

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHEROKEE COUNTY  
Court of General Sessions

Appellate Case No. 2023-001388

The Honorable J. Derham Cole, Circuit Court Judge

State of South Carolina.....Respondent,

v.

Jason Bryan McSwain .....Appellant.

**RECEIVED**

**Sep 11 2024**

S.C. SUPREME COURT

---

**RECORD ON APPEAL**

---

ALAN WILSON  
Attorney General

MARK FARTHING  
Senior Assistant Attorney General

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

*Attorneys for Respondent*

ELIZABETH FRANKLIN-BEST

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

*Attorney for Appellant*

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**WITNESSES**

Tammie L. Bright, CCSO

**ARREST WARRANT NUMBER**

H-002569

**ACTION OF GRAND JURY**

Foreperson of Grand Jury

Date: 3.13.03

**VERDICT**

**TRUE BILL**

Foreperson of Petit Jury

Date:

DOCKET NO. 03-GS-11-062

**The State of South Carolina**

County of Cherokee

*Trey Gowdy, Solicitor*

**COURT OF GENERAL SESSIONS**

**MAR 13 2003**

**TERM**

**THE STATE**

**vs.**

**Jason Bryan McSwain**

**Indictment for**

**CRIMINAL SEXUAL CONDUCT, WITH A  
MINOR, SECOND DEGREE**

SC Code: 16-3-655 (3)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )

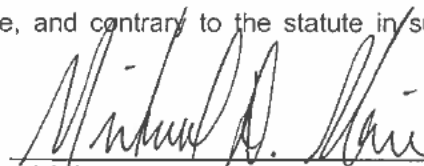
INDICTMENT

At a Court of General Sessions, convened on MAR 13 2003, the  
Grand Jurors of Cherokee County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH A MINOR , SECOND DEGREE**

That Jason Bryan McSwain did in Cherokee County on or about November 2000, through July, 2001, did commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree, in that the defendant did commit a sexual battery upon the minor, [REDACTED], who was at least fourteen years of age but who is less than sixteen years of age at the time of the incident and the Defendant was older than the victim ,in violation of §16-3-655 (3), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

**WITNESSES**

Christy Poole, GPD

**ARREST WARRANT NUMBER**

I-063508

**ACTION OF GRAND JURY**

Foreperson of Grand Jury

Date: 2-13-03

**VERDICT**

**TRUE BILL**

Foreperson of Petit Jury

Date:

DOCKET NO. 03-GS-11-064

**The State of South Carolina**

County of Cherokee

*Trey Gowdy, Solicitor*

**COURT OF GENERAL SESSIONS**

**MAR 13 2003**

**TERM**

**THE STATE**

**vs.**

**Jason Bryan McSwain**

**Indictment for**

**CONTRIBUTING TO  
DELINQUENCY OF A MINOR**

SC Code: 16-17-490

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )

INDICTMENT

At a Court of General Sessions, convened on MAR 13 2003, the  
Grand Jurors of Cherokee County present upon their oath:

**CONTRIBUTING TO DELINQUENCY OF A MINOR**

That Jason Bryan McSwain did in Cherokee County between November 2, 2002, and December 8, 2002 knowingly and unlawfully, he being a person over 18 years of age, encourage, aid, or cause to [REDACTED] a minor, to injury and endanger her morals by having a sexual relationship with her and the victim being a minor, in violation of §16-17-490 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

**WITNESSES**

Christy Poole, GPD

**ARREST WARRANT NUMBER**

I-063501

**ACTION OF GRAND JURY**

*[Signature]*  
Foreperson of Grand Jury

Date: 3-13-03

**VERDICT**

**TRUE BILL**

Foreperson of Petit Jury

Date:

DOCKET NO. 03-GS-11- 063

**The State of South Carolina**

County of Cherokee

*Trey Gowdy, Solicitor*

**COURT OF GENERAL SESSIONS**

**MAR 13 2003**

**TERM**

**THE STATE**

**vs.**

**Jason Bryan McSwain**

**Indictment for**

**CRIMINAL SEXUAL CONDUCT, WITH A  
MINOR, SECOND DEGREE**

SC Code: 16-3-655 (3)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )

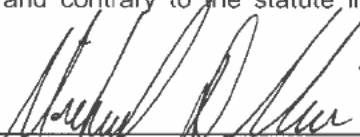
INDICTMENT

At a Court of General Sessions, convened on MAR 13 2003 the  
Grand Jurors of Cherokee County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH A MINOR , SECOND DEGREE**

That Jason Bryan McSwain did in Cherokee County on or about March 1, 2002 through October 20, 2002, did commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree, in that the defendant did commit a sexual battery upon the minor, [REDACTED], who was at least fourteen years of age but who is less than sixteen years of age at the time of the incident and the Defendant was older than the victim ,in violation of §16-3-655 (3), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

ARREST WARRANT

H-002569

STATE OF SOUTH CAROLINA

County/ Municipality of CHEROKEE COUNTY

THE STATE

against

JASON MCSWAIN

Address: GAFFNEY, SC 29340

Phone: SSN: Sex: Race: Height: Weight: DL State: SC DL#: DOB: Agency ORI#: SC0110000

Prosecuting Agency: SHERIFF'S OFFICE
Prosecuting Officer: DETECTIVE TAMMIE BRIGHT
Offense: CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
Offense Code:
Code/Ordinance Sec. 16-3-655

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant JASON MCSWAIN on 12-23-02

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: Magistrates Office, Cherokee County Court House GAFFNEY, SC 29340 803 487-2533

STATE OF SOUTH CAROLINA

County/ Municipality of CHEROKEE COUNTY

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant DETECTIVE TAMMIE BRIGHT being duly sworn deposes and says that defendant JASON MCSWAIN did within this county and state on November 25, 2000 violate the criminal laws of the State of South Carolina (or ordinance of Cherokee County) in the following particulars: CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT, JASON MCSWAIN, DID ENGAGE IN SEXUAL BATTERY BY HAVING SEXUAL INTERCOURSE WITH THE VICTIM, THE VICTIM WAS FIFTEEN AND THE DEFENDANT, BEING OLDER THAN THE VICTIM. THE INCIDENT OCCURRED BETWEEN NOVEMBER 2000 AND JULY 2001 AT [REDACTED], LOCATED IN CHEROKEE COUNTY, SOUTH CAROLINA.

CASE #2002-004263
WARRANT BASED ON THE INVESTIGATION BY THE CHEROKEE COUNTY SHERIFF'S OFFICE

Sworn to and subscribed before me on 12/23/2002 Signature of Issuing Judge (L.S.)

Signature of Affiant
Affiant's Address 312 EAST FREDRICK STREET GAFFNEY, SC 29340
Affiant's Telephone 864 487-2583

CLERK OF COURT
ATE M. BAINES
DEC 30 P 4:50

STATE OF SOUTH CAROLINA

County/ Municipality of CHEROKEE COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on November 25, 2000 defendant JASON MCSWAIN did violate the criminal laws of the State of South Carolina (or ordinance of Cherokee County) as set forth below:

DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)
Judge's Address Cherokee County Court House GAFFNEY, SC 29340
Judge's Telephone 803 487-2533
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

H-002569

700



ARREST WARRANT

1-063508

STATE OF SOUTH CAROLINA

County/ Municipality of GAFFNEY

THE STATE against

JASON BRYAN MCSWAIN

Address: GAFFNEY SC 29341

Phone: SSN: Sex: M Race: W Height: 510 Weight: 190 DL State: SC DL #: DOB: Agency ORI#: SC0110200

Prosecuting Agency: Gaffney Police Department Prosecuting Officer: C. I. Poole Offense: Minor/Contributing to delinquency of minor Code/Ordinance Sec: 16-17-0490

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of GAFFNEY The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jason Bryan McSwain on 12-27-02

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County/ Municipality of GAFFNEY

AFFIDAVIT

Form approved by SC Attorney General July 26, 1998. SCCA 518

Personally appeared before me the affiant C. I. Poole being duly sworn deposes and says that defendant JASON BRYAN MCSWAIN did within this county and state on 11/02/2002

violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of GAFFNEY in the following particulars:

DESCRIPTION OF OFFENSE: Minor/Contributing to delinquency of minor

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT BETWEEN THE DATES OF NOVEMBER 2, 2002 AND DECEMBER 8, 2002, THE DEFENDANT, JASON BRYAN MCSWAIN, DID KNOWINGLY AND WILFULLY ENCOURAGE AND AID THE VICTIM, TO INJURY AND ENDANGER HER MORALS BY HAVING A SEXUAL RELATIONSHIP WITH HER, AND THE VICTIM BEING A MINOR. THIS INCIDENT OCCURRED AT THE DEFENDANT'S RESIDENCE LOCATED AT 121 HAMPSHIRE DRIVE, WITHIN THE CITY OF GAFFNEY, COUNTY OF CHEROKEE SOUTH CAROLINA. PROBABLE CAUSE BASED UPON THE INVESTIGATION OF THE GAFFNEY POLICE DEPARTMENT DETECTIVE DIVISION AND STATEMENT OF VICTIM. CASE NUMBER - 02-043357

Sworn to and subscribed before me on 12/27/2002 Signature of Issuing Judge (L.S.)

