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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Honorable Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2025-000762

Dennis Michael Gallipeau, Appellant,

v.

State of South Carolina, Respondent.

AMENDED INITIAL BRIEF OF RESPONDENT STATE OF SOUTH CAROLINA

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Table of Contents

Table of Authorities.....	ii
Statement of Issues on Appeal	1
Statement of the Case.....	2
Standard of Review.....	4
Argument	5
1. This appeal should be dismissed because Gallipeau is not yet eligible for removal from the sex offender registry and the matter is not ripe for review.	5
2. Should the Court reach the merits, the SLED fee structure is constitutional because the statutory scheme provides a pathway to judicial review for all eligible registrant.	7
3. This Court should decline Appellant’s invitation to issue advisory guidance on procedural questions not properly before it.	11
Conclusion	12

Table of Authorities

Page(s)

Cases

<i>Boddie v. Connecticut</i> , 401 U.S. 371 (1971).....	9, 10
<i>Byrd v. Irmo High Sch.</i> , 321 S.C. 426, 468 S.E.2d 861 (1996)	5
<i>Denene, Inc. v. City of Charleston</i> , 359 S.C. 85, 596 S.E.2d 917 (2004)	10
<i>Grant v. S.C. Coastal Council</i> , 319 S.C. 348, 461 S.E.2d 388 (1995)	10
<i>I'On, L.L.C. v. Town of Mt. Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000)	7
<i>Jowers v. S.C. Dep't of Health & Env't Control</i> , 423 S.C. 343, 815 S.E.2d 446 (2018)	4
<i>Joytime Distribs. & Amusement Co. v. State</i> , 338 S.C. 634, 528 S.E.2d 647 (1999)	4
<i>State v. McSwain</i> , 445 S.C. 276, 281, 914 S.E.2d 124, 126 (2025)	5, 7, 8, 11
<i>Powell v. Keel</i> , 433 S.C. 457, 860 S.E.2d 344 (2021)	4, 7, 8, 9, 11

Statutes

S.C. Code Ann. § 23-3-400	2
S.C. Code Ann. § 23-3-462	1, 7, 8, 9, 11, 12
S.C. Code Ann. § 23-3-462(A)(1)(a)	5, 10, 11, 12
S.C. Code Ann. § 23-3-462(A)(6)	2
S.C. Code Ann. § 23-3-463	2, 5, 6, 7, 8, 9, 10, 11, 12, 13
S.C. Code Ann. § 23-3-463(A)(1)	8, 9
S.C. Code Ann. § 23-3-463(F)	12
34 U.S.C.A. § 20915(b) (West)	5, 6

Rules

Rule 220(c), SCACR	7
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Statement of Issues on Appeal

- I. Whether this appeal should be dismissed because Gallipeau has not yet met the statutory eligibility requirements for removal from the sex offender registry under S.C. Code Ann. § 23-3-462 and the matter is therefore not ripe for review.
- II. Whether, should this Court reach the merits, the SLED filing fee established under S.C. Code Ann. § 23-3-462 is constitutional because the statutory scheme provides a complete pathway to judicial review for all eligible registrants.
- III. Whether this Court should decline Appellant's invitation to issue advisory guidance on procedural questions not properly before it.

Statement of the Case

Appellant Dennis Michael Gallipeau is required to register as a sex offender under South Carolina's Sex Offender Registry Act, S.C. Code Ann. § 23-3-400 *et seq.* (SORA), as a result of a federal conviction in the United States District Court for the District of South Carolina for possession of material containing an image of child pornography. (R. p. ____.) Petition for Order for Removal. Gallipeau first registered with the Richland County Sheriff's Department on March 26, 2015. (R. p. ____.) Petition for Order for Removal. On November 14, 2018, Gallipeau's federal Supervised Release was revoked, and he was committed to the custody of the Federal Bureau of Prisons for four (4) months. (R. p. ____.) Judgment. After his release from custody, he was ordered to "be on supervised releases for a term of Twenty-four (24) months." (R. p. ____.) Judgment.

