

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Charles Rodney Squires, Appellant,

v.

South Carolina Law Enforcement Division, Respondent.

---

Appeal From Horry County  
J. Michael Baxley, Circuit Court Judge

---

Unpublished Opinion No. 2011-UP-218  
Submitted May 1, 2011 – Filed May 17, 2011

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**AFFIRMED**

---

William B. Von Herrmann, of Conway, for Appellant.

Attorney General Alan M. Wilson, Deputy Attorney General John W. McIntosh, Assistant Attorney General David A. Spencer, and Assistant Attorney

party asserting the defense fails to establish "the delay has worked injury, prejudice, or disadvantage" against her) (citations and internal quotation marks omitted).

**AFFIRMED.**

**FEW, C.J., HUFF and THOMAS, JJ., concur.**

State of South Carolina )  
)  
County of Horry )  
)  
CHARLES RODNEY SQUIRES )  
Plaintiff, )  
)  
vs. )  
\_\_\_\_\_)  
S.C. LAW ENFORCEMENT DIVISION )  
(SLED) )  
Defendant. )  
\_\_\_\_\_)

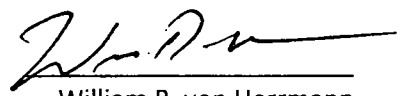
In the Court of Appeals

**Motion for Rehearing**

The Appellant makes this Motion to the Court of Appeals by and through his Attorney, William B. von Herrmann for rehearing of the issues and request the Court to reverse the Trial Court's decision. The Appellant's arguments are made based on the following:

1. The plain language of the granted pardon by statute is unambiguous and not less specific that S.C. Code 23-3-430(E)-(F) (2007 & Supp. 2010)
2. That the Appellant has made a proper showing the requirement of requesting as a sex offender has substantially effected a liberty interest Hendrick v. Taylor, 353 S.C. 542, 579 SE 2d 320 (2003).
3. That the Defendant set forth prejudice as disadvantage, not only in requiring his registration 12 years after the passing of the statute, but also his decision to plead as the statute was not passed until several years after his conviction.

It is for these reasons that the Appellant respectfully requests a rehearing and if the Court deems appropriate to be held En Banc as to determine these important issues.



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May 25, 2011  
Conway, South Carolina

**RECEIVED**  
MAY 26 2011  
S.C. Court of Appeals

# The South Carolina Court of Appeals

Charles Rodney Squires,

Appellant,

v.

South Carolina Law Enforcement  
Division,

Respondents.


The Honorable J. Michael Baxley  
Horry County  
Case No. 2009-CP-26-05672

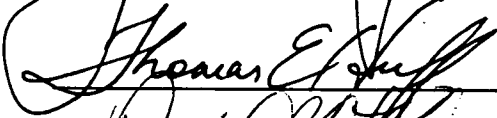
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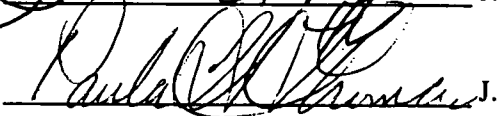
## ORDER

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After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

  
\_\_\_\_\_  
C.J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

Columbia, South Carolina

**FILED**

**JUN 23 2011**

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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CHARLES RODNEY SQUIRES,

Appellant,

vs.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION,

Respondent.

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RECORD ON APPEAL

---

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(843) 488-1030 Office  
ATTORNEY FOR APPELLANT

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Attorney General

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Chief Deputy Attorney General

DAVID A. SPENCER  
Assistant Attorney General

GEOFFREY CHAMBERS  
Assistant Attorney General

P.O. Box 11549  
Columbia, SC 29211  
(803) 734-3970  
ATTORNEYS FOR THE RESPONDENT

**RECORD ON APPEAL INDEX**

1. Exhibit A : Timeline
2. Exhibit B: Pardon Certificate

## **EXHIBIT A**

### **TIME LINE OF EVENTS**

**October 16, 1990**

Defendant Plead Guilty to Assault with intent to commit CSC 3<sup>rd</sup> and placed on probation.

