

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

The Honorable Debra McCaslin, Circuit Court Judge

Appellate Case No. 2025-000953

The State,

Respondent,

v.

Harvey Lee Goodwin,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Trial Court err by imposing sex offender registry suasponte when it was neither requested by the State nor agreed upon in the plea?

- II. Did the Trial Court violate the Appellant's due process rights by imposing sex offender registry suasponte as part of the sentence when it was not negotiated in the plea agreement, requested by the State, or statutorily required for the offense of conviction?

STATEMENT OF THE CASE

The appellant, Harvey Lee Goodwin, was arrested for two counts of Assault and Battery 2nd Degree and two counts of Unlawful Conduct Towards a child on May 16, 2024. This arrest is based upon the disclosure that the victim in this case, a minor at the time of disclosure, reported to the Lexington County Sheriff's Department on May 10, 2024. The victim reported to law enforcement that the Appellant touched her legs, back, and butt on several occasions over the past couple of years and that he had also attempted to kiss her on the lips and neck. The Appellant at the time of the disclosure, was the victim's stepfather. In a subsequent post-Miranda interview with Detective Kinder with the Lexington County Sheriff's Department, the Appellant confessed to leaning over and "rubbing her on the rear," her legs, and back of her neck. He also admitted that it may have occurred on more than one occasion and blamed it on him being inebriated.

On April 9, 2025, he pled guilty to one (1) count of Assault and Battery 2nd Degree and one (1) count of Unlawful Conduct Towards a Child. Assault and Battery 2nd Degree is a 0–3-year non-violent felony and Unlawful Conduct Towards a Child is a 0–10-year non-violent felony. At the plea, both the victim and her biological father addressed the court and the State left sentencing at the discretion of the court. This plea was done without negotiations. He was sentenced to three (3) years on the Assault and Battery 2nd Degree and eight (8) years on the Unlawful Conduct Towards a Child with credit for 3 days in the Lexington County Detention Center served upon his initial arrest. He was also sentenced to Mental Health Counseling and a No Contact Order on both charges. He was then sentenced to the Sex Offender Registry for the charge for Unlawful Conduct Towards a Child. Both charges were to run concurrently.

Counsel for the Appellant timely filed a Motion to Reconsider Sentencing (Sex Offender Registry) on April 16, 2025. The State then filed, State's Memorandum in Response to Defendant's

Motion to Reconsider Sentence (Sex Offender Registry) on April 29, 2025. The Court then issued an Order Denying Defendant's Motion to Reconsider Sentence (Sex Offender Registry) on May 6, 2025.

The Appellant then timely filed an appeal with the South Carolina Court of Appeals on May 16, 2025.

STATEMENT OF FACTS

This matter arises out of a plea made by the Appellant, Harvey Lee Goodwin, and the dispute over whether he should have been sentenced to the Sex Offender Registry. The plea was made with no negotiations nor mention of the Sex Offender Registry on the record. The victim nor her father mentioned this in their statements to the court, nor did the State request it.

During the sentencing of the Appellant in his plea, the Court asked if the Sex Offender Registry was being requested and the State allowed the court to make that decision. The Court then required the Appellant to register with South Carolina Sex Offenders Registry although it was not requested by any party nor was he advised on the record that he could face that consequence. The sex offender registry is also not required by statute for the charge of Assault and Battery 2nd Degree nor Unlawful Conduct towards a child.

The Appellant then filed a Motion to Reconsider Sentencing regarding the Sex Offender Registry and the State then filed a response in opposition to this Motion to Reconsider. The court then subsequently denied the Motion to Reconsider Sentencing. This appeal followed.

STANDARD OF REVIEW

“An abuse of discretion occurs when the conclusion of the trial court either lack evidentiary support or are controlled by error of law.” *Id.*; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENTS

I.THE TRIAL COURT ERRED BY IMPOSING SEX OFFENDER REGISTRY SUASPONTE WHEN IT WAS NEITHER REQUESTED BY THE STATE NOR AGREED UPON IN THE PLEA.

