STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Darlington County

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GREGORY LAMONT BENJAMIN,

APPELLANT

APPELLATE CASE NO. 2024-001017

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Since no finding of *any* cause to place appellant on the sex offender registry was found, the plea court's order placing appellant on the registry should be vacated.

Respondent misinterprets S.C. Code Ann. § 23-3-430(C). Brief of Respondent at 8-9. Section 23-3-430(C)(1)(f) states:

> [A] person . . . 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.

(emphasis added). Here, **no** specific finding by the court was made on the record to justify appellant being ordered to register as a sex offender.

Our Supreme Court has stated that when a lower court provides no factual findings to support its ultimate legal conclusion, it leaves the Court to speculate whether the law was faithfully executed below. See In re Treatment & Care of Luckabaugh, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002); Kiawah Property Owners Group v. Public Serv. Com'n of South Carolina, 338 S.C. 92, 96, 525 S.E.2d 863, 866 (1999) (holding the absence of factual findings made it "impossible" for the Court to review the lower court order because the "reasons underlying the decision are left to speculation.").

In Luckabaugh, the state brought civil commitment proceedings against Luckabaugh pursuant to the Sexually Violent Predator Act. 351 S.C. at 129, 568 S.E.2d at 341. The trial court released Luckabaugh after finding the Act was unconstitutional. Id. at 128, 568 S.E.2d at 341. The Supreme Court held a new commitment hearing was required because the trial court's legal conclusion was not supported by factual findings. The state's two experts and the defense's expert agreed that Luckabaugh was a sexual sadist, posed a risk of reoffending, and needed

"aggressive medical treatment." Id. at 133, 568 S.E.2d at 343. Luckabaugh's medical expert differed with the state only in that he opined Luckabaugh could successfully complete treatment on an outpatient basis. Luckabaugh, however, testified that he disagreed with the experts as to his diagnosis. Id. at 131, 568 S.E.2d at 342. The trial court issued a written order finding that Luckabaugh was not a sexually violent predator without making any findings of facts to support its legal conclusion that the state failed to carry its burden of proof. Id. at 131, 568 S.E.2d at 342. The Supreme Court vacated the order and remanded for a new commitment hearing. Id. at 134, 568 S.E.2d at 344. The Court emphasized that the trial court must issue an order that sufficiently sets forth its findings of facts and conclusions of law. Id.

Likewise, in this case, the trial court failed to make specific findings on the record that, based on the circumstances, there was cause or good cause to require appellant to register as a sex offender. The mere fact that appellant pled guilty to indecent exposure was not sufficient to establish appellant was a danger to the community or likely to reoffend sexually. A basis for such a conclusion does not appear in the record of this case. The only "facts" considered by the court came from the victim impact statement, appellant's prior nonsexual criminal record, and his Department of Corrections disciplinary record, none of which was competent evidence of appellant's likelihood of reoffending sexually.

Standard to Register Should be Good Cause

It follows that if a court must make specific findings when determining an outcome, there must be a standard or threshold that must be reached to direct which way to go. An "ultimate finding" or "specific finding" refers to a detailed legal determination reached by the court after weighing the facts and evidence. "Cause" or "good cause" is the legally sufficient reason or justification for an action taken by the court. In a criminal action, the government bears the

burden to prove a legally sufficient justification exists for the court to take a desired action. Appellant respectfully submits that due to the unanswered question of *what cause* must be met in order for a court to competently exercise its discretion to put a defendant on the sex offender registry, this Court should hold that the correct cause standard is "good cause." See In the Interest of Christopher H., 432 S.C. 600, 605, 854 S.E.2d 853, 855 (Ct. App. 2021) (holding "'good cause' for purposes of placing a juvenile offender on the private sex offender registry 'means only that the [sentencing court] must consider the facts and circumstances of the case to make a determination of whether or not the evidence indicates a risk to offend sexually.'") (quoting In re M.B.H., 387 S.C. 323, 327, 692 S.E.2d 541, 542 (2010)).[1]

In short, there must be a standard upon which appellate courts can review trial courts for abuse of discretion. Again, § 23-3-430(C)(1)(f) states that sex offender registration is required for an indecent exposure conviction only "**if** the court makes **a specific finding on the record** that, based on the circumstances of the case, the convicted person must register as a sex offender." (emphasis added). This harkens back to the purpose of the sex offender registry, which is to protect the public against persons who are likely to reoffend sexually. See S.C. Code Ann. § 23-3-400.

