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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge
Appellate Case No. 2024-001017

THE STATE,

Respondent,

vs.

GREGORY LAMONT BENJAMIN,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

"Whether the plea court erred by ruling appellant having masturbated in the presence of his former public defender in the county jail during an attorney-client visit was good cause or cause to order appellant placed on the sex offender registry pursuant to S.C. Code Ann. § 23-3-430(C)(1)(f) for indecent exposure at the behest of that attorney, where appellant's plea attorney, Ms. Berry, a former public defender, told the judge 'this kind of thing happens all the time,' she noted that appellant had no prior convictions for crimes of a sexual nature, and there was no competent evidence appellant was a risk to reoffend sexually since the state failed to prove appellant should be placed on the sex offender registry under these circumstances?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the plea judge somehow abuse his broad discretion or otherwise err by ordering Appellant to register as a sex offender following Appellant's conviction for indecent exposure when the facts and circumstances before the plea judge—including Appellant's unconditional entry of a guilty plea to a criminal offense involving the willful commission of a disturbing act of masturbation in the presence of a female public defender at a detention center—fully supported his finding Appellant should be required to register as a sex offender based on the case-specific circumstances involved?

STATEMENT OF THE CASE

In August of 2022, Appellant Gregory Lamont Benjamin—while already incarcerated at the Darlington County Detention Center in connection to an unrelated matter—was arrested after he exposed his penis and began masturbating during a meeting with his defense counsel. In October of 2022, the Darlington County Grand Jury indicted Appellant for one count of indecent exposure. On June 10, 2024, Appellant appeared in the Sumter County Court of General Sessions before the Honorable R. Ferrell Cothran, Jr., circuit court judge, and—after waiving venue—pled guilty as indicted. The plea judge accepted Appellant's guilty plea, sentenced him to a 540-day term of imprisonment, and credited him with 540 days of time already served. In addition to that, the plea judge ordered Appellant to register as a sex offender. Six days later, Appellant filed a notice of appeal through which he sought to challenge the sufficiency of the plea judge's order requiring him to register as a sex offender.[1] Thereafter, on June 19, 2024, the State filed a timely post-sentencing motion seeking a written order confirming the plea judge's sex offender registration findings.[2] Through an order filed on July 23, 2024, the plea judge confirmed he found the specific facts and circumstances of Appellant's case warranted Appellant registering as a sex offender. Appellant then timely filed a new notice of appeal.[3]

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[1] Specifically, in his notice of appeal, Appellant contended "the circuit court judge did not make a specific finding of fact on the record that, based on the circumstances of the case, warranted registry as a sex offender." (First Notice of Appeal).

[2] Notably, Appellant's service of the notice of appeal did not deprive the plea judge of jurisdiction to consider the State's timely post-plea motion. Hudson v. Hudson, 290 S.C. 215, 215, 349 S.E.2d 341, 341-342 (1986).

[3] In his latest notice of appeal, Appellant again identified the basis of his appeal as a contention "the circuit court judge did not make a specific finding of fact on the record that, based on the circumstances of the case, warranted registry as a sex offender." (Second Notice of Appeal).

ARGUMENT

The plea judge did not abuse his broad discretion or otherwise err by ordering Appellant to register as a sex offender following Appellant's conviction for indecent exposure because the facts and circumstances before the plea judge—including Appellant's unconditional entry of a guilty plea to a criminal offense involving the willful commission of a disturbing act of masturbation in the presence of a female public defender at a detention center—fully supported his finding Appellant should be required to register as a sex offender based on the case-specific circumstances involved.

Relevant Facts

Around 10:30 a.m. on the morning of August 1, 2022, Marianna Stephenson[4] ("Victim"), an assistant public defender in Darlington County, went to the Darlington County Detention Center to meet with Appellant, who was a client she had been appointed to represent in a criminal matter. (Tr. p. 4). At that time, Appellant was in custody at the detention center due to a probation violation, and Victim was working to assist him with the matter. (Tr. p. 4). Upon arriving at the detention center, Victim was placed in a meeting room with Appellant, and the two sat across from each other at the room's small table. (Tr. p. 4). They then proceeded forward with their meeting about Appellant's case. (Tr. pp. 4-5).

