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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2023-001388

THE STATE,

Respondent,

vs.

JASON BRYAN McSWAIN,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Is the time restraint prior to judicial review in Section 23-3-462 arbitrary and not rationally related to any legitimate interest and, therefore, violative of Appellant's due process rights under the Fourteenth Amendment to the United States Constitution as well as Article I, section 3 of the South Carolina Constitution?

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the circuit court judge somehow err by denying Appellant's premature raising a constitutional challenge to South Carolina's revised sex offender registry laws when the circuit court judge did not have authority to act based upon the manner through which the issue was raised to him? Furthermore, even assuming the matter had somehow properly been before him, did the circuit court judge somehow err by rejecting Appellant's constitutional challenge when: (1) Appellant did not meet his heavy burden of establishing any provision of our state's revised sex offender registry laws was clearly unconstitutional; and (2) those laws were and are constitutionally proper?

STATEMENT OF THE CASE

In December of 2002, Appellant Jason Bryan McSwain, who was a high school teacher at the time, was arrested following an investigation into allegations he had engaged in unlawful sexual acts with three separate female students. In March of 2003, the Cherokee County Grand Jury indicted Appellant for two counts of second-degree criminal sexual conduct with a minor and one count of contributing to the delinquency of a minor. On January 12, 2004, Appellant appeared in the Cherokee County Court of General Sessions before the Honorable J. Mark Hayes, II, circuit court judge, and pled guilty as indicted. At the conclusion of the plea hearing, the plea judge accepted Appellant's guilty pleas, sentenced him to an aggregate ten-year term of imprisonment for his offenses, and suspended that sentence to a two-year period of home detention coupled with a five-year term of probation. In addition to that, Appellant was required to register as a sex offender.

Subsequently, in May of 2023, Appellant filed a motion seeking an order directing him to be removed from the sex offender registry, and the State filed a return in opposition. On July 31, 2023, the Honorable J. Derham Cole, circuit court judge, conducted a hearing on the matter in the Cherokee County Court of General Sessions. Through an order filed on August 24, 2023, the circuit court judge denied Appellant's motion. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Between November of 2000 and December of 2002, Appellant, a teacher and coach at Gaffney High School, abused his position of trust and engaged in illicit sexual acts with three different female students. (Tr. p. 7; Motion Att. A, p. 1; Motion Att. F, p. 4; Indictments). During that span of time, Appellant moved from minor victim to minor victim and committed sexual batteries upon them, including when *two* were only fifteen years old.[1] (Indictments). Appellant's serial juvenile sexual abuse spree only came to an end when the parents of one of the girls discovered what had been going on with their daughter and alerted staff at the school. (Motion Att. A, p. 1). Fortunately, that disclosure led to the initiation of a criminal investigation into the matter, and it culminated in Appellant's arrest along with the discovery of his other minor victims. (Motion, p. 1; Motion Att. C, p. 1; Motion Att. F, p. 4; Arrest Warrants).

Ultimately, Appellant was convicted of a variety of offenses in connection to the uncovered sexual abuse, including two counts of second-degree criminal sexual conduct with a minor.[2] (Order, p. 1; Indictments; Sentencing Sheets). As a result of those convictions, Appellant was required to register as a sex offender, and he did so. (Motion, p. 2).

Approximately eighteen years later, Appellant submitted an application to the South Carolina State Law Enforcement Division ("SLED") seeking removal from the sex offender

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[1] During the circuit court proceedings and on appeal, Appellant has incorrectly suggested two of his victims were sixteen years old when he began his sexual relationships with them. (Motion, p. 1; App. Br. p. 4). Notwithstanding the fact Appellant could not have been convicted of two counts of second-degree criminal sexual conduct with a minor if that was actually true, the attachments to Appellant's own motion refuted such a claim and established one of the victims he has alleged was sixteen years old was—based on a simple comparison of her birthdate and the date their relationship began—actually only fifteen years old until just before the end of their multi-month-long relationship. (Motion Att. F, p. 1; p. 4).

