

A-20033

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
State of South Carolina, )  
 )  
vs. )  
 )  
Kenneth Wayne Signor, Sr., )  
 )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

Case No. 1986-GS-23-5233

**RECEIVED**  
APR 07 2023  
SC Court of Appeals

**ORDER DENYING  
DEFENDANT'S MOTION FOR  
ORDER OF REMOVAL**

This matter came before me for a hearing on Friday, March 10, 2023, on Defendant's motion for an order that he no longer had to register as a sex offender in the State of South Carolina. M. Kyle Thompson, Esq., of the Thirteenth Judicial Circuit Solicitor's Office appeared for the State, and Charles T. Brooks, III, Esq., appeared for Defendant. The Court Reporter was April Herron.

After reviewing the motion and the briefs submitted by the parties and hearing arguments of counsel, I am denying Defendant's motion.

BACKGROUND

Defendant was charged in 1986 with one count of Criminal Sexual Conduct with a Minor (2<sup>nd</sup> degree) and one count of Lewd Act on a Minor. Defendant pled guilty to these charges on March 27, 1987, and the Court sentenced Defendant to 15 years imprisonment on the Criminal Sexual Conduct charge and 10 years on the Lewd Act charge.

On or about April 1, 1994, Defendant was released from incarceration by the South Carolina Department of Corrections. That same year, the South Carolina Legislature passed legislation creating the Registry, which took effect July 1, 1994. That act, and subsequent amendments, require persons convicted of or pleading guilty to certain offenses to register with the South Carolina State Law Enforcement Division ("SLED") for the purpose of monitoring them

and protecting the community from persons who have committed those class of offenses. South Carolina courts have held that such a requirement does not violate the ex post facto clause, even for persons convicted and released prior to the creation of the Registry. See State v. Walls, 348 S.C. 26, 558 S.E.2d 524 (2002).

On January 19, 2001, Defendant registered as a sex offender for the first time based on his two 1987 guilty pleas. In 2022, the South Carolina General Assembly, following the South Carolina Supreme Court decision in Powell v. Keel, 433 S.C. 457, 860 S.E.2d 344 (2021), reh'g denied (Aug. 4, 2021), enacted S.C. Code Ann. § 23-3-462, which created a procedure by which persons could apply to SLED to be removed from the Registry if they met certain conditions. S.C. Code Ann. § 23-3-462, in relevant part, allows an offender to apply to be removed from the Registry "after having been registered for at least twenty-five years, if the offender was convicted as an adult, and was required to register as a Tier II offender." S.C. Code Ann. § 23-3-462(A)(1)(b). Defendant, having pled guilty to Criminal Sexual Conduct with a Minor (2<sup>nd</sup> degree), is classified as a Tier II offender under S.C. Code Ann. § 23-3-430(C)(2)(a).

Defendant applied to SLED to be removed from the Registry in 2022. At that time, he had only been on the Registry for 21 years. On August 22, 2022, SLED issued a letter denying Defendant's application to be removed from the Registry. SLED cited to the fact that Defendant had not met the twenty five-year requirement set forth in § 23-3-462(A)(1)(b).

On October 17, 2022, Defendant filed the instant Motion pursuant to S.C. Code Ann. § 23-3-463, which was also enacted in 2022. That statute allows offenders to file a motion with the general sessions court for an order to be removed from the Registry if they meet certain criteria, one of which is that the offender is a Tier II offender who application to SLED under § 23-3-462 has been denied by SLED. See S.C. Code Ann. § 23-3-463(A)(1). In the Motion, Defendant

alleges that he should be removed from the Registry because more than twenty-five years have elapsed since his conviction and that he is not likely to commit any other criminal offenses of a sexual nature.

### LAW

Defendant alleges that he is entitled to an order to be removed from the registry because more than twenty-five years have passed since he was released from incarceration and because he would have registered sooner had SLED notified him that he was required to do so. However, Defendant's alleged grounds for removal from the Registry cannot overcome the simple, basic truth that he is not eligible for removal under the plain language of the statute.

South Carolina's Sex Offender Registry statutes, S.C. Code Ann. § 23-3-400 et seq., provide the only lawful mechanisms and avenues by which an individual who is properly placed on the Registry can be removed. Otherwise, a person who is required to register must do so for life. See S.C. Code Ann. § 23-3-460(A).

Defendant seeks to be removed from the Registry pursuant to the aforementioned S.C. Code Ann. §§ 23-3-462 and -463. S.C. Code Ann. § 23-3-462 deals with applying for termination of the reporting requirements directly with SLED, while S.C. Code Ann. §§ 23-3-463 deals with moving before the court to be removed from the registry. Both statutes, passed by the legislature in 2022 in the wake of Powell v. Keel, 433 S.C. 457, 860 S.E.2d 344 (2021), reh'g denied (Aug. 4, 2021), utilize the same timeframe eligibility an offender must meet in order to be considered for removal as set forth in S.C. Code Ann. § 23-3-462(A)(1) and (A)(2).

