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.

APPELLANT'S REPLY TO BRIEF OF RESPONDENT

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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 besides the corresponding charges being dismissed as part of this plea. 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. 10, 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 even though it was not brought up nor mentioned until the Judge mentioned it.

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." Here, there was no proof of the Appellant as being a risk to the community and a simple 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 needed to be added to the sentence.

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. The Court states, "Is sounds to me like this ought to be a sex offender registry case." (R. P. 30, lines 5-6). The Court lacked statutory authority as it was a suasponte 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). 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 and the Respondent's initial brief agrees with this (Respondent Initial Brief. P. 6). However, the State did not request the Registry nor was it even mentioned at the time of the plea. In fact, the State only introduces 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, line 1-2.). Although the Respondent also mentioned in their brief of Page 6 that it "gives the judge discretion to order registration for a non-enumerated offense if good cause is shown by the solicitor," there is no good cause shown because statements of incident, the victim never requesting the registry, nor the state is good cause shown. 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.

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, "... 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. By imposing this requirement suasponte, it deprived the Appellant of his right to make a knowingly, voluntarily, and intelligent plea. This addition to the sentencing, imposed a burden on the Appellant without notice or statutory basis, which then violates his due process rights.

The respondent states that this argument lacks merit stating that, "the trial court did not abuse its broad discretion by ordering Appellant to register...including Appellant's entry of a guilty plea to an offense of a sexual nature—establish a good cause basis to believe Appellant was a risk to sexually reoffend." (Respondent Brief P. 5-6). Although the trial court has a broad discretion the charges the Appellant pled to are not sexual in nature, his recidivism rate was already low, and it is not required by statue for the sex offender 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. (R. P. 3) Additionally, there was no evidence presented to show that the Defendant was at risk of reoffending. The Appellant had 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). 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 suasponte, 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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