
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2006-CP-40-4840

William A. Thompson, #145029,Appellant,

v.

Jon Ozmint, Director, S.C. Dept. of Corr.;
Dennis Patterson, Records, S.C. Dept. of Corr.,Defendants,

Of Whom South Carolina Department of Corrections is the,Respondent.

APPENDIX TO THE RECORD ON APPEAL

William A. Thompson #145029
LCI Sumter S. 2141 B
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SC Court of Appeals

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

William A. Thompson, #145029,) Civil Action No.: 2004-CP-40-3521
)

Plaintiff,)

v.)

Jon Ozmint, Director, S.C. Dept. of)
Corr.; Dennis Patterson, Records,)
S.C. Dept. of Corr.,)

Defendants.)

ORDER

JENNIFER L. BRIDGEMAN
C.C.P. & O.S.
RICHLAND

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FILED
COURT

This matter is before the Court on a Motion for Summary Judgment filed by Defendants Jon Ozmint and Dennis Patterson ("Ozmint" and "Patterson"). On July 26, 2004, Plaintiff, William Thompson ("Thompson"), filed suit against Defendants Ozmint and Patterson in South Carolina's Court of Common Pleas. In his Complaint, Thompson alleges violations of his due process rights under the Fifth and Fourteenth Amendments when he was labeled a sex offender. Thompson also alleges an Eighth Amendment violation for subjection to ridicule and emotional stress. Lastly, Thompson alleges state law claims for defamation and gross negligence pursuant to the South Carolina Tort Claims Act.

Defendants removed the case to the United States District Court on September 2, 2004. Defendants subsequently filed a Motion for Summary Judgment on January 13, 2005. By Order of the Court dated August 22, 2005, Judge Joseph F. Anderson, Jr. granted summary judgment to Defendants on Thompson's federal law claims. Judge Anderson then remanded Thompson's state law claims to state court. On September 13, 2005, Defendants filed a Motion for Summary Judgment in state court.

This Court conducted a hearing on Defendants' Motion for Summary Judgment on October 10, 2005. Nikole D. Haltiwanger, Esquire, attorney for Defendants, and Thompson, appearing pro se, were present at the hearing. The Court has reviewed the pleadings in this action, the Motions, the Memorandums and other materials submitted by the parties and considered the arguments presented at the hearing. For the reasons set forth in this Order, Defendants' Motion for Summary Judgment is hereby granted.

FACTS

The Sex Offender Registry Act was enacted in 1994 and placed under the direction of the State Law Enforcement Division ("SLED"). S.C. Code Ann. § 23-3-410 (Supp. 2004). The statute also authorizes SLED to create regulations to implement the Act. S.C. Code Ann. §23-3-420 (Supp. 2004). The Sex Offender Registry Act requires that persons who have been convicted of, adjudicated delinquent for, or pled guilty or nolo contendere to certain crimes register with the state of South Carolina as sex offenders. S.C. Code Ann. §23-3-430 (Supp. 2004).

In 1994, the Sex Offender Registry Act provided that kidnapping was a registrable offense. S.C. Code Ann. § 23-3-430 (Supp. 1994). The statute was modified in 1996, and kidnapping was deleted from the registrable offense list. S.C. Code Ann. § 23-3-430 (Supp. 1996). In 1998, the statute was modified a second time, and kidnapping was again included as a registrable offense. S.C. Code Ann. § 23-3-430 (Supp. 1998). However, this time, a person convicted of kidnapping had to register unless "the court ma[de] a finding on the record that the offense did not include a criminal sexual offense." In 1999, the statute was modified a third time to change the wording of the section to include only a conviction of kidnapping of a person eighteen years of age or older within the registry requirement. S.C. Code Ann. § 23-3-430 (Supp. 1999).

Defendants submitted the Affidavit of Dennis Patterson detailing the application of the Sex Offender Registry statute to Thompson's sentence. In 1987, Thompson began serving a life sentence for kidnapping. Since entering the South Carolina Department of Corrections ("SCDC"), Thompson has always been a resident of Broad River Correctional Institution. When the Sex Offender Registry statute was enacted in 1994, Thompson was required to register as a sex offender. After the 1996 amendment, Thompson was removed from the Registry. Defendants admit Thompson was listed on a February 1998 Parole Hearing List as a sex offender. Thompson filed a grievance, and this information was corrected. However, Thompson was again placed on the Registry when kidnapping was re-inserted into the statute in June 1998.

There was no finding in Thompson's Commitment and Sentence documents that his kidnapping offense did not include a criminal sexual offense. In July 2004, Thompson was removed from the Sex Offender Registry after the SCDC received a letter from Judge Lee Alford stating that Thompson should not have to register as a sex offender. Thompson is no longer included on the Sex Offender Registry.

LEGAL STANDARD

Rule 56, SCRPC, provides that a party is entitled to judgment as a matter of law when there is no genuine dispute of material fact. Thus, summary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. Etheredge v. Richland School District One, 341 S.C. 307, 534 S.E.2d 275 (2000). When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). The pleadings and documents on file must be liberally construed in favor of the nonmoving party who must be given the benefit

of all favorable inferences that might reasonably be drawn from the record. Bates v. City of Columbia, 301 S.C. 320, 391 S.E.2d 733 (Ct.App.1990).

APPLICATION OF LAW TO FACTS

The South Carolina Tort Claims Act (the "Act") is the exclusive remedy for tort suits brought against the State of South Carolina, its political subdivisions, and its employees while acting within the scope of their official duties. S.C. Code Ann. §15-78-20, -70. The Act does not create causes of action. Rather, it removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act. Summers v. Harrison Constr., 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989).

The Act provides that a person pursuing a tort action against a state or state agency must commence suit within two years after the date the loss was or should have been discovered. S.C. Code Ann. 15-78-110. By his own admission, Thompson discovered the Registry listing in November 2000. This was after the statute was modified in June 1998 and required Thompson's inclusion on the Registry. Thompson did not file this suit until July 26, 2004. Thus, Thompson's suit is barred as it was filed well outside of the two year statute of limitations period.

The Act also provides that a person must suffer a loss to have a claim against a state or its agencies. S.C. Code Ann. §15-78-50(a). A loss is defined as bodily injury, disease, death, or damage to personal property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering and mental anguish. S.C. Code Ann. §15-78-30(f). However, a loss does not include intentional infliction of emotional harm. Id. Further, a person must suffer a bodily injury before he can claim damages for mental anguish or pain and

suffering. Thompson has not alleged any bodily injury and thus has no loss under the Tort Claims Act as a matter of law.

The Act further provides several exceptions to the government's waiver of immunity and states that these limitations should be liberally construed in favor of limiting the state's liability. S.C. Code Ann. 15-78-20(f). One exception provides that a governmental entity is not liable for a loss resulting from "adoption, enforcement, or compliance with any law,..." S.C. Code Ann. §15-78-60(4). Defendants were enforcing the provisions of state law when Thompson was placed on the Sex Offender Registry and cannot, as a matter of law, be held liable for any loss Thompson believes he suffered as a result of those actions.

Another exception states that a governmental entity is not liable for a loss resulting from the "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any ...prisoner...,of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. §15-78-60(25). Gross negligence means the failure to exercise even a slight degree of care. Moore v. Berkeley County School Dist., 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1997). Gross negligence is the intentional, conscious failure to do something which one ought to do. Worsley Companies, Inc. v. Town of Mt. Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000). When the evidence supports only one reasonable inference, summary judgment is appropriate on the issue of gross negligence. Id.

Thompson has failed to allege facts which support a violation of a tort duty. To establish a claim for gross negligence, Thompson must prove: 1) Defendants had a duty of due care; 2) Defendants breached the duty by failing to exercise a slight degree of care; 3) proximate cause; and 4) damages. Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281,

283 (2003). As a matter of law, Defendants have not been grossly negligent in this matter. State law establishes that persons convicted of kidnapping must be included on the Sex Offender Registry unless there was a finding in the record that no sex offense was involved. S.C. Code Ann. § 23-3-430. By following the provisions of state law, Defendants Ozmint and Patterson did not breach any duty of care that may have been owed to Thompson. Further, Thompson's allegations relate to intentional SCDC decisions. Even if true, such allegations as a matter of law do not constitute a "failure to use slight care."

Further, the Act provides that when bringing an action against a governmental entity under the provisions of this chapter, the plaintiff shall name as the party defendant only the agency or political subdivision for which the employee was acting. S.C. Code Ann. §15-78-70(c). If the employee is named individually in the suit, the agency for which the employee was acting must be substituted as the defendant. *Id.* Thompson's suit does not comply with this requirement of the South Carolina Tort Claims Act.

Thompson has also alleged Defendants defamed his character by publishing false information concerning his status as a sex offender. To establish a claim for defamation, a plaintiff must prove that the statement: 1) had a defamatory meaning; 2) was published with actual or implied malice; 3) was false; 4) was published by the defendant; 5) concerned the plaintiff; and 6) that the plaintiff suffered either legally presumed damages or special damages. Parker v. Evening Post Publishing Co., 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994).

Thompson cannot establish any publication of his sex offender status by Defendants Ozmint and Patterson. Thompson makes no allegations in his Complaint that either defendant was actually responsible for publishing any information regarding his status as a sex offender. In fact, Thompson's only allegation against Defendant Ozmint is that he stated in a letter that

he did not know anything about an inmate website. This is not an allegation of a defamatory statement.

Further, there are no allegations that either defendant ever personally said or wrote any statements about Thompson's sex offender status, beyond Thompson's allegation that sometime in 2000, Defendant Patterson stated Thompson would remain on the Sex Offender Registry. According to the provisions of the Sex Offender Registry Act in effect at that time, Thompson was required to register as a sex offender. This would make any identification of Thompson as a sex offender a true statement, and hence not defamatory. Thus, Thompson cannot establish any defamation through Defendant Patterson's alleged statement.

Thompson also cannot establish any malice by Defendants in this instance. Thompson attempts to show that Defendant Patterson acted with malice by stating that Patterson refused to remove Thompson from the registry even though he knew Thompson was not a sex offender. Even if this is true, Patterson could not ignore the dictates of state law. As an employee of a South Carolina law enforcement agency, Patterson must comply with the requirements of applicable statutes. Thus, Patterson could not remove Thompson from the registry without appropriate documentation.