Initially, Appellant and Victim's interactions during the meeting were apparently normal and unremarkable. (Tr. p. 4). However, after roughly ten to fifteen minutes, Victim realized Appellant was moving his arm in an up-and-down motion that suggested he was actively masturbating. (Tr. pp. 4-5). Upon making that shocking realization, Victim quickly stood to leave, and Appellant continued his disturbing behavior with his penis plainly and openly exposed. (Tr. p. 5). Victim then hastily exited the room and headed into the adjacent vestibule, which—due to the detention center's security measures—she was unable to leave without being let out by a guard. (Tr. p. 5). As she waited for the guard to enable her escape, Appellant

[4] By the time of the guilty plea hearing in connection to the incident, Appellant's victim's last name had changed. (Tr. p. 4).

continued to expose himself and verbally encouraged Victim to return to the meeting room. (Tr. p. 5).

Fortunately, Victim was able to get away, and, once she was free from the vestibule, she quickly reported what Appellant had done to deputies at the detention center. (Tr. p. 5). As a result of her disclosure, an investigator obtained a warrant for Appellant's arrest, and Appellant was formally arrested for indecent exposure the very next day. (Tr. p. 5; Arrest Warrant). Appellant was subsequently indicted for indecent exposure, and, following negotiations with the State, Appellant ultimately elected to plead guilty to that offense.[5] (Tr. p. 2; Indictment).

During the ensuing guilty plea hearing, Appellant admitted he openly masturbated during his meeting with Victim at the detention center and—with a full understanding of the potential consequences—pled guilty to indecent exposure based on that incident. (Tr. pp. 2-5). And, at Appellant's personal request, the plea judge accepted Appellant's guilty plea. (Tr. p. 9).

Once Appellant's guilty plea had been accepted, Victim addressed the court and aptly stated what happened to her "shouldn't be one of" the things that comes with being a public defender. (Tr. p. 9). Victim further noted Appellant's act was "sexually motivated," it occurred while she was "trapped" in a small space with him, and he had a history of similar behavior based on his prison disciplinary record.[6] (Tr. pp. 9-10). Resultantly, Victim opined Appellant belonged on the sex offender registry and indicated she believed what he did "will happen again." (Tr. p. 10).

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[5] Before pleading guilty, Appellant personally confirmed he wished to waive venue. (Tr. pp. 2-3).

[6] The prosecutor had a copy of Appellant's prison disciplinary record available for the plea judge's review. (Tr. p. 11).

Conversely, Appellant's plea counsel "ask[ed]" the plea judge not to place Appellant on the sex offender registry. (Tr. p. 15). In making that request, plea counsel asserted "this kind of thing happens all the time" for female defense attorneys and suggested her own personal choice as to how to handle it was to simply tell her clients it was not appropriate and she was "shutting it down." (Tr. p. 12). Plea counsel further asserted Appellant had not been aggressive toward her during their interactions and had "never masturbated at [her] during one of [their] meetings." (Tr. p. 12). However, plea counsel conceded Appellant did engage in an act of public masturbation with Victim and had "a history" of doing it while incarcerated based on his prison disciplinary record. (Tr. p. 12). Nevertheless, she suggested Appellant's offense resulted from a lapse in judgment "due to confinement" and noted he had neither previously been convicted of any sexual offenses nor had a record of engaging in public masturbation outside of incarceration. (Tr. pp. 12-13). She further noted she did not personally believe his record reflected "any inclination toward predatory behavior" and she thought he now understood the inappropriate nature of his behavior because she had spoken with him about it. (Tr. pp. 12-13). For those reasons, plea counsel opined Appellant was not "the kind of person that needs to be on our sex offender registry." (Tr. p. 14).

