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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Case No. 2019A2310100518
Appellate Case No. 2025-002150

Letitia H. Verdin, Acting Circuit Court Judge

State of South Carolina,

Respondent,

v.

Robert D. Foster,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. THE PLEA COURT ERRED IN SUA SPONTE PLACING THE APPELLANT ON THE SEX OFFENDER REGISTRY WHEN THE STATE PRODUCED NO EVIDENCE TO SUPPORT THE REGISTRY AND THE APPELLANT PRODUCED EVIDENCE THAT HE SHOULD NOT BE ON THE REGISTRY.

STATEMENT OF THE CASE

Appellant Robert Foster was arrested on November 12, 2019, and charged with two counts of Criminal Sexual Conduct, Third Degree related to a single incident with a single victim. After negotiations with the State, Appellant agreed to plead guilty to one count of Assault and Battery, First Degree with no recommendation.

On November 30, 2021, Appellant pled guilty in front of the Honorable Letitia H. Verdin. Judge Verdin¹ sentenced Appellant to 8 years in prison and placement on the Sex Offender Registry (“Registry”). Counsel specifically objected to the Registry based on the evidence presented at the plea hearing.

On December 7, 2021, Appellant filed a motion to reconsider requesting the Court reconsider both his sentence and his placement on the Registry. After a series of communications between the parties and the Court, the motion was finally denied on June 17, 2025, and written notice of the Order was provided to counsel on October 14, 2025. Counsel filed a notice of appeal on October 22, 2025.

Appellant has served all his prison time, so the only issue remaining is whether he should be on the Registry.

¹ Judge Verdin has since become Justice Verdin, but she is referred to as “Judge” when referencing her time as a Circuit Court Judge. This is not intended to be disrespectful, but only for clarity since she was a Circuit Court Judge at the time of the proceedings which form the basis for this appeal.

STANDARD OF REVIEW

The Court should look at two related standards when determining whether the Circuit Court properly placed Appellant Foster in the Registry. The Court’s overarching review is for abuse of discretion, which occurs when the sentence imposed was based on either an error of law or a factual conclusion not supported by evidence in the record. *In the Interest of Christopher H.*, 432 S.C. 600, 605 (Ct. App. 2021).

Though abuse of discretion is the basic standard of review, the decision to place a defendant on the Registry is not without guidance. South Carolina statutory authority dictates that a Circuit Court can only impose the Registry “... if good cause is shown by the prosecutor.” S.C. Code Ann. § 23-3-430(D).

To properly decide this appeal, the Court must determine if the Circuit Court appropriately exercised its discretion in determining the State showed “good cause” to include Appellant on the Registry.

ARGUMENT

1. THE PLEA COURT ERRED IN SUA SPONTE PLACING THE APPELLANT ON THE SEX OFFENDER REGISTRY WHEN THE STATE PRODUCED NO EVIDENCE TO SUPPORT THE REGISTRY AND THE APPELLANT PRODUCED EVIDENCE THAT HE SHOULD NOT BE ON THE REGISTRY.

a. The plea proceedings.

Appellant Foster appeared before the Circuit Court to plead guilty on November 30, 2021. Foster pled guilty to assault and battery in the first degree, which carried up to 10 years in prison. (Tr. 7, ll. 2-4).

There was some dispute about the facts presented in this case, because the State read the facts that would support criminal sexual conduct in the third-degree charge. This charge involves sexual battery with the victim, with one or more of the following circumstances: (a) use of force or coercion to accomplish the sexual battery in the absence of aggravating circumstances, or (b) knowledge that the victim suffers a mental defect, is mentally incapacitated, or is physically helpless, and (c) no aggravated force or aggravated coercion was used to accomplish the battery. S.C. Code Ann. § 16-3-654(1)(a)-(b).

Assault and battery in the first degree involves an unlawful injury or attempt to injure a person with the existence of another element. S.C. Code Ann. § 16-3-100(C)(1)(a)-(b). The aggravating factor applicable to this case is the “...nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent...” S.C. Code Ann. § 16-3-100(C)(1)(a)(i).