**1994**

Sex Offender Registry Legislation became effective

**July 16, 2001**

Charles Squires is granted a pardon by the State of South Carolina.

**July 8, 2008**

Date Charles Squires is initially notified to register as a sex offender after he approached the Sherriff's Department to inquire how to get a conviction expunged.

Pardon # 5673



SOUTH CAROLINA  
DEPARTMENT OF PROBATION, PAROLE,  
AND PARDON SERVICES  
COLUMBIA, SC



# CERTIFICATE OF PARDON

KNOW ALL MEN BY THESE PRESENTS:

*It having been made to appear to the SOUTH CAROLINA BOARD OF PROBATION, PAROLE, AND PARDON SERVICES that **Charles Rodney Squires** SS# 250-43-7074 and SID # 770786 who was convicted of Assault with Intent to Commit CSC-3rd on October 16, 1990 in the county of Horry has lived as a law abiding citizen since completing Probation and it being the opinion of the said South Carolina Board of Probation, Parole and Pardon Services that the Pardoning of this prisoner is not incompatible with the welfare of society, and it appearing further that the Board is satisfied he will abide by all laws of this State.*

*It is therefore ORDERED that said **Rodney Squires** BE PARDONED, effective July 10, 2001 and by this action, is absolved from all legal consequences of the above stated crime and conviction, and all his civil rights are restored.*

In witness whereof this Certificate bearing the approval of the South Carolina Board of Probation, Parole and Pardon Services is issued this date, July 16, 2001.

By order of:

SOUTH CAROLINA BOARD OF PROBATION,  
PAROLE AND PARDON SERVICES

By:

*Quendyn A. Bright*

Director of Parole Board Support Services

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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CHARLES RODNEY SQUIRES,

Appellant,

vs.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION,

Respondent.

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PROOF OF SERVICE

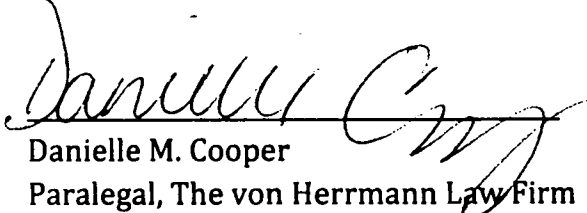
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I, Danielle M. Cooper, certify that I have served the RECORD ON APPEAL of Appellant on Respondent by depositing three copies of the same in the United States mail, postage prepaid, addressed to:

Geoffrey K. Chambers  
Assistant Attorney General  
Post Office Box 1149  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 31<sup>st</sup> day of March, 2010.

  
Danielle M. Cooper  
Paralegal, The von Herrmann Law Firm  
200 Elm Street  
Conway, SC 29526  
(843) 488-1030

State of South Carolina )  
 )  
 County of Horry )  
 )  
 CHARLES RODNEY SQUIRES )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 S.C. LAW ENFORCEMENT )  
 DIVISION )  
 (SLED) )  
 Defendant. )  
 \_\_\_\_\_ )

In the Court of Common Pleas  
 of the 15<sup>th</sup> Judicial Circuit

Case No. 09-CP-26- 5672

**PETITION FOR CERTIORARI**

This petition is brought on behalf of the Appellant, Charles R. Squires' Attorney, William B. von Herrmann. I hereby certify that a petition for rehearing this case be the South Carolina Court of Appeals and an Order denying the Rehearing Orders.

**Questions for Review**

1. Did the Court of Appeals error in determining that the Appellant must register on the sex offender list in spite of a pardon and the offers occurred prior to the passing of the registration
2. As to whether the court of Appeals errored in ruling that the registration requirement in the Appellant's unique position deprived him of fundamental fairness as required by due process
3. If the court of Appeals failed to apply the doctrine of laches in the Appellant's position as the State failed to require sex offender registration after 12 years of not requiring registration.

**Statement of Case**

This action was filed formally on or about June 9<sup>th</sup>, 2009 as a Motion for Declaratory Judgment pursuant to SCRCP 56 requesting South Carolina Law Enforcement Division remove Appellant's information, photographs and all other information from the Sexual Offender Registry.