Following those remarks, the plea judge took a short recess to consider the matter. (Tr. p. 15). After doing so, the plea judge elected to order Appellant to register as a sex offender. (Tr. p. 15). As support for that decision, the plea judge acknowledged defense counsel's remarks and recognized Appellant had no prior criminal convictions for any sex crimes. (Tr. p. 15). Nevertheless, the plea judge explained: (1) Appellant had engaged in acts of public masturbation in prison on at least two prior occasions; and (2) Appellant committed the act of indecent exposure that led to his latest conviction against court-appointed counsel, which made his

offense particularly grievous. (Tr. p. 15). Accordingly, the plea judge found sex offender registration was warranted under the circumstances involved, and he also sentenced Appellant to 540 days of imprisonment while awarding the same amount of credit for time already served. (Tr. pp. 15-16; Sentencing Sheet).

After Appellant's sentence was imposed, no objections of any kind were raised, including to the sufficiency or propriety of the plea judge's findings. (Tr. p. 16). However, a few days later, plea counsel filed a notice of appeal on Appellant's behalf alleging "the circuit court judge did not make a specific finding of fact on the record that, based on the circumstances of the case, warranted registry as a sex offender." (First Notice of Appeal).

In response to the new claim raised for the first time in the notice of appeal, the State—in order to avoid any possible confusion on appeal—timely moved for the plea judge to confirm he had, in fact, found Appellant should register a sex offender based on the circumstances of the case as required by Section 23-3-430(C) of the South Carolina Code of Laws. (Motion, pp. 1-2). Thereafter, through a written order, the plea judge did just that and confirmed he "made a specific finding of fact on the record that, based on the circumstance[s] of this case, it was warranted that [Appellant] be required to register as a sex offender." (Order, pp. 1-2). The plea judge further confirmed he had already made such a finding during the plea hearing and had noted it on Appellant's sentencing sheet. (Order, p. 1).

Following that, plea counsel filed another notice of appeal. (Second Notice of Appeal). And, through the latest one, plea counsel repeated her earlier claim "the circuit court judge did not make a specific finding of fact on the record that, based on the circumstances of the case, warranted registry as a sex offender." (Second Notice of Appeal).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When reviewing a sentencing issue on appeal, an appellate court will only interfere with a trial judge's sentencing decisions in rare and unusual circumstances in light of the broad discretion afforded to trial judges on such matters. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952); see State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974) ("A broad discretion is allowed the trial judge in imposing sentence within the legal limits."). Relatedly, an appellate court will not interfere with a sentencing judge's discretionary decision to order a criminal defendant to register as a sex offender absent an abuse of discretion. In re M.B.H., 387 S.C. 323, 327, 692 S.E.2d 541, 542-543 (2010); see State v. Fuller, 425 S.C. 468, 479, 822 S.E.2d 910, 916 (Ct. App. 2019) (recognizing an appellate court reviewing a discretionary decision regarding sex offender registration must apply a "deferential" standard of review). Generally speaking, "[a]n abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Patterson, 425 S.C. 500, 507, 823 S.E.2d 217, 221 (Ct. App. 2019) (citation and internal quotations omitted)); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's ruling constituted an abuse of discretion unless it was arbitrary and irrational).

Analysis

In response to the serious threat posed by sex offenders, South Carolina—just like the other forty-nine states and the federal government—has adopted laws requiring individuals convicted of certain sex offenses to be required to register as sex offenders. Powell v. Keel, 433 S.C. 457, 462, 860 S.E.2d 344, 346-347 (2021); see McKune v. Lile, 536 U.S. 24, 32-33 (2002)

(plurality opinion) ("Sex offenders are a serious threat in this Nation. . . . When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault."); People v. Ross, 646 N.Y.S.2d 249, 250 (N.Y. Sup. Ct. 1996) ("Every state requires sex offenders to register[.]"). The core purpose of such laws is to protect the public from those sex offenders who may reoffend and to aid law enforcement in solving sex crimes. State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002); see S.C. Code Ann. § 23-3-400 ("The intent of this article is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens."); see also Smith v. Doe, 538 U.S. 84, 103 (2003) ("The legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class.").