Signature of Affiant: Affiant's Address: 201 N. Limestone Street Affiant's Telephone: 864-489-8115

STATE OF SOUTH CAROLINA

County/ Municipality of GAFFNEY

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 11/02/2002 defendant JASON BRYAN MCSWAIN did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of GAFFNEY as set forth below:

DESCRIPTION OF OFFENSE: Minor/Contributing to delinquency of minor

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as hereafter is practicable.

Signature of Issuing Judge (L.S.) Judge Code: 456

Judge's Address: 201 N. Limestone Street Judge's Telephone: 864-487-8524

Issuing Court Magistrate Municipal Circuit

Original

**ARREST WARRANT**

**1-063501**

STATE OF SOUTH CAROLINA

County/  Municipality of  
**GAFFNEY**

**THE STATE**  
against

**JASON BRYAN MCSWAIN**

Address: [REDACTED]  
GAFFNEY SC 29341

Phone: [REDACTED] SSN: \_\_\_\_\_

Sex: M Race: W Height: 510 Weight: 195

DL State: SC DL #: \_\_\_\_\_

DOB: \_\_\_\_\_ Agency ORI#: SC0110200

Prosecuting Agency: Gaffney Police Department

Prosecuting Officer: C.I. Poole

Offense: Sex/Crim sex conduct w/minor <16-2nd deg

Offense Code: 0397

Code/Ordinance Sec: 16-03-0655(3)

This warrant is CERTIFIED FOR SERVICE in the

County/  Municipality of  
**GAFFNEY** The accused

is to be arrested and brought before me to be dealt with according to law.

\_\_\_\_\_  
Signature of Judge (L.S.)

Date: \_\_\_\_\_

**RETURN**

A copy of this arrest warrant was delivered to defendant Jason Bryan Mcswain on 12/14/2002

K.S. Lancaster  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

**STATE OF SOUTH CAROLINA**

County/  Municipality of  
**GAFFNEY**

**AFFIDAVIT**

Form approved by  
SCAttorneyGeneral  
July 26, 1990  
SCCA 518

Personally appeared before me the affiant C.I. Poole being duly sworn deposes and says that defendant JASON BRYAN MCSWAIN did within this county and state on 03/01/2002 violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of GAFFNEY) in the following particulars:

DESCRIPTION OF OFFENSE:  
Sex/Crim sex conduct w/minor <16-2nd deg

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

BETWEEN THE DATES OF MARCH 1, 2002 AND OCTOBER 20, 2002, THE DEFENDANT, JASON BRYAN MCSWAIN, DID ENGAGE IN SEXUAL BATTERY WITH THE VICTIM, WHO WAS UNDER SIXTEEN YEARS OF AGE, BY HAVING ORAL SEX AND INSERTING HIS FINGERS INTO HER VAGINA. THIS OFFENSE OCCURRED AT [REDACTED] LOCATED WITHIN THE CITY OF GAFFNEY, COUNTY OF CHEROKEE SOUTH CAROLINA. PROBABLE CAUSE BASED UPON INVESTIGATION OF THE GAFFNEY POLICE DEPARTMENT DETECTIVE DIVISION AND STATEMENTS OF VICTIM, WITNESSES AND DEFENDANT.

CASE NUMBER - 02-042452

Sworn to and subscribed before me )  
on 12/14/2002 )  
Kay D Seal )  
Signature of Issuing Judge (L.S.) )

C.I. Poole  
Signature of Affiant )  
Affiant's Address: 201 N. Limestone Street  
Affiant's Telephone: 864-489-8115

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
**GAFFNEY** )

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that on 03/01/2002 defendant JASON BRYAN MCSWAIN did violate the criminal laws of the State of South Carolina ( or ordinance of  County/  Municipality of GAFFNEY ) as set forth below:

DESCRIPTION OF OFFENSE:  
Sex/Crim sex conduct w/minor <16-2nd deg

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as thereafter is practicable

Kay D Seal )  
Signature of Issuing Judge (L.S.) )  
Judge Code: 456 )  
Judge's Address: 201 N. Limestone Street  
Judge's Telephone: 864-487-8524

Issuing Court  Magistrate  Municipal  Circuit

Original

2002 DEC 23 A 9:28  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 JENNIFER BAINES  
 CLERK OF COURT



ARREST WARRANT

1-063506

STATE OF SOUTH CAROLINA
County/ [X] Municipality of GAFFNEY

THE STATE against

JASON BRYAN MCSWAIN
Address: [REDACTED] GAFFNEY SC 29341
Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: W Height: 510 Weight: 190
DL State: SC DL #: [REDACTED]
DOB: [REDACTED] Agency ORI#: SC0110200
Prosecuting Agency: Gaffney Police Department
Prosecuting Officer: C.I. Ppola
Offense: Minor/Contributing to delinquency of min
Code/Ordinance Sec: 16-17-0490

This warrant is CERTIFIED FOR SERVICE in the
County/ [X] Municipality of GAFFNEY
The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)
Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jason Bryan McSwain on 12-27-02
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County/ [X] Municipality of GAFFNEY

AFFIDAVIT

Personally appeared before me the affiant C.I. Ppola being duly sworn deposes and says that defendant JASON BRYAN MCSWAIN did within this county and state on 10/21/2002 violate the criminal laws of the State of South Carolina (or ordinance of County/ [X] Municipality of GAFFNEY) in the following particulars:
DESCRIPTION OF OFFENSE:

Minor/Contributing to delinquency of minor
I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
THAT BETWEEN THE DATES OF OCTOBER 21, 2002 AND DECEMBER 12, 2002, THE DEFENDANT, JASON BRYAN MCSWAIN, DID KNOWINGLY AND WILFULLY ENCOURAGE AND AID THE VICTIM, [REDACTED] TO INJURY AND ENDANGER HER MORALS BY HAVING A SEXUAL RELATIONSHIP WITH HER AND THE VICTIM BEING A MINOR. THIS INCIDENT OCCURRED AT THE DEFENDANT'S RESIDENCE LOCATED AT [REDACTED] WITHIN THE CITY OF GAFFNEY, COUNTY OF CHEROKEE SOUTH CAROLINA. PROBABLE CAUSE BASED UPON THE INVESTIGATION OF THE GAFFNEY POLICE DEPARTMENT DETECTIVE DIVISION AND STATEMENT OF VICTIM.
CASE NUMBER - 02-042452

Sworn to and subscribed before me on 12/27/2002
Signature of Affiant
Affiant's Address: 201 N. Limestone Street
Affiant's Telephone: 864-489-8115

STATE OF SOUTH CAROLINA
County/ [X] Municipality of GAFFNEY

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 10/21/2002 defendant JASON BRYAN MCSWAIN did violate the criminal laws of the State of South Carolina (or ordinance of County/ [X] Municipality of GAFFNEY) as set forth below:
DESCRIPTION OF OFFENSE:

Minor/Contributing to delinquency of minor
Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as thereafter is practicable.

Signature of Issuing Judge (L.S.)
Judge's Address: 201 N. Limestone Street
Judge's Telephone: 864-487-8524
Issuing Court: [ ] Magistrate [X] Municipal [ ] Circuit

Original

Form approved by
SCAttorneyGeneral
July 26, 1990
SCCA 518

8/19/03 - Dismissed
Directly Reported
[Signature]

010

BAIL set by  
Age Seals

12-27-02

Fee and Amount: 7500 Blanket

Name of Surety: \_\_\_\_\_

**PRELIMINARY HEARING held by**

Age \_\_\_\_\_

Defense Attorney: \_\_\_\_\_

Disposition: \_\_\_\_\_

**DISPOSITION before**

Age \_\_\_\_\_

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_

Defence: \_\_\_\_\_

**JURORS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WITNESSES**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

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Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**CODEFENDANTS**

\_\_\_\_\_  
\_\_\_\_\_



ARREST WARRANT

1-063507

STATE OF SOUTH CAROLINA

County/ Municipality of GAFFNEY

THE STATE against

JASON BRYAN MCSWAIN

Address: GAFFNEY SC 29341

Phone: SSN:

Sex: M Race: W Height: 510 Weight: 190

DL State: SC DL #:

DOB: Agency OR#: SC0110200

Prosecuting Agency: Gaffney Police Department

Prosecuting Officer: C.I. Poole

Offense: Minor/Contributing to delinquency of min

OR OffenseCode: 0048

Code/Ordinance Sec: 16-17-0490

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of GAFFNEY

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jason Bryan McSwain on 12-27-02

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County/ Municipality of GAFFNEY

AFFIDAVIT

Personally appeared before me the affiant C.I. Poole being duly sworn deposes and says that defendant JASON BRYAN MCSWAIN

did within this county and state on 09/12/2002 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of GAFFNEY in the following particulars:

DESCRIPTION OF OFFENSE:

Minor/Contributing to delinquency of minor

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT BETWEEN THE DATE OF SEPTEMBER 12, 2002 AND DECEMBER 16, 2002, THE DEFENDANT, JASON BRYAN MCSWAIN, DID KNOWINGLY AND WILFULLY ENCOURAGE AND AID THE VICTIM, TO INJURY AND ENDANGER HER MORALS BY HAVING A SEXUAL RELATIONSHIP WITH HER AND THE VICTIM BEING A MINOR. THIS INCIDENT OCCURRED AT THE DEFENDANT'S RESIDENCE LOCATED AT WITHIN THE CITY OF GAFFNEY, COUNTY OF CHEROKEE SOUTH CAROLINA. PROBABLE CAUSE BASED UPON THE INVESTIGATION OF THE GAFFNEY POLICE DEPARTMENT DETECTIVE DIVISION AND STATEMENT OF VICTIM. CASE NUMBER - 02-042874

Sworn to and subscribed before me on 12/27/2002 Signature of Issuing Judge (L.S.)