Gallipeau applied to SLED for removal from the sex offender registry. (R. p. ____.) SLED Application. Gallipeau signed his SLED application for removal on March 26, 2025, and indicated that he had been registering as a sex offender for at least 10 years. (R. p. ____.) SLED Application. SLED returned the application to Gallipeau because he failed to pay the filing fee established under S.C. Code Ann. § 23-3-462(A)(6), which authorizes SLED to charge a filing fee not to exceed two hundred fifty dollars, and because he failed to submit fingerprint cards with the application, which are necessary for SLED to complete the fingerprint based criminal history checks required by S.C. Code Ann. § 23-3-462(B). (R. p. ____.) SLED Application Return Form.

Gallipeau thereafter filed a motion with the Richland County Court of General Sessions seeking judicial review of SLED's refusal under S.C. Code Ann. § 23-3-463, asserting his indigency status and requesting that the court waive the fee requirement on April 21, 2025. (R. p. ____.) Petition for Order for Removal. The Honorable Heath P. Taylor, Circuit Court Judge, denied the Petition for Order for Removal without a hearing on the ground that the SLED filing fee had

not been paid. Order. Gallipeau has been deemed indigent by the South Carolina Commission on Indigent Defense. Appellant's Initial Brief, p. 2.

This appeal follows.

Standard of Review

The threshold question of whether this matter is ripe for judicial review is a question of law reviewed de novo by this Court. *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018). Should this Court reach the merits, the constitutionality of a statute is likewise a question of law subject to de novo review. *Powell v. Keel*, 433 S.C. 457, 462, 860 S.E.2d 344, 346 (2021). The party challenging the constitutionality of a statute bears the burden of proving it unconstitutional. *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999) (holding that a legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt).

Argument

1. This appeal should be dismissed because Gallipeau is not yet eligible for removal from the sex offender registry and the matter is not ripe for review.

Section 23-3-462(A)(1)(a) requires a Tier I offender to have been registered for at least fifteen years before filing a request for termination of registration requirements with SLED. S.C. Code Ann. § 23-3-462(A)(1)(a). Gallipeau first registered with the Richland County Sheriff's Department on March 26, 2015, and therefore fifteen years had not passed when he applied for removal with SLED on March 26, 2025, and his application was premature. Furthermore, S.C. Code Ann. § 23-3-463(B) provides that:

All motions pursuant to this section must be made no earlier than the appropriate timeframes related to the underlying offense as specified in Section 23-3-462(A)(1) or subsection (A)(2). An offender is not eligible for a hearing pursuant to this section if he submitted an application prior to the timeframe specified in Section 23-3-462(A)(1) that was either not accepted or erroneously accepted by SLED.

S.C. Code Ann. § 23-3-463(B)

This case is not ripe because Gallipeau has not yet met the statutory timeframe requirements for filing an application with SLED for termination of his registration requirements, or for seeking a hearing under S.C. Code Ann. § 23-3-463. Since the case is not ripe, the Court need not reach the constitutional fee question at all. Until Gallipeau meets the eligibility requirements to apply for removal from the SC Sex Offender Registry, he is statutorily not entitled to a removal hearing under S.C. Code Ann. § 23-3-463 and there is no justiciable controversy for any court to resolve, so this appeal should be dismissed. *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996) (holding that a justiciable controversy must exist before any action can be maintained); *State v. McSwain*, 445 S.C. 276, 281, 914 S.E.2d 124, 126 (2025).