[2] In South Carolina, second-degree criminal sexual conduct with a minor was and is classified as a "violent" and "most serious" offense. S.C. Code Ann. § 16-1-60 (2024); S.C. Code Ann. § 17-25-45 (2024).

registry. (Motion, p. 4; Motion Att. I, p. 1). However, consistent with the plain mandates of South Carolina law, SLED denied Appellant's application as premature because his specific criminal offenses rendered him a "Tier II offender" and, thus, required him to register for a period of at least twenty-five years before he could be eligible for removal. (Motion Att. I, p. 1).

Following that denial, Appellant—"[p]ursuant to Section 23-3-463" of the South Carolina Code of Laws—moved for an order directing SLED to remove him from the registry. (Motion, pp. 1-6). In so moving, Appellant maintained the twenty-five-year waiting period for him being able to seek removal from the registry was fundamentally unfair and violative of his due process rights in light of his own supposedly "insignificant" and "negligible" risk of reoffending. (Motion, pp. 1-6).

During the ensuing hearing on Appellant's motion, Appellant again alleged the twenty-five-year waiting period violated his due process rights because it was purportedly "too long" and unreasonable. (Tr. pp. 3-6). Furthermore, Appellant argued there was no legitimate governmental interest in continuing to keep him on the registry due to the specific circumstances of his case. [3] [4] (Tr. pp. 5-6; p. 12).

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[3] As to those circumstances, Appellant's counsel pointed to the facts: (1) Appellant had not engaged in any criminal behavior since he was convicted; (2) none of Appellant's victims now personally thought he should be required to register as a sex offender; (3) Appellant later married one of his victims and remained married to her for several years; (4) Appellant now had a fourteen-year-old son who was being negatively impacted by Appellant's status as a registered sex offender, which had resulted in some of the son's friends' parents refusing to let their children visit Appellant's home; and (5) a retained expert concluded Appellant was a "below average" risk to reoffend based on her evaluation of him. (Tr. pp. 4-6; pp. 11-12; Motion, pp. 1-2; Motion Att. H, pp. 1-3).

[4] Beyond that, Appellant urged the circuit court judge to "avoid these constitutional issues" and somehow order his removal from the sex offender registry purely "as an equitable matter." (Tr. p. 6; p. 11). However, equitable relief was plainly inappropriate under the circumstances involved. Cf. Key Corp. Cap., Inc. v. Cnty. of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) ("While equitable relief is generally available where there is no adequate remedy at law,

Conversely, the solicitor argued Appellant's motion should be denied. (Tr. p. 10). As support for that position, the solicitor noted South Carolina's sex offender registry laws did, in fact, serve a legitimate governmental interest by—amongst other things—discouraging recidivism.[5] (Tr. p. 8). In light of that, the solicitor contended it was constitutionally proper for Appellant to be required to register for at least twenty-five years before being able seek removal, which he maintained was a valid legislative determination that complied with the mandates of the decision in Powell v. Keel, 433 S.C. 457, 860 S.E.2d 344 (2021). (Tr. pp. 6-8). Beyond that, the solicitor questioned whether the hearing on Appellant's statutorily-premature motion was the proper venue to address Appellant's constitutional challenge to the state's sex offender registry laws while noting a declaratory judgment action like in Powell would have been a more appropriate method of asserting such a challenge. (Tr. pp. 8-9).

Upon considering the matter, the circuit court judge denied Appellant's motion. (Order, pp. 1-4). In doing so, the circuit court judge recognized Appellant was not currently eligible for either removal from the sex offender registry or a hearing on the denial of his request for removal pursuant to the express mandates of Sections 23-3-462 and 23-3-463. (Order, pp. 1-2; p. 4). Furthermore, the circuit court judge concluded Appellant had likewise failed to meet his burden of establishing those provisions were clearly unconstitutional. (Order, pp. 3-4).

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an adequate legal remedy may be provided by statute. Indeed, a court's equitable powers must yield in the face of an unambiguously worded statute." (citations and internal quotations omitted)).