The Appellant pled on April 4, 2025 to one count of Assault and Battery 2nd Degree and one count of Unlawful Conduct Towards a Child. This plea was made without negotiations but with two corresponding counts (one of each of these charges) being dismissed as part of this plea. The State was represented by Solicitor Whitney Taylor-Yongue and both the victim and her biological father addressed the Court. The Appellant was represented at his plea by Attorney Madalyn Norton.

A plea must be knowingly, voluntarily, and intelligently made in order to be approved by the Court and accepted. Here the Court did, “accept the plea. I find it to be freely, voluntarily, and intelligently made. You’ve had advice of excellent counsel.” (R. P. 23, lines 4-5). The State, the victim, nor her father, requested the sex offender registration as part of the plea. The Court in its colloquy with the parties, asked if this was a part of the plea and the state left it up to the court. The Court then stated that they believed that this should be a part of the plea.

Under S.C. Code § 23-3-430 (A), “Any person, regardless of age, residing in the State of South Carolina who is in this State has been convicted of, pled guilty or nolo contendere to an

offense described below, or who has been convicted, pled guilty or no contendere, or found not guilty by reason of insanity in any comparable court in the United States, or a foreign country, or who has been convicted, pled guilty or nolo contendere, or found not guilty by reason of insanity in the United States federal courts of a similar offense, or who has been convicted of, pled guilty or nolo contendere, or found not guilty by reason of insanity to an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register pursuant to the provisions of this article.” S.C. Code § 23-3-430 (D) gives the Judge discretion to order registration for a non-enumerated offense if good cause is shown by the solicitor, “Upon conviction, guilty plea, or plea of nolo contendere of a person of an offense not listed in this article, the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the prosecution.” However, there was no proof of the Appellant as being a risk to the community. Simply reading of the facts and having the victim address the Court, but not request the sex offender registry, does not justify good cause shown and that the sex offender registry was not needed as part of the sentencing.

The Court exceeded its scope of the lawful sentencing by adding a collateral and very significant consequence to the Appellant, sex offender registration, that was not requested by the State nor part of the plea. This therefore gave the Appellant no opportunity to negotiate nor reject the registration requirement. The Court states, “It sounds to me like this ought to be a sex offender registry case.” (R. P. 30, lines 5-6). The Court then did not address the Appellant nor advise him that this could be a part of his plea and sentencing as the Court should have since the Court is the one who put this on the record and that it was fit. The Court lacked statutory authority as it was a sua sponte decision in that sex offender registry is not required by the Statute and the State did not

request it. Thus, making an error in law, without the States request, there is no good cause shown and therefore violates S.C. Code § 23-3-430 (D).

The Court states, “This is one of those touching cases. You know, I’m– I’m not–I’m not lenient on touching cases. I’m just not. You had no business touching this child, and she’s a child.” (R. P. 30, lines 22-25). However, the Appellant was charged with two counts of Assault and Battery and two counts of Unlawful Neglect of a Child upon his arrest. The Appellant was not charged with Criminal Sexual Conduct of a Minor in any form nor was there allegations that the Appellant touched the victims’ private areas. Therefore, although the Court does not like “touching cases” this is not a good cause shown for why the sex offender registration should be added in sentencing when the State made no mention of it.

Again, under S.C. Code § 23-3-430 (D), it is left to the Court's discretion if good cause is shown by the Solicitor. However, the State did not request the Registry nor was it even mentioned until the court addressed the record and the State on if they were requesting it, in which the State replied, “We’re leaving all of that in your discretion, Your Honor. And those discussions we had with the victim as well. (R. O. 29, line 25 & P. 30, lines 1-2.). Further supporting that the State was not requesting it, did not mention it, and nor did the victim. The victim concluded her statement to the court, “I hope that by sharing my story, you can understand the full extent of the damage cause, and that justice will be served to prevent this from happening from anyone else ever again.” (R. P. 24, lines 11-14). The victim did not request sex offender registration. The victim’s father then addressed the Court and concluded his statement, “And we ask that you take all of this into consideration when you come to your final decision on sentencing. Thank you.” (R. P. 25, lines 12-14). He also, did not request sex offender registration.