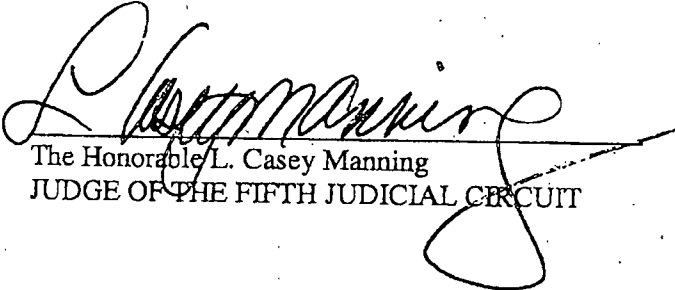
Finally, to the extent Defendants personally published information about Thompson's sex offender status, that publication was privileged. Thompson's status as a sex offender was established as required by state statute and regulations promulgated by SLED. SCDC personnel audited Thompson's court documentation and categorized him as a sex offender according to state law. Publication of information contained in judicial reports is privileged unless actual malice is established. Padgett v. Sun News, 278 S.C. 26, 292 S.E.2d 30 (1982). The privilege is not measured by the truth of the information reported, but by the fair and substantially true

account of the information contained in the documents. Id. at 31. As previously discussed, Thompson has not shown any malice on the part of Defendants. Thus, any actions Defendants may have taken in this process are protected as privileged.

CONCLUSION

In viewing the evidence in the light most favorable to Thompson, there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law. Therefore, for the foregoing reasons, Defendants' motion for summary judgment is hereby granted and this case is dismissed with prejudice.

IT IS SO ORDERED.


The Honorable L. Casey Manning
JUDGE OF THE FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina
September 14, 2011

RMS

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 04 -CP-40-3521

William A Thompson

Jon Ojima

PLAINTIFF(S)

DEFENDANT(S)

RICHLAND COUNTY
FILED
2006 AUG 21 PM 1:37
BARBARA A. SCOTT
C.C.C. & G. SCOTT

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

*Motion for Summary Judgment is ~~granted~~ granted.
Formal Order to follow.*

Dated at Columbia, South Carolina, this 14 day of August, 2006.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 22 day of Aug, 2006 to attorneys of record or to parties (when appearing pro se) as follows:

W. Thompson

Nikola D. Hallways

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

s/BARBARA A. SCOTT

[51]

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

William Thompson, #145029,)	C/A No. 3:04-22109-JFA-JRM
)	
Plaintiff,)	
v.)	ORDER GRANTING DEFENDANTS'
)	MOTION FOR SUMMARY JUDGMENT
Jon Ozmint, Director, SC Department of)	
Corrections; Dennis Patterson, Records, SC)	
Department of Corrections,)	
)	
Defendants.)	
_____)	

This matter is before the court for review of the Magistrate Judge's Report and Recommendation ("the report") made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(D.S.C.).

The Magistrate Judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendations to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)
(citations omitted).

The plaintiff is an inmate incarcerated by the South Carolina Department of Corrections ("SCDC"). In this action, he names as defendants Jon Ozmint, the Director of the SCDC, and Dennis Patterson, an SCDC employee who oversees inmate records. Thompson filed this action in state court, and the defendants thereafter removed it to this court.

Thompson is serving a life sentence following his conviction for kidnapping. He contends that his Fifth and Fourteenth Amendment rights were violated because he was labeled a sex offender without due process, and because his picture and name were placed on a website with false information indicating that he was a sex offender. He also contends that his Eighth Amendment rights were violated because he was subjected to ridicule and emotional distress by these actions. In addition to these federal claims, plaintiff asserts several claims arising under South Carolina state law.

Before the Magistrate Judge, the defendants moved for summary judgment. Pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of his right and obligation to respond to the motion. He filed a memorandum and affidavit in opposition.

The Magistrate Judge has filed a detailed and comprehensive Report and Recommendation suggesting that the defendants' motion for summary judgment should be granted for a variety of independent reasons. Within the time prescribed by the Local Rules for this District, the plaintiff filed objections to the Report and Recommendation. The court has carefully considered all of the objections, conducted the required *de novo* review, and has

determined that the Magistrate Judge's recommended disposition should not be disturbed. For this reason, the court will grant the defendants' motion.

In order to put the claims in proper context, it is necessary for the court to recite in detail the somewhat confusing patchwork of state laws regarding sex offenders that have been put on the books while Thompson has been incarcerated. The South Carolina Sex Offender Registry Act (the "Act") was enacted in 1994 and placed under the direction of the chief of the South Carolina State Law Enforcement Division. S.C. Code Ann. § 23-3-410. The Act requires that persons who have been convicted of certain crimes register with the State of South Carolina as sex offenders. S.C. Code Ann. § 23-3-430. When the Act was first passed in 1994, it provided that kidnapping was a registerable offense. *Id.* In 1996, the Act was modified, and kidnapping was deleted from the registerable offense list. S.C. Code Ann. § 23-3-430 (West Supp. 1996). Then, in 1998, the Act was modified again and kidnapping was once again included as a registerable offense. A proviso to the kidnapping designation provided that no registration was required when "the court [made] a finding on the record that the offense did not include a criminal sexual offense." S.C. Code Ann. § 23-3-430(c)(15).

Thompson was incarcerated while all of these statutory changes were made. When the Act was first passed in 1994, he met the statutory definition of a sex offender based on

his kidnapping conviction. After the 1996 amendment, he was removed from the registry.¹ Plaintiff was placed back on the registry when kidnapping was re-inserted into the statute in June 1998. At that time, there had been no finding by the court that his kidnapping offense did not include a criminal sexual offense. Ultimately, plaintiff was removed from the registry after the SCDC received a letter from Judge Lee Alford, a state trial judge, stating that plaintiff should not have to register as a sex offender. Defendants assert, and plaintiff does not dispute, that plaintiff is no longer included on the registry.

Before delving into the issues presented by the plaintiff's objections, it should be noted that the United States Supreme Court has spoken clearly in this area. In *Connecticut Dep't Public Safety v. Doe*, 538 U.S. 1 (2003), the court held that the due process clause does not entitle inmates to a hearing to determine whether they are currently dangerous to determine their inclusion on a sex registry because the issue of dangerousness was not material under the state registration law. In other words, because the law's requirements for

¹ Apart from the official sex offender registry, Thompson's name was apparently inadvertently included on two additional lists. A February 19, 1998 parole hearing list suggested Thompson was a sex offender. Thompson filed a grievance and this reference was removed. The Magistrate Judge suggests that to the extent plaintiff is attempting assert a claim concerning the parole list, the claim for damages is barred by the statute of limitations. Plaintiff alleges that he was also apparently inadvertently included on some type of internet website designating him as a sex offender. It is not clear from the record whether this in fact occurred, but assuming it did, the Magistrate Judge suggests that this claim involves a state law claim for defamation rather than a constitutional claim. Although Thompson objected to most of the Report and Recommendation (and even included objections to some things the Magistrate did not decide adversely to him), he has failed to object to the Magistrate Judge's Report regarding the parole list and the internet website. Accordingly, the court will accept the Magistrate Judge's Report and Recommendation as to these two items without objection.

registering turned on the offender's conviction alone, a fact that the offender already had a procedurally-safeguarded opportunity to contest, and no other fact was relevant to the disclosure of the offender's information, there was no need for a hearing regarding placement on the registry. The South Carolina registration regime is similar to Connecticut's: the mere fact of conviction alone justifies inclusion on the registry.

With this background, the court turns to the Report and Recommendation and the plaintiff's objections.

THE EX POST FACTO CLAIM

In footnote two in the introductory paragraphs of the Report and Recommendation, the Magistrate Judge suggests that in his memorandum opposing summary judgment, plaintiff attempts to raise, for the first time, an Ex Post Facto challenge. The Magistrate Judge suggests in this footnote that because such a claim was not raised in the complaint, it is not properly before the court.

Thompson objects to this portion of the Report and Recommendation, pointing out that Rule 15(b) of the Federal Rules of Civil Procedure provides for amendment of pleadings to conform to the evidence. This rule, however, has no application to the issue at hand. Rule 15(b) deals with amendments to conform to the evidence "[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties...." The court agrees with the Magistrate Judge that the Ex Post Facto claim was not properly pled and is not properly before this court.

REMOVAL JURISDICTION

Again in the introductory section of the Report and Recommendation, the Magistrate Judge notes in a footnote that the plaintiff appears to want his case remanded to state court. The Magistrate Judge suggests that because the complaint clearly raises federal constitutional issues, jurisdiction is proper in this court.

Plaintiff objects to this footnote as well, citing the diversity jurisdiction statute, 28 U.S.C. § 1332, as his basis for suggesting that there is no jurisdiction here. While the plaintiff is correct that there is no jurisdiction based on diversity of citizenship, there is plainly federal question jurisdiction under 28 U.S.C. § 1331, given the fact that the plaintiff relies upon three Amendments to the United States Constitution as the bases for his claims.

INJUNCTIVE RELIEF

Plaintiff's initial complaint sought injunctive relief as well as damages. The Magistrate Judge observes that the plaintiff has apparently abandoned his claim for injunctive relief, inasmuch as any such claim would clearly be moot. Plaintiff's objection memorandum does not address this aspect of the Magistrate Judge's Report and Recommendation, and the court therefore concludes that any claims for injunctive relief have now been abandoned. Thus, the only claims remaining are for damages.

DUE PROCESS ISSUES

As noted previously, *Connecticut v. Doe* puts to rest any due process claims plaintiff might have as to his inclusion, removal, and re-inclusion on the sex offender list. Thompson's objection memorandum appears to make some generic objection to this

conclusion, but this court is of the opinion that the Magistrate Judge correct applied *Connecticut v. Doe*. There was no due process violation when the defendants in this case followed state law when they inserted, removed, and re-inserted plaintiff's name on the registry.

EIGHTH AMENDMENT CLAIMS

The Magistrate Judge suggests that any Eighth Amendment claim must fail in this case because the plaintiff claims only mental and emotional distress. The plaintiff has not alleged, nor has he sought to prove, any physical injury resulting from having been listed on the sex offender registry. There is no federal constitutional right to be free from emotional distress, physiological stress, or mental anguish, and, hence, there is no liability under § 1983, regarding such claims. *See, e.g., Grandstaff v. City of Borger*, 767 F.2d 161 (5th Cir. 1985), *cert. denied*, 480 U.S. 916 (1987). *See also* 42 U.S.C. § 1997e(e) (the Prison Litigation Reform Act of 1995).

IMMUNITY

The Magistrate Judge also points out that because the defendants are sued in their official capacities, a judgment awarding plaintiff damages would be barred by the Eleventh Amendment to the United States Constitution. Although declaratory and/or injunctive relief may be granted, claims of that nature have previously been dismissed as moot.