Respondent argues S.C. Code Ann. § 23-3-430(C)(1)(f) includes a "standard our legislature statutorily set out." Brief of Respondent at 14. However, this language reveals a clear *absence* of any standard upon which a defendant—or the state—can rely. Respondent

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[1] The state respectfully asserts in a rather tone deaf footnote that appellant argued the state had to show "good cause" for a defendant to be placed on the sex offender registry even when it was statutorily mandated for an offense. Brief of Respondent at 8, n. 7. If appellant was arguing that, it would be "bizarre." The judge had the discretion to place appellant on the sex offender registry, but it was not mandatory, and the issue is what **standard** guided the judge's discretion—"cause" or "good cause"—to place an offender on the sex offender registry when the registry is not statutorily mandated.

correctly quotes State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999), in pointing out that on appellate review a court "must take the statute as we find it, giving effect to legislative intent as expressed in its language." However, appellate courts have often clarified legislative intent when ambiguities leave trial courts without proper standards to rely upon for their rulings. See United States v. Clemons, 442 S.C. 670, 676-77, 901 S.E.2d 280, 283-84 (2024) (the Supreme Court answered a certified question from the Fourth Circuit and held in South Carolina, it is possible for a defendant to be found guilty of both second degree assault and battery pursuant to S.C. Code Ann. § 16-3-600(D) and criminal domestic violence of a high and aggravated nature pursuant to S.C. Code Ann. § 16-25-20(A) with a *mens rea* of recklessness as defined by the Model Penal Code); see also State v. King, 422 S.C. 47, 810 S.E.2d 18 (interpreting the legislative intent of the *mens rea* required for attempted murder pursuant to S.C. Code Ann. § 16-3-29); State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 664 (2011) (finding that a defendant must prove his entitlement to statutory immunity by a standard of the preponderance of the evidence best effectuated the intent of the legislature).

Further, defense counsel in this case correctly asserted why there was no reason or cause to order appellant to register as a sex offender. Counsel explained that appellant regretted his exposure or masturbation in the presence of his former defense attorney when they met at the jail, and he had attempted to apologize for it. Counsel further articulated that, as a criminal defense attorney, appellant's behavior while incarcerated—and unfortunately where others could view it—was not unusual. The topic of the discussion was whether appellant should be ordered to register as a sex offender as his former attorney (and not the prosecuting attorney) desired, and counsel correctly articulated why appellant's regrettable behavior was not a justifiable reason to order appellant to register as a sex offender.

Issue is Preserved for Appellate Review

Our Supreme Court has emphasized that when a party puts on the record an argument for a specific ruling by the court, and the judge denies it, the issue is preserved for appeal without the need for an additional objection. See State v. Johnson, 333 S.C. 62, 64 n.1, 508 S.E.2d 29, 30 n.1 (1998) ("the long standing rule that where a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the issue for appeal, to renew the request at conclusion of the court's instructions"); State v. Johnson, 439 S.C. 331, 341, 887 S.E.2d 127, 132 (2023) (holding defendant's "failure to renew his request for a limiting instruction at the end of the jury charge is inconsequential"). "A trial court's opportunity to rule necessarily includes both parties being aware of the nature of the objection such that they may present their best arguments addressing *that* objection." State v. Morales, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023) (citing Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)). The objecting party is not required to use the exact name of a legal doctrine to preserve the issue so long as the party sufficiently framed its argument. Buist v. Buist, 410 S.C. 569, 574-75, 766 S.E.2d 381, 383-84 (2014). Preservation rules should not be applied "in a technical manner as if this is some sort of game of 'gotcha' elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue." Cone v. State, 443 S.C. 487, 494, 905 S.E.2d 368, 372 (2024) (quoting Morales, 439 S.C. at 609, 889 S.E.2d at 556).