The record is very clear in that the State did not request the registry as part of the plea and left it up to the Courts discretion. The Motion to Reconsider Sentencing is also clear that “The offenses that the Defendant pled guilty to are not listed offense in the statute. The State was required to show good cause and they did not make any argument or request for the registry.” (at 1). However, the State then introduces for the first time, the request for sex offender registry in their Memorandum in that the victim requested it, when it is clearly stated in the record as “We’re leaving all of that in your discretion, Your Honor. And those discussions we had with the victim as well. (R. P. 29, line 25 & P. 30, lines 1-2.). In the State’s Memorandum in Response to the Defendant’s Motion to Reconsider Sentence (Sex Offender Registry), “At sentencing, Victim addressed the Court and relayed how this case has impacted her and asked for both active time and that the Defendant be required to register as a sex offender... The State left both the sentence and the registry in the sole discretion of the Court.” (R. P. 2, paragraph 3). However, the victim did not request either on the record.

The state then further goes on to say in their memorandum, “Instead, the State’s intent was for the Court to make the appropriate decision on both sentencing and the registry after considering the presentation from both the State and the Defense.” (R. P. 12, paragraph 2). But the registry was not mentioned at all as consideration to the court by the State. The Court introduced this on the record and the State remained silent and the counsel for the Appellant opposed. So, it was not that the, “intent was for the Court to make the appropriate decision both sentencing and the registry,” it was that the Court imposed it without basis for good cause shown as it was not mentioned by the state and not required be statute. Regardless of the State’s “intent” it was not requested and therefore, suasponte, abuse of discretion of the Court and a violation of the Sex Offender Registry statute.

The court exceeded its authority in imposing this when the sex offender registration was not a part of the plea, the state did not request it, and it's not mandated by statute. Since the Court modified the plea, this violated the Appellants due process and should be stricken from the plea. The Court then goes on to deny the motion to reconsider stating, "After consideration of the arguments from counsel, the State, and the record, the Court respectfully denies Defendant's Motion to Reconsider the sex offender registry." (R. P. 1). But the Court did not consider the arguments and the record because the record supports the Appellants motion to reconsider due to no good cause was shown by the State. The State then contradicts itself in stating sex offender registration was requested, when the record reflects it was not.

II. THE TRIAL COURT VIOLATED THE APPELLANT'S DUE PROCESS BY IMPOSING SEX OFFENDER REGISTRATION AS PART OF THE SENTENCE SUASPONTE WHEN IT WAS NOT NEGOTIATED IN THE PLEA AGREEMENT, REQUESTED BY THE STATE, NOR STATUTORILY REQUIRED FOR THE OFFENSE OF CONVICTION.

U.S. Const. Amend. XIV, the Due Process of Law Section 1 states, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridged the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is under Due Process that the Appellant has the right to enter into a plea knowingly, voluntarily, and intelligently. The Court cannot impose additional terms to a plea if they were not

agreed upon in the plea unless mandated by statute. Although this plea is made without negotiations, the terms of the plea were to plea to one count of each count and the additional count of each were to be dismissed. Although the sentencing was up to the Court, the sex offender registration was not mentioned nor requested by the State nor is it mandated by Statute and therefore changed the plea agreement. The Court then did not address this request it was making with the Appellant to allow him to understand that she was deeming this appropriate for his matter. This therefore violated his due process rights. By imposing this requirement suasponete, it deprived the Appellant of his right to make a knowingly, voluntarily, and intelligent plea. By imposing this addition to the sentencing, this imposed a burden on the Appellant without notice or statutory basis, which then violates his due process rights.

As already stated, the Court stated that they accepted his plea as knowingly, voluntarily, and intelligently made, the court however did not make sure the Appellant fully understood the consequences of the plea. Before the Court accepted the plea, the Court asks, "All right. Mr. Goodwin, are you under the influence of any drugs or alcohol today...Ever been treated for any type of mental illness... You know you have a right to a jury trial on both of these charges...But when you plea guilty, you give up all of your jury trial rights. Are you willing to do that...Has anyone promised you to get you to plea guilty today...Straight up plea. So they're leaving it up to me. That means I can give you up to 13 years if I wanted to. Do you understand?" (R. P. 17, lines 24-25; P. 18, lines 2-3, lines 5-6, lines 10-11; P. 19, lines 20-21; P. 20, lines 8-10). In this, the Court goes through the court line of questioning to make sure that the Appellant understands that what they are pleading to, they are not being coerced, and that they understand the consequences. Although the court had its own discretion to sentence the Appellant as the Court saw fit, its

discretion was abused because there was no good cause shown as required by Statute in order to place him on the registry.