Additionally, Gallipeau's suggestion that federal SORNA entitles him to a ten-year registration period is without merit. 34 USCA § 20915 does provide for a five-year reduction of

the time a Tier I offender is required to register where they have a “clean record”, but Gallipeau has not shown that he is eligible for this reduction, or that the Federal Court has granted him this reduction. To have a clean record, 34 USCA § 20915(b) requires:

- (A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed;
- (B) not being convicted of any sex offense;
- (C) successfully completing any periods of supervised release, probation, and parole; and
- (D) successfully completing of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

34 USCA § 20915(b).

Regarding the requirement to complete a sex offender treatment program, Gallipeau wrote “N/A” on his SLED application and did not submit any additional documents showing proof of completion of a treatment program. (R. p. ____.) SLED Application. Additionally, while Gallipeau’s supervised release has ended, his original term of supervised release was not completed successfully because it was revoked. *See* Judgment, *USA v. Gallipeau*, No. 3:08-cr-00096-JFA-1 (D.S.C. Nov. 14, 2018) (“The defendant's term of supervised release is hereby REVOKED and the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of Four (4) months. ... Upon release from imprisonment, the defendant shall be on supervised release for a term of Twenty-four (24) months.”). (R. p. ____.) Judgment. In addition, the time that Gallipeau was committed to the custody of the Bureau of Prisons for the revocation does not count towards his required time on the registry. According to, 34 U.S.C. 20915, registration periods exclude any time the sex offender is in custody or civilly committed therefore, Mr. Gallipeau did not even meet the ten-year time frame when he filed his Petition for Removal pursuant to SC. Code Ann. § 23-3-463 with the circuit court.

The circuit court correctly dismissed Gallipeau's motion, and this Court should affirm that dismissal. However, the proper basis for dismissal is not that Gallipeau failed to pay the SLED filing fee, but rather that Gallipeau has not yet met the statutory eligibility requirements for removal under S.C. Code Ann. § 23-3-462. This Court may affirm the decision of the lower court on any ground appearing in the record, and the record plainly establishes that Gallipeau's petition was premature. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 418-19, 526 S.E.2d 716, 723 (2000) (holding that an appellate court may affirm the lower court's ruling on any ground appearing in the record, regardless of whether that ground was relied upon by the lower court); Rule 220(c), SCACR. Additionally, the arguments raised in Gallipeau's initial brief were not presented to the lower court or ruled upon by the lower court, so they are not preserved for review by this court. Accordingly, and consistent with the doctrine of constitutional avoidance, this Court need not reach the constitutional questions Gallipeau raises regarding the fee structure.

2. Should the Court reach the merits, the SLED fee structure is constitutional because the statutory scheme provides a pathway to judicial review for all eligible registrants.

A. *Powell v. Keel* required judicial review, and the Legislature delivered it through a constitutionally adequate statutory scheme.

Because S.C. Code Ann. § 23-3-463 guarantees judicial review to any eligible registrant whose petition is denied by SLED, the filing fee established under S.C. Code Ann. § 23-3-462 does not unconstitutionally block access to the courts. Notably, this Court has already upheld the constitutionality of South Carolina's current statutory scheme, which provides for SLED's ability to charge an application fee. *See State v. McSwain*, 445 S.C. 276, 914 S.E.2d 124 (2025). In *McSwain*, this Court noted

In 2021, we held SORA's prior lifetime registration requirement was unconstitutional in part because the complete absence of judicial review made South Carolina's registry requirements "the most stringent in the country." *Powell*, 433 S.C. at 463, 860 S.E.2d at 347 (citing Logan, *supra*, at 225). The General Assembly responded by amending SORA to bring it in line with federal law and the approach taken by a majority of states. The current tiered system and corresponding time periods of required registration are reasonably designed to accomplish the legitimate interests the State has in protecting the public and aiding law enforcement in investigating sex crimes.

State v. McSwain, 445 S.C. 276, 287, 914 S.E.2d 124, 130 (2025). Ultimately, this Court found that "SORA's tiered-registration system and corresponding mandatory-minimum time periods for registration are rationally related to SORA's legislative purposes." *State v. McSwain*, 445 S.C. 276, 286–87, 914 S.E.2d 124, 129 (2025). Again, the tiered system found constitutional in *McSwain* included the filing fee, which is merely a prerequisite to SLED's administrative process, not a barrier to judicial review.

