

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

**RECEIVED**

AUG 04 2023

SC Court of Appeals

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Case No. 1986-GS-23-5233

(Appellate Case No. 2023 – 00575)

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Kenneth Signor,

Appellant,

v.

The State of South Carolina,

Respondent.

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INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

**DID THE CIRCUIT COURT ERR WHEN NOT GRANTING THE APPELLANT'S MOTION FOR REMOVAL FROM THE SEX OFFENDER REGISTRY WHEN THE GOVERNING STATUTE IS AMBIGUOUS AS TO CREDITING AN OFFENDER WITH REGISTRATION TIME WHEN HE WAS NOT AFFIRMATIVELY NOTIFIED BY THE STATE FOR REGISTRATION, AND HAD HE BEEN, HE WOULD HAVE THE MANDATORY REGISTRATION TIME TO BE REMOVED FROM THE REGISTRY?**

## STATEMENT OF THE CASE

This matter came before the Circuit Court for a hearing on Friday, March 10, 2023, based on Appellant's/Defendant's Motion for Removal From the Sex Offender Registry. The Appellant/Defendant argued that if the State of South Carolina, through the respective state agencies, had exercised their affirmative duty to notify him of the registration requirements, the Appellant/Defendant would have enough time to be removed from the Sex Offender Registry as a Tier II Offender.

The State of South Carolina argued that the governing statute regarding removal from the Sex Offender Registry is unambiguous and the Appellant/Defendant simply does not have the requisite time in to be removed from the Registry.

The Circuit Court denied the Appellant's/Defendant's Motion in an Order dated March 20, 2023.

This appeal follows.

## STANDARD OF REVIEW

Regarding procedural issues such as the granting or denying of a motion, the standard of review is abuse of discretion. *See Sanders v. Smith*, 431 S.C. 605, 848 S.E.2d 604 (S.C. App.

2020), citing *Ware v. Ware*, 404 S.C. 1, 10, 743 S.E.2d 817, 822 (2013). “An abuse of discretion occurs when the order of the court is controlled by an error of law or when[n] the order is based on factual findings that are without evidentiary support.” *Ware*, 404 S.C. at 10, 743 S.E.2d at 822.

In a case that raises a novel question of law, the appellate court is “free to decide the questions with no particular deference to the lower court.” *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (S.C. 2010), citing *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 718-19 (2000).

## FACTS

Mr. Kenneth Wayne Signor, Sr., the Appellant/Defendant, first began to register for the Sex Offender Registry in 2001 when he was notified by law enforcement of the requirement to register. (R. at \_\_\_\_). He has continuously registered since 2001 and has had no criminal infractions since his release from prison in 1994. (R. at \_\_\_\_).

On March 27, 1987, Mr. Signor pled guilty to one count of Criminal Sexual Conduct with a Minor (2<sup>nd</sup> Degree) and one count of Lewd Act on a Minor. (R. at \_\_\_\_). Mr. Signor received a 15 year sentence on the Criminal Sexual Conduct charge and a 10 year sentence on the Lewd Act charge. (R. at \_\_\_\_).

On or about April 1, 1994, Mr. Signor was released from prison by the South Carolina Department of Corrections. (R. at \_\_\_\_). Approximately three months after his release, the South Carolina Sex Offender Registry law took effect on July 1, 1994. (R. at \_\_\_\_). The new law required an affirmative duty on the part of certain agencies to notify an offender of the requirement to register. (R. at \_\_\_\_). From 1994 to 2001, Mr. Signor did not receive that notice. (R. at \_\_\_\_). When he did receive notice in 2001, he fulfilled the registration requirement, and has since then until now continuously registered. (R. at \_\_\_\_).

In 2022, the South Carolina General Assembly enacted S.C. Code Ann. § 23-3-462, providing a mechanism for offenders to be removed from the Sex Offender Registry. (R. at \_\_\_\_). However, the removal mechanism did not include any provisions for individuals who did not receive notice of registration requirements prior to July 1, 1994. (R. at \_\_\_\_).