Signature of Affiant Affiant's Address: 201 N. Limestone Street Affiant's Telephone: 864-489-8115

STATE OF SOUTH CAROLINA County/ Municipality of GAFFNEY

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 09/12/2002 defendant JASON BRYAN MCSWAIN did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of GAFFNEY as set forth below: DESCRIPTION OF OFFENSE:

Minor/Contributing to delinquency of minor

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or

as thereafter is practicable Signature of Issuing Judge (L.S.) Judge Code: 456

Judge's Address: 201 N. Limestone Street Judge's Telephone: 864-487-8524

Issuing Court Magistrate Municipal Circuit

Original

Form approved by SCAttorneyGeneral July 26, 1990 SCCA 518

819103 - Dismissed - Directly Indicted

BRAND 2002 JAN

012

BAIL set by  
Ige Sealv

12-27-02

Amount: 7500. Blanket

Name of Surety: \_\_\_\_\_

**PRELIMINARY HEARING held by**

Ige \_\_\_\_\_

Defense Attorney: \_\_\_\_\_

Disposition: \_\_\_\_\_

**DISPOSITION before**

Ige \_\_\_\_\_

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_

Sentence: \_\_\_\_\_

**JURORS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WITNESSES**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**CODEFENDANTS**

\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee  
STATE VS.  
Jason Bryan McSwain  
AKA:  
Race: W Sex: M Age: 27  
DOB: [REDACTED] SS#: [REDACTED]  
Address: [REDACTED]  
City, State, Zip: Spartanburg, SC 29307  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

INDICTMENT/CASE#: 03 -GS- 11 - 062  
A/W#: H002569  
Date of Offense: 11-25-00  
S.C. Code §: 16-3-655  
CDR Code #: 0131917  
 CASE RESTORED  
SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
TO: CSC w/a minor 2nd degree  
in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 0131917  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State. Concurrent  
ATTEST:  
[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of 2 days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for 5  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,  
which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: State Prison 2 yrs may be served home incarceration  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms:  
 set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: State 02-063

Recipient: \_\_\_\_\_  
\*Fine: \_\_\_\_\_ \$  
§14-1-206 (Assessments 107.5%) \$  
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$  
§14-1-211(A)(2) (DUI Surcharge) \$100 \$  
§56-5-2995 (DUI Assessment) \$12 \$  
§ 35.13 (Public Def/Prob) \$500 \$  
§73.3, 1B TP (Law Enforce. Funding) \$25 \$  
§33.7, 1B TP (Drug Court Surcharge) \$100 \$  
§50-21-114(BUI Breath Test Fee) \$50 \$  
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$  
3% to County (if paid in installments) \$  
TOTAL \$

Appointed PD or appointed other counsel, §35.13 TP  
Requires \$500 be paid to Clerk during probation.  
PRESIDING JUDGE [Signature]  
Judge Code: 1312  
Sentence Date: January 12, 2004

Brandee W. McBee  
Clerk of Court/ Deputy Clerk  
Court Reporter: Michelle Math

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
STATE VS. Jason Bryan McSwain
AKA:
Race: W Sex: M Age: 27
DOB:
Address:
City, State, Zip: Spartanburg, SC 29307
DL# SID#

INDICTMENT/CASE#: 03 -GS- 11 - 0604
AW#: L 063508
Date of Offense: 11-02-02
S.C. Code §: 16-17-490
CDR Code #: 0101418
CASE RESTORED
SENTENCE
PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Contributing Del. of a Minor
in violation of § 16-17-490 of the S.C. Code of Laws, bearing CDR Code # 0101418
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: Solicitor, Jason McSwain Defendant, Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 30 days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for 1
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on: other sentence
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

Table with columns for item description and amount. Includes rows for Restitution (Heard, Waived, Ordered), Recipient, \*Fine, and various assessment fees like §14-1-206, §14-1-211(A)(1), etc.

PTUP days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: SAME as 0603

Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.
PRESIDING JUDGE
Judge Code: 11312
Sentence Date: January 12, 2004

Brandy W. McBee, Clerk of Court/Deputy Clerk
Court Reporter: Mike Watts

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee  
STATE VS.  
Jason Bryan McSwain

INDICTMENT/CASE#: 03 -GS- 11 - 063  
AW#: 1063501  
Date of Offense: 3-1-02  
S.C. Code §: 16-3-655  
CDR Code #: 0 / 3 / 9 / 7  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

AKA:  
Race: W Sex: M Age: 27  
DOB: - SS#: -  
Address: -  
City, State, Zip: Spartanburg, SC 29307  
DL# - SID# -

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
TO: CSC w/ a minor 2nd degree  
in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 0 / 3 / 9 / 7  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State. Concurrent  
ATTEST:  
[Signature] Solicitor Jason McSwain Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of 2 days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for 5  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,  
which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: with other sentences 2 years may be served  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections. AS have detention

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms:  
 set by SCDPPPS

PTUP \_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: Therapy - NO CONTACT WITH VICTIMS.

Recipient: \_\_\_\_\_  
\*Fine: \_\_\_\_\_ \$  
\$14-1-206 (Assessments 107.5%) \$  
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$  
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$  
\$56-5-2995 (DUI Assessment) \$12 \$  
§ 35.13 (Public Def/Prob) \$500 \$  
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$  
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$  
\$50-21-114(BUI Breath Test Fee) \$50 \$  
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$  
3% to County (if paid in installments) \$  
TOTAL \$

Appointed PD or appointed other counsel, \$35.13.TP  
Requires \$500 be paid to Clerk during probation  
PRESIDING JUDGE [Signature]  
Judge Code: \_\_\_\_\_  
Sentence Date: January 12, 2004

Branchley W. McBee  
Clerk of Court/ Deputy Clerk  
Court Reporter: Mike Watts



## South Carolina Law Enforcement Division

P.O. Box 21398  
Columbia, South Carolina  
29221-1398

*Henry D. McMaster, Governor*  
*Mark A. Keel, Chief*

*Tel: (803) 737-9000*

October 17, 2022

Jason Bryan McSwain

[REDACTED]  
Gaffney, SC 29341

Ref: Sex Offender Registry Removal  
Application# 2022-00134

Jason Bryan McSwain,

After carefully reviewing your Application for Removal from the S.C. Sex Offender Registry (SOR), the SLED SOR unit has noted that you do not meet the requirements for removal outlined in S.C. Code 23-3-462. Specifically, S.C. Code 23-3-462(A) states, "[a]n offender may file a request for termination of the requirement of 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."

Your January 12, 2004, conviction for Criminal Sexual Conduct in the 2<sup>nd</sup> Degree is classified as a Tier II offense for the removal process. Additionally, your initial registration date is recorded as January 23, 2004. Therefore, you have only completed 18 years, 7 months, and 23 days of the required 25-year registration period. Barring any future convictions for a sex-related offense or for failing to register as a sex offender, you will be eligible to apply for removal no earlier than 120 days prior to January 23, 2029.

Lastly, S.C. Code 23-3-462(D)(1) provides, "[i]f an offender is denied a termination request, the offender may petition again for termination with SLED no sooner than five years after the previous denial." Again, you will be eligible to apply for removal no earlier than 120 days prior to January 23, 2029.

Respectfully,

A handwritten signature in blue ink that reads "B.C. Ridgeway".

Bryan C. Ridgeway, Lieutenant  
SLED, S.C. Sex Offender Registry

cc: Jason Bryan McSwain SOR file  
Cherokee County Sheriff's Office  
Franklin Best Law Firm



*An Accredited Law Enforcement Agency*



STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

Jason McSwain,

vs.

State of South Carolina

) IN THE COURT OF GENERAL SESSIONS  
) FOR THE SEVENTH JUDICIAL CIRCUIT

)  
) Indictment Nos: 2003-GS-11-62, 2003-GS-11-63,  
) 2003-GS-11-64

)  
) **MOTION REQUESTING ORDER TO BE  
) REMOVED FROM SOUTH CAROLINA SEX  
) OFFENDER REGISTRY**

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, SC  
2023 MAY -3 AM 10:48  
RANDY W. MOBLE

**I. INTRODUCTION**

Pursuant to Section 23-3-463 Jason McSwain moves before this honorable Court for an order to be removed from the Sex Offender Registry. Mr. McSwain is not at risk of reoffending, and he does not pose a threat to the public. He has complied with all the requirements of his sentence and has maintained an unblemished criminal record.

**II. BACKGROUND**

Mr. McSwain began a relationship with ██████████ when she was sixteen and the bookkeeper for the basketball team he coached. Ex. A, ¶ 4. Her parents discovered the affair and contacted the school, which called law enforcement. Ex. A, ¶ 5. During the investigation, law enforcement learned he previously had relationships with two other students, ██████████ when she was fifteen years old and ██████████ when she was sixteen years old. Ex. B, ¶ 4, Ex. C, ¶ 4. ██████████ initiated the relationship by coming to his house unannounced and repeatedly inviting herself over there. Ex. B, ¶¶ 4 & 5. Her relationship with Mr. McSwain was

roughly two years prior to the investigation. Ex. B, ¶ 5. ██████████ was in consensual relationship with Mr. McSwain for a few months prior to the investigation.<sup>1</sup> Ex. C, ¶ 4.