Pursuant to South Carolina's sex offender registry laws, a sentencing judge *must*—by virtue of the conviction itself and nothing more—order an offender convicted of certain delineated offenses to register as a sex offender.[7] S.C. Code Ann. § 23-3-430(C); see Smith, 538 U.S. at 104 (explaining a state's "determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness" is not improper or unconstitutional). Meanwhile, if an offender is convicted of an *undelineated* crime not automatically mandating registration, a sentencing judge can discretionarily order that

[7] Despite the fact registration as a sex offender is mandatorily required upon conviction for many offenses in South Carolina, Appellant—for the first time on appeal—makes the bizarre unqualified blanket contention "[t]he burden is on the state to prove good cause exists to order a defendant to register as a sex offender." (App. Br. p. 8). Tellingly, at the same time, Appellant includes no citation to any authority of any kind to actually support that inaccurate and newly-advanced contention. (App. Br. p. 8). Significantly, the likely reason for his failure in that regard is such a contention would only be true pursuant to a statutory provision that was *not* applicable to his own case. Compare S.C. Code Ann. § 23-3-430(C)(1)(f) (including indecent exposure on the list of delineated offenses requiring sex offender registration upon conviction while also including an offense-specific limiting caveat); with S.C. Code Ann. § 23-3-430(D) (permitting a trial judge to order sex offender registration "if good cause is shown by the prosecution" upon conviction for "an offense *not* listed in this article" (emphasis added)).

offender "as a condition of sentencing" to register as a sex offender "if good cause is shown by the prosecution." S.C. Code Ann. § 23-3-430(D); see M.B.H., 387 S.C. at 327, 692 S.E.2d at 542 ("[A] finding of good cause in this context means only that the judge must consider the facts and circumstances of the case to make the determination of whether or not the evidence indicates a risk to reoffend sexually.").

In our state, "[i]t is unlawful for a person to wilfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway[,]" and an offender who commits such an act is guilty of indecent exposure. S.C. Code Ann. § 16-15-130. Notably, indecent exposure is, in fact, one of the crimes included on our state's specifically-delineated list of registerable offenses. S.C. Code Ann. § 23-3-430(C)(1)(f). However, unlike most of the other delineated offenses, indecent exposure only requires sex offender registration upon conviction "if the court makes a specific finding on the record that, *based on the circumstances of the case*, the convicted person should register as a sex offender." Id. (emphasis added). Thus, a sentencing judge in South Carolina must require sex offender registration for an offender convicted of indecent only upon finding the case-specific circumstances warrant it, and, significantly, the readily-apparent and logical reason our legislature elected to include that limiting caveat was a particular act of indecent exposure may *or may not* be sexual in nature based on the specific circumstances involved. See, e.g., State v. Duran, 967 A.2d 184, 196 (Md. 2009) ("[T]he crime of indecent exposure is not in and of itself sexual in nature, because the lewdness element incorporates conduct that is not sexual, in addition to that which may be sexual."); cf. State v. Murray, 416 P.3d 1225, 1229 (Wash. 2018) ("[T]here are several conceivable examples where an individual could be convicted of indecent

exposure but lack sexual motivation: (1) flashing a passerby for shock value, (2) streaking naked across a school campus, or (3) mooning someone out a window.”).

Here, in the case sub judice, Appellant did not flash someone for shock value, go streaking across a field at a sporting event while nude, moon someone as a joke, or drunkenly and openly urinate in a public space. Instead, he waited until he was alone in meeting room at the Darlington County Detention Center with his female public defender, and, once he had his victim isolated and trapped, he exposed his penis to her without warning and began masturbating. He then kept masturbating after his horrified victim realized what was going on and swiftly attempted to escape, and Appellant—apparently undeterred—responded to that escape attempt by encouraging his victim to return to the meeting room while continuing to engage in that deviant behavior. Thus, Appellant perpetrated a lewd criminal offense upon an officer of the court who was only attempting to aid him with a pending criminal matter, and he did not stop his inappropriate behavior even when it was patently obvious it was upsetting his advocate and now victim.

