. I AM THE ABOVE NAMED _____ IN THE ABOVE CAPTIONED ACTION.
2. REGULAR COMMUNICATION BY MAIL EXISTS THROUGHOUT THE STATE OF SOUTH CAROLINA AND THAT THIS IS A PROPER CIRCUMSTANCE OF SERVICE BY MAIL.
3. I HAVE THIS DAY SERVED A COPY OF THE Notice of Intent to Appeal, & Statement of Judgement by the Court.
4. IN THE ABOVE-CAPTIONED MATTER ON THE FOLLOWING PERSON(S) BY DEPOSITING IN THE UNITED STATES MAIL, POSTAGE PREPAID:

Daniel E Shearhouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia S.C.

DATED THIS 30th DAY OF May, 2013.

SWORN AND AFFIRMED TO BEFORE ME
THIS DAY OF 30th May, 2013
D. C. Way
NOTARY PUBLIC
MY COMMISSION EXPIRES March 9, 2014
SOUTH CAROLINA

RESPECTFULLY SUBMITTED,
[Signature]

ORIGINAL 2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-32-02794

Sherwood A. Adams #264887

State of South Carolina

FILED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

2013 APR 26

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

Disposition Type (Check One)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

The State's Motion to Dismiss is granted on the basis that the time to seek relief from the Sex Offender Registry requirements is when Mr. Adams is released from incarceration and registry is required. See *Hazel v. State*, 377 S.C. 60, 659 S.E.2d 137 (2008); *Johnson v. Lloyd*, 399 S.C. 470, 732 S.E.2d 198 (Ct. App. 2012) (Declaratory judgment filed he successfully completed his probationary sentence and learned that registry was not merely a condition of probation but required for life.)

Mr. Adams also challenges his registry status because it is used in determining his conditions of confinement. Any challenge to the conditions of confinement must be addressed through the Department of Corrections' grievance procedures. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999).

The State's attorney shall prepare a formal Order and send it to the Court electronically within ~~ten~~ 20 *al* days from the date of this Order.

Order Information

This order ends does not end the case.

Additional Information for the Clerk :

Complete if judgment requires payment of a sum of money or affects title to real or personal property			
JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____
Other:	\$ _____	Other:	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

SCRCP Form 4 (09/2011)

Al-Shabazz Fee
COPY SENT 1-MAY-13 TO

4/25/2013

Statement of the Case

Petitioner Sherwood A. Adams #264887 was convicted of CDVHAN and Kidnapping during the Sept. 2003 term of Lexington County General Session Court before the Honorable Marc H. Westbrook. Petitioner was sentenced to prison for a period of fifteen years for kidnapping and ten years on the CDVHAN. However approx. 3 years after being incarcerated the petitioner was inform. by case workers (classification) of the Dept. of Corrections that he has to register as a sex offender. At that time petitioner petitioned the court(s) for an order of Clarification which was returned to him by his trial counsel along with a letter stating that the issue could be raised at P.C.R. Stating that (She) as counsel "fail to advise (me) petitioner of the full consequence of kidnapping." This issue was never heard at P.C.R. let alone rule upon.

After exhausting all of his remedies and still not being able to prevail petitioner filed a Declaratory Judgment on 5/10/12 seeking to be removed from the sex offenders registry. A hearing on this matter was held in Feb. 2013 common pleas term of court by Judge A. Lee. A statement of judgment was rendered to petitioner by Judge A. Lee dated Apr. 25, 2013 and received by petitioner May 10, 2013 stating "that the State

to dismiss is granted on the basis that the petitioner time to seek relief from Sex offenders Registry is when he is released from prison. The petitioner disagree and appeal this judgement, his argument is as follow....

Question(s)

- ①. Did the court(s) erred in the following:
 - a) dismissing petitioner motion on the basis that the time to seek relief from sex offenders Registry is when he is release.
 - b) instructing petitioner that to challenge the condition of confinement base on sex offender registry status is to be address through the Department of corrections grievance Procedures (A.L.J.)...

- ②. Is there an indefiniteness in the wording of statute 23-3-430(c)(5) when in conjunction with Statute 16-3-910 and does the statute(s) violates the constitutional rights of petitioner.