Mr. McSwain pled guilty to two-counts of criminal sexual conduct with a minor, second degree, and one count of contributing to the delinquency of a minor on January 12, 2004. Ex. E, Ex. D, ¶ 2. He was sentenced to ten years' imprisonment, which was suspended upon serving two years and five years' probation. Ex. E, Ex. D, ¶ 3. As a result of his convictions, Mr. McSwain was also required to register as a sex offender and has met all registration requirements throughout his time on the registry. Ex. D, ¶ 3. He was allowed to serve the two years at a home detention center, which he completed in January 2006. Ex. D, ¶ 4.

### III. GROUNDS FOR REMOVAL

Mr. McSwain successfully completed probation in 2011, which included counseling treatment. Ex. D, ¶ 4. He has had no subsequent arrests or convictions of a sexual offense, or any other legal infraction. Ex. D, ¶ 5. Instead, Mr. McSwain has remained committed to moving past his criminal convictions and creating a life for himself. When ██████████ was in college, she wanted to reconnect with Mr. McSwain and sought to have his restraints modified so that he would no longer be prohibited from contact with her. Ex. F. With the help and support of her mother (whose report of their relationship led to his convictions), ██████████ petitioned the court to modify the terms of his sentence, which the court granted. Exs. F, G. Mr. McSwain and ██████████ eventually married and although they divorced after seven years, they have an amicable relationship and share joint custody of their son. Ex. A, ¶ 7.

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<sup>1</sup> ██████████ reconnected with Mr. McSwain when she was around twenty years old, and they had a brief relationship. Ex. C, ¶ 7.

Mr. McSwain still resides in same community and has endeavored to develop his career and remain a devoted father. He served as the Director for Environmental Health and Safety at a corporation that manufactures polymers. Despite a demanding career, he made time to coach his son's basketball team. Mr. McSwain has consistently been an involved father, always present and striving to do what is best for his son. Ex. A, ¶ 10.

However, having to maintain his status on the sex offender registry takes a toll on these achievements. Working for a global corporation that requires worldwide travel was difficult. His passport was revoked, and he was informed he would need to be identified as a sex offender on his passport. Additionally, as his son (and his son's peers) have gotten older, his son has become a target for bullying based on Mr. McSwain's registration. Ex. D, ¶ 12. Some of his son's friends are not allowed to visit Mr. McSwain's house because parents know he is on the registry. And even the little things that make up a childhood have been impacted. Ex. D, ¶ 12. His son enjoys going to the local YMCA, but he does not get to go with his father because Mr. McSwain is not allowed to go. See Ex. D, ¶ 11. Mr. McSwain has repaid his debt to society, he has complied with the registry requirements and maintained non-criminal behavior.

Each of Mr. McSwain's victims have provided affidavits supporting this petition for him to be removed from the registry. Exs. A–C. Furthermore, he has undergone an evaluation with a forensic psychiatrist to determine his risk rate for recidivism. Dr. Donna S. Maddox used the Static 99-R actuarial risk assessment to review Mr. McSwain and he scored a zero. Ex. H, p. 2–3. Based on this score, Dr. Maddox opined that he was at a below average risk of reoffending and assigned him an expected rate of 1.4 percent based on his being in the community over a decade without an offense. Ex. H, 3.

Pursuant to Section 23-3-462, Mr. McSwain requested his removal from the registry from the South Carolina Law Enforcement Division (SLED). This request was denied on the basis that his request was premature,<sup>2</sup> not because he posed any remaining threat to the public or that the interests of justice would be served by his continued registration. Ex. I. This denial is inconsistent with his rights under both federal and state constitutions.

On June 9, 2021, the Supreme Court of South Carolina decided *Powell v. Keel*, which held that the requirement for lifetime registration under the Sex Offender Registry Act, was unconstitutional absent opportunity for judicial review to assess the risk of re-offending. 433 S.C. 457, 472, 860 S.E.2d 344, 351–52 (2021). Although it deferred to the General Assembly on crafting the mechanisms of the process due, the Supreme Court “require[d] 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.” *Id.* at 468, 860 S.E.2d at 349. It further held that Powell had received due process because his judicial review after ten years. *See Powell v. Keel*, 433 S.C. 457, 461, 860 S.E.2d 344, 346 (2021).

Yet Mr. McSwain was denied relief based solely on timing because despite the clear evidence he is not at risk of reoffending. Mr. McSwain has consistently registered for the past **nineteen years** and the denial of review, especially considering his insignificant risk of reoffending, is inconsistent with his due process rights under the Fourteenth Amendment to the United States Constitution and Article I, section 3 of the South Carolina Constitution. Having to

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<sup>2</sup> Under section 23-3-430(C)(2), Mr. McSwain is classified as a Tier II offender and section 23-3-462 provides no opportunity for review until twenty-five years from the relevant conviction and registration inception.

wait twenty-five years until obtaining judicial review is not the “reasonable promptness” and “fundamental fairness” required by the Supreme Court to ensure due process. Mr. McSwain has a negligible risk of reoffending and therefore his continued registration does not “bear [] a reasonable relationship to any legitimate interest of government.” *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004). The Supreme Court has stated “a likelihood of re-offending lies at the core of South Carolina’s civil statutory scheme.” *State v. Dykes*, 403 S.C. 499, 507, 744 S.E.2d 505, 510 (2013); *see State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (“[I]t is clear the General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes.”). There is no longer a corresponding benefit to society for his registration.

#### IV. CONCLUSION

Ultimately justice is aggravated by Mr. McSwain’s continued requirement of registration. It is clear there is no danger from which the public must be protected, and any punitive effects are suffered not by Mr. McSwain, but by his minor child. He therefore respectfully requests this Court grant his motion for removal from the registry and terminate his registration requirement.

Respectfully submitted,

/s/Ranee Saunders

Ranee Saunders

Elizabeth Franklin-Best

Elizabeth Franklin-Best, P.C.

3710 Landmark Drive, Suite 113

Columbia, SC 29204

(803) 445-1333

[ranee@franklinbestlaw.com](mailto:ranee@franklinbestlaw.com)

BRANDY W. ANDERSON

2023 MAY -3 AM 10:48

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, SC

[elizabeth@franklinbestlaw.com](mailto:elizabeth@franklinbestlaw.com)

May 1, 2023

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, GA

2023 MAY -3 AM 10:48

BRANDY W. MOBET

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )

IN THE COURT OF GENERAL SESSIONS  
FOR THE SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA )

vs. )

**STATE'S RESPONSE TO DEFENDANT'S  
MOTIONS TO BE REMOVED FROM  
THE SEX OFFENDER REGISTRY**

Jason Bryan McSwain, )

Indictment #: 2003-GS-11-62, 2003-GS-11-63,  
2003-GS-11-64

Defendant )

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2023 JUN 14 P 4:01  
BRANDY W. ROBERTS

TO: Jason Bryan McSwain, by and through his attorney, Elizabeth Franklin-Best

The State, represented by Assistant Solicitors Matthew T. Craft and Anthony C. Leibert, respectfully requests the Defendant's Motion to be Removed from the Sex Offender Registry Requirements be denied as untimely and on its merits.

**PROCEDURAL HISTORY**

The Defendant, Jason Bryan McSwain (hereinafter the Defendant) was convicted on January 12, 2004 of two (2) counts of Criminal Sexual Conduct with a Minor 2<sup>nd</sup> Degree under S.C. Code Section §16-17-490. He was sentenced to ten years suspended to two years followed by probation for five years. As a result of these convictions, the Defendant was ordered to be placed on the sex offender registry. At the time of his conviction in 2004, the sex offender registry's duration was for the Defendant's lifetime.

On July 1, 2022, the South Carolina Legislature enacted amendments to Article 7 of Title 23 of the South Carolina Statutes which delineate the requirements of the sex offender registry to create different tiers of offenses and duration of the associated sex offender registry requirements. This new law creates a procedure for registered sex offenders to request termination from the registry dependent on their conviction tier and the length of time they had been on the registry dependent on their conviction tier and the length of time they had been on the registry with Tier I being the least restrictive, Tier II being moderately restrictive, and Tier III being the most restrictive.

The Defendant applied to the South Carolina Law Enforcement Division (hereinafter referred to as SLED) in 2022 for termination of the requirements of his sex offender registration, and based on the tier of his conviction (Tier II) and the length of time he had been on the registry, was denied since he did not yet meet the requirements for potential termination (See Exhibit I).

### **LAW AND LEGAL ARGUMENTS**


South Carolina Statute Section §23-3-462(A) states, “After successful completion of the requirements of this section, an offender may apply to the South Carolina Law Enforcement Division for the termination of the requirements of registration pursuant to this article.” (S.C. Code Ann. §23-3-462(A)). It goes on to state, “An offender may file a requires for termination of the requirement of 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.” (S.C. Code Ann. §23-3-462(A)(1)(b)).

The Defendant was convicted of two counts of Criminal Sexual Conduct with a Minor 2<sup>nd</sup> Degree under S.C. Code Ann. §16-3-655(B)(1) and Contribution to the Delinquency of a Minor S.C. Code Ann. §16-17-490 and placed on the sex offender registry. Under the new sex offender termination law, S.C. Statute Section §23-3-420(C)(2) states, “For purposes of this article, a person who has been convicted of, or pled guilty or nolo contendere to any of the following offenses shall be referred to as a Tier II offender. . . (e) criminal sexual conduct with minors, 2<sup>nd</sup> degree (S.C. Code Ann §16-3-655(B)). Due to the sex offender registration date of January 23, 2004, twenty-five (25) years from that date would be January 23, 2029.