Based on his actions, Appellant was indisputably guilty of indecent exposure, and his particular offense was obviously, unquestionably, and by definition *sexual* in nature. See New Oxford American Dictionary 1078 (3rd ed. 2010) (defining “masturbate” as to “stimulate one’s own genitals for sexual pleasure” or “simulate the genitals of (someone) to give them sexual pleasure”); see also S.C. Code Ann. § 16-15-305(C)(1)(b) (defining “sexual conduct” for purposes of a different statute as—amongst other things—“masturbation”). Furthermore, based on the contents of Appellant’s prior prison disciplinary record coupled with his plea counsel’s candid acknowledgements about that record, Appellant had a preexisting history of similar

behavior while in custody and, thus, his latest act of public masturbation was *not* his first or only one.

Presented with those facts and circumstances, the plea judge could reasonably find the circumstances of Appellant's specific act of indecent exposure warranted Appellant registering as a sex offender since Appellant's offense was one that was plainly sexually-motivated and, therefore, supported a conclusion he posed a risk sufficient to warrant his inclusion on the sex offender registry. See Smith, 538 U.S. at 103 (recognizing a state could find a conviction for a sex offense standing alone "provides evidence of substantial risk of recidivism"); see also S.C. Code Ann. § 23-3-400 ("Statistics show that sex offenders often pose a high risk of re-offending."). Accordingly, the plea judge did not abuse his discretion or otherwise err by making just such a finding based on the case-specific circumstances involved and ordering Appellant to register as a sex offender in a matter fully consistent with unambiguous South Carolina law. See S.C. Code Ann. § 23-3-430(C)(1)(f) (stating "a person, regardless of age, who has been convicted or pled guilty or nolo contendere in this State . . . of indecent exposure . . . is required to register pursuant to the provisions of this article if the court makes a specific finding on the record that, based on the circumstances of the case, the convicted person should register as a sex offender").

In arguing to the contrary on appeal, Appellant alleges the plea judge purportedly erred by ordering him to register as a sex offender, and he raises a wide variety of contentions to support his claim in that regard. More specifically, Appellant appears to maintain this Court should—despite the relevant statutory language employed by our legislature—adopt a "good cause" standard for indecent exposure convictions, find the burden of proving "good cause" rests solely upon the State, and hold the State is required to prove "good cause" not just by a

preponderance of the evidence but beyond a reasonable doubt. Thus, in essence, Appellant is asking this Court to rewrite South Carolina's sex offender registry laws in a manner more to his own liking. Appellant appears to then want this Court to apply that new standard on appeal, find the State failed to prove "good cause" in his case, and *vacate* the plea judge's order requiring him to register as a sex offender in total *without* remanding the matter or providing any opportunity for the plea judge to ever even consider such a contention. Beyond that, Appellant maintains there was purportedly "no competent evidence" he was a risk to sexually reoffend "*outside of prison*"[8] regardless of what standard is applied and, thus, the plea judge supposedly could not properly order him to registry as a sex offender. (App. Br. pp. 13-14) (emphasis added). For obvious reasons, there are multiple problems with Appellant's arguments.

First, none of the arguments Appellant has elected to raise on appeal were ever raised to or ruled upon by the plea judge. Demonstrating that fact, Appellant—likely due to the statutory language our legislature actually used when setting out the standard to be followed by a sentencing judge deciding whether to order sex offender registration for indecent exposure—did