In objecting to this portion of the Report and Recommendation, the plaintiff refers to the immunity section of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60. That state law pertains to immunity of governmental entities with regard to state-law claims brought under the South Carolina Tort Claims Act. It has no application whatsoever to the

Eleventh Amendment to the United States Constitution. This objection is therefore overruled.²

REMAINING STATE LAW CLAIMS

The Magistrate Judge suggests that once all the federal claims are dismissed from this action, the court should remand the case to state court.

MISCELLANEOUS ISSUES RAISED BY PLAINTIFF

Included in plaintiff's memorandum in opposition to the summary judgment motion is a discussion of issues that were raised by the defendants in their motion for summary judgment, but not addressed by the Magistrate Judge. For this reason, it is not necessary for the court to rule on matters such as to whether the plaintiff has exhausted administrative remedies, whether the plaintiff can show gross negligence, and whether the theory of *respondeat superior* should apply to this case.

Having considered and rejected all of the plaintiff's objections to the Report and Recommendation, the court agrees with the Magistrate Judge that summary judgment should be awarded to the defendants on the federal claims and that the state law claims remaining in the case should be remanded to state court. Accordingly, all objections are overruled; the Report and Recommendation is incorporated herein by reference; the motion by the defendants for summary judgment as to all federal claims is hereby granted; and the

² The Magistrate Judge suggests, as an alternative, that the defendants are entitled to qualified immunity on the claims asserted here, because the plaintiff has failed to show defendants violated any of his clearly established constitutional or statutory rights. Inasmuch as the court has determined that Eleventh Amendment immunity applies, and has determined further that no constitutional rights were violated, it is not necessary for the court to address the qualified immunity issue.

remainder of this case, consisting of state law claims only, is hereby remanded to the Court of Common Pleas for Richland County, South Carolina.

IT IS SO ORDERED.

August 22, 2005
Columbia, South Carolina

/s/ Joseph F. Anderson, Jr.
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

WILLIAM A. THOMPSON, # 145029,) Civil Action No. 3:04-22109-JFA-JRM
)
Plaintiff,)
)
vs.)
)
JON OZMINT; DIRECTOR, S.C. DEPT. OF)
CORR; AND DENNIS PATTERSON,)
RECORDS, SC DEPT. OF CORR.,)
) **REPORT AND RECOMMENDATION**
Defendants.)
_____)

Plaintiff filed this action, pro se, in the Court of Common Pleas, Richland County, South Carolina on July 26, 2004. Defendants removed this action to this court on September 2, 2004.¹ Defendants are Jon Ozmint, Director of the South Carolina Department of Corrections (“SCDC”), and Dennis Patterson (“Patterson”), an SCDC employee who oversees the inmate records office. A motion for summary judgment was filed by Defendants on January 13, 2005. Plaintiff, because he is proceeding pro se, was advised on January 20, 2005, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), that a failure to respond to Defendants’ motion for summary judgment could result in the dismissal of his complaint. Plaintiff filed a memorandum in opposition to summary judgment on January 31, 2005.

¹Pretrial matters in this case were referred to the undersigned pursuant to Rule 73.02(B)(2)(e), DSC. Because these are dispositive motions, this report and recommendation is entered for review by the court.

DISCUSSION

Plaintiff, who is serving a life sentence for kidnapping, alleges that his Fifth and Fourteenth Amendment rights were violated because he was labeled a sex offender without due process and his picture and name were placed on a website with false information that he was a sex offender. He alleges that his Eighth Amendment rights were violated because he was subjected to ridicule and emotional distress by these actions.² Additionally, Plaintiff alleges claims under South Carolina law.³

Defendants argue that they are entitled to summary judgment because: (1) Defendants are entitled to Eleventh Amendment immunity; (2) Defendants did not violate Plaintiff's due process rights by labeling him as a sex offender according to the requirements of the South Carolina Sex Offender Registry Law; (3) Defendants did not violate Plaintiff's Eighth Amendment rights; (4) Defendants are entitled to qualified immunity; (5) Defendants cannot be held liable on a theory of respondeat superior;⁴ (6) Plaintiff failed to exhaust his administrative remedies; (7) Plaintiff's

²Plaintiff, in his memorandum in opposition to summary judgment, argues that the labeling of him as a sex offender violated his rights under the Ex Post Facto clause. Plaintiff failed to raise this claim in his complaint and thus it is not properly before the court.

³On September 20, 2004, Plaintiff filed a pleading titled "RESPONSE TO NOTICE OF REMOVAL." It is unclear, but he may be attempting to have this action remanded to state court. A party may remove an action from state court to federal court if "the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a) and (b). This court exercises original jurisdiction over cases presenting questions of federal law. See 28 U.S.C. § 1331. In determining the existence of federal question jurisdiction, courts must look at what is "presented on the face of a plaintiff's properly pleaded complaint." Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). Looking at the face of the complaint, Plaintiff alleges federal claims, as he claims that his Fifth, Eighth, and Fourteenth Amendment rights have been violated.

⁴The doctrine of respondeat superior generally is inapplicable to § 1983 suits, such that an employer or supervisor is not liable for the acts of his employees, absent an official policy or
(continued...)

claims are moot as he has been removed from the Sex Offender Registry; (8) Plaintiff's claims are barred by the applicable statute of limitations under the South Carolina Tort Claims Act; (9) Plaintiff cannot demonstrate any gross negligence on the part of Defendants; (10) Plaintiff's tort claims are barred by the South Carolina Tort Claims Act; and (11) Plaintiff cannot establish a claim for defamation.

1. Injunctive and Declaratory Relief

Defendants argue that Plaintiff's claims are moot or alternatively that his request for injunctive relief is moot because he has been removed from the Sex Offender Registry (the "Registry"). Plaintiff appears to concede that his injunctive claims are moot, but argues that he can still recover monetary damages. See Plaintiff's Opposition Memorandum at 9. Plaintiff's claims for injunctive relief are now moot, as references to him as a sex offender have been removed (see Patterson Aff.). See Williams v. Griffin, 952 F.2d 820 (4th Cir. 1991); and Ross v. Reed, 719 F.2d 689 (4th Cir. 1983).

2. Due Process

Plaintiff alleges that his due process rights were violated because he was labeled as a sex offender without due process and his picture and name were placed on a website with false information that he was a sex offender. Defendants argue that Plaintiff's due process rights were

⁴(...continued)

custom which results in illegal action. See Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Fisher v. Washington Metro Area Transit Authority, 690 F.2d 1133, 1142-43 (4th Cir. 1982). Higher officials may be held liable for the acts of their subordinates, however, if the official is aware of a pervasive, unreasonable risk of harm from a specified source and fails to take corrective action as a result of deliberate indifference or tacit authorization. Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984), cert. denied, Reed v. Slakan, 470 U.S. 1035 (1985).

not violated because state law required that he be placed on the Register at certain times; any error as to his status was corrected; Plaintiff has not alleged any specific acts by Defendants that would constitute a constitutional violation; Plaintiff has not challenged the substantive law as being defective, only the procedural aspects of its application; Plaintiff fails to show a protected property or liberty interest implicated by the alleged actions; and to the extent Plaintiff alleges he was deprived a protected property or liberty interest, he was provided with a suitable post-deprivation remedy.⁵

The South Carolina Sex Offender Registry Act (the "Act") was enacted in 1994 and placed under the direction of the South Carolina State Law Enforcement Division ("SLED"). S.C. Code Ann. § 23-3-410. The statute also authorizes SLED to create regulations to implement the Act. S.C. Code Ann. § 23-3-420. The Act requires that persons who have been convicted of, adjudicated delinquent for, or pled guilty or nolo contendere to certain crimes register with the state of South Carolina as sex offenders. S.C. Code Ann. § 23-3-430.⁶

In 1994, the Act provided that kidnapping was a registrable offense. S.C. Code Ann. § 23-3-430 (West Supp. 1994). The Act was modified in 1996, and kidnapping was deleted from the registrable offense list. S.C. Code Ann. § 23-3-430 (West Supp. 1996). In 1998, the Act was modified again, and kidnapping was again included as a registrable offense. A person convicted of kidnapping had to register "except when the court [made] a finding on the record that the

⁵See Hudson v. Palmer, 468 U.S. 517, 533 (1984); and Zinermon v. Burch, 494 U.S. 113, 131-132 (1990).

⁶All references to the South Carolina Code are to the 2004 Supplement unless otherwise indicated.

offense did not include a criminal sexual offense.” S.C. Code Ann. § 23-3-430 (West Supp. 1998).

When the Act was enacted in 1994, Plaintiff met the state statutory designation of a sex offender based on his kidnapping conviction. See S.C. Code Ann. § 23-3-430 (West Supp. 1994); Patterson Aff. Patterson states that after the 1996 amendment, Plaintiff was removed from the Registry. Patterson Aff. Although Plaintiff was listed on a February 1998 Parole Hearing List as a sex offender, this information was corrected after Plaintiff filed a grievance.⁷ Mary Coleman Aff., Inmate Grievance Form Step 1. Plaintiff was again placed on the Registry when kidnapping was re-inserted into the statute in June 1998. Patterson Aff. Contrary to Plaintiff’s argument, there was no finding in his Commitment and Sentence documents that his kidnapping offense did not include a criminal sexual offense. Patterson Aff., Attachments to Aff. (Plaintiff’s Commitment and Sentence documents). Plaintiff was removed from the Registry after SCDC received a letter from Judge Lee Alford, Chief Administrative Judge for South Carolina’s Sixteenth Judicial

⁷To the extent that Plaintiff is attempting to assert a claim concerning the parole list, the claim is barred by the statute of limitations. Plaintiff appears to concede this, only arguing that the statute of limitations does not preclude his claims concerning his later placement on a website list in which he was designated a sex offender. See Plaintiff’s Opposition Memorandum at 9-10.

State law concerning limitation of actions applies in claims brought under § 1983. See Wilson v. Garcia, 471 U.S. 261, 266 (1985); see also Burnett v. Grattan, 468 U.S. 42 (1984); and Owens v. Okure, 488 U.S. 235 (1989). In South Carolina, the statute of limitations is generally three years for claims arising after April 5, 1988. S.C. Code Ann. § 15-3-530. This action was not filed until over three years after the alleged incidents concerning the parole list. The South Carolina Tort Claims Act establishes a two-year statute of limitations for tort actions. S.C. Code Ann. § 15-78-110. Plaintiff claims he became aware he was listed as a sex offender on February 18, 1998, when a parole list was posted in the institution. Even assuming that he had an additional year to file his action if he filed a verified complaint (see S.C. Code Ann § 15-78-80 and 110), or that the statute of limitations was tolled during the pendency of his administrative proceedings (the Order from the Administrative Law Judge Division concerning Plaintiff’s appeal of his grievance is dated June 3, 2002), Plaintiff failed to timely file this action as to his parole list claim.