This matter came before the Circuit Court for a hearing on Friday, March 10, 2023, based on Appellant's/Defendant's Motion for Removal From the Sex Offender Registry based on the mechanisms established in the 2022 law. (R. at \_\_\_\_). The Appellant/Defendant argued that if the State of South Carolina, through the respective State agencies, had exercised their affirmative duty to notify him of the registration requirements, the Appellant/Defendant would have enough time to be removed from the Sex Offender Registry as a Tier II Offender. (R. at \_\_\_\_).

The State of South Carolina argued that the governing statute regarding removal from the Sex Offender Registry is unambiguous and the Appellant/Defendant simply does not have the requisite time in to be removed from the Registry. (R. at \_\_\_\_).

The Circuit Court denied the Appellant's/Defendant's Motion in an Order dated March 20, 2023. (R. at \_\_\_\_).

## ARGUMENT

**THE CIRCUIT COURT ERRED WHEN NOT GRANTING THE APPELLANT'S MOTION FOR REMOVAL FROM THE SEX OFFENDER REGISTRY WHEN THE GOVERNING STATUTE IS AMBIGUOUS AS TO CREDITING AN OFFENDER WITH REGISTRAION TIME WHEN HE WAS NOT AFFIRMATIVELY NOTIFIED BY THE STATE FOR REGISTRATION, AND HAD HE BEEN, HE WOULD HAVE THE MANDATORY REGISTRATION TIME TO BE REMOVED FROM THE REGISTRY.**

### A. No Remedy Available Under Law

The central issue in this case is whether Mr. Signor, the Appellant/Defendant can be removed from the Sex Offender Registry as a Tier II Offender by having twenty-five (25) or more years on the Registry, if you include the time he would have been registered if he was properly notified per South Carolina Code Ann. § 23-3-440. (R. at \_\_\_\_). Mr. Signor contends that the Circuit Court erred in not granting the Motion to Remove him from the Registry.

Through absolutely no fault of his own, Mr. Signor was not notified of the requirement for him to register until 2001. (R. at \_\_\_\_). Mr. Signor first registered on January 19, 2001, and has registered continuously ever since. (R. at \_\_\_\_).

Mr. Signor was released from prison in April of 1994. (R. at \_\_\_\_). Approximately three months later, the new South Carolina Sex Offender Registry became effective July of 1994. South Carolina Code Ann. § 23-3-400, *et seq.* (R. at \_\_\_\_). Upon his notification by law enforcement to register in 2001, Mr. Signor has continuously registered without incident. (R. at \_\_\_\_). In addition, Mr. Signor has not had any other involvement with the criminal justice system. (R. at \_\_\_\_).

When the new Sex Offender Registry law was enacted in July of 1994, the General Assembly placed an affirmative duty on the State, through agencies like the South Carolina Department of Corrections; the South Carolina Department of Probation, Pardon, and Parole; the South Carolina Law Enforcement Division; and Sheriff's Offices, to notify offenders of the registration requirement. South Carolina Code Ann. § 23-3-440. (R. at \_\_\_\_). That affirmative duty required someone from the agencies listed above to notify Mr. Signor of his obligation to register. (R. at \_\_\_\_). In essence, Mr. Signor lost approximately close to seven (7) years of registry time through no fault of his own. Further, the State did not timely exercise its affirmative duty to notify Mr. Signor of the requirement to register (R. at \_\_\_\_).

In *State v. Walls*, the South Carolina Supreme Court declared that qualifying convictions prior to the enactment of the Sex Offender Registry in July of 1994 required those offenders to also register. 558 S.E.2d 524, 348 S.C. 26 (S.C. 2002). (R. at \_\_\_\_). Likewise, in Mr. Signor's case, if the reach for the Registry statute can pull an offender in for a conviction that occurred before the enactment of the statute, then credit for not notifying an offender should exist as well, especially since the State has the affirmative duty to notify, verbally or in writing. South Carolina Code Ann. § 23-3-440. (R. at \_\_\_\_). Also in *Walls*, the offender was given notice to register. 558 S.E.2d 524, 348 S.C. 26, 28-29 (S.C. 2002). (R. at \_\_\_\_).