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[8] Regarding reoffending *inside* of prison, Appellant seems to not believe that would be relevant since his disturbing behavior was and is—in his view—"an undeniable fact of incarcerated life." (App. Br. p. 12). For what it's worth, similar thinking has resulted in successful actions for violations of the federal Civil Rights Act. See, e.g., Beckford v. Dep't of Corr., 603 F.3d 951, 953 (11th Cir. 2010) ("Melanie Beckford and 13 other women, all former non-security employees at Martin [Correctional Institution], complained that the Department failed to remedy sexually offensive conduct of inmates, including the frequent use of gender-specific abusive language and pervasive 'gunning,' the notorious practice of inmates openly masturbating toward female staff. . . . We conclude that the jury was entitled to find the Department liable under Title VII because it unreasonably failed to remedy the sexual harassment by its inmates. We also reject the other arguments of the Department and affirm."); see also Frank Main, $14 Million Settlement Proposed in Lawsuit Over Cook County Inmates Masturbating in Front of Female Public Defenders, Chicago Sun-Times (Feb. 23, 2020), https://chicago.suntimes.com/news/2020/2/23/21149566/14-million-settlement-lawsuit-inmates-masturbating-cook-county-jail-tom-dart-amy-campanelli ("A $14 million legal settlement is being proposed by attorneys for Cook County public defenders and law clerks whose class-action lawsuit claims they were subjected to a hostile work environment in which inmates they represented were masturbating in front of them.").

not *ask* the plea judge to find a "good cause" standard was applicable to sex offender registry determinations for indecent exposure and did *not* suggest the State should be required to prove "good cause"— beyond a reasonable doubt or otherwise—before registration could be ordered in such circumstances. Furthermore, Appellant did *not* argue he could not legally be placed on the sex offender registry based on the specific circumstances involved in his case and did *not* argue there was no "competent evidence" that would allow him to properly be ordered to register as a sex offender. Instead, plea counsel merely *asked* the plea judge not to place Appellant on the sex offender registry after opining she did not personally think he belonged on it, and, when the plea judge found sex offender registration was warranted anyway, plea counsel raised no objections of any kind in response. Cf. State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) ("No objection to sentencing was raised at trial and this issue is not properly before the court."). In fact, the first time plea counsel actually suggested the plea judge may have erred in some manner was *in the notice of appeal*, and, when the plea judge timely responded to the claim of error identified in that notice of appeal by confirming through a written order he had made the specific finding of fact required by state law, plea counsel responded by filing a second notice of appeal raising the exact same claim of error that had been included in the first one. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."). Under such circumstances, the plea judge was wholly denied any opportunity to consider, address, or rule upon Appellant's newly-advanced claims of error when rendering his discretionary decision regarding sex offender registration in Appellant's case and, resultantly, Appellant's current appellate claims neither were properly preserved for appellate review nor can appropriately be

raised or addressed for the first time on appeal. See State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) ("[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review."); State v. Walker, 252 S.C. 325, 327-328, 166 S.E.2d 209, 210 (1969) (declining to address Walker's appellate contention the sentence he received could not have properly been imposed "on the elementary ground that the question was not raised below"); see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000) (explaining South Carolina's imposition of procedural requirements on appellants "is meant to enable the lower court to rule properly after it considered all relevant facts, law, and *arguments*" (emphasis added)); Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." (citations omitted)).

Second, to the extent Appellant is asking this Court to impose the "good cause" standard from another statutory provision—Section 23-3-430(D) of the South Carolina Code of Laws—in place of the standard our legislature statutorily set out for a sex offender registration determination when an offender has been convicted of indecent exposure, that obviously would not be proper pursuant to well-established principles of statutory construction. See State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999) ("We, of course, must take the statute as we find it, giving effect to the legislative intent as expressed in its language. We cannot under our power of construction supply an omission in the statute."), see also ArrowPointe Fed. Credit Union v. Bailey, 438 S.C. 573, 580, 884 S.E.2d 506, 509 (2023) ("Determinations of public policy are chiefly within the province of the legislature, whose authority on these matters we must respect. We do not sit as a superlegislature to second-guess