[5] The solicitor aptly noted Appellant's continued inclusion on the sex offender registry could have been the very thing that had kept Appellant—who stood convicted of committing offenses of a sexual nature against three different minor victims—from reoffending. (Tr. pp. 7-8). And, significantly, such a possibility constituted strong evidence of the wisdom of the policy-based decisions made by our legislature in regard to the sex offender registry. Cf. Pyrnne v. Settle, 848 F. App'x 93, 106 (4th Cir. 2021) ("[I]n the eyes of the legislators who enacted [Virginia's sex offender registry requirements], that Prynne has lived 'a model life' since her conviction, supports the conclusion that the registry helps prevent recidivism.").

STANDARD OF REVIEW

In a criminal case, an appellate court sits to review errors of law only. State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016). Meanwhile, when reviewing a challenge to the constitutionality of a statute, an appellate court has a "very limited" scope of review. State v. Harrison, 402 S.C. 288, 292, 741 S.E.2d 727, 729 (2013). All statutes are presumed to be constitutional and, if possible, will be construed in such a way to render them valid. State v. Neuman, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009); see Powell v. Hargrove, 136 S.C. 345, 350, 134 S.E. 380, 382 (1926) ("[An appellate court] must sustain the validity of the legislative enactment, if it is possible to do so by any reasonable construction of the Constitution, even though the Court might differ with the Legislature as to the propriety of the legislation."). Importantly, a statute "will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt[,]" and the party challenging the validity of the statute has the heavy burden of proving its unconstitutionality. In re Care & Treatment of Lasure, 379 S.C. 144, 147, 666 S.E.2d 228, 229 (2008); see State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) ("Appellants have the burden of proving the statute unconstitutional.").

ARGUMENT

The circuit court judge correctly denied Appellant's premature motion raising a constitutional challenge to South Carolina's revised sex offender registry laws because the circuit court judge did not have authority to act based upon the manner through which the issue was raised to him. Furthermore, even assuming the matter had somehow properly been before him, the circuit court judge nevertheless correctly rejected Appellant's constitutional challenge because: (1) Appellant did not meet his heavy burden of establishing any provision of our state's revised sex offender registry laws was clearly unconstitutional; and (2) those laws were and are constitutionally proper.

On appeal, Appellant, a registered sex offender, contends this Court should now rule the statutory twenty-five-year waiting period put into place through South Carolina's revised sex offender registry laws should be declared unconstitutional. As support for that contention, Appellant maintains that particular provision is purportedly not rationally related to the government's legitimate interest in protecting the public. Appellant's contention should be rejected for several different reasons. First and most significantly, Appellant's constitutional challenge was not properly before the circuit court judge's whose order he is now appealing because the motion through which Appellant raised the matter below was statutorily premature. As a result, the circuit court judge had no valid authority to act in Appellant's case, and the constitutional challenge was neither properly before him nor properly before this Court. Second, even if the procedural issues with Appellant's case could somehow be ignored, the circuit court judge correctly denied Appellant's premature motion and rejected Appellant's constitutional challenge because: (1) Appellant did not meet his heavy burden of establishing the twenty-five-year waiting period for sex offenders like him was clearly unconstitutional; and (2) our state's revised sex offender registry laws were and are constitutionally proper. For those reasons, this Court should reject Appellant's constitutional challenge and affirm the circuit court judge's ruling denying his statutorily-premature motion.

A. The circuit court judge correctly denied Appellant's statutorily-premature motion made pursuant to Section 23-3-463(B) of the South Carolina Code of Laws because the circuit court judge did not have authority to act upon it based on the plain language of that provision.

For a circuit court judge in South Carolina to be able to validly act in a particular matter, there necessarily must be some legal basis authorizing the circuit court judge to do so. See City of Columbia v. S.C. Pub. Serv. Comm'n, 242 S.C. 528, 532, 131 S.E.2d 705, 707 (1963) (instructing a court must remain "within the scope of its powers"); see also S.C. Const. art. V, § 11 ("The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law."); cf. State v. Warren, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011) (explaining a circuit court judge generally "is without authority to consider a criminal matter once the term of court during which judgment was entered expires"). Fundamentally, if a court has no authority to act, it cannot. Ross v. Richland Cnty., 270 S.C. 100, 102, 240 S.E.2d 649, 650 (1978).