Furthermore, Appellant requested that he not be required to register in the future.

The matter was heard before the Honorable J. Michael Baxley on May 27, 2009 with Appellant raising several issues regarding his position and opposed by the South Carolina Attorney General's Office representing the South Carolina Law Enforcement Division.

On August 5, 2009 the Honorable J. Michael Baxley denied the relief requested by Appellant. On August 13, 2009, Appellant filed a Notice of Appeal.

On October 16, 1990, Appellant was represented by L. Morgan Martin, of the Horry County Bar, at trial for Criminal Sexual Conduct in the first degree. Prior to the jury rendering a verdict, Appellant plead guilty to Criminal Sexual Conduct in the third degree. Appellant was sentenced to probation. He successfully completed his probationary sentence without violation or revocation on October 15, 1996.

In July of 2001, the Appellant, again being represented by L. Morgan Martin, was granted a Pardon on the Criminal Sexual Conduct 3<sup>rd</sup> degree charge. This Pardon specifically states that by the action taken by the Board of Pardons and Parole, the Plaintiff was "absolved from all legal consequences of the stated crime and conviction...".

In 1994, the Sexual Offender Registry legislation was enacted. Most sex offenders were given notice of the necessity of registering; However, the State failed to give the Appellant notice until fourteen (14) years later in July of 2008.

Appellant has never been charged with any other crime. The State notified the Plaintiff in 2008 of the necessity for him to register as a sex offender in Horry County only after he approached the Sherriff's Department concerning the issue. (Please see time line identified as Exhibit A). Mr. Squires appeals to this Court for the reasons contained in this brief.

### **ARGUMENT**

The controlling issue regarding the effect of a Pardon is found and decided in South Carolina Code § 24-21-940 (A). The General Assembly has determined the effect of a Pardon is to alleviate an individual:

"From all the legal consequences of his crime and his conviction, direct and collateral, including punishment, whether imprisonment, pecuniary penalty or **WHATEVER ELSE THE LAW HAS PROVIDED**" (emphasis added).

This statute is clear, unambiguous and is the current State of Law. As recognized by our Courts, a penal statute (or any other statute) passed should be strictly construed against the State and in favor of the Defendant. State v. Steven Cutler 274 S.C. 376, 264 S.E. 2d 420 (1980). In the present case, there are no ambiguities necessary for the Court to interpret nor is it possible to be more specific as to the ramifications of a Pardon.

The State attempts to rely on the Sexual Offender Registry found in South Carolina Code Ann § 24-21-940(A) as a conflicting statute. However, the State does not and cannot overcome the enacting

statute of the Sexual Offender Registry found in South Carolina Code §23-3-400, which specifically states:

“The provisions [of the statute] are not intended to violate the guaranteed Constitution Rights of those who have violated our Nations Laws.”

Clearly, the General Assembly contemplated limited exceptions to the mandatory Sexual Offender Registry, when due process or other Constitutional issues are at risk.

In short, there cannot be a more specific statute than the statute allowing for a Pardon to be granted. In fact, the Pardon comes with a certificate explaining the legal ramifications after the grant. [Please see Exhibit B contained herein]

Moreover, the Sexual Offender Registry statute cannot be analyzed separately without considering the enacting portion as well. If for no other reason contained in this brief, Appellant believes he is entitled to have the trial court’s decision overturned and he be relieved of his obligation to register as a Sex Offender.

The trial court erred in finding the State waived all rights and should be prohibited from requiring Appellant to register as a Sexual Offender.

The most relevant case on point was decided in January of 2009, in Charles R. Hipp v. South Carolina Department No. 26588. In that case, the State attempted to suspend the driver’s license of an individual twelve (12) years after a violation. The Appellate Court found this to be a violation of fundamental fairness which denied the individual the right to due process.

In the case at Bar, the State failed to notify the Appellant for almost fourteen (14) years as to any potential requirement to register as a Sexual Offender. Moreover, Appellant has received a Pardon absolving him of all legal consequences resulting from his conviction. The State cannot produce any relevant case law to the contrary.