Based on the above, SLED sent a letter dated October 17, 2022 to the Defendant denying his petition to be removed from the registry as twenty-five (25) years had not yet passed (See Exhibit I).

IT IS THEREFORE REQUESTED THAT, due to the Defendant’s conviction date to the Tier II offense of Criminal Sexual Conduct with a Minor 2<sup>nd</sup> Degree and the length of time being less than twenty-five (25) years from the date of his conviction and registration on the sex offender registry, the State requests the Defendant’s Motion be denied as untimely and improperly filed.

Respectfully submitted,

  
Anthony C. Leibert  
Assistant Solicitor

  
Matthew T. Craft  
Assistant Solicitor

Barry J. Barnette  
Solicitor  
Seventh Judicial Circuit  
Cherokee County Courthouse  
125 Floyd Baker Blvd  
Gaffney, SC 29340

June 14, 2023  
Spartanburg, South Carolina

Cc: Ranee Saunders  
Elizabeth Franklin-Best  
Elizabeth Franklin-Best, P.C.  
3710 Landmark Drive, Suite 113  
(803) 445-1333  
[ranee@franklinbestlaw.com](mailto:ranee@franklinbestlaw.com)

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF CHEROKEE ) IN THE COURT OF GENERAL SESSIONS

3 The State, )  
4 -vs- ) TRANSCRIPT OF RECORD  
5 Jason Bryan McSwain, ) 2003-GS-11-00064  
6 Defendant. ) July 31, 2023  
7 ) Gaffney, South Carolina

8  
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B E F O R E:

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HONORABLE J. DERHAM COLE, JUDGE

13

14

15

A P P E A R A N C E S:

16

ANTHONY C. LEIBERT, ESQUIRE  
MATTHEW THOMAS CRAFT, ESQUIRE  
Attorneys for the State

17

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ELIZABETH ANNE FRANKLIN-BEST, ESQUIRE  
Attorney for the Defendant

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Linda D. Moffitt  
Circuit Court Reporter

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INDEX

Motion -- page 3.  
No sworn testimony.  
No exhibits entered into evidence.

1 (Proceedings July 31, 2023)

2 THE COURT: Is Mr. McSwain here?

3 MS. FRANKLIN-BEST: He is, Your Honor. He is here  
4 with his son [REDACTED].

5 THE COURT: Okay. And this is your motion on his  
6 behalf?

7 MS. FRANKLIN-BEST: This is my motion, Your Honor, and  
8 if you would like me to just to go ahead and go forward  
9 now, I can do that. Sometimes I don't know who needs to  
10 speak first. I am happy to do so.

11 THE COURT: It's your motion. You might as wells  
12 speak first.

13 MS. FRANKLIN-BEST: All right. Thank you. Thank you,  
14 Your Honor.

15 THE COURT: Sure.

16 MS. FRANKLIN-BEST: So the issue here at heart I think  
17 is really quite simple that Jason McSwain does not need to  
18 be on the sex offender registry.

19 The current regime which was required by the South  
20 Carolina Supreme Court's opinion in Powell vs. Keel still  
21 requires too much for citizens like Jason McSwain.

22 There's no need for people like Jason McSwain to have  
23 to wait 25 years before review in order to be removed from  
24 the sex offender registry, and this timeframe and his  
25 continued inclusion on the sex offender registry, Your

1 Honor, we argue, violates his rights to due process.

2 No one here is arguing that Jason McSwain constitutes  
3 any kind of continuing threat. He has led a law-abiding  
4 existence since he was initially convicted of this crime.

5 He ended up marrying and having a child with the  
6 victim in this case. And [REDACTED] herself would have  
7 been here except that she had to work today. And  
8 Mr. McSwain is here with his son who is sort of the results  
9 of this relationship, Your Honor. And he is now 14 years  
10 old.

11 The stigma of being on the sex offender registry  
12 impacts his son, the 14-year-old. He's a straight-A  
13 student. He's on the basketball team. He plays football.  
14 He wants to be a lawyer when he grows up, which is why he  
15 asked his father if he could come to this today.

16 He is getting ready to enter high school and,  
17 obviously, he and his peers are now at an age where they're  
18 going to become aware of the stigma associated with being  
19 on this registry. And, frankly, I mean, this is why  
20 Mr. McSwain has been pursuing this, Your Honor.

21 Jason's career itself has been kind of limited by his  
22 inclusion on the sex offender registry, but it's really  
23 these impacts on his son that is why he is now pursuing  
24 this to get this done. And it's these impacts on his son  
25 that have caused him the most pain and anguish, Your Honor.

1           ██████ has been picked on because of his father's  
2 status. Some of his friends are not allowed to visit his  
3 house because of Jason's placement on the registry, and all  
4 of this is deeply unfair and unnecessary.

5           I mean, Jason leads a highly productive life. He  
6 works. He's stable. We had Dr. Donna Maddox assess him  
7 because we wanted to show this Court that Jason is not a  
8 threat to the community.

9           There is absolutely no danger here. Instead, the  
10 inclusion on this registry continues to impact his son, and  
11 under the unique facts of this particular case, Your Honor,  
12 it would be appropriate to remove him. So what we're  
13 asking for today is an order removing him from the sex  
14 offender registry.

15           Now, we had to first apply to SLED to get to this  
16 point, and we knew that we would lose there under the  
17 statute.

18           If this offense had been a Tier III offense, then this  
19 Court would be completely authorized to remove Jason from  
20 the registry. Because this is a Tier II offense the  
21 statute states that we need to wait 25 years. So,  
22 respectfully, Your Honor, I mean, that's too long for a  
23 case like this.

24           As a constitutional matter, Your Honor, which this  
25 Court does not need to rule on -- I mean, it violates due

1 process because 25 years is not a reasonable timeframe in  
2 which to revisit Jason's inclusion on the sex offender  
3 registry, but also as applied to Jason it is  
4 unconstitutional because there's no legitimate government  
5 interest in keeping him on the sex offender registry.

6 So what we're asking this Court to do and sort of  
7 avoid these constitutional issues unless this Court would  
8 like to address the constitutional issues is to find that  
9 as an equitable matter and to see that justice is done to  
10 simply issue an order removing him from the sex offender  
11 registry.

12 His placement on that registry is over inclusive. It  
13 dilutes the utility of that registry for others, and if  
14 anyone is deserving of this kind of relief for himself and  
15 for his son it is Jason McSwain, Your Honor.

16 THE COURT: All right. Thank you.

17 MR. CRAFT: Your Honor, I'll defer first to Assistant  
18 solicitor Tony Leibert.

19 THE COURT: Okay.

20 MR. LEIBERT: Thank you, Your Honor. May it please  
21 the Court.

22 You're aware of Powell vs. Keel. The Supreme Court  
23 ordered the legislature to give an avenue to be removed,  
24 and they did that.

25 In this case the Tier II, which he falls under, says

1 25 years. And this is all part of -- and I keep forgetting  
2 the name. She did an outstanding job during that, but I'd  
3 like Your Honor to see this. This is the report they got.  
4 I hand it up. And he applied at 18 years, seven months, so  
5 many days, applied for 25 years. Prior to that it was for  
6 life.

7 He was a school teacher. And he was convicted of  
8 having inappropriate activity, C.S.C. times two, and then  
9 contributing to the delinquency of a minor with three  
10 students at three separate times. That's every  
11 mothers-and-fathers' almost worst nightmare. The worst  
12 nightmare, I think, probably is a mass shooting. But  
13 that's terrifying, but that's what he did.

14 It was life before this. Now it's 25 years. But I'm  
15 not going -- I don't want to touch the merits too much, but  
16 just putting on the merits a little bit, that would be my  
17 concern.

18 You know there's always problems. Our actions cause  
19 problems for our families. My nephew named after me was  
20 convicted of an armed robbery years ago, and it killed my  
21 grandfather. My grandfather was innocent. It changed his  
22 life. He didn't last long because he couldn't bear his  
23 son -- grandson being in prison, or great-grandson.

24 That's always -- and he seems like a very nice man.  
25 He came up to me, shook my hand. His son, a great looking

1 young man. But that's the law. That's how the law stands.

2 If they still think it's unconstitutional, I think  
3 they need to do it, what's done, by Mr. Powell in that  
4 opinion if you need that. That was a declaratory action  
5 against SLED and the State of South Carolina, that being  
6 the attorney general's office, not little Tony Leibert at  
7 the Seventh Circuit solicitor's office.

8 So if you believe it has merit, and I submit to you it  
9 doesn't, he just needs to wait, and I think they said  
10 January of 2029, in order to apply.

11 And I'm glad if, in fact, he hasn't had any problems  
12 since, but I did a case in front of you years ago that the  
13 victim came forward 29 years later, and Your Honor put him  
14 in jail.

15 You know, all across this country that doesn't  
16 necessarily -- that doesn't mean he has but that doesn't  
17 means he hasn't. And that's why we have the sex offender  
18 registry. So it's gone from life to 30 years for the  
19 highest year, first degree, and then 25 years.

20 So I would submit, Your Honor, that the statute is --  
21 legislature did exactly what they were ordered to do, and I  
22 believe the Supreme Court said in Powell vs. Keel this is  
23 best left to the legislature somewhere in that opinion.

