

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Aug 14 2024**

**SC Court of Appeals**

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

THE STATE,

Respondent,

vs.

JASON BRYAN McSWAIN,

Appellant.

**MOTION TO CERTIFY CASE**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

Years after he was convicted of several criminal offenses—including two counts of second-degree criminal sexual conduct with a minor—and mandatorily ordered to register as a sex offender based on the nature of his convictions, Appellant Jason Bryan McSwain filed a motion seeking an order directing him to be removed from the sex offender registry. The State filed a return opposing the motion. 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, Judge Cole denied McSwain’s motion. McSwain then timely initiated an appeal, and that appeal was filed with the South Carolina Court of Appeals.

## II.

On appeal, McSwain has solely raised the following issue: “The time restraint prior to judicial review in Section 23-3-462 is arbitrary and not rationally related to any legitimate interest; therefore, it violates 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.” (App. Br. p. 7). And, as to the relief being sought, McSwain has directly asked for the challenged statute to be declared unconstitutional by the appellate court. (App. Br. p. 13). Thus, McSwain’s appeal principally involves a constitutional challenge being raised on both state and federal grounds to a South Carolina statute. At present, McSwain’s appeal is pending in the Court of Appeals, and, by this point, all initial briefing has been completed.<sup>1</sup>

## III.

Pursuant to the plain and unambiguous mandates of South Carolina law, this Court—and not the Court of Appeals—has exclusive appellate jurisdiction over an appeal from “a final judgment involving a challenge on state or federal grounds, to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance[.]” S.C. Code Ann. § 14-8-200(b)(3). Furthermore, pursuant to state law, this Court can certify any case pending before the Court of Appeals for review prior to the Court of Appeals reaching a decision on the matter. See S.C. Code Ann. § 14-8-210(b) (“In any case pending before the court of appeals, the Supreme Court may in its discretion, on motion of any party to the case, on request by the court of appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the court of appeals.”). Notably,

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<sup>1</sup> The records from McSwain’s appeal are presently available through the South Carolina Appellate Court Public Index. Appellate Records for State v. Jason Bryan McSwain, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=79134>.

“[c]ertification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.” Rule 204, SCACR.

#### IV.

Here, McSwain is solely challenging the constitutionality of South Carolina’s recently-revised sex offender registry laws and their accompanying statutory twenty-five-year waiting period before an offender like him can first seek removal from the registry. See S.C. Code Ann. § 23-3-462(A)(1)(b) (“An offender may file a request for termination of the requirement of [sex offender] registration with SLED, in a form and process established by the agency . . . 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[.]”). Thus, because the appeal principally involves a constitutional challenge to South Carolina law, the matter falls within the exclusive appellate jurisdiction of this Court. See S.C. Code Ann. § 14-8-200(b)(3) (instructing the Supreme Court has exclusive jurisdiction in an appeal from “a final judgment involving a challenge on state or federal grounds, to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance” but explaining the Supreme Court can transfer an appeal involving a constitutional challenge to the Court of Appeals if the Supreme Court finds “the constitutional question raised is not a significant one”). Moreover, due to the nature of the issue being raised, McSwain’s appeal involves an issue of significant public interest since the constitutionality of South Carolina’s sex offender registry laws could have a broad impact on both registered sex offenders in our state and the health, welfare, and safety of our state’s citizens. 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 S.C. Code Ann. § 14-8-210

(“Certification is appropriate where the case involves an issue of significant public interest or a legal principle of major importance, or in other cases the court considers appropriate.”).

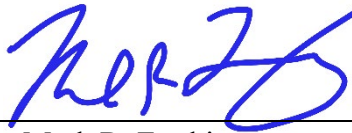
Accordingly, for those reasons, the State asks this Court to certify McSwain’s appeal and transfer jurisdiction over the case to this Court.

**WHEREFORE**, the State prays this Court will certify McSwain’s appeal for consideration by the Court for all purposes pursuant to Section 14-8-210 of the South Carolina Code of Laws and Rule 204 of the South Carolina Appellate Court Rules; hold the matter in abeyance pending a ruling on the State’s motion to certify; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Senior Assistant Deputy Attorney General

By:   
Mark R. Farthing  
S.C. Bar Number 76901

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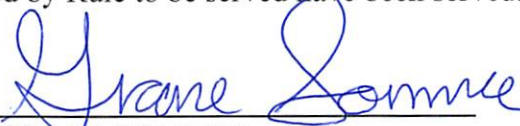
**PROOF OF SERVICE**

I, Grace Sommer, certify I have served the within Motion to Certify Case on Appellant by sending an electronic copy via email to the addresses listed in AIS for the following individuals:

Elizabeth Anne Franklin-Best, Esquire  
Elizabeth Franklin-Best, P.C.  
3710 Landmark Drive, Suite 113  
Columbia, South Carolina 29204

Meagan E. Johnson, Esquire  
Virtual Legal Associates LLC  
Post Office Box 421  
Greenwood, South Carolina 29648

I further certify that all parties required by Rule to be served have been served.  
This 14th day of August, 2024.

  
GRACE SOMMER  
Legal Assistant