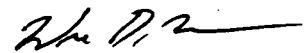
Therefore, Appellant requests this Court to reverse the trial court’s decision and require a permanent declaratory judgment issued alleviating the requirement of registry as a Sex Offender.

The Trial court erred in ruling the State’s action should not be banned for failure to provide fundamental fairness, a clear violation of due process. Appellant advances the proposition that the requirement to register should be banned under the Doctrine of Laches and other equitable relief available in the Court of Common Pleas. Moreover, he asserts under all issues of this case that he has suffered severe prejudice as a result of the State’s action.

The basic fiber for which the law of this State is woven lies in the United States Constitution and by and through the 14<sup>th</sup> Amendment to the South Carolina Constitution. Both of these living documents rise to the testament of the absolute necessary for fundamental fairness that, of course, is the basis for due process.

The Doctrine of Laches applies if a party, in this case the State, knows his/her rights but fails to assert them, and by unreasonable delay causes the other party to enter into an obligation or detrimentally change his position. Equity will ordinarily refuse to enforce those rights which the State seeks to enforce. See Chambers of S.C. Inc. v. County Council for Lee County, 315 S.C. 418 SE 2d 279, 280 (1993). To establish Laches Appellant must show (1) delay (2) unreasonableness of the delay and (3) prejudice. Hallums v. Hallums 296 S.C. 195, 371 SE 2d 525 (1988). In the case at bar, it is without a doubt that the State delayed in requiring registration. There was an unreasonable delay, in that Appellant's record of conviction was maintained by the State and continued to be maintained for 14 years and yet he was not notified to register as a Sex Offender. The issue of prejudice is equally as obvious. Appellant maintained good behavior, having never reoffended in any way. Not requiring Appellant to register has also allowed Appellant to avoid undue embarrassment from friends and family.

Moreover, Appellant has been able to obtain employment and favorable standing in the community and church. By requiring Appellant to register as a Sex Offender, he began to lose his hard-earned standing in the community. As the Court can imagine, the prejudices caused by the State's actions are too numerous to mention. Appellant believes he is entitled to the relief requested based on the above arguments; and respectfully requests the same.



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7-6 20, 2011  
Conway, SC

State of South Carolina )  
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It is for these reasons that the Appellant respectfully requests a rehearing and if the Court deems appropriate to be held En Banc as to determine these important issues.



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May 25 2011  
 Conway, South Carolina

**RECEIVED**  
 MAY 26 2011  
 S.C. Court of Appeals

# The South Carolina Court of Appeals

Charles Rodney Squires, Appellant,

v.

South Carolina Law Enforcement  
Division, Respondents.


The Honorable J. Michael Baxley  
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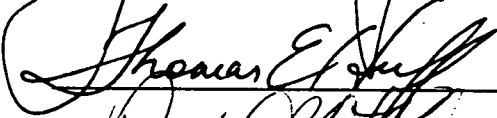
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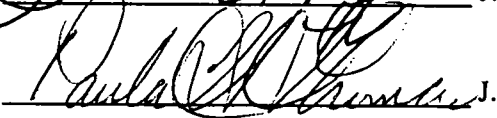
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After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

  
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\_\_\_\_\_  
J.

  
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J.

Columbia, South Carolina

**FILED**

**JUN 23 2011**

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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party asserting the defense fails to establish "the delay has worked injury, prejudice, or disadvantage" against her) (citations and internal quotation marks omitted).

**AFFIRMED.**

**FEW, C.J., HUFF and THOMAS, JJ., concur.**

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CHARLES RODNEY SQUIRES,

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FINAL BRIEF OF APPELLANT

---

William B. von Herrmann

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Conway, SC 29526

ATTORNEY FOR APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

1. The Appellant believes the Trial Judge erred in ruling the effect of a Pardon is not an absolute bar to mandatory Sex Offender Registration by the Appellant.
2. That the Court erred in interpreting the relevant statutes thereby denying Appellant due process and fundamental fairness.
3. The Court erred in ruling the respondent should have been estopped by the Doctrine of Laches. In addition, ordering the Appellant to avail himself to the Sexual Offender Registration is a violation of the South Carolina Constitutional requirement of fundamental fairness and due process. Forcing Appellant to register after a Pardon and 14 years without notice to register causes significant prejudice to him.