Circuit, stating that Plaintiff should not have to register as a sex offender. Patterson Aff.; Letter from Judge Lee Alford dated June 15, 2004; Plaintiff's Correspondence. Patterson states that Plaintiff is no longer included on the Registry. Patterson Aff.

Plaintiff's procedural due process claims fails because his name was placed on the Registry⁸ or internet pursuant to the terms of the Act, as discussed above. See Connecticut Dep't of Public Safety v. Doe, 538 U.S. 1, 7 (2003)(even assuming that the respondent was deprived of a liberty interest, due process did not entitle him to a hearing to establish a fact that was not material under the Connecticut's sex offender statute because the law's requirements turned on an offender's conviction alone); see also Ballard v. Chief of Federal Bureau of Investigation, 2004 WL 190425 (W.D.Va. 2004). Plaintiff also fails to show that his substantive due process rights were violated. An inmate does not have a liberty interest in preventing the publication of his criminal record. Paul v. Davis, 424 U.S. 693, 713 (1976)(Even if Plaintiff had a protected liberty interest, the criminal proceedings and the "categorical abrogation of that liberty interest by a validly enacted statute suffices to provide all the process that is 'due'"); Connecticut Dep't of Public Safety, 538 U.S. at 8 (J. Scalia concurring).

Additionally, Plaintiff has not received any additional benefits or had any benefits taken away because he was registered as a sex offender. Inmates are not required to submit to any treatment program based on sex offender status and they are not disciplined or deprived of any good-time credits because of the status. See S.C. Code Ann. §§ 23-3-400, et seq.

⁸Plaintiff's appears to allege that he was incorrectly designated as a sex offender on an SCDC website and parole, not that he was actually placed on SLED's Registry. His allegations concerning the SCDC website and parole list appear to be state law claims for defamation and/or gross negligence, rather than constitutional claims.

3. Eighth Amendment

Plaintiff alleges that his Eighth Amendment rights were violated because he was subjected to ridicule and emotional distress. Defendants argue that Plaintiff fails to show that his Eighth Amendment rights were violated because he fails to show any physical injury by being listed on a sex offender registry.

There is no federal constitutional right to be free from emotional distress, psychological stress, or mental anguish, and, hence, there is no liability under § 1983 regarding such claims. See Grandstaff v. City of Borger, 767 F.2d 161 (5th Cir. 1985), cert. denied, 480 U.S. 916 (1987); and Rodriguez v. Comas, 888 F.2d 899, 903 (1st Cir. 1989). The PLRA provides:

No Federal civil action may be brought by a prisoner confined in a jail, prison or other correctional facility for mental or emotional injury suffered while in custody without a prior showing of physical injury.⁹

42 U.S.C. § 1997e(e).

4. Immunity

Defendants argue that they are entitled to Eleventh Amendment immunity. When a defendant is sued in his or her official capacity, the suit is frequently intended as one against the state, the real party in interest. If review of the pleadings indicates that the state is, in fact, the party being sued, then a judgment awarding damages is precluded by the Eleventh Amendment

⁹The PLRA does not define "physical injury" and the Fourth Circuit has not ruled on the issue, but the Fifth Circuit held that "physical injury" must be more than de minimis, but need not be significant. Siglar v. Hightower, 112 F.3d 191 (5th Cir. 1997)(concluding that a sore, bruised ear lasting for three days was de minimis and failed to meet the requisite physical injury to support a claim of emotional or mental suffering); see also Zehner v. Trigg, 952 F. Supp. 1318 (S.D. Ind. 1997)(exposure to asbestos not physical injury necessary to support claim for mental or emotional injury under the PLRA), aff'd, 133 F.3d 459 (7th Cir. 1997).

of the United States Constitution. Although declaratory and/or injunctive relief may be granted, damages may not be awarded against the state. In the case of Will v. Michigan Department of State Police, 491 U.S. 58 (1989), the Supreme Court analyzed the interplay between § 1983 and the Eleventh Amendment of the Constitution and stated,

Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties. The Eleventh Amendment bars such suits unless the State has waived its immunity [cites omitted] or unless Congress has exercised its undoubted power under § 5 of the Fourteenth Amendment to override that immunity.

Id. at 66.

The Eleventh Amendment immunity granted to the states "applies only to States or governmental entities that are considered 'arms of the State' for Eleventh Amendment purposes," but the court found that state agencies, divisions, departments, and officials are entitled to the Eleventh Amendment immunity. Id. at 70. In reaching this conclusion, the court held that a suit against state officials acting in their official capacities is actually against the office itself and, therefore, against the state. State officials may only be sued in their individual capacities. Therefore, Defendants are entitled to Eleventh Amendment immunity from monetary damages in their official capacities.

Defendants also argue that they are entitled to qualified immunity in their individual capacities. The Supreme Court in Harlow v. Fitzgerald, 457 U.S. 800 (1982), established the standard which the court is to follow in determining whether a defendant is protected by qualified immunity.

Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not

violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Id. at 818.

The Court of Appeals for the Fourth Circuit, discussing qualified immunity, stated:

Qualified immunity shields a governmental official from liability for civil monetary damages if the officer's "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." "In determining whether the specific right allegedly violated was 'clearly established,' the proper focus is not upon the right at its most general or abstract level, but at the level of its application to the specific conduct being challenged." Moreover, "the manner in which this [clearly established] right applies to the actions of the official must also be apparent." As such, if there is a "legitimate question" as to whether an official's conduct constitutes a constitutional violation, the official is entitled to qualified immunity.

Wiley v. Doory, 14 F.3d 993 (4th Cir. 1994)(internal citations omitted), cert. denied, 516 U.S. 824 (1995). As discussed above, Plaintiff fails to show that Defendants violated any of his clearly established constitutional or statutory rights. Therefore, Defendants are entitled to qualified immunity in their individual capacities.

5. State Claims

Plaintiff's remaining claims are based on state law. It is recommended that discretion be exercised pursuant to 28 U.S.C. § 1367(c)(3) and that these remaining state law claims be remanded to the State court. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343 (1988); and Hinson v. Norwest Fin. SC, Inc., 239 F.3d 611 (4th Cir. 2001).

CONCLUSION

Based on a review of the record, it is recommended that Defendants' motion for summary judgment (Doc. 19) be granted.

Respectfully submitted,

s/Joseph R. McCrorey
United States Magistrate Judge

June 16, 2005
Columbia, South Carolina

The parties' attention is directed to the important information on the attached notice.

Notice of Right to File Objections to Magistrate Judge's Report and Recommendation
&
The Serious Consequences of a Failure to Do So

The parties are hereby notified that any objections to the attached Report and Recommendation (or Order and Recommendation) must be filed within ten (10) days of the date of its filing. 28 U.S.C. § 636 and Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three days for filing by mail. Fed. R. Civ. P. 6. Based thereon, this Report and Recommendation, any objections thereto, and the case file will be delivered to a United States District Judge fourteen (14) days after this Report and Recommendation is filed. Advance Coating Technology, Inc. v. LEP Chemical, Ltd., 142 F.R.D. 91, 94 & n. 3 (S.D.N.Y. 1992). A magistrate judge makes only a recommendation, and the authority to make a final determination in this case rests with the United States District Judge. See Mathews v. Weber, 423 U.S. 261, 270-271 (1976); and Estrada v. Witkowski, 816 F. Supp. 408, 410 (D.S.C. 1993).

During the ten-day period, but not thereafter, a party must file with the Clerk of Court specific, written objections to the Report and Recommendation, if he wishes the United States District Judge to consider any objections. Any written objections must *specifically identify* the portions of the Report and Recommendation to which objections are made *and* the basis for such objections. Failure to file written objections shall constitute a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the United States District Judge. See United States v. Schronce, 727 F.2d 91, 94 & n. 4 (4th Cir.), *cert. denied*, Schronce v. United States, 467 U.S. 1208 (1984); and Wright v. Collins, 766 F.2d 841, 845-47 & nn. 1-3 (4th Cir. 1985). Moreover, if a party files specific objections to a portion of a magistrate judge's Report and Recommendation, but does not file specific objections to other portions of the Report and Recommendation, that party waives appellate review of the portions of the magistrate judge's Report and Recommendation to which he did not object. In other words, a party's failure to object to one issue in a magistrate judge's Report and Recommendation precludes that party from subsequently raising that issue on appeal, even if objections are filed on other issues. Howard v. Secretary of HHS, 932 F.2d 505, 508-509 (6th Cir. 1991). See also Praylow v. Martin, 761 F.2d 179, 180 n. 1 (4th Cir.) (party precluded from raising on appeal factual issue to which it did not object in the district court), *cert. denied*, 474 U.S. 1009 (1985). In Howard, supra, the Court stated that general, non-specific objections are *not* sufficient:

A general objection to the entirety of the [magistrate judge's] report has the same effects as would a failure to object. The district court's attention is not focused on any specific issues for review, thereby making the initial reference to the [magistrate judge] useless. * * * This duplication of time and effort wastes judicial resources rather than saving them, and runs contrary to the purposes of the Magistrates Act. * * * We would hardly countenance an appellant's brief simply objecting to the district court's determination without explaining the source of the error.

Accord Lockert v. Faulkner, 843 F.2d 1015, 1017-19 (7th Cir. 1988), where the Court held that the appellant, who proceeded *pro se* in the district court, was barred from raising issues on appeal that he did not specifically raise in his objections to the district court:

Just as a complaint stating only 'I complain' states no claim, an objection stating only 'I object' preserves no issue for review. * * * A district judge should not have to guess what arguments an objecting party depends on when reviewing a [magistrate judge's] report.

See also Branch v. Martin, 886 F.2d 1043, 1046 (8th Cir. 1989) ("no de novo review if objections are untimely or general"), which involved a *pro se* litigant; and Goney v. Clark, 749 F.2d 5, 7 n. 1 (3rd Cir. 1984) ("plaintiff's objections lacked the specificity to trigger *de novo* review"). This notice, hereby, apprises the parties of the consequences of a failure to file specific, written objections. See Wright, supra; and Small v. Secretary of HHS, 892 F.2d 15, 16 (2nd Cir. 1989). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing addressed as follows:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

RECEIVED

AUG 05 2004

DIRECTOR

IN THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

04CP403521

William A. Thompson 145029
Plaintiff,

v.

Jon Ozmint, Director, SC Dept.
of Corr.; Dennis Patterson,
Records, SC Dept. of Corr.
Defendants.