24 So I'd ask you to consider all of that, and very  
25 capable and learned counsel here is much more learned on

1 this statute than I am. So, please, I'll listen to him if  
2 you don't mind, Your Honor. I don't think I covered  
3 everything.

4 THE COURT: All right. Thank you, Mr. Leibert.

5 MR. LEIBERT: Thank you, Your Honor.

6 MR. CRAFT: May it please the Court, Your Honor.

7 Matthew Craft for the state.

8 Your Honor, I'll be very brief as far as any matters  
9 of constitutionality. I do not believe this is the  
10 appropriate venue for that argument. I do believe an  
11 action needs to be brought including the attorney general's  
12 office, as well as SLED counsel.

13 As far as the statutes in this particular case,  
14 section 23-3-462 controls what they call the termination of  
15 sex offender registry requirements and delineates the  
16 timeframes for each of those offenses.

17 Under 430(2)(A)(1)(b) it states that for Tier II  
18 offenders, as Mr. McSwain would be classified as, it is a  
19 requirement of 25 years of registry, not for completion of  
20 any portion of his sentence, just 25 years from his date of  
21 registration, before he can appeal or apply to be removed.

22 In Exhibit I -- and I believe from the same letter  
23 that's been proffered up to Your Honor from SLED -- SLED  
24 notes that his initial registration date was  
25 January 23rd of 2004.

1           They have been kind enough to go ahead and count out  
2 to the day the date for which he would be eligible to apply  
3 for removal as January 23rd of 2029. So under just the  
4 timeframe this action is premature.

5           Section 23-3-460(3) is the statute that controls for  
6 motion requests to be removed subsequent to SLED  
7 application processes. And again under 460(3)(B) it states  
8 that all motions under this action must be made no earlier  
9 than the appropriate timeframes relative to the offense.  
10 Again, specified by 460(2) as a Tier II offense. That  
11 would be that same 25 years.

12           Your Honor, I would ask that you deny this motion  
13 based on the timeframe.

14           While the other collateral consequences and the  
15 treatment of his family are unfortunate, the statute does  
16 not anticipate or include any leeway or any discretion in  
17 that regard for different social situations.

18           It specifies that even before you can get to the state  
19 where Your Honor would consider a determination of whether  
20 he is a threat and needs to be kept on the registry the  
21 administrative timeframes must be met. Thank you.

22           THE COURT: Thank you, Mr. Craft.

23           Ms. Best.

24           MS. FRANKLIN-BEST: Thank you, Your Honor.

25           So, I mean, I understand their argument. I knew that

1 this would be exactly the argument that they would present.  
2 The statute is there. It has been there not for very long.

3 I expect that there will be additional challenges to  
4 it. This case may very well be one of those. What I'm  
5 hoping is that for Mr. McSwain's sake and for that of his  
6 son that we might be able to get some sort of an equitable  
7 resolution here.

8 The South Carolina Supreme Court has recognized  
9 Mr. McSwain has a liberty interest in not being on the sex  
10 offender registry.

11 What Tier II does not recognize as with respect to  
12 this particular charge is the consensual nature of this. I  
13 mean, that's not to say that it wasn't illegal. I mean, it  
14 clearly was, but it's this particular offense under these  
15 particular facts is quite different than the other cases  
16 that are also listed under Tier II, which is why I think  
17 this offense is probably subject to pretty robust  
18 constitutional challenge.

19 When we first got involved in this case we kind of  
20 thought to ourselves, well, maybe this will end up being a  
21 constitutional challenge up to the South Carolina Supreme  
22 Court.

23 We ended up when investigating, we reached out to all  
24 of these victims, Your Honor, and none of them believe that  
25 he belongs on the sex offender registry.

1           No one believed that he coerced or was forceful or was  
2 violent in any way, Your Honor. I mean, as applied to  
3 Jason McSwain, this just doesn't serve any purpose.  
4 There's just no legitimate government interest that's being  
5 advanced by this.

6           That's why we're here today, Your Honor, is to just  
7 sort of allow him after 19 years with absolutely no  
8 problems at all -- he's not had any, you know, contact with  
9 law enforcement this entire time -- to just finally be free  
10 of this burden as his son continues up through high school.  
11 And, you know, peers can sometimes be cruel. And this, you  
12 know, just so much impacts this child's life.

13           As I said earlier, this is why we're here. And, Your  
14 Honor, I do have a proposed order if you would like to see,  
15 Your Honor, granting him removal from the sex offender  
16 registry.

17           THE COURT: Okay.

18           MS. FRANKLIN-BEST: May I pass this up? Thank you,  
19 Your Honor.

20           THE COURT: You may.

21           MS. FRANKLIN-BEST: Thank you, Your Honor.

22           THE COURT: Anything else?

23           MS. FRANKLIN-BEST: Can I speak to my client for just  
24 one moment?

25           THE COURT: Sure.

1 (Pause.)

2 MS. FRANKLIN-BEST: Thank you, Your Honor. No further  
3 argument.

4 MR. CRAFT: Nothing further from the state, Your  
5 Honor.

6 THE COURT: All right. I'll review it and issue an  
7 order.

8 MR. LEIBERT: Thank you, Your Honor.

9 MR. CRAFT: Thank you, Your Honor.

10 MS. FRANKLIN-BEST: Thank you, Your Honor.

11 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 31st day of July 2023.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 13, 2023

s/Linda D. Moffitt

\_\_\_\_\_

Linda D. Moffitt  
Circuit Court Reporter



**STATE OF SOUTH CAROLINA  
THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT**

J. DERHAM COLE  
JUDGE

180 MAGNOLIA STREET, 2ND FLOOR  
POST OFFICE BOX 1744  
SPARTANBURG, SOUTH CAROLINA 29304-1744  
TELEPHONE: (864) 596-2685  
FAX: (864) 596-3592  
E-MAIL: jcole@scjd.state.sc.us

August 21, 2023

The Honorable Brandy W. McBee  
Cherokee County Clerk of Court  
Post Office Drawer 2289  
Gaffney, SC 29342-2289

Re: 2003-GS-11-00063  
Jason Bryan McSwain, Appellant vs. The State of South Carolina, Respondent

Dear Clerk;

Enclosed please find for filing an order(s) with reference to the above-captioned case(s). Upon entry of the order(s), please serve notice upon the affected parties in accordance with *Rule 77(d) of the South Carolina Rules of Civil Procedure*. Thank you in advance for your usual and capable assistance in this matter.

With kindest personal regards, I remain,

Sincerely yours,

**J. Derham Cole**  
Resident Judge  
The Seventh Judicial Circuit

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2023 AUG 24 A 11:00  
BRANDY W. MCBEE

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 CHEROKEE COUNTY  
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 BRANDY W. MOORE

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 Jason Bryan McSwain, )  
 ) Appellant, )  
 )  
 -vs- )  
 )  
 The State of South Carolina, )  
 ) Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

Indictment No: 2003-GS-11-00063

1063501

This matter is before the Court on motion of Jason Bryan McSwain pursuant to S. C. Code Ann. Section 23-3-463, on appeal of a decision of the South Carolina Law Enforcement Division ("SLED") refusing his request for the termination of his requirement to register on the sex offender registry and seeking an order of this Court removing him from the sex offender registry.

At the hearing held in this matter the appellant appeared with counsel Elizabeth Franklin-Best, Esq. The State was represented by Assistant Circuit Solicitors Anthony C. Leibert and Matthew T. Craft.

It appears that the notice requirements of S. C. Code Ann. Section 23-3-463(G) related to this appeal and motion hearing have been satisfied. Counsel ably presented their respective positions with regard to the validity of the appeal and motion.

Salient Facts

Appellant was convicted of Criminal Sexual Conduct With a Minor 2<sup>nd</sup> Degree (S. C. Code Ann. Section 16-3-655(B)) upon his entry of a plea of guilty (Indictment Number 2003-11-00063) to that crime on January 12, 2003. At the time of his conviction he was twenty-seven years of age. At the time of the offense the appellant was at least twenty-five years of age and the minor was less than sixteen years of age. As a collateral consequence of his conviction he was required to register as a sex offender pursuant to S. C. Code Ann. Section 23-3-430(C)(2)(e). His conviction is classified as a Tier II offense under S. C. Code Ann. Section 23-3-430(C)(2)(e).

Appellant filed an application with SLED pursuant to S. C. Code Ann. Section 23-3-462 seeking termination of the requirement to register as a sex offender. SLED refused his request for

A1

termination due to his failure "to meet the requirements for removal outlined in S. C. Code 23-3-462". Specifically, the appellant failed to meet the timeframe requirement of S. C. Code Ann. Section 23-3-462(A)(1)(b) which is applicable to the applicant's conviction.

Applicable Law

S. C. Code Ann. Section 23-3-430(A) provides that any person who is a resident of the State of South Carolina and who in this State has been convicted of the crime of Criminal Sexual Conduct with a Minor 2<sup>nd</sup> degree in violation of S. C. Ann. Section 16-3-655(B), "shall be required to register" on the sex offender registry in accordance with the requirements of S. C. Code Ann. Section 23-3-450.

A person convicted of Criminal Sexual Conduct with a Minor 2<sup>nd</sup> degree is referred to as a "Tier II" offender. S. C. Code Ann. Section 23-3-430(c)(2)(e). S. C. Code Ann. Section 23-3-462(A)(1)(b) permits a Tier II offender who was convicted as an adult to apply to SLED for termination of the requirement to register "after having been registered for at least twenty-five years" if he shows that that he has satisfied the mandates of S. C. Code Ann. Section 462(A)(3)(4)(5) and (6).