Moreover, the *Powell v. Keel* decision itself required only that SORA provide a mechanism for judicial review, and the Legislature delivered exactly that through the enactment of §§ 23-3-462 and 23-3-463. *Powell v. Keel*, 433 S.C. 457, 472, 860 S.E.2d 344, 351-52 (2021) (holding SORA's lifetime registration requirement unconstitutional, absent any opportunity for judicial review, and recognizing the development of a judicial review process as a matter for the General Assembly). Nothing in *Powell* mandated a fee-free process. Accordingly, the Legislature acted well within its authority in structuring the administrative removal process reasonably, including establishing a filing fee to offset the costs of administration. The existence of a filing fee does not render the process unconstitutional, because even those unable or unwilling to pay the filing fee are still entitled to judicial review in accordance with *Powell*. See S.C. Code Ann. § 23-3-463(A)(1) which provides that an "offender may file a motion with the general sessions court to request an order to be removed from the requirements of the sex offender registry act if: (1) He is

a Tier I or Tier II offender or if the offender was required to register based on an adjudication of delinquency whose application for removal under Section 23-3-462 has been denied by SLED.” *Id.* If, as in this case, SLED denies an application for removal under Section 23-3-462, the petitioner is entitled to seek judicial review under S.C. Code Ann. § 23-3-463. Accordingly, the existence of the fee does not bar access to the courts or judicial review and does not run afoul of the holding in *Powell v. Keel*.

B. The fee barrier condemned in *Boddie* is fundamentally different from the administrative prerequisite at issue here.

Gallipeau relies on *Boddie v. Connecticut*, 401 U.S. 371 (1971), for the proposition that a fee barrier to judicial review is unconstitutional as applied to indigent litigants. However, *Boddie* is distinguishable from the present case in two critical respects. First, the Court in *Boddie* expressly limited its holding to circumstances where the judicial process is the exclusive precondition to addressing the right at stake. *Id.* at 382-383. Second, the SLED fee is not a court filing fee blocking direct access to a judicial proceeding. It is an administrative processing fee at the front end of an administrative process to offset the cost associated with processing the petitions, after which judicial review is available as of right under S.C. Code Ann. § 23-3-463. The Court in *Boddie* itself recognized that its holding does not establish a universal right to free court access in all circumstances. As the Court stated, the legitimacy of the state’s monopoly over dispute settlement stands unimpaired where recognized, effective alternatives for the adjustment of differences remain. *Boddie*, 401 U.S. at 376. Because the statutory scheme here provides a complete pathway to judicial review for eligible registrants, *Boddie* does not compel the result Gallipeau seeks.

C. The SLED fee structure does not violate equal protection because Gallipeau is not similarly situated to eligible registrants and the fee is rationally related to a legitimate government purpose.

Gallipeau further contends that the SLED fee structure violates equal protection by creating a two-tiered system in which non-indigent registrants may access judicial review while indigent registrants may not. However, this argument fails for the same fundamental reason as his due process challenge under *Boddie*: Gallipeau is not yet eligible to petition for removal under S.C. Code Ann. § 23-3-462(A)(1)(a), and therefore the fee has not deprived him of anything to which he is currently entitled. Further, failure to pay the fee does not impact his ability to seek judicial review under S.C. Code Ann. § 23-3-463. An equal protection claim requires a showing that similarly situated persons receive disparate treatment. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995). Here, Gallipeau is not similarly situated to eligible registrants who can pay the fee, because he is not yet eligible to petition for removal regardless of his ability to pay.