Likewise, it is apparent from the record here that the trial court understood and ruled on appellant's argument that he should not be required to register as a sex offender. The court acknowledged appellant's argument and ruled against appellant. It follows that (1) the court was aware of appellant's opposition to being required to register as a sex offender; (2) appellant's

opposition and argument against registry was the functional equivalent of an objection; and (3) appellant's objection was made on the record. Therefore, there is no requirement to renew appellant's objection at the end of the proceedings, and the issue is properly preserved for appellate review.

Registry Purpose is Non-Punitive

Respondent attempts to conflate the criminal offense of indecent exposure, § 16-15-130, with that of the sex offender registry requirements, § 23-3-430(C)(1)(f). The first is the codification of the criminal offense and it includes the punitive recourse a court must consider in determining an offender's sentence. Its purpose is to criminalize specific acts and designate punishment for offenders, with a classification of misdemeanor carrying a maximum penalty of three years imprisonment.

This is not analogous to the purpose of the sex offender registry requirements. South Carolina Code Ann. § 23-3-400 states that the purpose of the sex offender registry is to "promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens." Based on this language, it is clear the General Assembly intended to protect the public from those sex offenders who may reoffend sexually. Notably absent from the language is any reference to punishment of violators, indicating the General Assembly did not intend to punish sex offenders when sex offender registry was imposed, but to protect the public. State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002).

Appellant maintains that his acts are distinguishable from those cited by respondent. Appellant pled guilty and apologized to his former attorney for his actions. This demonstrates that he has taken responsibility, is remorseful, and understands the harm he caused.

Furthermore, as defense counsel explained during the plea proceeding, this type of behavior is regrettably not uncommon amongst male inmates.

Respondent also cited to a civil action in the Eleventh Circuit where former female prison employees filed for relief under Title VII due to the Department of Corrections not protecting them from sexual harassment by male inmates. Brief of Respondent at 12 (citing Beckford v. Dep't of Corr., 603 F.3d 951, 953 (11th Cir. 2010). A few readily apparent points in response:

> (1) Civil actions and penalties are incongruent to criminal actions and penalties;
>
> (2) There is nothing in the Eleventh Circuit's opinion regarding sex offenders or placement on sex offender registry;
>
> (3) There is nothing to suggest that the Eleventh Circuit's opinion would lead to every inmate involved being placed on the sex offender registry, especially without there being any specific findings to justify such an action; and,
>
> (4) In fact, the offending inmates are not named in the lawsuit. This case only bolsters the fact that, while such behavior is improper and not acceptable, this type of behavior is not unexpected from male inmates and the solution to that problem lies in remedial correctional facility policies and procedures and is irrelevant as to the legal issue of cause or good cause for sex offender registration.

A defense attorney is the champion of the cause of his or her client, and when a conflict of interest arises that impairs the ability to advocate for the client, seeking to withdraw is the proper remedy for the attorney. See People v. Delgadillo, 275 P.3d 772, 775 (Colo Ct. App. 2012). There is no problem on that score in this case. However, appellant respectfully submits that the cause or good cause required for a defendant to be placed on the sex offender registery should not hinge on the subjective reaction of his attorney to institutionally common, but unquestionably improper, behavior such as that in this case.

Regardless, since the plea court in this case did not find *any cause on the record* to order appellant to register as a sex offender, that order must be vacated. See In re Treatment & Care of Luckabaugh, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002).

CONCLUSION

By reason of the arguments in the brief of appellant and in this reply brief, the order of the trial court that appellant must register as a sex offender should be vacated.

Respectfully submitted,

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Lara M. Caudy
Senior Appellate Defender

ATTORNEYS FOR APPELLANT

This 19th day of June, 2025.

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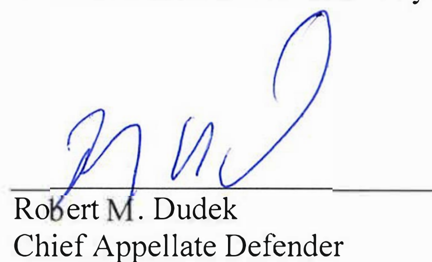
APPELLATE CASE NO. 2024-001017

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 19th day of June, 2025.



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