The Circuit Court also erred when it determined that the Registry provisions found in South Carolina Code Ann. § 23-3-462 are unambiguous as to when a person can be removed from the Registry. (R. at \_\_\_\_). However, a closer review of the statutory framework shows that a person who did not receive notice as a part of the affirmative duty requirement by the State has no options for removal. (R. at \_\_\_\_). To declare that a statute is unambiguous when it omits a category of individuals is flawed. As such, when there is no remedy available at law, then the principles of equity should govern.

In *Johnson v. Lloyd*, the Court of Appeals reversed a trial court's order in which an offender was granted relief to be removed from the Registry under a theory of equitable relief. Appellate Case No 2011-193227, Opinion No. 5019 (S.C. App. Aug 01, 2012). In reversing the equitable relief granted to Johnson, the Appellate Court said:

““ It is well known that equity follows the law.” *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2070. While equitable relief is generally available when there is no adequate remedy at law, an adequate legal remedy may be provided by statute. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C, 179, 185, 379 S.E. 2d 119, 123 (1989). When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent. *Lonchar v. Thomas*, 517 U.S. 314, 323 (1996).”

The Court concluded in *Johnson* that the offender had several options for removal from the Registry. (R. at \_\_\_\_). Then in *Powell v. Keel*, the South Carolina Supreme Court determined that the registry procedures were unconstitutional since they provided for lifetime registration without the opportunity for review. 433 S.C. 457, 860 S.E.2d 344 (S.C. 2021). In addition, the South Carolina Supreme Court granted Powell relief to be removed from the Registry based on the showing that he no longer posed a risk to justify continuing registration. *Id.* at 352.

While it has been argued that the Registry statute is unambiguous and complete, litigation over the matter appears otherwise. (R. at \_\_\_\_). An “adequate” remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity. 27 Am. Jur. 2d, Equity, § 94 (1966). In the *Powell* case, relief was granted to the offender for removal from the Registry even before the South Carolina General Assembly fashioned a constitutional mechanism for removal with review. Here, the removal statute is not certain, practical, complete and efficient to attain the ends of justice because it does not include a provision for individuals who did not receive notice to register. As such, Mr. Signor is in a category in which no relief is provided, therefore, there is no remedy at law. For good cause shown, the Court can fashion a remedy for Mr. Signor, which would be removal from the Registry. The trial court erred by not doing so, and should be reversed.

**B. Equitable Remedy Available**

Appellant/Defendant argues that equity should apply to his situation because the removal mechanisms enacted in 2022 are not a complete and full remedy under the law, especially when his class of individuals have been omitted, specifically those individuals who received a conviction or other triggering event prior to the enactment of the July 1994 Registry, and they did not receive

notice to register from the State in a timely manner. (R. at \_\_\_\_). In Mr. Signor's case, the notice to register came approximately close to seven (7) years after his release from prison. (R. at \_\_\_\_).

Here, the Circuit Court concluded that the Registry laws as of 2022 are unambiguous as to removal. (R. at \_\_\_\_). Therefore, according to the Circuit Court, if Mr. Signor does not have twenty-five (25) years on the Registry, he cannot be removed. (R. at \_\_\_\_). The Circuit Court further concluded that equitable powers must yield in the face of an unambiguously worded statute. (R. at \_\_\_\_). The statute does not address, and is silent on the removal process for someone who has not received notice according to the affirmative duty owed by the State in South Carolina Code Ann. § 23-3-440. As such, the equitable powers of the court are appropriate to fashion a relief for Mr. Signor.

In *Powell v. Keel*, the South Carolina Supreme Court left it to the South Carolina General Assembly to fashion a system for removal from the Registry. However, the Court granted Powell the relief to be removed from the Registry. If part of the statutory scheme includes the affirmative duty for State agencies to give written or verbal notice to offenders, then there should be a consequence when such is not done.

In light of the statutory scheme not including such consequence, the law is not complete and the principles of equity should apply for relief. This is not a re-writing of the statute, or implanting legislative intent, rather, based on equity, it is achieving fundamental fairness as expressed in *Powell*. For that reason, Mr. Signor should be credited for the time he would have had on the Registry had he been properly notified as required by the law. If Mr. Signor's time is credited from July 1, 1994, he would have acquired the necessary twenty-five (25) years of registration and should now be removed from the Registry.