In the case sub judice, Appellant—as a result of his convictions for second-degree criminal sexual conduct with a minor—was required to register as a sex offender as mandated by South Carolina law. See S.C. Code Ann. § 23-3-430(C)(5) (2003) (identifying second-degree criminal sexual conduct with a minor as an offense that—outside of certain factual scenarios that were not applicable to Appellant's case—required registration as a sex offender); S.C. Code Ann. § 23-3-430(C)(2)(e) (2024) (continuing to require an individual convicted of second-degree criminal sexual conduct with a minor to register as a sex offender and classifying such an individual as a "Tier II offender"). Following that, Appellant—by his own calculation—waited roughly nineteen years to attempt to raise a constitutional challenge to his registration requirement. And, significantly, he did so *not* by initiating a declaratory judgment action or

filing a petition in the Supreme Court's original jurisdiction but, instead, by: (1) seeking removal from the sex offender registry through the submission of a premature removal application to SLED that—by his own candid admission—failed to comply with the requirements of Section 24-3-462;[6] and (2) challenging SLED's denial of his application through a premature general sessions motion filed pursuant to Section 23-3-463. See S.C. Code Ann. § 23-3-462(A)(1)(b) (2024) ("An offender may file a request for termination of the requirement of registration with SLED . . . 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."); see also Thompson v. State, 415 S.C. 560, 564 n. 3, 785 S.E.2d 189, 191 n. 3 (2016) ("[T]he sex offender registry is a civil requirement separate and apart from the criminal punishments associated with sexual offenses in this state. As such, a declaratory judgment, and not post-conviction relief (PCR), is the appropriate vehicle in which to address this matter." (citations omitted)).

Critically though, in light of its express language, Section 23-3-463—the basis upon which Appellant brought his motion before the circuit court judge—was *not* applicable in Appellant's case since Appellant had not yet been on the sex offender registry for the requisite period of time. See S.C. Code Ann. § 23-3-463(B) (2024) ("All motions pursuant to this section must be made no earlier than the appropriate timeframes related to the underlying offense as specified in Section 23-3-462(A)(1) or subsection (A)(2). An offender is not eligible for a hearing pursuant to this section if he submitted an application prior to the timeframe specified in Section 23-3-462(A)(1) that was either not accepted or erroneously accepted by SLED."); see also State v. Price, 441 S.C. 423, 435, 895 S.E.2d 633, 639 (2023) (instructing all South Carolina courts "are bound to follow clear and unambiguous statutory law"). As a result, Appellant failed

[6] During the motion hearing, Appellant's counsel admitted "we knew that we would lose [with SLED] under the statute." (Tr. p. 5).

to identify any viable legal basis upon which the circuit court judge had authority to act in his case, and, without simply ignoring state law, the circuit court judge did not have the authority to order Appellant's removal from the registry or address Appellant's constitutional challenge to South Carolina's sex offender registry laws based on what was actually before him. Cf. Price, 441 S.C. at 437, 895 S.E.2d at 640 (explaining a circuit court judge would not have authority to act and would not be "empowered to consider reducing an inmate's sentence" pursuant to Section 17-25-65 *unless and until* the requirements of the statute were met). Accordingly, the circuit court judge correctly denied Appellant's statutorily-premature and improper motion seeking removal from the sex offender registry as he did not have any valid authority to act upon it under the circumstances involved.[7] See Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002) ("A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on."); see also State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (explaining it constitutes reversible error for a court to address an issue that is not properly before it). The circuit court judge's ruling rejecting Appellant's motion should be affirmed.

[7] Notably, the fact the circuit court judge did not have any authority to act in response to Appellant's motion made pursuant to Section 23-3-463 did not mean there were no legitimate avenues available to Appellant to raise his constitutional challenge to our state's sex offender registry laws. See S.C. Const. art. V, § 5 ("The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs."); S.C. Code Ann. § 15-53-20 (2024) ("Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree."); cf. Aiken v. Byars, 410 S.C. 534, 536-537, 765 S.E.2d 572, 573 (2014) (granting relief following a constitutional challenge raised through an original jurisdiction petition).

B. Notwithstanding the fact Appellant's constitutional challenge was not properly before him, the circuit court judge correctly found Appellant failed to meet his heavy burden of establishing South Carolina's revised sex offender registry laws were clearly unconstitutional, and those revised laws were and are not violative of his state and federal due process rights.