IN THE COURT OF COMMON PLEAS

COMPLAINT

CIVIL ACTION NO. 04CP403521

RECEIVED

AUG 06 2004

GENERAL COUNSEL

2004 JUL 26 AM 9:32
B.B. BRANNON
C.C.C. SCOTT
G.S.

FILED

2004 241
NW 8-3
9-2-0

CIVIL RIGHTS COMPLAINT
WITH A JURY DEMAND

This is a civil action pursuant to SOUTH CAROLINA RULES OF CIVIL PROCEDURE filed by William A. Thompson, a state prisoner, alleging violation of his constitutional rights and seeks money damages, declaratory judgment, and injunctive relief. The plaintiff request a trial by jury.

Jurisdiction

1. This is a civil action under South Carolina Rules of Civil Procedures. The parties and subject matter of this case are within the jurisdiction of this Honorable Court pursuant to §§ 15-78-60(25), 15-78-100 of the Code of Laws of South Carolina of 1976 (as amended) and the South Carolina Rules of Civil Procedure, Statutory and common Laws and South Carolina Constitution for torts of Defendants for gross negligence and willful violations of civil rights, Criminal Laws, and for Defendants violation of S.C. Code of laws § 24-3-1130.

Parties

2. Plaintiff William A. Thompson is presently incarcerated at the State Prison of Richland County, Columbia South Carolina. Broad River Correctional Institution.

3. Defendant Jon Ozmint is the Director of the Department of Corrections of South Carolina and is responsible for the operation and management of the Department of Corrections. Article XII, § 2 of the South Carolina Constitution states: The general assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates. In 1960, the South Carolina Department of

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(1)

AUG 10 2004

INSURANCE RESERVE FUND
CLAIMS DEPARTMENT

Corrections (SCDC) was created to carry out the states responsibilities for the prison system. South Carolina Code of laws § 24-1-130 provides that SCDC is responsible for the proper care and treatment of prisoners. He is sued in his individual and official capacities.

4. Defendant Dennis Patterson, agent of the South Carolina Department of Corrections, works in the RECORDS BRANCH, in charge of inmate records, or has responsibilities in that Branch. He is sued in his individual and official capacities.

FACTS

5. In the month of January, 1998 plaintiff discovered that his name was on the PAROLE HEARING LIST, hearing date for February 18, 1998. Plaintiff was listed under the sex offense column. Plaintiff was in shock to see such a malicious scorn. Plaintiff's name and reputation and self-esteem, dropped to its lowest level. Plaintiff has had to face the significant stigma associated with being labeled a sex offender.

6. January 15, 1998 plaintiff sent a letter to South Carolina Law Enforcement (SLED), explaining the situation. Plaintiff shared how he felt emotionally, and the implications of wearing a sex offender label. Plaintiff did not get an answer from SLED.

7. January 16, 1998 plaintiff wrote letter to the PAROLE BOARD explaining his situation, but got no response on that letter.

8. Plaintiff wrote John Shupper, attorney at law. John Shupper wrote to Larry Batson, General Counsel about the sex offender list.

9. Plaintiff's first grievance dated July 30, 1998 final decision stated that system was changed and no longer listed inmate as a sex offender. The matter was deemed resolved.

10. First part of grievance was filed July 8, 1998, the final decision is discussed in paragraph 9.

11. Step 2 grievance dated 7/30/1998 stating that inmate was no longer classified as a sex offender. Inmate Thompson never was classified as a sex offender.

12. Plaintiff wrote General Counsel, Larry Batson explaining the situation that he was on the PAROLE HEARING LIST, listed on the sex offender column. Mr. Batson wrote back stating that inmate Thompson's allegations were in error, stating that he was not classified as a sex offender.

13. Plaintiff wrote the General Counsel back stating that he never said he was classified as a sex offender, that he was posted in the dorm on the PAROLE list under the sex offender column. He wrote back stating that he check inmate Thompson's record and it did not indicate that he was a sex offender.

14. Plaintiff wrote a request to the warden asking him to post a memorandum, clarifying that a mistake had been made putting inmate Thompson on the sex offender column. He stated that the institution was not responsible for publishing the information that I wanted.

15. Plaintiff had the grievance clerk check the computer to see if he was still on the sex registry and he indicated yes. Plaintiff file grievance step 1 on 11/27/2000; grievance # BRCI-1091-00. Paragraph 20, of action taken by IGC: states that defendant Dennis Patterson told grievance clerk that inmate Thompson would remain on the sex offender registry.

16. Plaintiff filed grievance step 2, 2/2/2001. Plaintiff, not being lettered in the law had no idea what it meant for, THE COURT TO MAKE A FINDIGN ON THE RECORD. The OFFENDER RECORDS BRANCH stated that the court needs a ruling or decision at the time of sentencing. Plaintiff had no idea of how he was supposed to get this ruling since his crime was in 1987.

17. Plaintiff filed his appeal with ALJD 3/15/01, it was denied June 3, 2002 Docket No. 01-ALJ-04-00423-AP. It was dismissed for lack of jurisdiction.

Plaintiff not being lettered in the law did not know what to do.

18. Grievance investigation dated 11/27/2000, 11/28/2000 and 1/4/2001. Dennis Patterson stated that inmate Thompson would remain on the sex registry. Dennis Patterson made the statement that he wasn't aware of the sex registry Amendment at the time inmates grievance was resolved. The Amendment took place 6/11/98, inmate's grievance was resolved 11/9/98. 5 months difference.

19. Plaintiff finally figured out what it means for the court to make a finding. Plaintiff filed an affidavit with the Clerk of Court trying to get this order. The Clerk sent back an unsigned letter stating that that office could not help. Letter dated 5/19/2004.

20. Plaintiff's picture and name was placed on the Inmate Search Web Site. It stated: Sex Offender Registry YES. Plaintiff does not have a sex offense and never in his life has had one. Because of this erroneous printing of his name on a parole list and posted in all the dorms of all institutions in South Carolina, inmate suffers the stigmatizing effect of being labeled a sex offender.

21. A friend of plaintiff's called solicitor Betty Miller in York County about getting an order stating there was no sex offense involved in his crime. Betty Miller referred him to the public defenders office and stated that they wouldn't do it that she would because it was a simple matter. Plaintiff does not know if this has been done yet.

22. Plaintiff filed a motion to the solicitor's office just before he found out that his friend had called the solicitor. Filed 5/24/04.

23. Defendant Ozmint stated in a letter dated May 12, 2004 to my friend that he don't know anything about an Inmate Web Site.
24. Plaintiff wrote SLED to ask Ron Cook for help. Got a letter back stating that Mr. Cook had retired.
25. Plaintiff sent Dennis Patterson a letter explaining that he knows that plaintiff is not a sex offender and that he is wrong in what he is doing, that he has one last chance to remove plaintiff from the sex offender registry or be sued in a court of law.
26. After all the trouble that plaintiff has been through, he finds on a display text for an inmate that was faxed to Gene Noles. It says that inmate needs a consent order from judge that sentenced him, York County. Plaintiff has tried and tried to get this done.
27. Plaintiff presented Dennis Patterson with an affidavit signed by a judge but it wasn't good enough for him.

CLAIMS

First cause of action

28. The actions of the defendants stated in paragraphs 5 through 27 denied plaintiff due process of law in violation of the fifth and fourteenth Amendments.
29. Plaintiff's fifth and fourteenth Amendment rights to be notified and given the right to defend was violated when
 - (a) he was labeled a sex offender without due process and
 - (b) his picture and name was placed on a web site stating false information for the world to see

Second cause of action

30. Plaintiff alleges that defendants violated state law by

- (a) publication of false information causing irreparable damage and
- (b) defamation of character and institutional record

31. Defendants violated state law when

- (a) falsifying information on a web site or cause of and
- (b) placing false information on a parole list as it was posted in all SC institutions dorms causing plaintiff to wear a sex offender label

Fourth cause of action

32. Plaintiff alleges an eighth Amendment violation of his Constitutional right because

- (a) he has been subjected to ridicule and
- (b) causing plaintiff emotional stress

Relief

Wherefore, plaintiff requests this Honorable Court to grant the following relief:

A. Issue a declaratory judgment that defendants violated the United States Constitution and State Law when they:

- 1) labeled plaintiff as sex offender without justification
- 2) caused defamation by intentional false publishing plaintiff as a sex offender
- 3) showed malice, knowingly and with false, reckless disregard, made such defamatory statement, false information


B. Issue an injunction ordering that defendants and their agents

- 1) refrain from such careless disregard for other human beings
- 2) refrain from such arbitrary abuse

(6)

- 3) refrain from putting false information on web site, or any other place
- C. Grant compensatory damages in the following amount
 - 1) \$10,000 against defendant Jon Ozmint
 - 2) \$10,000 against defendant Dennis Patterson
- D. Grant punitive damages of \$10,000 against each of the defendants
- E. Grant such other relief as it may appear plaintiff is entitled.

Respectfully Submitted,



William A. Thompson 145029
ERCI Congaree Rm. 131
4460 Broad River Road
Columbia, SC 29210

Date: 8.3.04

(7)

RECEIVED

AUG 10 2004
INSURANCE RESERVE FUND
CLAIMS DEPARTMENT

04CP 403521

IN THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

William A. Thompson 145029

Plaintiff,

v.

Jon Ozmint, Commissioner for
South Carolina Department of
Corrections.

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 04CP403521

SUMMONS

2004 JUN 26 AM 9:32
BARBARA C. SCOTT
C. CLERK S.S.

FILED

To the above named defendant: Jon Ozmint Commissioner of South Carolina
Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221

You are hereby summoned and required to serve upon plaintiff William A. Thompson, 145029, whose address is 4460 Broad River Road, Columbia, South Carolina 29210, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you failed to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of the Court

Dated _____

ACKNOWLEDGEMENT OF RECEIPT OF SUMMONS
AND COMPLAINT

I declare under penalty of perjury, that I received a copy of the summons
and of the complaint in the above-captioned manner at

Defendant's name

Relationship to Entity/
Authority to receive service
of process.

Date of Signature

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

WILLIAM A. THOMPSON #145029,) 2004-CP-40-3521
)

PLAINTIFF,)
)

-vs-)

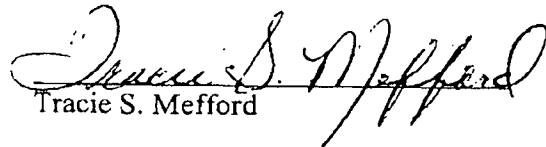
CERTIFICATE OF SERVICE)

JON OZMINT, DIRECTOR, S.C. DEPT.)
OF CORR.; DENNIS PATTERSON,)
RECORDS, S.C. DEPT. OF CORR.,)

DEFENDANTS.)
)

This is to certify that I, Tracie S. Mefford, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached **Notice of Removal** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

**William A. Thompson #145029
Broad River Correctional Institution
Congaree Room 131
4460 Broad River Road
Columbia, South Carolina 29210**


Tracie S. Mefford

Columbia, South Carolina

September 2, 2004

FILED

JAN 13 2005

LARRY W. PROPEL, CLERK
COLUMBIA, S. C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DIVISION OF SOUTH CAROLINA
COLUMBIA DIVISION

WILLIAM A. THOMPSON #145029,)
)
 PLAINTIFF,)
)
 -vs-)
)
 JON OZMINT, DIRECTOR, S.C. DEPT.)
 OF CORR.; DENNIS PATTERSON,)
 RECORDS, S.C. DEPT. OF CORR.,)
)
 DEFENDANTS.)