Defendant is a Tier II offender based upon his guilty plea to Criminal Sexual Conduct with a Minor (2<sup>nd</sup> degree). The minimum amount of time he must register as a sex offender before he can apply to be removed is twenty-five years. See S.C. Code Ann. § 23-3-462(A)(1)(b). As

previously set forth, he registered for the first time on January 19, 2001. Twenty-five years from that date is January 19, 2026, or almost three years from now.

Defendant's motion argues that the statutory timeframe for removal approved by the legislature just last year does not apply to him. Instead, he argues that his timeframe should be calculated based upon when he was convicted and when he was released from incarceration. However, Defendant lacks any statutory or legal support for his position.

The statute setting forth the timeframe for when an offender may apply or move for removal from the Registry is unambiguously worded. The South Carolina Supreme Court has specifically held that

[i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Id. Moreover, "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); see also Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.")

Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007).

Defendant argues that in equity he should be eligible to apply or move to be removed from the Registry, since he legally is not able to do so. It is well-known that "equity follows the law." See Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) citing Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 319-20, 659 S.E.2d 263, 267 (Ct. App. 2008). Moreover, the South Carolina Supreme Court has held that a "court's equitable powers must yield



in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).

In enacting S.C. Code Ann. §§ 23-3-462 and -463, the legislature could have chosen to utilize a scheme such as that set forth in S.C. Code Ann. § 23-3-540(H), which allows an offender to move after ten years to no longer be subject to electronic monitoring. The legislature also could have chosen to connect the timeframe for applying to come off the Registry to an individual's date of conviction or date of release from incarceration. It chose not to do so, instead enacting the timeframes currently set forth.

The timeframe for when an individual may apply or move to be removed from the Registry is purely a matter of legislative prerogative, and there is no judicial discretion over this duration without violating the separation of powers mandated by the South Carolina Constitution. See S.C. Const. art. I, § 8 ("In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."). Even as it was determining that individuals should have an opportunity to seek judicial review to be removed from the Registry, the South Carolina Supreme Court deferred to the Legislature to determine how best to accomplish that.

We recognize the development of a judicial review process is a matter best left to the General Assembly. See Moseley v. Welch, 209 S.C. 19, 26-27, 39 S.E.2d 133, 137 (1946) ("The supreme legislative power of the State is vested in the General Assembly."); see also State v. Bani, 97 Hawai'i 285, 36 P.3d 1255, 1268 (2001) ("[T]he difficult and sensitive task of reaching an accommodation between the State's substantial interest in requiring sex offender registration and notification, on the one hand, and an offender's legitimate interest in ensuring against erroneous deprivation of his or her liberty interest, on the other, is best left, in the first instance, to the legislature."); Doe v. State, 167 N.H. 382, 111 A.3d 1077, 1101 (2015) (noting the specifics of a judicial review process for sex offenders requires "line-drawing" which is "a task for the legislature"). To be sure, the General Assembly has ably established judicial review in the sex offender context before, and such

procedures do not impede the legitimate goals of the legislation. See S.C. Code Ann. § 23-3-540(H) (2007 & Supp. 2020) (outlining the process by which a person may be released from SORA's satellite monitoring requirements); id. §§ 44-48-110 to -130 (2018) (providing a petition process for sexually violent predators to be released from commitment). Therefore, we are confident in the General Assembly's ability to fulfill our request to fashion the particulars of the hearing process. Nevertheless, we require the hearings at which sex offenders may demonstrate they no longer pose a risk sufficient to justify continued registration be conducted with reasonable promptness and meet standards of fundamental fairness

Powell v. Keel, 433 S.C. 457, 467-68, 860 S.E.2d 344, 349 (2021), reh'g denied (Aug. 4, 2021).

Defendant further alleges that since S.C. Code Ann. § 23-3-440, which requires the State to notify an individual prior to their release from custody or supervision that the person must register, is silent as to the notification of persons released from custody prior to the creation of the Registry, he is being harmed by the State's failure to require him to register until 2001. Defendant states that he would have registered earlier had he been so notified. This argument is without evidentiary support. Furthermore, and more importantly, for the Court to consider Defendant's argument, the Court would have to read something into a statute that is plain, unambiguous, and conveys a clear meaning. The Court cannot and will not do that.

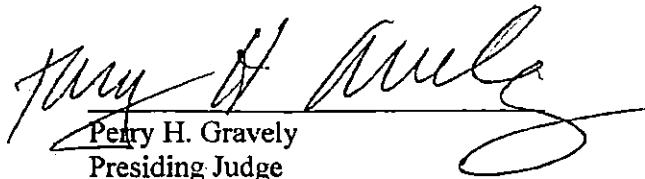
THEREFORE,

IT IS ORDERED that Defendant's Motion for Order of Removal is **denied**.

IT IS FURTHER ORDERED that Defendant shall continue to comply with the requirements of the South Carolina Sex Offender Registry as set forth in S.C. Code Ann. §§ 23-3-400 *et seq.*

IT IS SO ORDERED.

Much 20, 2023  
Greenville, South Carolina

  
Peary H. Gravely  
Presiding Judge