In response to the serious threat posed by sex offenders, South Carolina—just like the other forty-nine states and the federal government—has adopted laws requiring individuals convicted of certain sex offenses to be required to register as sex offenders. Powell v. Keel, 433 S.C. 457, 462, 860 S.E.2d 344, 346-347 (2021); see McKune v. Lile, 536 U.S. 24, 32-33 (2002) (plurality opinion) ("Sex offenders are a serious threat in this Nation. . . . When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault."); People v. Ross, 646 N.Y.S.2d 249, 250 (N.Y. Sup. Ct. 1996) ("Every state requires sex offenders to register[.]"). The core purpose of such laws is to protect the public from those sex offenders who may reoffend and to aid law enforcement in solving sex crimes. State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002); see S.C. Code Ann. § 23-3-400 (2024) ("The intent of this article is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens."); see also Smith v. Doe, 538 U.S. 84, 103 (2003) ("The legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class.").

Historically, a convicted sex offender in South Carolina was required to register for the remainder of the offender's life. Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003), overruled by Powell v. Keel, 433 S.C. 457, 860 S.E.2d 344 (2021). However, through its recent decision in Powell, our Supreme Court concluded South Carolina's lifetime registration requirement was unconstitutional "absent any opportunity for judicial review to assess the risk of re-offending." Powell, 433 S.C. at 467, 860 S.E.2d at 349. In reaching that conclusion, the

Supreme Court determined—although the initial mandatory imposition of sex offender registration bore a reasonable relationship to a legitimate governmental interest—the lifetime registration requirement under existing law was arbitrary and not rationally related to the identified purposes of the state's sex offender registry laws since it afforded no opportunity whatsoever for judicial review at any future point in time. Id. at 466, 860 S.E.2d at 348.

In light of its conclusion in Powell, the Supreme Court requested the legislature develop a review process and—consistent with critical separation-of-powers principles—left it to our legislators to make the necessary policy-based judgments involved in doing so. Id.; see ArrowPointe Fed. Credit Union v. Bailey, 438 S.C. 573, 580, 884 S.E.2d 506, 509 (2023) ("Determinations of public policy are chiefly within the province of the legislature, whose authority on these matters we must respect. We do not sit as a superlegislature to second-guess the General Assembly's decisions." (citations and internal quotations omitted)). The Supreme Court's only caveat was "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, 433 S.C. at 468, 860 S.E.2d at 349 (emphasis added). Importantly, the Supreme Court further stressed a judicial review hearing after "more than ten years of registration" was "by no means the only acceptable process." Id.

Following that, our General Assembly promptly responded by altering our state's sex offender registry laws to provide a mechanism through which sex offenders would potentially be able to obtain removal from the registry after a statutorily-delineated period of time. Act No. 221, 2022 S.C. Acts & Joint Resolutions. Regarding that mechanism, the legislature has now divided sex offenders into escalating tiers based upon—amongst other things—the seriousness of the offenses committed, and an offender's tier now dictates *when* the offender can seek potential

removal from the registry via a defined process. S.C. Code Ann. § 23-3-430(C) (2024); S.C. Code Ann. § 23-3-462(A) (2024); S.C. Code Ann. § 23-3-463(A) (2024). Notably, for "Tier II offenders" like Appellant, removal from the registry could and can first be sought after a period of at least twenty-five years of registration.[8] S.C. Code Ann. § 23-3-463(A)(1)(b) (2024).

In the case at bar, Appellant now seeks for the statutory twenty-five-year waiting period before he and other sex offenders like him can first seek removal from the registry to be declared unconstitutional and violative of his state and federal due process rights. As support for such a request, Appellant maintains the legislature's policy-based temporal line-drawing in Section 23-3-462 was "arbitrary" and not reasonably related to any legitimate governmental interest because he—as an individual—purportedly poses a "negligible" risk of reoffending based on the "clear evidence" he presented. Notwithstanding the fact Appellant's due process challenge was not properly before the circuit court judge since Appellant's premature motion afforded the circuit court judge no authority to act,[9] Appellant's contentions are wrong on the merits, and South Carolina's sex offender registry laws are constitutionally proper.