## STATEMENT OF THE CASE

This action was filed formally on or about June 9<sup>th</sup>, 2009 as a Motion for Declaratory Judgment pursuant to SCREP 56 requiring South Carolina Law Enforcement Division to remove Appellant's information, photographs and all other information from the Sexual Offender Registry. In addition, to prohibit the necessity of the Appellant to register in the future.

The matter was heard by motion before the Honorable J. Michael Baxley on May 27, 2009 with the Appellant raising several issues regarding his position and opposed by the South Carolina Attorney General's Office representing the South Carolina Law Enforcement Division.

On August 5, 2009 the Honorable J. Michael Baxley denied the relief requested by the Appellant.

On August 13, 2009 the Appellant filed a Notice of Appeal.

The Appellant was represented by L. Morgan Martin, of the Horry county Bar, at trial for Criminal Sexual Conduct in the first degree. Prior to the jury rendering a verdict, Mr. Squires plead guilty to Criminal Sexual Conduct in the third degree. The Appellant was sentenced to a probationary sentence. He successfully completed his probationary sentence without violation or revocation.

In 1994, the Sexual Offender Registry legislation was enacted and most sex offenders were given notice of the necessity of registering. The State failed to give the Appellant notice until fourteen (14) years later in July of 2008.

In July of 2001, the Appellant, again being represented by L. Morgan Martin, was granted a Pardon on the Criminal Sexual Conduct (3<sup>rd</sup>) charge. This Pardon specifically states that by the action taken by the Board of Pardons and Parole, the Plaintiff was "absolved from all legal consequences of the stated crime and conviction...".

Mr. Squires, the Plaintiff, has to date not been charged with any other crime. The State notified the Plaintiff in 2008 of the necessity for him to register as a sex offender in Horry County, after he approached the Sherriff's Department concerning the issue. (Please see time line identified as exhibit A). Mr. Squires appeals to this Court for the reasons contained in this brief.

This appeal follows.

## STATEMENT OF THE FACTS

This action was filed formally on or about June 9<sup>th</sup>, 2009 as a Motion for Declaratory Judgment pursuant to SCREP 56 requiring South Carolina Law Enforcement Division to remove Appellant's information, photographs and all other information from the Sexual Offender Registry, in addition, to prohibit the necessity of the Appellant to register in the future.

The matter was heard by motion before the Honorable J. Michael Baxley on May 27, 2009 with the Appellant raising several issues regarding his position and opposed by the South Carolina Attorney General's Office representing the South Carolina Law Enforcement Division.

On August 5, 2009 the Honorable J. Michael Baxley denied the relief requested by the Appellant and on August 13, 2009 the Appellant filed a Notice of Appeal.

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## ARGUMENT

The Appellant believes the controlling issue ,regarding the issues of the effect of a Pardon granted to him, is found and decided in South Carolina Code § 24-21-940 (A). The General Assembly has determined the effect of a Pardon alleviated an individual;

“From all the legal consequences of his crime and his conviction, direct and collateral, including punishment, whether imprisonment, pecuniary penalty or **WHATEVER ELSE THE LAW HAS PROVIDED**” (emphasis added).

This statute is clear unambiguous and the current State of Law. As recognized by our Courts, a penal statute (or any other statute) passed should be strictly construed against the State and in favor of the Defendant. State v. Steven Cutler 274 S.C. 376, 264 S.E. 2d 420 (1980). In the present case there are no ambiguities necessary for the court to be interpreted nor is it possible to be more specific as to the ramifications of a Pardon.

The State attempts to rely on the Sexual Offender Registry found in South Carolina Code Ann § 24-21-940(A) as a conflicting statute. However, the State does not and cannot overcome the enacting statute of the Sexual Offender Registry found in South Carolina Code 23-3-400 specifically stating

“The provisions [of the statute] are not intended to violate the guaranteed Constitution Rights of those who have violated our Nations Laws.”