As stated in the Motion to Reconsider sentencing, at 2, “The state did not present any professional findings or recommendations to support placing the Defendant of the Sex Offender Registry. Additionally, there was no evidence presented to show that the Defendant was at risk of reoffending. *In Re Christopher H.* 432 S.C. 600 (S.C. Ct. App. 2021).” (R. P. 3) *In the Interest of Christopher H.*, the Appellant argues that the Court erred in finding good cause was shown to put him on the private sex offender registry when there was insufficient evidence that he was a risk to reoffend. Although in that case, that is the private sex offender registry and this is not, the same argument stands. Without good cause shown, due process is violated and the sex offender registration should not have been imposed. The court went on to say here that, “We find the weight of the evidence indicated the State failed to show good cause for placing Christopher on the registry. The only evidence of risk indicated a low risk, and the evidence overwhelmingly indicated registry in this case was not appropriate. Such a low risk of reoffending does not seem to meet the intent of the statute. Thus, we find the sentencing court abused its discretion in ordering Christopher to be placed on the registry. *M.B.H.*, 387 S.C. at 326, 692 S.E.2d at 542 (explaining the sentencing court abuses its discretion when the sentence imposed was “based on an error of law or a factional conclusion without evidentiary support”).” The lack of evidentiary support is also here in this case with the Appellant, Mr. Goodwin. The Appellant has no prior criminal record besides, “...he has a marijuana charge back from 2000” (R. P. 26, lines 10-11), he “does not have any children and does not spend time around minor children. The minor that was involved in these charges is no longer in the Defendant’s life.” (R. P. 3 at 4) Furthermore, “The Defendant has worked with a psychologist through the entirety of his case and the psychologist found that the

Defendant did not pose a threat to anyone in the community nor likely to reoffend. See attached the tally sheet of the STATIC99R showing the Defendant was found at a -1 on the sexual recidivism score.” (R. P. 3 at 7). This low score, plus his minimal criminal record, puts him low risk to reoffend making the Sex Offender Registry extreme in this case and again a violation of S.C. Code § 23-3-430 (D).

The South Carolina Supreme Court address recidivism and its risk regarding life time registration prior to the tier system, “Indeed, “a likelihood of re-offending lies at the court of South Carolina’s civil statutory scheme.” *Dykes*, 403 S.C. at 507, 744 S.E.2d at 510; *see* S.C. Code Ann. § 23-3-400 (2007 & Supp. 2020) (“Statistics show that sex offenders often pose a high risk of re-offending.”) However, the lifetime inclusion of individuals who have a low risk of re-offending renders the registry over-inclusive and dilutes its utility by creating an ever-growing list of registrants that is less effective at protecting the public and meeting the needs of law enforcement.” (*Powell v. Keel*, 433 S.C. 457, 860 S.E.2d 344 (S.C. 2021).) In the case at hand, although, the State of South Carolina no longer has life time registration, the Appellant is at very low risk to reoffend and these charges are not required by statute to require sex offender registration and so it is an error of law by the Court and supported by *Powell v. Keel* in that, “the lifetime inclusion of individuals who have a low risk of re-offending renders the registry over-inclusive and dilutes its utility”.

Therefore, because the sex offender registration was not part of the plea, not requested by the state, not requested by the victim, and not mandated by statute, this suasponte decision by the Court violates the Appellant’s due process rights as there is no good cause shown and therefore, an error of law.

CONCLUSION

Based on the arguments presented herein, the Appellant asks the Court to overturn the requirement for Sex Offender Registry as this was imposed suasponete, without good cause shown, in violation of the appellants due process rights, and for all other relief which is just and proper.



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