Unquestionably, South Carolina's citizens possess both a state and federal constitutional right not to be deprived of life, liberty, or property without due process of law. See U.S. Const. amend. V ("No person shall be . . . deprived of life, liberty, or property, without due process of

[8] The list of offenses that result in classification as a "Tier II offender" upon conviction in South Carolina includes second-degree criminal sexual conduct, second-degree and third-degree criminal sexual conduct with a minor, trafficking in persons, and a variety of other sexual offenses involving minor victims. S.C. Code Ann. § 23-3-430(C)(2) (2024).

[9] Significantly, the fact the circuit court judge did not actually have authority to rule upon Appellant's constitutional challenge based on the improper means through which Appellant sought to raise it forecloses a need for the merits of Appellant's constitutional challenge to now be addressed on appeal. See In re Care & Treatment of McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (recognizing the existence of the "firm policy to decline to rule on constitutional issues unless such a ruling is required").

law[.]"); U.S. Const. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."); S.C. Const. art. I, § 3 ("The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."). The touchstone of those constitutional due process guarantees is the protection of an individual from *arbitrary* government action. County of Sacramento v. Lewis, 523 U.S. 833, 845 (1998).

Here, just as was true in Powell, Appellant's constitutional due process challenge to the statutory twenty-five-year waiting period for eligibility for removal from the registry hinges on whether the law was reasonably designed to accomplish its purposes since no fundamental rights are implicated. Powell, 433 S.C. at 465, 860 S.E.2d at 348; see State v. Hornsby, 326 S.C. 121, 125-126, 484 S.E.2d 869, 872 (1997) ("When a statute is challenged under the Due Process Clause, this Court *only* requires the act to be *reasonably designed* to accomplish its purposes, unless some fundamental right or suspect class is implicated." (emphasis added)). Therefore, the relevant question upon which the matter rests is simply whether the statute bears a *reasonable* relationship to *any* legitimate governmental interest. Powell, 433 S.C. at 465, 860 S.E.2d at 348; see Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004) ("We recently held that the standard for reviewing all substantive due process challenges to state statutes, including economic and social welfare legislation, is whether the statute bears a reasonable relationship to any legitimate interest of government."). And, critically, Appellant bore and continues to bear the heavy burden of demonstrating the total absence of such a

reasonable relationship, which is an undeniably difficult burden to meet. See Hornsby, 326 S.C. at 126, 484 S.E.2d at 872 ("The burden of showing a statute is [constitutionally] unreasonable falls on the one who attacks it."); see also Landon Holdings, Inc. v. Grattan Twp., 667 N.W.2d 93, 106 (Mich. Ct. App. 2003) (characterizing the burden of establishing a law has no reasonable relationship to a legitimate governmental interest as a "difficult" one). With that in mind, Appellant did not and could not meet his heavy burden because South Carolina's revised sex offender registry laws—including the twenty-five-year waiting period before a "Tier II offender" is first eligible to seek removal—clearly have a reasonable relationship to a legitimate governmental interest.

Demonstrating that fact, the underlying governmental interests served by our state's sex offender registry laws were and are—as has repeatedly been recognized, including recently—legitimate and fundamental ones. S.C. Code Ann. § 23-3-400 (2024); see Doe v. Keel, 440 S.C. 427, 433, 892 S.E.2d 282, 285 (2023) ("South Carolina has a legitimate and fundamental interest in promoting the public health, safety, and welfare of its citizens[.]"); Powell, 433 S.C. at 465, 860 S.E.2d at 348 ("This Court has previously recognized the State's legitimate interest in requiring sex offender registration."); cf. In re Justin B., 405 S.C. 391, 408, 747 S.E.2d 774, 783 (2013) ("The purpose of the registration and electronic monitoring scheme in the instant case is clear—to provide for the safety and welfare of the State's citizens, and eliminate information deficits which hinder law enforcement in their apprehension of those offenders. These goals are a legitimate exercise of the State's police power[.]" (citation omitted)). And, under our state's revised and *now more-targeted* sex offender registry laws, all sex offenders are no longer treated in precisely the same manner but, instead, offenders are classified into tiers based on the seriousness of their qualifying convictions, which is a factor reasonably and legitimately tied to