Clearly, the General Assembly contemplated limited exceptions to the mandatory Sexual Offender Registry, such as when due process or other Constitutional issues are at risk.

In short, there cannot be a more specific statute than the statute allowing for a Pardon to be granted. In fact, the Pardon comes with a certificate explaining the legal ramifications after the grant. [Please see attachment B contained herein]

Moreover, the Sexual Offender statute cannot be analyzed separately without considering the enacting portion as well. If for no other reason contained in this brief, the Appellant believes he is entitled to have the trial court's decision overturned and he not required to register as a Sex Offender.

The Court erred in not ruling that the State waived all rights and should be prohibited from requiring Appellant to register as a Sexual Offender.

The most relevant case on point was decided in January of 2009, in Charles R. Hipp v. South Carolina Department No. 26588 in which the State attempts to suspend the driver's license of the respondent twelve (12) years after a violation was in violation of fundamental fairness and thus denied the Appellant the right to due process.

In the case at Bar, the State failed to notify the Defendant for almost fourteen (14) years as to any potential requirement to register as a Sexual Offender. Moreover, the Appellant has received a Pardon absolving him of all legal consequences. The State cannot produce any relevant case law to the contrary.

Therefore, the Appellant requests this Court to reverse the trial court's decision and require a permanent declaratory judgment issued alleviating the requirement of registry as a Sex Offender.

The Appellant contends that the trial Court erred in ruling the States action should not be banned by failure to provide fundamental fairness, a clear violation of due process.

In addition, the Appellant advances the proposition that the requirements should be banned under the Doctrine of Latches and other equitable relief available in the court of Common Pleas. Moreover, he asserts under all issues of this case that he has suffered severe prejudice as a result of the State's action.

The basic fiber for which the Law of this State is woven lies in the United States Constitution and by and through the 14<sup>th</sup> Amendment the South Carolina Constitution. Both of these living document rise to the testament of the absolute necessary for fundamental fairness that of course, is the basis for due process.

The doctrine of Latches applies if a party, in this case the State, knows their rights but fails to assert them. But by unreasonable delay causes the other party to enter into obligation or detrimentally change his position then equally will ordinarily refuse to enforce those rights for which the State seeks to enforce. See Chambers of S.C. Inc. v. County Council for Lee County, 315 S.C. 418 SE 2d 279, 280 (1993). The Court further expanded the requirements of establishing Latches so that this Appellant must show (1) delay (2) unreasonable delay and (3) prejudice. Hallums v. Hallums 296 S.C. 195, 371 SE 2d 525 (1988). In the case at bar, it is without a doubt that the State delayed in requiring registration. There was an unreasonable delay, in that his record of conviction was maintained by the State and continued to be maintained for 14 years and not notified to register as a Sex Offender. The issue of prejudice is equally as obvious. The Appellant maintained good behavior having never reoffended in any way. Not requiring the Appellant to register has also allowed the Appellant to avoid undue embarrassment from friends and family.

Moreover, he has been able to obtain employment, in favorable standing in the community and church. By in large, as a result of requesting the Appellant to register as a Sex Offender he began to lose the progress that has been a result of rehabilitation. As the Court can imagine, the prejudice caused by the State's actions is too numerous to mention. The Appellant believes he is entitled to the relief requested based on the above itemized issues.

**CONCLUSION**

The Appellant hereby requests this Court to reverse the Order of the Trial Court. Furthermore, the Appellant requests that the Court Order as a matter of Law, he not be required to register on the Sexual Offender List and all information regarding any previous registration be deleted from the Sexual Offender Registry.

Respectfully Submitted,

William B. von Herrmann

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March 30, 2010

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM Horry COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

---

CHARLES RODNEY SQUIRES,

Appellant,

vs.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION,

Respondent.

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CERTIFICATE OF COUNSEL

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The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b).  
SCACR.