Both charges carry the same sentence of ten years. The criminal sexual conduct charge requires mandatory placement on the Registry, while the assault and battery leaves that placement to the plea judge. In imposing sentence, the plea court recognized that the reduction from criminal sexual conduct to assault and battery was an important benefit to the Appellant. (Tr. p.18, ll. 21-25). Because both charges carried the exact same sentence, the clear implication in the change in charges was the difference of opinion on the facts and the Court’s responsibility in placing the Appellant on the Registry.

The State recited the relevant facts. The State reported there was vaginal penetration and the Appellant held his hand over the victim's throat. (Tr. p. 10, ll. 17-24). The State also claimed he sent an apology message on Snapchat the following morning admitting to rape. (Tr. p. 10, l.25 – p. 11, l.2). Importantly, the State agreed there was no sentencing recommendation: “[i]t is straight-up to assault and battery, first degree, as to sentence and also to the Registry.” (Tr. p. 11, ll.6-8). The State kept its word and made no argument in support of any sentence or sentencing condition, nor did it offer any further evidence or argument after stating the facts and reciting the agreement with the Appellant.

The victim also spoke before Appellant was sentenced. While she gave emotional testimony, she did not address the facts of the case or tell the Court anything beyond what the State offered in its description of the offense. (Tr. p. 11, l. 12 – p.12, l. 9). The Court asked Appellant how he pled, guilty or not guilty, after hearing the facts. (Tr. p. 12, ll. 16-18). He pled guilty but did not state he agreed with all the facts put forward by the State.

Appellant's counsel recognized he was pleading guilty at the plea hearing but did not agree with all the facts placed on the record by the State. (Tr. p. 13, ll. 13-15). Specifically, counsel made it clear they agreed to plead guilty to the assault and battery charge but would not have pled guilty to the criminal sexual conduct charges. (Tr. p. 13, ll. 16-21).

Appellant presented a report from Dr. Geoffrey McKee, an expert who conducts forensic psychosexual evaluations. (Tr. p. 14, ll.1-4; McKee Report). McKee's report describes numerous quantitative measures scored for sexual recidivism risk. (McKee Report). Based on Appellant's scores on the tests and Dr. McKee's analysis of the scores, Dr. McKee found that Appellant had a low risk of sexual recidivism and there was no quantitative reason to place him on the Registry. (McKee Report).

Counsel went on to explain a number of mitigating factors and offered the Court support for a probationary sentence, (Tr, p. 14, l.5 – p. 16, l.25). Importantly, he explained Dr. McKee's report and its reflection Appellant had a very low chance of recidivism. (Tr.

p. 16, ll.3-9). Counsel also explained the Snapchat message. He told the Court that there were a number of messages being sent back and forth between various parties and the specific message was the product of a discussion between Appellant and a friend related to his understanding of consent and whether there was consent to his actions with the victim in this case. (Tr. p. 17, l.1 – p.18, l. 3).

The Court then took a break and returned to sentence Appellant. (Tr. p.18, ll. 7-16). Appellant was sentenced to 8 years in prison and placement on the Sex Offender Registry. Counsel objected to the placement on the Registry, arguing there had been no showing of good cause. (Tr. p. 19, ll. 8-18). The Court responded that the “... seriousness of the allegations in this case [...] warrants good cause.” (Tr. p.19, ll.19-20). There was no further argument from the State, and the State did not present any evidence in support of placing Appellant on the Registry.

b. Good cause is required for placement on the Sex Offender Registry.

By statute, the *prosecution* must show good cause for placement on the Registry. S.C. Code Ann. § 23-3-430(D). This Court has recognized that trial courts cannot place a defendant on the Registry sua sponte; the solicitor must show good cause for placement on the Registry. *State v. Davis*, 375 S.C. 12, 15 (Ct. App. 2007).

There are very few cases considering the “good cause” standard. However, opinions from the Court have created a framework for how the standard should be applied. This Court considered a juvenile placement on the Registry² which revealed the requirements for placing an offender on the Registry. *In the Interest of Christopher H.*, 432 S.C. 600 (Ct. App. 2021). This opinion describes the hearing presentation.