the risk the offenders pose. S.C. Code Ann. § 23-3-430(C) (2024); see Smith, 538 U.S. at 103 (recognizing a state "could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism"). Furthermore, the policy-based line drawing our legislature performed to establish precisely *when* each tier of sex offender could first be eligible for removal from the registry in South Carolina was reasonably and legitimately related to the escalating class-based risk demonstrated by offenders convicted of more serious offenses, particularly those offenses committed upon minor victims.[10] See S.C. Code Ann. § 23-3-400 (2024) ("Statistics show that sex offenders often pose a high risk of re-offending."); see also Smith, 538 U.S. at 104 ("The duration of the reporting requirements is not excessive. Empirical research on child molesters, for instance, has shown that, contrary to conventional wisdom, most reoffenses do not occur within the first several years after release, but may occur *as late as 20 years* following release." (emphasis added and citation, brackets, and internal quotations omitted)); McKune, 536 U.S. at 33 (plurality opinion) (noting "the victims of sexual assault are most often juveniles" and explaining research has shown "[w]hen convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault"); cf. Doe v. Moore, 410 F.3d 1337, 1348 (11th Cir. 2005) ("The state's objective to focus on a class of offenders that are particularly dangerous or likely more dangerous is rational, and extensive 'courtroom factfinding' that questions legislative determinations is not permissible here." (citation omitted)). Accordingly, our state's revised sex offender registry laws—including the twenty-five-year waiting period for eligibility for removal from the registry for sex offenders like

[10] Obviously, Appellant's victims were minors since he was convicted of multiple counts of second-degree criminal sexual conduct with a minor. See S.C. Code Ann. § 16-3-655(3) (2000) ("A person is guilty of criminal sexual conduct in the second degree if the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim.").

Appellant—provide the review mandated by Powell while simultaneously bearing a *reasonable* relationship to a legitimate governmental interest and, thus, are not clearly unconstitutional as necessary for them to be stricken down.[11] See Landon Holdings, Inc., 667 N.W.2d at 106 ("Under the reasonable relationship test, a law should be upheld if supported by any facts known or reasonably assumed."); see also Smith, 538 U.S. at 104 (explaining a state's "determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness" does not render a statute unreasonable or unconstitutional); cf. Doe v. Settle, 24 F.4th 932, 953 (4th Cir. 2022) (rejecting "in short order" a substantive due process challenge Virginia's sex offender registry laws because the laws were rationally related to a legitimate public interest in public safety).

For those reasons and notwithstanding the procedural shortcomings involving in Appellant's specific case, the circuit court judge wisely concluded Appellant failed to meet his heavy burden of establishing either Section 23-3-462 or any other provision of South Carolina law concerning the sex offender registry was constitutionally repugnant. See Lasure, 379 S.C. at 147, 666 S.E.2d at 229 ("A statute is presumed constitutional and will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt."); see also Planned Parenthood S. Atl. v. State, 440 S.C. 465, 482, 892 S.E.2d 121, 131 (2023) ("In keeping with the separation of powers, it is the legislature's prerogative to make policy decisions, and it is the Court's duty to evaluate only whether those policy decisions are

[11] For what it's worth, South Carolina's new tier-based classification system for sex offenders and accompanying waiting periods for eligibility for removal are strikingly consistent with laws previously adopted by the federal government and many other states. See 34 U.S.C.A. § 20915(a) (requiring a sex offender to register for fifteen years if a tier I sex offender, for twenty-five years if a tier II sex offender, and for life if a tier III sex offender); see also Powell, 433 S.C. at 463, 860 S.E.2d at 347 (citing to a research compilation outlining different states' methods for providing for relief from sex offender registration obligations).

indisputably repugnant to the federal or state constitutions." (emphasis added)); cf. Smith, 538 U.S. at 105 ("The excessiveness inquiry of our ex post facto jurisprudence is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy. The question is whether the regulatory means chosen are reasonable in light of the nonpunitive objective. The Act meets this standard."). The circuit court judge's ruling rejecting Appellant's motion should be affirmed.

CONCLUSION

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

Respectfully submitted,

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