the General Assembly's decisions." (citations and internal quotations omitted)). Here, since Appellant was convicted of indecent exposure, the controlling standard was the one set out in Section 23-3-430(C)(1)(f). See S.C. Code Ann. § 23-3-430(C)(1)(f) (setting out the standard a sentencing judge must follow when determining whether to require a person to register as a sex offender). That provision, which was specifically designed to govern sex offender registration for those convicted of indecent exposure, only requires a sentencing judge to make a specific finding the circumstances of the particular case warrant registration before ordering it. Id. At the same, it places no burden on the State unlike Section 23-3-430(D) and makes no reference whatsoever to "good cause." Id. Thus, without simply ignoring or altering the applicable statutory language, the "good cause" standard and burden allocution set out in Section 23-3-430(D) are in no way applicable when an offender is convicted of indecent exposure, and any other interpretation would render the language of Section 23-3-430(C)(1)(f) entirely obsolete and superfluous, which—as a matter of law—cannot be proper. See Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) ("The canon of construction 'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.' "); see also State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (stating the reviewing court must presume the legislature did not intend a futile act); cf. Nelson v. Ozmint, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (finding the legislature's inclusion of language allowing for early release in one statute but omitting it in another evidenced the legislature's intent for a defendant convicted of the offense delineated in the statute not containing the early release language to be ineligible for early release).

Third and finally, to the extent Appellant is contending the plea judge could not order Appellant to register as a sex offender because there was no competent evidence to support such a decision, there was ample evidence in the record supporting a finding the circumstances of Appellant's case warranted sex offender registration. As previously noted, Appellant intentionally committed a disturbing act of public masturbation in the presence a female officer of the court and had an agreed-upon history of engaging in similar *sexually-deviant* behavior while incarcerated. See State v. Fly, 501 S.E.2d 656, 660 (N.C. 1998) ("Even in a society where all boundaries of common decency seem frequently under assault, it is simply unacceptable for a person to harass others by *willfully* exposing in their presence those private parts of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others." (citation and internal quotations omitted)). In light of those circumstances, any reasonable sentencing judge could conclude sex offender registration was warranted, and, significantly, that was all that was necessary for the plea judge be able to issue the ruling he issued in Appellant's case pursuant to the plain language of the controlling statute. S.C. Code Ann. § 23-3-430(C)(1)(f). As a result, the plea judge's ruling was fully supported by the facts and circumstances presented to him, and he committed no abuse of discretion or any other conceivable error of law by choosing to order Appellant to register as a sex offender for his perverted sexual offense. See United States v. Booker, 543 U.S. 220, 233 (2005) ("We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range."); State v. Miller, 187 S.C. 271, __, 197 S.E. 310, 311 (1938) ("Where left to his discretion by the law, the presiding judge, in the exercise of a wise judgment, determines what sentence, within the law, would be just and proper in any particular case."); cf. State v. Watts, 988 N.W.2d 254, 261 (N.D. 2023) (concluding the trial

judge did not abuse his discretion by requiring Watts to register as a sex offender after Watts was convicted of indecent exposure in connection to an incident in which he exposed his penis to a detention officer at a detention center and began masturbating).

Accordingly, for all those reasons, the plea judge did not abuse his discretion or otherwise err by ordering Appellant to register as a sex offender after Appellant was convicted of a disturbing criminal offense of a sexual nature, and there are no proper grounds upon which that discretionary decision could validly be disturbed on appeal. See Fuller, 425 S.C. at 479, 822 S.E.2d at 916 (recognizing a sentencing judge is allowed broad discretion when making a discretionary sentencing decision within the statutory limits, including in regard to sex offender registration); cf. State v. Fraley, 437 S.C. 135, 138, 876 S.E.2d 703, 705 (Ct. App. 2022) ("We may or may not have come to the same conclusions as the plea court, but we do not see how we could say the court abused its discretion. In the written order denying reconsideration, the court explained that it considered all of the facts and circumstances of the case, and there is undoubtedly some evidence supporting the court's bottom-line conclusion that there was 'good cause' for Fraley to register."). The plea judge's order requiring Appellant to register as a sex offender should be affirmed.

CONCLUSION

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

Respectfully submitted,

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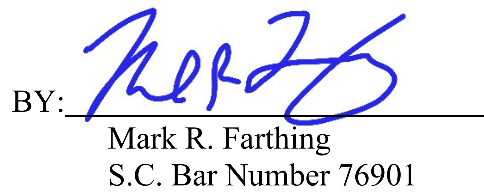

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