The trial court had an evaluation from the Midlands Evaluation Center that included both a psychiatric evaluation and a sex offender risk assessment. *Id.* at 602. The State relied on those records in requesting Christopher’s placement on the Registry. *Id.* at 603. The defense entered evidence into the record against placement on the Registry,

² There is no difference between placing a juvenile or an adult on the Registry, so the analysis is the same.

including testimony from Dr. McKee about the evaluation he performed and its outcomes. *Id.* at 603-604. Other therapists testified in support of not placing the juvenile on the Registry.

This Court noted the Supreme Court's opinion in *In re M.B.H.* that defined good cause as considering the facts and circumstances of the case "...to make the determination of whether or not the evidence indicates a risk to reoffend sexually." *In re M.B.H.*, 387 S.C. 323, 327 (2010). Most importantly for present purposes, the Supreme Court discussed the State's evidence in support of the Registry:

At the dispositional hearing, the solicitor introduced the Center's evaluation report to support the request for Appellant to be placed on the private sex offender registry. The judge relied on the professional findings and recommendations in that report in concluding good cause existed for placing Appellant on the registry. The record is clear that the judge considered all the facts and circumstances of this case, both aggravating and mitigating, in determining that there is a risk of sexual reoffense. Such a determination is supported by the evidence in the record.

Id. at 327. *M.B.H.* describes the situation contemplated by the statute. The prosecution requested placement on the Registry and presented evidence in support of that request. The trial court's granting of the request was a proper exercise of its discretion.

This Court distinguished the presentation in *M.B.H.* from the one in *Christopher*. Because the statute requires a showing of good cause, the legislature intended to require more than a scintilla of evidence for placement on the Registry. *In the Interest of Christopher H.*, 432 S.C. at 606. This Court noted that there was never a zero risk of reoffending, and if any risk of reoffending was sufficient to trigger the Registry, the legislature had passed a law that would not accomplish anything. *Id.* at 606-607.

In the Interest of Christopher H. sets out how to show good cause. This Court found that the only evidence in that case indicated a low risk to reoffend and did not support placement on the Registry. *Id.* at 607. Because the only evidence of reoffending revealed a low risk, this Court found the lower court abused its discretion by imposing a sentence based on an error of law or a factual conclusion not supported by the evidence. *Id.*

c. The statutory reasoning behind “good cause” aligns with the Court’s view that the Registry is non-punitive.

The Registry comes with onerous requirements. The general counsel for the South Carolina Law Enforcement Division (“SLED”) has testified it has lifetime reporting requirements³ and would even prevent a college student from living on campus. *In the Interest of Christopher H.*, 432 S.C. 600, 603 (Ct. App. 2021). There are numerous other restrictions that go along with the Registry.⁴

Despite the numerous restrictions that come with placement on the Registry, most challenges to its punitive nature have failed. South Carolina appellate courts have repeatedly held the Registry is not punitive. The Supreme Court has held that the General Assembly did not intend to punish sex offenders, but rather to protect the public from offenders who may reoffend and aid law enforcement in solving sex crimes, which is also linked to the potential to reoffend. *State v. Walls*, 348 S.C. 26, 31 (2002). The registration of offenders has been viewed by the Supreme Court as rationally related to achieving the legislature’s objective of protection from offenders who may reoffend. *In the Interest of Ronnie A.*, 355 S.C. 407, 409 (2003).

Based on the Supreme Court’s interpretation of the Registry law and the legislative intent of the law, it focuses on reoffending. Any other view would disregard both legislative intent and South Carolina precedent based on numerous decisions reviewing the Registry and its operation.

d. The prosecution did not present good cause to place Appellant Foster on the Registry.

As the previous sections establish, South Carolina law requires the prosecution to demonstrate good cause for placement on the Registry. The plain language of the statute

³ Counsel recognizes the statute has slightly changed and there is now potential to be removed from the Registry if certain conditions are met, but even under the new law an offender faces decades on the list.

