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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2023-00575

THE STATE, Respondent,

v.

KENNETH WAYNE SIGNOR, SR. Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The Circuit Court properly denied Appellant's Motion for Removal from the Sex Offender Registry because the governing statue is clear on the requirements for removal and Appellant did not meet them.

COMBINED PROCEDURAL HISTORY AND STATEMENT OF FACTS

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

On or about April 1, 1994, Appellant was released from incarceration by the South Carolina Department of Corrections. The same year, the South Carolina Legislature passed legislation creating the Sex Offender Registry, which took effect July 1994. That act, along with its subsequent amendments requires 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.

On January 19, 2001, Appellant registered as a sex offender for the first time based on his two 1987 guilty pleas to sex crimes. In 2022, the South Carolina General Assembly, following the South Carolina Supreme Court decision in Powell v. Keel[1], 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). Appellant having pled guilty to Criminal Sexual Conduct with a Minor (2nd degree), is classified as a Tier II offender under S.C. Code Ann. § 23-3-430(C)(2)(a).

[1] Powell v. Keel, 433 S.C. 457, 860 S.E.2d 344 (2021).

Appellant 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 Appellant's application to be removed from the Registry. SLED cited to the fact that Appellant had not met the twenty-five-year requirement set forth in S.C. Code Ann. § 23-3-462(A)(1)(b).

On October 17, 2022, Appellant filed a Motion pursuant to S.C. Code Ann. § 23-3-463, also enacted in 2022, that allowed to request an order to be removed from requirements of the sex offender registry if their application for removal from Registry had been denied by SLED. See S.C. Code Ann. §23-3-463(A)(1). In the Motion, Appellant alleged 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.

A hearing was held on March 10, 2023, on Appellant's Motion for Order of Removal. At the hearing Appellant argued that if the State of South Carolina, through the respective agencies, had exercised their affirmative duty to notify him of the registration requirements, he would have registered in July of 1994 and would therefore have enough time to be removed from the Sex Offender Registry as a Tier II offender. The State argued that the governing statute regarding removal from the Registry is unambiguous and Appellant does not have the requisite time in to be removed from the Registry. The Circuit Court denied Appellant's hearing on March 20, 2023 stating "for the Court to consider Defendant's argument, the Court would have to read something into the statute that is plain, unambiguous and conveys a clear meaning." (Order denying Defendant's Motion for Order of Removal pg. 6).

Appellant filed a timely notice of appeal. This appeal follows.

STANDARD OF REVIEW

"In criminal cases, the Appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "Questions of statutory interpretation are questions of law, which appellate court is free to decide without any deference to the court below." CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Id.

ARGUMENT

The Circuit Court properly denied Appellant's Motion for Removal from the Sex Offender Registry because the governing statue is clear on the requirements for removal and Appellant did not meet them.

Appellant argues that the Circuit Court erred by not granting Appellant's Motion for Removal from the Sex Offender Registry. Appellant specifically argues that 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 notified, he would have the mandatory registration time to be removed from the registry. This argument lacks merit because the governing statute is not ambiguous, and the circuit court properly interpreted the statute as written.

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). Appellant is alleging he should be removed from the Registry pursuant to the 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, utilize the same timeframe eligibility an offender must meet to be considered for removal as set forth in S.C. Code Ann. §23-3-462(A)(1) and (A)(2).

Appellant is a Tier II offender based upon his guilty plea to Criminal Sexual Conduct with a Minor (2nd 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 stated, Appellant registered for the first time on January 19, 2001. Twenty-five years

from that date is January 19, 2026. Appellant believes that he should be credited time from July 1994 when the legislation passed that created the Registry, because the State through their respective agencies did not exercise their affirmative duty to notify him of the registration requirements and if they had he would have registered in July of 1994 giving him the allotted time necessary to be removed from the Registry.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "The plain language of a statute is the best evidence of legislative intent." Grier v. AMISUB. of S.C., Inc., 397 S.C. 532, 538, 725 S.E.2d 693, 697 (2012). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges, 341 S.C. at 85, 533 S.E.2d at 581.

In Doe v. Keel, a sex offender who moved from South Carolina to Georgia brought federal action against SLED seeking removal of his name and information from South Carolina's sex offender registry pursuant to Sex Offender Registry Act (SORA). Doe v. Keel, 440 S.C. 427, 892 S.E.2d 282 (2023). Our Supreme Court held "Provisions for removing a sex offender's name and identifying information from the Registry are set forth in section 23-3-462 and subsections 23-3-430(E), (F), and (G). None of these provisions apply to Doe's circumstances. The regulations promulgated by SLED neither expand SLED's authority beyond that granted by the General Assembly in SORA nor require SLED to remove Doe's name and identifying information from the Registry." Keel at 437-438, 892 S.E.2d at 288.

Similar to the circumstances in Doe, where there are no provisions for being removed from the sex offender registry for persons released from custody prior to the creation of the Registry or for awarding preregistration credit to such persons. Therefore, without ignoring or altering the

plain language of the statute, there was no statutory basis upon which Appellant's premature request to be removed from the Sex Offender Registry could be granted at this time. See State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999) ("We, of course, must take the statute as we find it, giving effect to the legislative intent as expressed in its language. We cannot under our power of construction supply an omission in the statute."); see also R.R. Comm'n of Indiana v. Grand Trunk W. R. Co., 100 N.E. 852, 855 (Ind. 1913) ("The courts cannot venture upon the dangerous path of judicial legislation to supply omissions or remedy defects in matters committed to a co-ordinate branch of the government. It is far better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however desirable they may be, than for judicial tribunals to transcend the just limits of their constitutional powers." (citations and internal quotations omitted)).

Therefore, the Circuit Court did not err in denying Appellant's Motion for Removal and the Circuit Court's decision should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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