D. Argument

Petitioner is required to register as sex offender pursuant to S.C. Code 23-3-430(C)(5), which provides that any persons convicted of kidnapping a person eighteen years of age or older must register as a sex offender unless a finding is made on the record that the kidnapping did not include a criminal sexual offense or attempted criminal sexual offense, by the Dept. of Corr. The department of corrections is only following the statute as it is given, however this statute infringes upon the petitioner constitutional rights in several ways. Petitioner was instructed by a judgement from Honorable Judge A. Lee that the condition of (his) petitioner confinement due to his registry status must be address through the Dept. of Corr. grievance procedures (the A.L.J.). Petitioner understand the A.L.J. of the Dept. of Corr must follow statute(s) of the state but they must leave the question of whether it is constitutional to the courts, Beaufort County Bd. of Educ. v. Lighthouse Charter School Committee 335 S.C. 230, 516 SE2d 655 (1999). because a prisoner is not wholly stripped of constitutional protections when he is imprisoned for a crime. There is no iron curtain drawn between the Constitution and the prisoner of this country. Wolff v. McDonnell, 418 U.S. @ 555-56, 94 S.Ct @ 2974, 41 LE2d @ 950;

The infringements are as follows; 1. The 14th Due Process and 6th Amend. right to a jury trial which entitles the jury to determine guilt on every element of the crime beyond a reasonable doubt, which the element of a sexual nature needed for a sex registry is not present in the body of the kidnapping statute. Thus, the jury could not ^{have} convicted petitioner as to register as sex offender and therefore petitioner could not be placed on the registry by the Dept. of Corr. Also the 14th Amend § 1 guarantees more than just fair process, it covers a substantive sphere as well. According to S.C.D.C. petitioner is unable to visit with younger family members and unable to participate in programs inside the Dept. of Corr. that prepare inmates for the world beyond prison walls, not for the charge of kidnapping but because of the sex offender registry. Petitioner has also been trained in hospice and palliative care and certified by the state of South Carolina, but was told due to the sex registry table I would be unable to use the certificate in gaining employment and lastly by placing table on petitioner as sex offender on S.C.D.C. web site along with a photo I.D..

Again the provision of the constitution states

"that no state shall deprive any person of life, liberty, or property... And because of statute 23-3-430" which mandates

a registry, it's an infringement of the petitioner's fundamental rights. Thus because of the challenging of constitutionality of statute 23-3-430 (c)(5), the 14th + 16th Amend of the Const. along with the question of law. The grievance process of the A.L.J. which the court(s) instructed petitioner to turn would lack jurisdiction Slezak v. S.C.D.C. 685 SE2d 506 (2004)

Therefore the equitable relief sought by petitioner would be one of law. An the action of a Declaratory Judgment is like a chameleon. Its color is determined by its background, i.e; the underlying action. Jacobs v. Service Merchandise Co. 297 S.C. 123 375 SE2d 1 (1st App 1988). Thus the court(s) erred in instructing petitioner to grievance process - A.L.J....

Argument

The department of corrections has placed petitioner on the sex offender registry for, 16-3-910, kidnapping pursuant to statute 23-3-430(c)(5). Which states

"Kidnapping of a person 18 yrs of age or older except when courts make a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense"

The petitioner will show that the validity of this Statute 23-3-430 (a) is unconstitutional when placed in conjunction with Kidnapping Statute 16-3-910. The language in an indictment which determines the charge for kidnapping must contain the essential elements of the offense and be specific enough in order that the petitioner will know what he is to defend himself against. The, Honorable Marc Westbrook, Judge in petitioner case gave the jury instruction in the law that "they must accept the law as the Judge charge it to be correct law. The law charge to the jury is as follow: as set forth under section 16-3-910 of S.C. Code of Laws:

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, Abduct or carry away any person by means whatsoever without authority of law except a minor is seized or taken by a parent thereof, shall be guilty of a felony...

And the 3 essential elements of the offense given to the jury are as follow:

1. There must be some positive act or conduct on the part of the kidnapper that result in a taking, carrying, seizure or detention of the victim..

- 2) The taking, carrying away, seizure or detention must have been accomplished without any lawful warrant or authority.
- 3) The taking carrying away seizure or detention must have been accomplished by force and against the will of the victim.

According to the wording of the aforementioned, 16-3-910 does not provide any sexual criteria to aid in determining whether or not a person is to register as a sex offender. Thus it would be impossible for petitioner; let alone anyone else to defend themselves against the sex registry in a kidnapping charge, and just as impossible for a jury to convict a person of the same said. The jury can only accept the law as stated by the court(s) (judge) as correct, and the court(s) can only give the law as pass down from state legislatures in its plain and ordinary meaning then the petitioner would pose the question where does fault lie in this instance? The court(s) or The legislatures... In State v Brown 602 SE2d 392 (2004) it states "in a fundamental concept of criminal law the state must prove beyond a reasonable doubt all elements of the offense charge against a defendant. In the matter, now before this court, there are no sexual elements listed to be proven in the charge of kidnapping. Since the state fails to present sufficient proof, of a sexual element, a judgment for petitioner

, not to be required to register as a sex offender", must be rendered.
State v Gregorie 528 SE2d 47 (2002) Burks v. U.S. 98 S. Ct 2141 (1978) AS
The Courts stated in U.S. vs Moore, 613 F2d 1029, 1044, 1045 D.C. Cir
(1980) to be sure, as a matter of due process, the burden is upon
the Government to prove beyond a reasonable doubt every essential
element of offense it charges. The elements of the statutory
offense(s) of sexual crimes is determined by the statute's
language because sexual crimes include the element of a sexual
nature or act which is not an element of kidnapping. There-
fore each statute stand "alone" and require proof of an element
not require by the other. Thus 23-3-430(C)(15) cannot meet the
element test of 16-3-910.