3: 04-22109-17BC

**NOTICE OF MOTION
AND MOTION FOR
SUMMARY JUDGMENT**

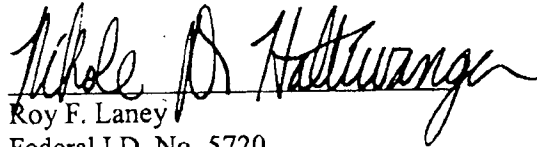
TO: WILLIAM A. THOMPSON, #145029, PRO SE:

YOU WILL PLEASE TAKE NOTICE that Defendants, Director Jon E. Ozmint and Dennis Patterson, by and through their undersigned counsel, do hereby move pursuant to Rule 56 of the Federal Rules of Civil Procedure, for an Order granting Defendants' summary judgment in the above captioned action on the grounds that there is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law for the following reasons: 1) as a matter of law, Plaintiff has not alleged any facts which would support any claims for violations under the United States Constitution or any other Federal right, privilege or immunity; 2) as a matter of law, Defendants are not "persons" as defined by 42 U.S.C. § 1983; 3) as a matter of law, Defendants are entitled to good faith qualified immunity; 5) as a matter of law, Defendants are not liable under the doctrine of respondeat superior; 6) as a matter of law, Plaintiff has failed to exhaust his administrative remedies; 7) as a matter of law, Plaintiff's claims are moot; 8) as a matter of law, Plaintiff's suit is barred by the statute of limitations; and 9) as a matter of law, Plaintiff is not entitled to any claim for relief pursuant to the South Carolina Tort Claims Act. This motion is further based upon the laws, rules and statutes of the United States of America,

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the pleadings and affidavits in this case, and such other material as this Court may deem just and proper.

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Attorneys for Defendant

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January 13, 2005

FILED

JAN 13 2005

LARRY W. PROPEL, CLERK
COLUMBIA, S. C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DIVISION OF SOUTH CAROLINA
COLUMBIA DIVISION

WILLIAM A. THOMPSON #145029,)
)
 PLAINTIFF,)
)
 -vs-)
)
 JON OZMINT, DIRECTOR, S.C. DEPT.)
 OF CORR.; DENNIS PATTERSON,)
 RECORDS, S.C. DEPT. OF CORR.,)
)
 DEFENDANTS.)

3: 04-22109-17BC

**MEMORANDUM IN
SUPPORT OF
SUMMARY JUDGMENT**

I. INTRODUCTION

On July 26, 2004, Plaintiff, William Thompson ("Thompson"), filed suit against Defendants, Jon Ozmint and Dennis Patterson ("Ozmint" and "Patterson"), in South Carolina's Court of Common Pleas. In his Complaint, Thompson alleges violations of his due process rights under the Fifth and Fourteenth Amendments when he was labeled a sex offender. Thompson also alleges an Eighth Amendment violation because he was subjected to ridicule and emotional stress. Lastly, Thompson alleges state law claims for defamation and gross negligence pursuant to the South Carolina Tort Claims Act. Defendants removed the case to the United States District Court. For the reasons set forth in this Memorandum, Defendants are entitled to summary judgment on all claims in this action.

II. STATEMENT OF FACTS

The Sex Offender Registry Act was enacted in 1994 and placed under the direction of the State Law Enforcement Division ("SLED"). S.C. Code Ann. § 23-3-410 (Supp. 2004). The statute also authorizes SLED to create regulations to implement the Act. S.C. Code Ann. §23-3-420 (Supp. 2004). The Sex Offender Registry Act requires that persons who have been convicted

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of, adjudicated delinquent for, or pled guilty or nolo contendere to certain crimes register with the state of South Carolina as sex offenders. S.C. Code Ann. §23-3-430 (Supp. 2004).

In 1994, the Sex Offender Registry Act provided that kidnapping was a registrable offense. S.C. Code Ann. § 23-3-430 (Supp. 1994). The statute was modified in 1996, and kidnapping was deleted from the registrable offense list. S.C. Code Ann. § 23-3-430 (Supp. 1996). In 1998, the statute was modified a second time, and kidnapping was again included as a registrable offense. S.C. Code Ann. § 23-3-430 (Supp. 1998). However, this time, a person convicted of kidnapping had to register unless "the court ma[de] a finding on the record that the offense did not include a criminal sexual offense." In 1999, the statute was modified a third time to change the wording of the section to include only a conviction of kidnapping of a person eighteen years of age or older within the registry requirement. S.C. Code Ann. § 23-3-430 (Supp. 1999).

In 1987, Thompson began serving a life sentence for kidnapping. Thompson has always been a resident of Broad River Correctional Institution. When the Sex Offender Registry statute was enacted in 1994, Thompson was required to register as a sex offender. (Affidavit of Dennis Patterson.) After the 1996 amendment, Thompson was removed from the Registry. (Affidavit of Dennis Patterson.) Defendants admit Thompson was listed on a February 1998 Parole Hearing List as a sex offender. Thompson filed a grievance, and this information was corrected. (Affidavit of Mary Coleman; Inmate Grievance Form Step 1.) However, Thompson was again placed on the Registry when kidnapping was re-inserted into the statute in June 1998. (Affidavit of Dennis Patterson.) There was no finding in Thompson's Commitment and Sentence documents that his kidnapping offense did not include a criminal sexual offense. (Affidavit of Dennis Patterson; Commitment; Sentence.)

In July 2004, Thompson was removed from the Sex Offender Registry after SCDC received a letter from Judge Lee Alford stating that Thompson should not have to register as a sex offender. (Affidavit of Dennis Patterson; June 15, 2004, Letter from Judge Lee Alford; Inmate Correspondence.) Thompson is no longer included on the Sex Offender Registry. (Affidavit of Dennis Patterson.)

III. STANDARD FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56(c) "mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). As a practical matter, this standard means that a plaintiff "must produce sufficient evidence to reasonably support a jury verdict in its favor." Grooms v. Mobay Chem. Corp., 861 F. Supp. 497, 501 (D.S.C. 1991) (Emphasis added), aff'd 993 F.2d 1537 (table) (4th Cir. 1993), cert. denied, 510 U.S. 996, 114 S.Ct. 561 (1993). Thus, "[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Where, as here, Thompson cannot provide sufficient evidence in support of his claims, the Court should enter summary judgment in favor of the Defendants.

IV. ARGUMENT

A. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON THOMPSON'S CLAIMS BROUGHT PURSUANT TO 42 U.S.C. §1983.

1. Defendants are not Persons as Defined by 42 U.S.C. §1983.

To the extent Thompson has set forth claims against Defendants pursuant to 42 U.S.C. §1983, such claims should be dismissed.

42 U.S.C. § 1983 provides in part:

Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (Emphasis added).

In *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), the United States Supreme Court stated that a suit brought against “a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office.” Suits against officials in their official capacity are simply another way of pleading an action against the entity for which the official is an agent. *Monell v. Dept. of Social Servs.*, 436 U.S. 658, 690 (1978). Additionally, states and state agencies are not “persons” as defined by 42 U.S.C. §1983 and therefore are not subject to suit under section 1983. *Will*, at 58.

In his Complaint, Thompson asserts his claims against Defendant Ozmint as the Director of SCDC and against Defendant Patterson as an employee of the Inmate Records department at SCDC. (Plaintiff’s Complaint, pp. 3 & 4.) These are allegations against Defendants in their official capacities as employees of SCDC, a state agency. Thus, Thompson’s claims against these Defendants in their official capacities are actually claims against SCDC and should be dismissed.

2. **As a Matter of Law, Defendants did not Violate Thompson’s Constitutional Rights.**

a. **Summary of Thompson’s Constitutional Claims.**

Thompson has alleged two claims for violations of the United States Constitution. First, Thompson alleges that Defendants violated his due process rights under the Fifth and Fourteenth Amendments by labeling him a sex offender without notifying him or giving him a chance to defend. (Plaintiff’s Complaint, ¶ 29.) Second, Thompson alleges Defendants violated his Eighth

Amendment rights against cruel and unusual punishment because he was subjected to ridicule and emotional stress when he was labeled a sex offender. (Plaintiff's Complaint, ¶ 32.)

Defendants are entitled to judgment as a matter of law on both of Thompson's claims.

b. **Defendants did not Violate Thompson's Due Process Rights by Labeling Thompson as a Sex Offender According to the Requirements of the State Sex Offender Registry Law.**

Thompson alleges he was deprived of his due process rights when he was labeled a sex offender without being notified or given a chance to defend against this label. Thompson states he first became aware he was listed as a sex offender when a parole list was posted in the institution in January 1998. (Plaintiff's Complaint, ¶ 5.) Defendants admit that Thompson was listed on this Parole Hearing List as a sex offender. This error was corrected after Thompson filed a grievance. (Affidavit of Mary Coleman; Inmate Grievance Form Step 1.) Thompson was again required to register as a sex offender when the statute was amended in June 1998. (Affidavit of Dennis Patterson.)

However, to the extent that SCDC personnel listed Thompson as a sex offender in error, Thompson has not alleged any specific acts by Ozmint and Patterson which would constitute a violation of the United States Constitution. To state a procedural or substantive due process claim, an inmate must demonstrate that he was deprived of life, liberty, or property by government action. Beverati v. Smith, 120 F.3d 500, 502 (4th Cir. 1997). State law provides that persons convicted of certain crimes are required to register as sex offenders. As previously stated, the statute originally provided that a kidnapping conviction was a registrable offense. S.C. Code Ann. § 23-3-430 (Supp. 2004). Now, the statute provides that kidnapping of a person eighteen years of age or older is a registrable offense unless the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense. S.C. Code Ann. § 23-3-430 (Supp. 2004). Thompson was convicted of kidnapping,

and there was no finding in his court documentation that his offense did not include a criminal sexual offense. (Affidavit of Dennis Patterson; Commitment; Sentence.)