In *Powell*, the Court also required that hearings in which offenders sought to be removed from the Registry should also meet the “standards of fundamental fairness.” *Id.*, 433 S.C. 457, 467-68, 860 S.E.2d 344, 349 (2021). In *Hipp v. SC Dep’t of Motor Vehicles*, 673 S.E.2d 416, 381 S.C. 323 (S.C. 2009), the South Carolina Supreme Court did not allow the suspension of a driver’s license after a twelve year delay that was not caused by the driver, based on the premise that such a suspension would have been a denial of fundamental fairness.

In Mr. Signor’s case, the fact that he did not contribute to the delayed notice to register, and the fact that the State agencies did not carry out their duty to notify him, it would be fundamentally unfair to not credit him for the time between July of 1994 and January of 2001 as time counted towards the mandatory 25 years of registration and eventual removal from the Registry.

The Registry statute has been challenged a number of times in South Carolina with some offenders being successful in their attempt to be removed or not required to register. See *Edwards v. State Law Enforcement Div.*, 395 S.C. 571, 720 S.E.2d 462 (S.C. 2011). In the *Edwards* case, the Court concluded that the 2004 pardon of the offender relieved him of the obligation to register; and the General Assembly’s 2005 and 2008 amendments to the Registry statute could not be applied retroactively to *Edwards*. The fact that amendments were made to the Registry statute defeats the argument that it is an unambiguous piece of legislation. If that was the case, amendments would not have been passed, litigation brought, and mechanisms created as a result of the *Powell* decision.

Mr. Signor’s position is that the current mechanism for removal does not include a situation for his case in which he was not timely and properly notified to register by the State.

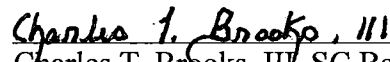
In *State v. Binnarr*, 733 S.E.2d 890 (S.C. 2012), notice was the central issue in the case. Binnarr was convicted for failure to timely register under the Registry statute. Binnarr argued on appeal that he did not receive actual notice of the change in law requiring him to register biannually. *Id.* The South Carolina Supreme Court found that the trial court erred by not finding that actual notice was required for a conviction for not properly registering. *Id.* As a result, Binnarr's conviction was reversed. *Id.* Further, the Court in Binnarr concluded that for purposes of due process, actual notice was required. *Id.*

Comparing the *Binnarr* decision to Mr. Signor's situation, Mr. Signor too should have been notified in 1994 about the registration requirement. The State, having failed to do so, should be required to credit time to Mr. Signor for registration time between 1994 and 2001. As such, the trial court erred in not granting the Motion to Remove Mr. Signor from the Registry.

### CONCLUSION

For all of the reasons stated above, this Honorable Court should reverse the judgment of the Circuit Court and grant the relief requested, or in the alternative remand for new proceedings.

RESPECTFULLY SUBMITTED,

  
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July 31, 2023

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

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SC Court of Appeals

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Case No. 1986-GS-23-5233

(Appellate Case No. 2023 – 00575)

Kenneth Signor,

Appellant,

v.

The State of South Carolina,

Respondent.

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**PROOF OF SERVICE**

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I hereby certify that on this 31st of July, 2023, I filed the **Initial Brief of Appellant** and the **Designation of Matter to be Included in the Record on Appeal** with the South Carolina Court of Appeals via first class mail, with appropriate postage attached; and I served a copy via the same format on the following:

The Honorable Alan Wilson  
Office of the Attorney General  
1000 Assembly Street, Room 519  
Columbia, SC 29201

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July 31, 2023

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Kenneth Signor v. State of South Carolina  
Appellate Case Number 2023-000575

Dear Honorable Clerk Kitchings:

Enclosed, please find the **Initial Brief of Appellant** and the **Designation of Matter to be Included in the Record on Appeal** of Appellant Kenneth Signor and the **Proof of Service**.

If you have any questions, or need any additional information, please do not hesitate to contact me.

With Warm Regards, I am

Sincerely,

*Charles T. Brooks, III*  
Charles T. Brooks, III  
Attorney at Law

Enclosures as stated

cc: The Honorable Alan Wilson  
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