Thus the statute set forth in kidnapping is not
descriptive enough to warrant a sex offender registry under statute
23-3-430(C)(15). All charges under this section (23-3-430(C)(15)) involved
a sexual act in the elements of the charge all except the charge
of (16-3-910) kidnapping. Therefore the wording of statute 23-3-430
(C)(15) as in conjunction with 16-3-910 would be unduly technical,
artificial and narrow in the sense. which also create a flaw
in this instance between the two. In order to expose the
flaw it is necessary to review both statutes to guarantee the
petitioner 14th Amend. of fundamental fairness is protected. And when
reviewing the statute(s) they must be interpreted with fundamental

not to be

principles of statutory construction. State v Martin 358 SE2d 697 (1987).

Section 23-3-430(c)(15) "States" when the court(s) make a finding on the record that the offense did not include a criminal sexual offense verse Section 16-3-910 that does not list a sexual offense as an element to the charge, shows that there's an inconsistency or opposition between the two statute. And because of the inconsistency the petitioner is at a disadvantage by it, due to he was sentence to 15 yrs. in prison under 16-3-910 Kidnapping but a greater punishment was impose by statute 23-3-430(c)(15) after being found guilty of the offense. In addition, the petitioner raises, the applicability of the Ex post Facto Clause of the State and Federal Constitution must be consider (see Art 154 of the South Carolina Constitution; Art 159 + 10 of the U.S. Constitution).

Ex post Facto violation has occur in this case because not only has statute 23-3-430(c)(15) substantially alter the consequences attached to the crime of kidnapping, but also imposes a greater punishment of a sex offender registry for life. Thus meeting the two elements that must be present for a criminal law to be ex post Facto: (it must be retrospective and ² must disadvantage the offender affected by it. State v Husieth, 302 S.C. 169, 171, 394 SE2d 486, 487 (1990)). Clearly because

of Statute 23-3-430(c)(5) petitioner is at a disadvantage by having to register as a sex offender for life, restricted on where he can live, work, and travel. Petitioner should not be deprived of his life under the forms of law unless the jurors who try him are able upon their consciences, to say that the evidence before them is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charge. Davis v. U.S. 484, 493, 116 S.Ct @ 357, 360. This statute is also more burdensome than the prior. The petitioner argues that it is the effect of the law that determines whether it is ex post facto. The next critical question is whether 23-3-430(c)(5) charges the legal consequences of kidnapping? Yes it does by imposing additional punishment to petitioner than prescribe in section 16-3-910. It's for this mere reason that the ex post facto clause was include in the constitution in order to assure that the state and federal legislatures would be restricted from enacting arbitrary or vindictive legislation Miller v Florida 482 U.S. 423, 429, 107 S.Ct 2446, 96, LE 2d 351 (1987).

Therefore the petitioner contends that, do to the afore-mention argument, his following constitutional rights has been violated...

- ① Due process Clause of the 14th Amendment, ② Substantive due process rights violated because 23-3-430 mandates arbitrary a lifetime registry for sex offender. ③ Ex post facto clause due

to statute 23-3-430 (c)(5) imposes additional punishment to the charge of kidnapping. Thus for this reason, petitioner argues that he should not be made to register as a sex offender because the elements necessary to constitute a sex offender register is not found in Section 16-3-910 (kidnapping)...

SA Sherwood A. Adams

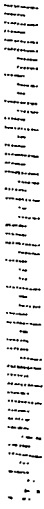
Sherwood A. Adams

Sherwood

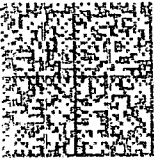
Birch-2 D19

1516 Old Gilliard Rd.

Ridgeville S.C. 29472



UNITED STATES POSTAGE



1.52

PITNEY BOWES

\$ 001.520

02 1P
0003167712 MAY 30 2013
MAILED FROM ZIP CODE 29472

S.C. Supreme Court of Appeals

Daniel E. Shearousey Clerk

Post Office Box 11330

Columbia, S.C. 29211