Even if this Court were to apply rational basis review to the equal protection claim, the SLED fee structure would survive that standard as well. Under rational basis review, the requirements of equal protection are satisfied when the classification bears a reasonable relation to the legislative purpose sought to be affected, the members of the class are treated alike under similar circumstances and conditions, and the classification rests on some reasonable basis. *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004). The SLED fee structure satisfies all three requirements. First, the fee requirement is rationally related to the legitimate government interest in offsetting the administrative costs of processing removal applications. Second, all registrants seeking removal are treated alike, as the fee applies uniformly to every registrant regardless of their individual circumstances. Third, requiring registrants to bear

the administrative cost of a process they initiate rests on a reasonable basis. The fact that some registrants may find the fee more burdensome than others does not render it unconstitutional under rational basis review.

Moreover, as this Court held in *Powell v. Keel*, SORA's registration requirements are rationally related to the Legislature's stated purpose of protecting the public from those with a high risk of reoffending. 433 S.C. 457, 466, 860 S.E.2d 344, 348 (2021) (finding the initial mandatory imposition of sex offender registration satisfies the rational relationship test in light of the General Assembly's stated purpose). This was essentially reiterated in 2025 in *McSwain* in which this Court found that "SORA's tiered-registration system and corresponding mandatory-minimum time periods for registration are rationally related to SORA's legislative purposes." *State v. McSwain*, 445 S.C. 276, 286–87, 914 S.E.2d 124, 129 (2025). A filing fee that helps administer that statutory scheme is no less rational.

The constitutional questions Gallipeau raises are no more ripe for review than his underlying petition under S.C. Code Ann. § 23-3-462(A)(1)(a). Gallipeau is not yet eligible to petition for removal under S.C. Code Ann. § 23-3-462(A)(1)(a). The constitutional questions he raises may never require resolution if, when he becomes eligible in 2030, he is able to pay the fee or if the Legislature has by that time addressed the fee waiver question. This Court should decline to issue a constitutional ruling on a question that is not yet ripe for review and that may never require resolution in this case.

3. This Court should decline Appellant's invitation to issue advisory guidance on procedural questions not properly before it.

Gallipeau asks this Court to provide sweeping procedural guidance to lower courts regarding the administration of SORA removal proceedings under S.C. Code Ann. § 23-3-462 and

§ 23-3-463. This Court should decline that invitation. Because this appeal should be dismissed on ripeness grounds, the procedural questions Gallipeau poses regarding the burden of proof, the role of prosecuting agency objections, and the right to counsel on appeal are not properly before this Court. To address them would require this Court to render judgment on hypothetical questions untethered to the facts of this case. This Court should confine its analysis to the threshold question actually presented: whether this premature appeal should be dismissed.

Furthermore, while there may be some procedural questions that arise in the coming years, the process outlined in S.C. Code Ann. § 23-3-462, and § 23-3-463 is not so unclear as to require guidance from the appellate courts at this time. Tier I and Tier II sex offender registrants who meet certain requirements can apply to SLED for administrative removal from the South Carolina Sex Offender Registry. If that application is denied, those applicants can seek judicial review pursuant to S.C. Code Ann. § 23-3-463, where the circuit court can either order their removal from the South Carolina Sex Offender Registry or decline to order their removal from the South Carolina Sex Offender Registry in accordance with S.C. Code Ann. § 23-3-463(F).

Conclusion

For the foregoing reasons, the State respectfully requests that this Court dismiss this appeal because Gallipeau has not met the statutory eligibility requirements for removal under S.C. Code Ann. § 23-3-462(A)(1)(a) and this matter is not ripe for review. When he does meet the eligibility requirements, should he still not be able to pay the filing SLED filing fee and again have his SLED application denied, he would be able to seek judicial review from the circuit court at that time pursuant to S.C. Code Ann. § 23-3-463, barring any statutory changes in the interim. Should this Court reach the merits, the State respectfully requests that this Court find that the SLED fee structure is constitutional and does not unconstitutionally bar indigent registrants from accessing

judicial review under S.C. Code Ann. § 23-3-463. In either event, this Court should decline Appellant's invitation to issue procedural guidance on questions not properly before it.

Respectfully Submitted,

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