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PROOF OF SERVICE

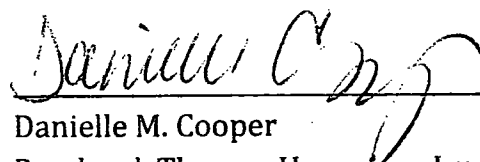
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I, Danielle M. Cooper, certify that I have served the Final Brief of Appellant on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Geoffrey K. Chambers  
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I further certify that all parties required by Rule to be served have been served.

This 30<sup>th</sup> day of March, 2010.

  
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal From Horry County  
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Charles Rodney Squires,

Appellant.

vs.

South Carolina Law Enforcement Division,

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FINAL BRIEF OF RESPONDENT

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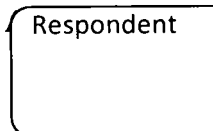
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## STATEMENT OF ISSUES ON APPEAL

### I.

Section 23-3-430 relates to the narrow area of the effect of pardons on the Sex Offender Registry requirements, and is more specific than the general statute regarding pardons.

### II.

The Trial Court correctly held the Appellant was not denied due process or fundamental fairness.

### III.

Laches does not apply because Appellant does not come to Equity with clean hands, and there was no prejudice against Appellant resulting from not receiving prompt notice of his duty to register.

## STATEMENT OF THE CASE

Charles Rodney Squires was convicted of Criminal Sexual Conduct in the third degree pursuant to South Carolina Code Ann. § 16-3-654 on October 16, 1990. Squires received a pardon for this conviction on July 16, 2001. Squires filed a action in 2009 requesting the Court find that due to his pardon, he is not required to register and should be removed. This matter was heard on May 27, 2009 before the Honorable J. Michael Baxley. On August 5, 2009, Judge Baxley denied the relief requested by Appellant.

Appellant filed a notice of appeal from Judge Baxley's order. This appeal follows.

## STATEMENT OF FACTS

Mr. Squires was convicted of Criminal Sexual Conduct in the third degree in 1998 under South Carolina Code Ann. § 16-3-654. Criminal Sexual Conduct in the third degree is a triggering offense requiring registration under S.C. Code Ann. § 23-3-430 (Supp. 1998). Mr. Squires received a pardon in 2001.

## ARGUMENT

### I.

**Section 23-3-430 relates to the narrow area of the effect of pardons on the Sex Offender Registry requirements, and is more specific than the general statute regarding pardons.**

The trial court correctly found that under South Carolina Code Ann. §23-3-430(F), Appellant is still required to register as a sex offender. Section 23-3-430(F) is narrowly tailored to the effect of pardons on the requirement to register as a sex offender. When statutes conflict and one statute addresses the issue in more general terms, the more specific statute is considered an exception to the more general statute. Spectre, LLC v. South Carolina Dep't of Health and Env'tl. Control, 2010 WL 344650 (S.C.); Wilder v. South Carolina Hwy. Dep't, 228 S.C. 448, 90 S.E.2d 635 (1955); *see also* Wooten ex rel. Wooten v. S.C. Dep't of Transp., 333 S.C. 464, 511 S.E.2d 355, 357 (1999) (a more specific statutory provision prevails over a more general one).

Both South Carolina Code Ann. §24-21-940(A) and §23-3-430(F) explain the effect of a pardon in South Carolina. Section 24-21-940(A) provides the definition of a pardon in terms of the pardon's effects:

“Pardon” means that an individual is fully pardoned from all the legal consequences of his crime and of his conviction, direct and collateral, including the punishment, whether of imprisonment, pecuniary penalty or whatever else the law has provided.

Likewise, South Carolina Code Ann. §23-3-430(F) also defines the effects of a pardon, but does so relative to the narrow scope of the sex offender registry:

If an offender receives a pardon for the offense for which

he was required to register, the offender must reregister as provided by Section 23-3-460 and may not be removed from the registry except:

- (1) as provided by the provision of subsection (E); or
- (2) if the pardon is based on a finding of not guilty specifically stated in the pardon.