⁴ <https://scor.sled.sc.gov/FAQs.aspx> (last accessed February 2, 2026).

requires a showing from the prosecution. Any other interpretation renders the reference in the statute to “the prosecution” superfluous, which is prohibited by the rules of statutory interpretation. Statutes should be read so no word is rendered irrelevant or unnecessary. *State v. Sweat*, 386 S.C. 339, 351 (2010). In addition to that rule, it is critical to determine and effectuate the intent of the legislature. *Montgomery v. Spartanburg Cnty. Assessor*, 419 S.C. 77, 81 (Ct. App. 2016).

Two matters derive from these rules. First, the prosecution bears the burden of proof under the Registry’s statutory scheme. Additionally, the statute must be interpreted in light of the legislative intent, which means the “good cause” contemplated by the statute should relate to the legislative concern about reoffending. Any other interpretation, especially linking the Registry solely to the facts of one case, runs the risk of imposing the Registry as punishment. That would turn much of the jurisprudence surrounding the Registry on its head. A punitive aspect would require a very different view of the Registry and allow broader challenges to its application which is inconsistent with legislative intent.

In the instant case, the only evidence of recidivism risk was presented by the Appellant. Because reoffending is the primary focus of the Registry, this kind of evidence should be the most important information in considering good cause for placing a defendant on the Registry. Appellant presented the Court with a report from Dr. McKee showing that he was a low risk for reoffending and there was no reason to put him on the Registry. (McKee Report). The Court did not question the report or evince any doubt about its accuracy or findings.

On the other hand, the prosecution presented no evidence of risk of reoffending. It read the facts of the case but made no argument in support of the Registry nor did it attempt to link any of its evidence or statements at the plea to a risk of reoffending or the propriety of placement on the Registry. A proper reading of the statute requires the prosecution to show good cause for placement on the Registry. The Court cannot simply

find it without such a showing, because the prosecution bears the burden of proof under the statute. There cannot be a finding without that showing.

Irrespective of the prosecution's failure to show good cause in this case, the entire record offers no support for imposition of the Registry. The State simply set out the facts of the case. While these are appropriate for determining the ultimate sentence, the Registry cannot be part of punishment under South Carolina's statutory scheme. The Court would have to link the Registry to some fact that supported a concern about reoffending. Without that, there can be no good cause for the Registry.

Because there was no argument or request from the prosecution to place Appellant on the Registry, he should not have been placed on the Registry. Even if there had been such a request in this case, the only evidence related to recidivism was produced by the Appellant. And that evidence directly contradicted any belief Appellant should be placed on the Registry. Dr. McKee did not just state Appellant had a low risk of reoffending; he also stated there was no quantitative reason to place him on the Registry. In other words, the evidence did not support the placement on the Registry. As that was the only evidence presented relevant to the Registry, Appellant Foster should not have been placed on the Registry.

CONCLUSION

The "parade of horrors" is rarely a useful rhetorical device. But it fits perfectly here. Allowing Appellant Foster to remain on the Registry in light of the record in this case would render South Carolina's statutory scheme meaningless. If the record and argument in this case allow for Appellant to be placed on the Registry, any case could result in such a placement in violation of the statute's legislative intent. Additionally, disregarding the legislature's clear directive regarding that placement risks placement on the Registry becoming a punishment for the facts of the case which is at odds with both the statute and appellate opinions interpreting the statute.

Two things have to happen for proper placement on the Registry: (1) a showing of good cause, and (2) the showing is made by the prosecution. Neither occurred in this case.

The prosecution made no showing. The record only reflects evidence that Appellant was not at risk of reoffending, which is grounds for not placing him on the Registry. Because there was no evidence to support the Registry, coupled with no request or argument for the Registry from the prosecution, the Court abused its discretion in placing the Appellant on the Registry.

Appellant Robert Foster respectfully requests the Court reverse the decision of the lower court and order Appellant removed from the Sex Offender Registry.

Respectfully submitted,

s/ Joshua Snow Kendrick

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