STATE OF SOUTH CAROLINA

In the Supreme Court

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2022-001-464

Carl Ray Fraley, Jr.,

Appellant,

v.

State of South Carolina,

Respondent.

Appellant's Reply to Respondent's Return to Motion For Extension of Time and Other Relief

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S.C. SUPREME COURT

On October 18, 2022, a Petition for a Writ of Certiorari to the Court of Appeals was filed in the Supreme Court by the Appellant Carl Ray Fraley, Jr. in accordance with South Carolina Appellate Court Rule 242 and Rule 240 of the Appellate Court Rules by his undersigned Counsel.

The Appellant also filed a "Motion for Extension of Time and Other Relief" on October 18, 2022 in the Supreme Court.

The "Other Relief" sought by the Appellant was a request that, pursuant to Appellate Court Rule 242, the Supreme Court, or any two (2) Justices thereof, "on its own motion" issue a Writ of Certiorari to the Court of Appeals to review the final decision of the Court of Appeals in this matter.

On October 19, 2022, Appellant's Counsel received a lengthy "Return to Motion for Extension of Time and Other Relief" from the Attorney General which set forth various arguments which are designed to convince the Supreme Court that it should not issue an order allowing an extension of time for the Appellant to file the Petition for a Writ of Certiorari in this matter. The Appellant reiterates its valid grounds for the extension of time and requests that it be granted on the grounds that a violation the Appellant's Constitutional Rights are involved in this case which presents a novel issue of first impression.

However, and importantly, the State of South Carolina did not argue that the Supreme Court, or any two (2) Justices of the Supreme Court, lacks the Power to "on its own motion" issue a Writ of Certiorari to the Court of Appeals as contemplated by Rule 242 of the Appellate Court Rules.

The Appellant would, respectfully and urgently, submit to the Court or any two of its Justices that, in the event the Court is inclined to disallow the extension of time requested by the Appellant in this matter as urged by the Attorney General, that a Writ of Certiorari be issued to the

Court of Appeals "on its own motion", or by two (2) Justices of the Supreme Court on the following grounds:

The orders of the Court of General Sessions and the South Carolina Court of Appeals, which require the Appellant to be placed on the sex offender registry for life, in the absence of a medical opinion indicating that a risk to reoffend sexually, is a clear violation of the Appellant's constitutional rights under the United States Constitution and the Constitution of the State of South Carolina. The Fourteenth Amendment of the United States Constitution provides that a State shall not "deprive any person of life, liberty, or property without due process of Law. U.S. Constitution Amendment XIV, Section 1. The South Carolina Constitution in Article I, Section 3 provides that no person shall "be deprived of life, liberty, or property without due process of law.

The South Carolina Supreme Court in Powell v. Keel, 433 S.C. 457, 472, 860 S.E.2d 344, 352 (2021), reh'g denied (Aug. 4, 2021), recently held that the State's Statutory Provision Scheme essentially provides that a person on the sexual register shall remain on the register for life without an appropriate review process is unconstitutional. In that case, the court noted that Mr. Powell was registered as a sex offender since his sentencing in 2010 and had not been arrested since that time. In 2011, Mr. Powell successfully completed his probationary sentence as well as his outpatient psychiatric treatment and group therapy. Importantly, he was assessed by Dr. William Burke, a licensed Counselor and Dr. Thomas Martin, a licensed psychologist, and both determined he had a low risk of recidivism.

In the Ruling in favor of Mr. Powell, who was removed from the sexual offender's registry, the Supreme Court stated:

"Similarly, we agree with Respondent that SORA's lifetime registration requirement without judicial review violates due process. The Fourteenth Amendment provides that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1; see also S.C. Const. art. I, § 3 (providing no person shall "be deprived of life, liberty, or property without due process of law"). Courts must "ensure [] that legislation which deprives a person of a life, liberty, or property right have, at a minimum, a rational basis, and not be arbitrary ...."

As was the case with Mr. Powell, who demonstrated a low risk of recidivism, the Court determined Mr. Powell should not be on the Sex Offender Registry. Therefore, the Appellant, should also not be on the Sex Offender Registry. Dr. Lee's report actually indicates Appellant has a low risk to reoffend sexually. Doctor Gunter's live testimony also clearly demonstrated, in his opinion, that the Appellant should not be placed on the Sex Offender's Registry.

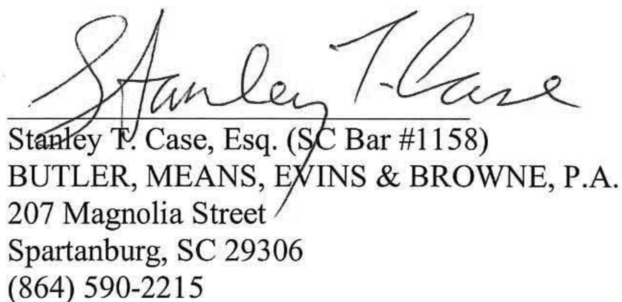
The record demonstrates that the Appellant's rights under the United States Constitution, the South Carolina Constitution, and South Carolina Law were violated because the State of South Carolina did not provide appropriate evidence which demonstrated that "good cause" existed for ordering him to be registered as a sex offender due to "a risk to reoffend sexually" as contemplated by S.C. Code Ann. § 23-3-430(D).

The Supreme Court in Powell v. Keel, 433 S.C. 457, 472, 860 S.E.2d 344, 352 (2021), reh'g denied (Aug. 4, 2021), held that the effective date of the opinion would be delayed for 12 months from the date of the filling of the decision to allow the general assembly to correct the deficiency in the statute regarding a lack of proper judicial review. Appellant is informed and believes that the General Assembly amended the statutory scheme by adoption of S.C. Code Ann.

§ 23-3-462. However, it appears that the statutory revision does not address nor provide a statutory procedure which applies to the Appellant due to the fact that he is not classified as a Tier 1, 2, nor 3 offender. Appellants plea was an Alford plea. As a result of plea negotiations, the state of South Carolina agreed to allow the Appellant to enter a conditional plea to an offense of Simple Assault. This places the Appellant in a category not anticipated by the statue, therefore, his constitutional rights have been violated. This is further grounds for the issuance of a Writ of Certiorari to the Court of Appeals by the Supreme Court in order to protect the Appellants constitutional rights.

Accordingly, a Writ of Certiorari to the Court of Appeals should be issued by the Supreme Court "on its own motion", or by two (2) Justices of the Supreme Court. Also, after due consideration of the Briefs and Arguments of the Parties, the Record, and the applicable State and Federal Law, issue its Order reversing the Orders of the Court of Appeals and the Court of General Sessions and issue an appropriate Order to the effect that the Appellant should not be registered as a sex offender under South Carolina law.

Respectfully submitted on October 24, 2022.



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