An offender who is denied a request for termination of the registration requirement by SLED may appeal the denial to the General Sessions Court by following the procedure established under S. C. Code Ann. Section 23-3-463. S. C. Code Ann. Section 23-3-462(E). "An offender may file a motion with the general sessions court to request an order to be removed from the requirements of the sex offender registry act if: (1) He is a Tier I or Tier II offender ... whose application for removal under Section 23-3-462 has been denied by SLED." S. C. Code Ann. Section 23-3-463(A)(1). "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." S. C. Code Ann. Section 23-3-463(B).

Discussion

Based upon the presentation and submissions made, it appears that the appellant had an inappropriate and illegal sexual relationship with a minor, although the relationship was

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reasonable promptness and meet standards of fundamental fairness”, and enacted S. C. Code Ann. Sections 23-3-462 and 23-3- 463.

While there may be merit to the appellant’s assertions in this case, it is undisputed that the appellant fails to meet the requirements for termination of the registration requirements of S. C. Code Ann. Section 23-3-430(A). He was convicted of a Tier II criminal offense as an adult which mandates registration for a period of at least twenty-five years. S. C. Code Ann. Section 23-3-462(A)(1)(b). Notwithstanding the clear mandate of the law, the appellant asserts he should be removed from the Sex Offender Registry because he “is not at risk of reoffending, and he does not pose a threat to the public” and “has complied with all the requirements of his sentence and has maintained an unblemished record”.

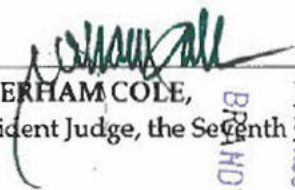
The establishment of a process to satisfy constitutional due process in the deprivation of a liberty interest resulting from a criminal conviction is best left to the General Assembly and they have spoken on the issue in the context of this case. Whether or not the General Assembly’s enactments addressing this issue are sufficient to satisfy constitutional requirements is best left to the Supreme Court for determination, as this court has not been clearly convinced beyond a reasonable doubt that the enactments of the General Assembly applicable to this case are repugnant to any constitutional protections or rights of the appellant.

Conclusion

After consideration of the record, the argument of counsel, submissions made, and the applicable law, this Court finds that the appellant’s **MOTION for REMOVAL and APPEAL** of SLED’s denial of this application for removal from the South Carolina Sex Offender Registry should be and **IS** therefore **DENIED**.

**IT IS SO ORDERED!**

August 21, 2023  
Spartanburg, South Carolina

  
\_\_\_\_\_  
J. DERHAM COLE, Judge Presiding  
Resident Judge, the Seventh Judicial Circuit

BRANDY W. MCBEE

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SPARTANBURG COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
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**Affidavit of ~~Asst. John~~**

I hereby declare and affirm under penalty of perjury:

- 1) I am ~~Asst. John~~ and I'm over the age of 18. I am competent to execute this affidavit.
- 2) I am one of the victims from the criminal case against Jason McSwain.
- 3) I have spoken with LaDonna Falvey, Elizabeth Franklin-Best's paralegal, in connection with what I know about this case.
- 4) I was 16 years old at the time that Jason McSwain and I started talking and becoming flirty in our relationship. This led to us meeting up outside of school and ultimately leading to a sexual relationship. This relationship continued for a few months as I thought it was a special relationship, and I loved him.
- 5) Another victim accused him of a relationship with her and that ultimately ended their relationship with each other. That victim and others gave law enforcement my name as a potential victim.
- 6) I never felt forced to have a relationship with Jason McSwain. I was a willing party in wanting to have a relationship with a guy. I thought I was more mature than I was, but there was never any conscious coercion.
- 7) We later reconnected when I was in college at about 20 years old and rekindled a quick romance, but that fizzled out. Since then, we have not had a relationship for 15 years.
- 8) I do not think Jason McSwain is a threat to the public. I think he made some bad decisions in his past, but he's spent a lot of time suffering for those decisions. There is no reason for anyone to be fearful that he would need to stay on the sex offender registry.

FURTHER AFFIANT SAYETH NAUGHT.

~~Asst. John~~  
\_\_\_\_\_

Dated this 29 day of June, 2022.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )  
\_\_\_\_\_ )

Affidavit of A [REDACTED] C [REDACTED]

I hereby declare and affirm under penalty of perjury:

- 1) I am [REDACTED] and I'm over the age of 18. I am competent to execute this affidavit.
- 2) Jason McSwain is my ex-husband, and I was a victim in his criminal case.
- 3) I have spoken with LaDonna Falvey, Elizabeth Franklin-Best's paralegal, in connection with what I know about this case.
- 4) Jason and I met when I was a 16-year-old student in high school, and he was the basketball coach. I helped as bookkeeper for the basketball team. This is where our relationship started.
- 5) My parents learned of our relationship and contacted the high school. The school then had to turn it over to law enforcement, and I was interviewed by police. Jason McSwain was then arrested. He later pleaded guilty to avoid going to trial and that's when the no-contact order was issued.
- 6) After I graduated from high school, I got back in touch with him and that's when I went through the court process with my parents to have the no-contact order removed. We later got married when I was 19 years old, and our son was born when I was 22 years old.
- 7) We were married for seven years. I would call our divorce a mutual decision. We have joint custody of our son.
- 8) I do not see Jason as a danger to me. We co-parent well together and get along.
- 9) I do not think Jason is a repeat offender and is not a predator against children.
- 10) As a father, he's always involved in our son's life. He's always been around and tried to do what is best for our son. Being on the sex offender registry has been a mark on Jason's back for a long time. For our son and for Jason, I hope that he can be removed from the sex offender registry.

FURTHER AFFIANT SAYETH NAUGHT.

[REDACTED]

Dated this 18 day of July, 2022.

STATE OF HAWAII )  
 )  
COUNTY OF HONOLULU )  
\_\_\_\_\_ )

Affidavit of M [REDACTED] D [REDACTED]

I hereby declare and affirm under penalty of perjury:

- 1) I am [REDACTED] and I'm over the age of 18. I am competent to execute this affidavit.
- 2) I am one of the victims in Jason McSwain's case after we had an intimate relationship.
- 3) I have spoken with LaDonna Falvey, Elizabeth Franklin-Best's paralegal, in connection with what I know about this case.
- 4) I was 15 years old at the time of my relationship with Jason McSwain. I initiated the relationship with him after driving to his house without him having knowledge I was coming for a visit. I then started calling him often and then he started asking if I could come over to his house.
- 5) I was the first one to make the steps toward the relationship that we had. This relationship happened about two years prior to it coming to light with law enforcement.
- 6) The relationship we had was consensual. I never felt forced to be with him.
- 7) Because it was consensual, I think Jason McSwain should not be on the sex offender registry. I never agreed with him being on the registry because he's not a danger to minors or anyone.
- 8) Jason and I do not talk currently, but it's only because we have both moved on with our lives and not for any negative reason.

FURTHER AFFIANT SAYETH NAUGHT.

[REDACTED]  
\_\_\_\_\_  
[REDACTED]

Dated this 18 day of July, 2022.

STATE OF SOUTH CAROLINA

)

**Affidavit of Jason McSwain**

)

COUNTY OF CHEROKEE


---

)

I hereby declare and affirm under penalty of perjury:

- 1) I am Jason McSwain, and I am over the age of 18. I am competent to execute this affidavit.
- 2) On January 12, 2004, I pled guilty to two-counts of criminal sexual conduct with a minor, second degree, and one count of contributing to the delinquency of a minor.
- 3) I was sentenced to ten years' imprisonment, suspended on service of two years and five years' probation, and was also required to register as a sex offender.
- 4) I successfully completed my sentence in January 2006 and probation in 2011, which included counseling treatment.
- 5) I have had no subsequent arrests or convictions.
- 6) I have complied with all registry requirements since my conviction.
- 7) I was evaluated for a risk assessment and scored a zero.
- 8) Each of the victims of the crimes has attested that they do not believe me to be a threat to society.
- 9) I have a son with my former wife, [REDACTED], who was one of the victims of the crimes for which I was convicted.
- 10) My son is my priority, and his mother and I coparent amicably. I have made an effort to coach his sports and remain active in his life.
- 11) He is old enough now to feel the impact of having a father on the sex offender registry and has had to deal with the restrictions on what I can do.
- 12) He has endured the impact on his relationships with his peers, including friends not being allowed to come over to his father's house as well as bullying.
- 13) Being on the registry effected my career as well and my ability to be a productive member of society.

AFFIANT SAYETH FURTHER NAUGHT.