While South Carolina Code Ann. §24-21-940(A) provides the general effect of a pardon to alleviate an individual from direct and collateral legal consequences, South Carolina Code Ann. §23-3-430(F) specifically describes the effect of pardons on the duty to register as a sex offender and outlines specific requirements for the language of a pardon to relieve a person of the duty to register. Accordingly, the trial court correctly found the more specific language of Section 23-3-430(F) prevails and that appellant had a continuing duty to register.

## II.

**The Trial Court correctly held the Appellant was not denied due process or fundamental fairness.**

The Trial Court correctly held that due process rights were not violated by requiring the Appellant to register as a sex offender. Sex offender registration is non-punitive, does not violate due process, and is rationally related to achieving the legitimate objective of protecting the public from offenders who may re-offend. In re Ronnie A., 355 S.C. 407, 585 S.E.2d 311(2003); Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003) (registration does not violate equal protection or due process). The Supreme Court has also held that the Sex Offender Registry does not violate the ex post facto clause. State v. Walls, 348 S.C. 26, 558 S.E.2d 524 (2002) (requiring registration twenty-five years after conviction does not violate the ex post facto clause because the act is a civil statute designed to protect the public rather than punish offenders).

Reliance on Hipp v. South Carolina Department of Motor Vehicles (381 S.C. 323, 673 S.E.2d 416 (2009)) is misplaced. In that case the Court found a person has a property interest in a driver's license and the State may not take away a property interest without satisfying the requirements of due process. Id. However, sex offender registration does not have the loss of property or liberty elements necessary to trigger due process requirements. Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003); State v. Walls, 348 S.C. 26, 558 S.E.2d 524 (2002). The Trial Court correctly differentiated a remedial statute designed to protect the public from the loss of a property interest in driving privileges.

The court has found there is no liberty or property interest at stake in registering as

a sex offender because registration is non-punitive. Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003). In order to show a due process violation there must be a liberty or property interest at stake. Because Mr. Squire's listing as a sex offender is non-punitive, there is no violation of due process rights by requiring registration.

### III.

**Laches does not apply because Appellant does not come to Equity with clean hands, and there was no prejudice against Appellant resulting from not receiving prompt notice of his duty to register.**

The Trial Court correctly held that Laches does not apply to the fourteen year period where the Appellant was not notified of his duty to register as a sex offender. Appellant has been under the duty to register since the enactment of the statute and failed to meet his duty. He cannot impute his failure to abide by the law on SLED.

South Carolina Code Ann. §23-3-470(A) clearly places the duty to register as a sex offender on the Appellant:

It is the duty of the offender to contact the sheriff in order to register, provide notification of change of address, or notification of change in attendance, enrollment, employment, or vocation status at any public or private school, including, but not limited to, a kindergarten, elementary school, middle school, or junior high, high school, secondary school, adult education school, college or university, and any vocational, technical, or occupational school. If an offender fails to register, provide notification of change of address, or notification of change in attendance, enrollment, employment, or vocation status at any public or private school, as required by this article, he must be punished as provided in subsection (B).

To qualify for equitable relief, a person must come to equity with clean hands. Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E.2d 735 (1943). Because Mr. Squires was aware of his conviction of a sex crime, he was on constructive notice of his duty to register as a sex offender when the law was enacted. Failing to register in the years since the sex offender registry was enacted does not comply with the duty to register imposed

by South Carolina Code Ann. §23-3-430 and §23-3-470. Because Mr. Squires failed to uphold his duty, he should not be rewarded by equity.

Laches requires the showing of both delay and material prejudice resulting from the delay against the party requesting the assertion of laches. Grossman v. Grossman, 242 S.C.298, 130 S.E.2d 850 (1963). SLED's failure to notify Appellant of his duty to register only resulted in Appellant not having to register for many years. This is not a prejudice to the Appellant and Laches should not apply.

**CONCLUSION**

For all of the foregoing reasons, the Common Pleas Court's Order should be upheld.

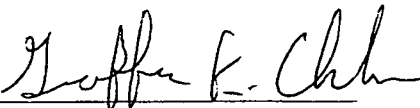
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May 7, 2010