  
Jason McSwain

Date this 3<sup>rd</sup> day of April, 2023

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 EX PARTE: )  
 Alicia Leazer, )  
 )  
 Petitioner, )  
 )  
 IN RE: )  
 STATE, )  
 )  
 vs. )  
 )  
 Jason Bryan McSwain, )  
 )  
 Defendant. )  
 Indictment No.: 03-GS-11-063 )

IN THE COURT OF GENERAL SESSIONS  
 C.A. NO.:

PETITION

2005 FEB 25 / A 11:43  
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 J. G. WATSON  
 CLERK OF COURT

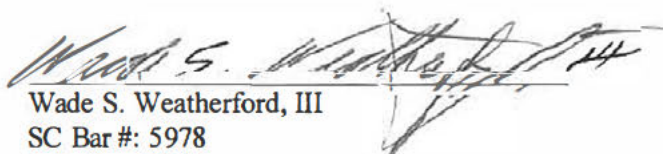
PETITIONER ALLEGES:

1. That Petitioner is a resident of Cherokee County, South Carolina. That her date of birth is October 21, 1986 and that she is now eighteen (18) years of age.
2. That the above named Defendant plead guilty to CSC with a minor second degree on January 12, 2004.
3. That Petitioner was the victim in the above.
4. That one of the conditions of the Defendant's sentence was "no contact with victim".
5. That as an adult, I am asking the court to remove the "no contact with victim" provision from the sentence of Jason McSwain.
6. That I have discussed this matter with my mother extensively and she supports my request.

7. That my mother and I have made our feelings known to the court in letters.
8. That I have also discussed this matter with my professional counselor and he believes it would be in my best interest for the restriction to be removed. (See attached letter)
9. That Petitioner is informed and believes that Jason McSwain does not object to the request of the Petitioner.

Wherefore, Petitioner prays that the restriction of "no contact with victim" be removed from the sentence of Jason McSwain in my case.

~~January~~ *Feb* 9, 2005  
Gaffney, South Carolina

  
Wade S. Weatherford, III  
SC Bar #: 5978  
P.O. Box 2207  
Gaffney, SC 29342  
864-489-1500  
Attorney for Petitioner

I, [REDACTED], Petitioner and Dell Leazer, Mother, after being sworn, say that they have read the foregoing Petition and that the contents are true and that they join in the prayer of the Petition.

[REDACTED]  
Alicia Leazer

Dell Leazer  
Dell Leazer

SWORN TO AND SUBSCRIBED BEFORE ME  
this 9<sup>th</sup> day of Feb, 2005.

Wanda S. Wentworth III  
Notary Public for South Carolina  
My Commission Expires: 5/2/13

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 EX PARTE: )  
 Alicia Leazer, )  
 )  
 Petitioner, )  
 )  
 IN RE: )  
 STATE, )  
 )  
 vs. )  
 )  
 Jason Bryan McSwain, )  
 )  
 Defendant. )

IN THE COURT OF GENERAL SESSIONS  
 C.A. No.: 03-GS-11-063

2005 FEB 25 11:42  
 CLERK OF COURT  
 JAMES W. WOODS, JR.  
 CLERK OF COURT


**ORDER**

This matter was heard pursuant to a Petition wherein Petitioner requested the Court to remove the restriction in Defendant's sentence which prevented him from having contact with her. Petitioner advised the Court that she was now a legal adult, that she felt that she had the right to associate with those of her own choosing and that she, therefore, requested the freedom to do so. She also advised the Court that she had discussed this matter at length with her parents and her professional counselor. Both the mother and the professional counselor advised the Court that, all things considered, in the opinion of each, it would be in the best interest of Petitioner that she be allowed to have contact with Defendant.

The Defendant's attorney advised the Court that Defendant had no objection to Petitioner's request.

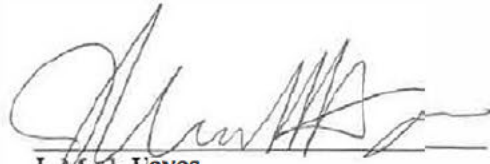
The State conceded that there was no legal precedent to deny Petitioner's request.

Based on the above, the Court finds that Petitioner's request should be granted. Now therefore it is

-1-  


ORDERED that Petitioner is hereby allowed to have contact with Defendant, so long as it is with the consent of Petitioner.

February 24, 2005  
Spartanburg, South Carolina



J. Mark Hayes  
Administrative Judge for Civil

## Psychiatric Evaluation

Jason McSwain

DOB: 7/21/76

Date of Virtual Evaluation: 7/5/22

Date of Report: 7/5/22

Identifying Information: Jason McSwain is a 45 year old divorced father evaluated pursuant to a request from his attorney, Elizabeth Franklin.

Reason For Referral: He pleaded guilty to Criminal sexual conduct, second degree, criminal sexual conduct third degree and Contributing to the Delinquency of a Minor for offenses which occurred in 2000 while he was a high school Chemistry teacher and basketball coach. He has been on the Sex Offender Registry since. His lawyer requested an evaluation to determine his current risk for offending if he is no longer on the registry.

**Statement of Nonconfidentiality:** He understood a written report of this evaluation would be sent to his attorney and potentially used in his upcoming legal proceeding.

### Sources of Information:

Indictment CSC, second

Warrant CSC, second 3/1/2000-10/1/2000 (oral, digital)

Guilty Plea CSC, second sentence 10 yrs sus 2yrs home incarceration with 5 years probation 1/12/04

Exparte Order allowing victim [REDACTED] contact with Mr. McSwain 1/24/05

Petition to remove no contact order 2/9/05

Letter dated 12/26/04 [REDACTED]

Letter 12/27/04 from mother, Dell Leazer

Letter from Scott Davis 1/5/05

Warrant CSC, second 11/2000-7/2001

Guilty plea (same as above)

Warrant Contributing to the Delinquency of a Minor 11/02-12/02

Guilty plea 1 yrs, time served and 1 year probation 1/12/04

Cherokee County Home Detention Successful Completion Report 1/17/06

Letters of support 2004

### Pertinent History:

He presently resides in his own home where he has joint custody of his 13-year-old son. His parents divorced when he was younger. His mother remarried. His stepfather has Alzheimers, and his 63-year-old mother is now a caretaker for him. He and his father now have a relationship since his charges. Before his charges, he viewed his father as "more like a friend." He graduated from Wofford College. He started teaching at age 21 at a Middle School. After one year, he was transferred to Gaffney High School. He had relations with three different

students at different times. He was in his mid-twenties. Two of the victims were 16 and one was 15. He eventually married one of the alleged victims from 2006-2009. They share joint custody of their 13-year-old son [REDACTED]. He stated they divorced due to her infidelity. He denied that he was unfaithful to his wife.

He has been employed with the same company for six years. He is the Director for Environmental health and Safety for a polymer company. They are aware he is on the Registry. He noted difficulty travelling because of his registry requirements. His passport was revoked although he had successfully traveled to Sweden and the UK. He was informed he would have to reapply and have his passport identify him as a sex offender.

He does not use drugs or alcohol.

He has no other legal history.

He does have some medical issues. He had C-Spine surgery and was prescribed Lyrica and Volatarn. He was treated for anxiety in the past with Klonopin. He has not been on this medication for some time. He presently takes Celexa 10 mg daily. He does have shoulder surgery scheduled.

He does report recent situational depression. He stated his son is now being picked on at school due to his status as a registered sex offender. He stated that some of his son's friends are not allowed to visit his home due to his status. He reported he hurts for his son and is saddened that his son has to deal with his offense history.

He recently had a three-year relationship which ended in May. He is not in a present relationship. He does not report any of the criteria for the nine paraphilic disorders. He has not had sex with prostitutes or strangers. He has not had multiple partners. He has used a dating app in the past.

#### **Mental Status Examination:**

He was pleasant and cooperative. He became tearful when discussing his son's situation because of his offending. He was not suicidal or homicidal. He prides himself on being a good father. His judgment is good as well as his insight. His cognition was intact.

#### **Diagnosis:**

Adjustment Disorder with depressed mood

#### **Risk Assessment:**

The Static 99-R is an empirically derived actuarial risk assessment designed to assess risk of sexual recidivism for adult males who have already been charged with or convicted of at least one sex offense against a child or nonconsenting adult. It is intended to position offenders in terms of their relative degree of risk for sexual recidivism based on commonly available demographic and criminal history information that has been found to correlate with sexual recidivism in adult male offenders. The scores characterize the individual's relative risk for sexual recidivism in terms of how unusual it is and how it compares to risk presented by the typical offender. The recidivism estimates were derived from new charges and reconvictions of groups of individuals. As such, these estimates do not directly correspond to the recidivism risk of an individual offender.

In routine sample of sexual offenders, the average five-year recidivism rate is between 5% and 15%. This means that out of 100 sexual offenders of mixed risk levels, between five and fifteen would be charged or convicted of a new sexual offense after five years in the community. Conversely, between 85 and 95 would not be charged or convicted of a new offense during that period.

Mr. McSwain's score of 0 on the Static 99-R places him in the Level II, Below average risk range. Offenders with this same score from the routine samples have been found to sexually recidivate at 1.8% to 4.4% after five years. The observed recidivism rate is 2.7%. The expected recidivism rate is halved if the offender has been offense free from five to ten years while in the community, placing his expected recidivism at 1.4%.

**Opinions:**

1. Mr. McSwain's risk to reoffend is below average.
2. His expected recidivism rate is 1.4% based on his being in the community for more than ten years without an offense.

Donna S. Maddox, MD  
Consulting Forensic Psychiatrist

**RECEIVED**

**Sep 11 2024**

**S.C. SUPREME COURT**

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHEROKEE COUNTY  
Court of General Sessions

Appellate Case No. 2023-001388

The Honorable J. Derham Cole, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Jason Bryan McSwain.....Appellant.

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 11, 2024

/s/ Elizabeth Franklin-Best  
Elizabeth Franklin-Best  
Elizabeth Franklin-Best, P.C.  
3710 Landmark Drive, Ste 113  
Columbia, South Carolina 29204  
(803) 445-1333