“Sex offenders are a serious threat in this Nation.” McKune v. Lile, 536 U.S. 24, 32 (2002). As such, the United States Supreme Court has consistently upheld state sex offender registry requirements. Smith v. Doe, 538 U.S. 84 (2003); Connecticut Dept. of Public Safety v. Doe, 538 U.S. 1 (2003). Thompson does not challenge the substantive law as being defective, only the procedural aspects of its application in his situation. States are not barred by procedural due process principles from drawing such general sex offender classifications as are at issue here. Connecticut Dept. of Public Safety v. Doe, 538 U.S. 1, at 8.

The Supreme Court has identified only two instances when an inmate is deprived of liberty that due process protections are required: when a change in the conditions of confinement is so severe that it essentially exceeds the sentence imposed by the court, and when the state has consistently bestowed a certain benefit to prisoners, typically through statute or administrative policy, and the deprivation of the benefit “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin v. Connor, 515 U.S. 472, 484 (1995). Examples of the second instance are good-time credits and parole, neither of which are constitutionally required, but are often provided to inmates through state laws.

In the present case, state law has not provided any additional benefits to or taken any benefits from inmates who are required to register as sex offenders. Inmates are not required to submit to any treatment program because of their sex offender status. They are not disciplined or deprived of any good-time credits. S.C. Code Ann. § 23-3-400 to -530 (Supp. 2004).

Being required to register as a sex offender clearly does not implicate any property interest. Thompson alleges that his reputation was injured when he was listed as a sex offender. Case law establishes that injury to reputation alone, without some other more tangible interest, is

not a liberty or property interest within the procedural protections of the due process clause. Paul v. Davis, 424 U.S. 693, 708-09 (1976). Standing alone, defamation is a tort actionable under most state laws, but not a constitutional deprivation. Siegert v. Gilley, 500 U.S. 226, 233 (1991).

However, to the extent that Thompson alleges he was intentionally deprived of a property interest by Defendants' actions, no due process claim arises unless or until the state fails or refuses to provide a suitable postdeprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533 (1984). The courts have determined that this also applies in cases of liberty deprivations. Zinerman v. Burch, 494 U.S. 113, 131-132 (1990). The grievance process available to SCDC inmates complies with the requirements of due process and is such a postdeprivation remedy. Al-Shabazz v. State, 338 S.C. 354, 527 S.E. 2d 742 (2000). Thompson filed a grievance with SCDC. (Affidavit of Mary Coleman.) Thompson appealed his grievance all the way to the Administrative Law Division, but no further. (Affidavit of Mary Coleman.) Thompson should have continued to pursue his grievance through the court system by appealing to the Circuit Court, Court of Appeals, and S.C. Supreme Court, but chose not to do so. Thompson was required to exhaust his administrative remedies before filing a civil action in circuit court. Thus, Thompson's Complaint should be dismissed.

c. **Defendants did not Violate Thompson's Eighth Amendment Rights by Subjecting Him to Ridicule and Emotional Stress.**

Thompson alleges an Eighth Amendment violation because he was subjected to ridicule and emotional stress when he was listed as a sex offender on a parole list. To establish a prima facie case under the Eighth Amendment, a plaintiff must show both "(1) a serious deprivation of a basic human need; and (2) deliberate indifference to prison conditions on the part of prison officials." Strickler v. Waters, 989 F.2d 1375, 1379 (4th Cir. 1993). The Eighth Amendment prohibits cruel and unusual punishment, not cruel and unusual prison conditions. Id. An inmate

must show a serious or significant physical or emotional injury that resulted from the challenged condition or he cannot survive summary judgment. *Id.* at 1381. Additionally, the Prison Litigation Reform Act states that an inmate cannot bring a claim for mental or emotional injury without a prior showing of some physical injury. 42 U.S.C. §1997e (e).

Thompson has not alleged that being listed on the sex offender registry caused him any physical injury. He has presented no evidence of any physical injury he sustained. Additionally, Thompson cannot establish that he was deprived of any basic human need: food, shelter, clothing, or medical care. Without this showing, Thompson does not have a claim for an Eighth Amendment violation, and his Complaint should be dismissed.

3. **Defendants in Their Individual Capacities are Entitled to Qualified Immunity.**

In establishing the standard to determine whether a defendant is entitled to qualified immunity, the United States Supreme Court has stated that “[g]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The Fourth Circuit has further stated

“In determining whether the specific right allegedly violated was ‘clearly established’, the proper focus is not upon the right at its most general or abstract level, but at the level of its application to the specific conduct being challenged.’ Moreover, ‘the manner in which this [clearly established] right applies to the actions of the official must also be apparent.’ As such, if there is a ‘legitimate question’ as to whether an official’s conduct constitutes a constitutional violation, the official is entitled to qualified immunity.”*Id.*

The federal courts have set forth a three-step inquiry to determine whether qualified immunity is an applicable defense. First, the court “must identify the specific constitutional right allegedly violated.” *Pritchett v. Alford*, 973 F.2d 307, 312 (4th Cir. 1992). Then, the court

should "inquire whether the right was clearly established at the time of the alleged violation." Id. This does not mean that the exact conduct must have been held unlawful, but that the unlawfulness of the conduct must be apparent under pre-existing law. Anderson v. Creighton, 483 U.S. 635, 640 (1987). Finally, the court must "determine whether a reasonable person in that official's position would have known that his conduct violated that right." Pritchett, at 312.

As previously discussed, Thompson has not established a violation of any constitutional right. Nor has Thompson demonstrated any unlawful conduct by any SCDC employees. Listing inmates on a sex offender registry in compliance with state law is not an unlawful action. Further, a reasonable person would have no reason to believe that his conduct in enforcing a state law would violate a constitutional right. Therefore, Defendants are entitled to qualified immunity for Thompson's alleged constitutional violations.

4. **Defendants are not Liable Under the Doctrine of Respondeat Superior.**

The doctrine of respondeat superior is generally inapplicable to section 1983 suits, and an employer or supervisor is not liable for employees' actions unless there is an official policy or custom which results in illegal action. Monell v. Dept. of Social Services, 436 U.S. 658, 694 (1978). Upper level officials may be liable if the official is aware of a pervasive, unreasonable risk of harm from a specified source and fails to take corrective action as a result of deliberate indifference or tacit authorization. Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984). In this instance, there has been no illegal action and no unreasonable risk of harm. Thus, Plaintiff's Complaint should be dismissed.

5. **Thompson has Failed to Exhaust his Administrative Remedies.**

The Prison Litigation Reform Act requires that a prisoner exhaust all available administrative remedies before filing a section 1983 action complaining of prison conditions. 42 U.S.C. §1997e (a). The term "prison conditions" means all prison life, whether general

circumstances or particular episodes and irrespective of the type of wrong alleged. Porter v. Nussle, 534 U.S. 516 (2002). Further, the inmate must allege in his complaint that he has exhausted the available administrative remedies. Failure to do so mandates dismissal of the prisoner's claim without prejudice. Massey v. Wheeler, 221 F.3d 1030 (7th Cir. 2000).

The South Carolina Supreme Court has outlined the procedure a state prisoner must follow to obtain a review of an SCDC decision in non-collateral or administrative matters, i.e. where the inmate is not challenging the validity of a conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 376, 527 S.E.2d 742, 749 (2000). Administrative matters include disciplinary outcomes, calculation of sentence-related credits, custody status and other conditions of imprisonment. Id. at 749-50. According to this procedure, the inmate must first file a grievance, which gives the inmate "a method to raise the matter to prison officials and create a reviewable record." Id. at 753. Once SCDC makes its final decision, the inmate has the right, in certain cases, to appeal to the State Administrative Law Division and thereafter to the South Carolina Circuit Court, Court of Appeals and Supreme Court. Id. at 754. The Administrative Law Division has jurisdiction over all inmate grievance appeals that have been properly filed. Slezak v. SCDC, 605 S.E.2d 506, 507 (2004).

As previously stated, Thompson filed a grievance regarding his allegedly erroneous designation as a sex offender. (Affidavit of Mary Coleman). This grievance proceeded through the proper channels and was appealed to the Administrative Law Judge Division. (Affidavit of Mary Coleman). Thompson received a final decision from the Administrative Law Judge Division, but did not appeal to the Circuit Court. (Order of Dismissal.) Thus, Thompson has failed to exhaust the administrative remedies available to him and cannot proceed with his suit.

6. Thompson's Claims are Moot.

A case is moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Murphy v. Hunt, 455 U.S. 478, 481 (1982). Pursuant to Judge Lee Alford's letter dated June 15, 2004, Thompson was removed from the Sex Offender Registry. (Affidavit of Dennis Patterson; June 15, 2004, Letter from Judge Lee Alford; Inmate Correspondence.) Thompson is no longer designated a sex offender and has no live controversy.

Even if Thompson's Complaint is not moot, Thompson's request for relief in the form of an injunction is moot. A plaintiff seeking injunctive relief has the stiff burden of showing that he is under imminent threat of suffering further harm in the absence of the injunctive relief that he seeks. Connecticut v. Massachusetts, 282 U.S. 660, 674 (1931). An injunction is a drastic remedy and will not issue unless there is an imminent threat of illegal action. Bloodgood v. Garranghty, 783 F.2d 470, 475 (4th Cir. 1986).

As of July 12, 2004, Thompson's inmate record was corrected and he is no longer listed as a sex offender in SCDC's records. (Affidavit of Dennis Patterson; Inmate Correspondence.) As a judge has now documented that there was no sex offense involved in his kidnapping conviction, there is no threat of Thompson returning to the Sex Offender Registry under the current statutory provisions. A court cannot enjoin or restrict activity which is not occurring or which will not occur in the future. As there is nothing to enjoin, Thompson's request for an injunction should be dismissed as moot.

7. Thompson's Suit is Barred by the Statute of Limitations.

42 U.S.C. §1983 does not contain a statute of limitations and must rely on the statute of limitations established by state law. In South Carolina, the Tort Claims Act establishes a two-year statute of limitations for tort actions. S.C. Code Ann. §15-78-110. Thompson complains he

first became aware he was listed as a sex offender on February 18, 1998, when a parole list was posted in the institution. (Plaintiff's Complaint, ¶ 5.) As such, Thompson had two years from that date to institute a proceeding against these Defendants. Thompson did not file this suit in circuit court until July 26, 2004. Thus, the statute of limitations has expired and Thompson's action against Defendants Ozmint and Patterson should be dismissed.

Even assuming that the statute of limitations was tolled while Thompson pursued his administrative remedies, Thompson is still outside the statute of limitations period. The Order from the Administrative Law Judge Division is dated June 3, 2002. (Order of Dismissal.) Thompson did not file this action until July 26, 2004. The statute of limitations period expired prior to Thompson's filing, and the suit should be dismissed.

B. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON THOMPSON'S TORT CLAIMS.

1. Thompson Cannot Demonstrate any Gross Negligence on the Part of Defendants, and His Tort Claims are Barred by the South Carolina Tort Claims Act.

The South Carolina Tort Claims Act is the exclusive remedy for tort suits brought against the State of South Carolina and its political subdivisions. S.C. Code Ann. §15-78-20. The Tort Claims Act does not create causes of action. Rather, it removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act. Summers v. Harrison Constr., 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989). The Act provides several exceptions to the government's waiver of immunity. One such exception provides that a governmental entity is not liable for a loss resulting from the "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any ...prisoner...,of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. §15-78-60(25).

Gross negligence means the failure to exercise even a slight degree of care. Moore v. Berkeley County School Dist., 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1997). Gross negligence is the intentional, conscious failure to do something which one ought to do. Worsley Companies, Inc. v. Town of Mt. Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000). When the evidence supports only one reasonable inference, summary judgment is appropriate on the issue of gross negligence. Id. Under the South Carolina Tort Claims Act, a person must suffer a loss to have a claim against a state or its agencies. S.C. Code Ann. §15-78-50 (a). A loss is defined as bodily injury, disease, death, or damage to personal property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering and mental anguish. S.C. Code Ann. §15-78-30 (f). A person must suffer a bodily injury before he can claim damages for mental anguish or pain and suffering. Thompson has not alleged any bodily injury and thus has no claim under the Tort Claims Act.

Additionally, Thompson has failed to allege facts which support a violation of a tort duty. To establish a claim for gross negligence, Thompson must prove: 1) Defendants had a duty of due care; 2) Defendants breached the duty by failing to exercise a slight degree of care; 3) proximate cause; and 4) damages. Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281, 283 (2003). State law establishes that persons convicted of kidnapping must be included on the Sex Offender Registry unless there was a finding in the record that no sex offense was involved. S.C. Code Ann. § 23-3-430. By following the provisions of state law, Defendants Ozmint and Patterson did not breach any duty of care that may have been owed to Thompson. Further, Thompson's allegations relate to intentional SCDC decisions. Even if true, such allegations as a matter of law do not constitute a "failure to use slight care."

Thompson cannot establish a violation of a tort duty by Defendants in this situation. As such, Defendants Ozmint and Patterson are entitled to summary judgment for Thompson's claims pursuant to the South Carolina Tort Claims Act.

2. **Under the South Carolina Tort Claims Act, Thompson Cannot Sue These Defendants Individually.**

State employees can only be sued for torts that occurred in performing their official duties under the terms of the South Carolina Tort Claims Act. The Act provides that a government employee is personally liable only if the plaintiff proves that his conduct was outside the scope of his official duties or his actions constituted actual fraud, actual malice, intent to harm, or a crime of moral turpitude. S.C. Code Ann. §15-78-70(b). Thompson has not alleged any conduct by either Ozmint or Patterson that was outside the scope of their official duties as SCDC employees. The South Carolina Tort Claims Act further provides that when bringing an action against a governmental entity under the provisions of this chapter, the plaintiff shall name as the party defendant only the agency or political subdivision for which the employee was acting. S.C. Code Ann. §15-78-70(c). Because Thompson's suit does not comply with the mandates of the South Carolina Tort Claims Act, his claims against these Defendants should be dismissed.

3. **Thompson Cannot Establish a Claim for Defamation.**

Thompson has no claim for defamation against Defendants Ozmint and Patterson. To establish a claim for defamation, a plaintiff must prove that the statement: 1) had a defamatory meaning; 2) was published with actual or implied malice; 3) was false; 4) was published by the defendant; 5) concerned the plaintiff; and 6) that the plaintiff suffered either legally presumed damages or special damages. Parker v. Evening Post Publishing Co., 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994).

Thompson cannot establish any publication of his sex offender status by Defendants Ozmint and Patterson. Thompson makes no allegations in his Complaint that either defendant actually published any information regarding his status as a sex offender. In fact, Thompson's only allegation against Defendant Ozmint is that he stated in a letter that he did not know anything about an inmate website. This is not an allegation of a defamatory statement.

Further, there are no allegations that either defendant ever personally said or wrote any statements about Thompson's sex offender status, beyond Thompson's allegation that sometime in 2000, Defendant Patterson stated Thompson would remain on the sex offender registry. According to the provisions of the Sex Offender Registry Act in effect at that time, Thompson was required to register as a sex offender. This would make any identification of Thompson as a sex offender a true statement, and hence not defamatory. Thus, Thompson cannot establish any defamation through Defendant Patterson's alleged statement.

Thompson also cannot establish any malice by Defendants in this instance. Thompson attempts to show that Defendant Patterson acted with malice by stating that Patterson refused to remove Thompson from the registry even though he knew Thompson was not a sex offender. Even if this is true, Patterson could not ignore the dictates of state law. As an employee of a South Carolina law enforcement agency, Patterson must comply with the requirements of applicable statutes. Thus, Patterson could not remove Thompson from the registry without appropriate documentation.

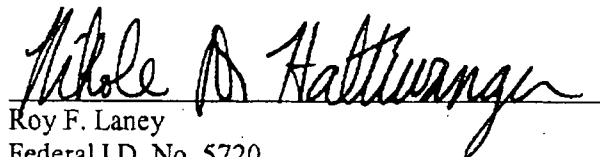
Finally, to the extent that Defendants personally published information about Thompson's sex offender status, that publication was privileged. Thompson's status as a sex offender was established as required by state statute and regulations promulgated by SLED. SCDC personnel audited Thompson's court documentation and categorized him as a sex

offender according to state law. (Affidavit of Dennis Patterson.) Publication of information contained in judicial reports is privileged unless actual malice is established. Padgett v. Sun News, 278 S.C. 26, 292 S.E.2d 30 (1982). The privilege is not measured by the truth of the information reported, but by the fair and substantially true account of the information contained in the documents. Id. at 31. As previously discussed, Thompson has not shown any malice on the part of Defendants. Thus, any actions Defendants may have taken in this process are protected as privileged, and Thompson's claims should be dismissed.

V. CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court grant Defendants' Motion for Summary Judgment.

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Attorneys for Defendants

Columbia, South Carolina

January 13, 2005.

IN THE UNITED STATES DISTRICT COURT
FOR THE DIVISION OF SOUTH CAROLINA
COLUMBIA DIVISION

WILLIAM A. THOMPSON #145029,)

3: 04-22109-17BC

PLAINTIFF,)

-vs-)

JON OZMINT, DIRECTOR, S.C. DEPT.)
OF CORR.; DENNIS PATTERSON,)
RECORDS, S.C. DEPT. OF CORR.,)

CERTIFICATE OF SERVICE

DEFENDANTS.)

This is to certify that I, Happy B. Rodes, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached **Notice of Motion and Motion for Summary Judgment and Memorandum in Support of Summary Judgment** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

**William A. Thompson #145029
Broad River Correctional Institution
Congaree Room 131
4460 Broad River Road
Columbia, South Carolina 29210**

Happy B Rodes
Happy B. Rodes

Columbia, South Carolina

January 13, 2005

JAN 13 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DIVISION OF SOUTH CAROLINA
COLUMBIA DIVISION

LARRY W. PROPPES, CLERK
COLUMBIA, S. C.

2005 JAN 10 PM 12:16

WILLIAM A. THOMPSON #145029,)
)
PLAINTIFF,)
)
-vs-)
)
JON OZMINT, DIRECTOR, S.C. DEPT.)
OF CORR.; DENNIS PATTERSON,)
RECORDS, S.C. DEPT. OF CORR.,)
)
DEFENDANTS.)

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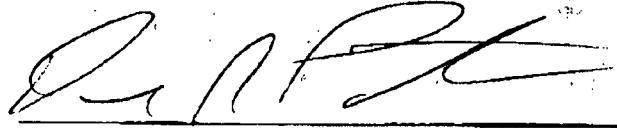
**AFFIDAVIT OF
DENNIS PATTERSON**

PERSONALLY appeared before me, Dennis Patterson, who, being first duly sworn, deposes and states as follows:

1. My name is Dennis Patterson. I am employed by the South Carolina Department of Corrections and oversee the Inmate Records Office. My office is responsible for maintaining copies of institutional records for all inmates within SCDC.
2. Attached are copies of the following documents: Classification Summary Report, Commitment, Sentence, letter dated June 15, 2004, from Judge Lee S. Alford, and Inmate Correspondence dated July 12, 2004. These documents are kept by my office in the ordinary course of business and were retrieved from Thompson's inmate record.
3. My office is also responsible for updating information regarding an inmate's sex offender status.
4. Thompson was convicted of kidnapping in 1987.
5. The Sex Offender Registry statute was enacted on July 1, 1994, and included the offense of kidnapping as a sex registry offense.
6. As such, Thompson was required to register as a sex offender.

- 7. On June 18, 1996, the statute was amended to remove kidnapping as a registrable offense unless registry was ordered by the court.
- 8. Thompson was then removed from the Sex Offender Registry.
- 9. On June 11, 1998, the statute was amended again. Kidnapping was re-inserted as a registrable offense unless the court specified on the record that the offense was not sex related.
- 10. Personnel in the Inmate Records office audited Thomson's commitment documentation and determined that there was no finding by the court that Thompson's kidnapping offense was not sex related. Therefore, Thompson was again placed on the Sex Offender Registry.
- 11. Pursuant to a letter written by Judge Lee S. Alford, Thompson was removed from the Sex Offender Registry and notified of this correction on July 12, 2004.

FURTHER, Affiant Sayeth Naught.



DENNIS PATTERSON

SWORN TO BEFORE ME THIS

12th DAY OF JANUARY, 2005.

Margaret Ann Brown (L.S.)

Notary Public for South Carolina

My Commission Expires: July 6, 2009

My Commission Expires July 6, 2009

INMATE RECORDS SERVICE
2005 JAN 10 PM 12:16

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS
COMMITMENT

145
10/28/87
[Handwritten initials]

11-2 Term, 19 87

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

vs.

- (1) 87 8846-2055 - Kidnapping
- (2) 87 8846-2056 - Agg Assault + Battery
- (3) _____
- (4) _____
- (5) _____

William Alfred Thompson

Age 29 DOB: 10-14-58
Color White
Sex Male
SS#: 244-15-5725

VERDICT:

145029

W.A. Thompson Pleads guilty as charged on each count

THE SENTENCE OF THE COURT IS THAT THE DEFENDANT BE CONFINED IN THE CUSTODY OF THE SOUTH CAROLINA BOARD OF CORRECTIONS AS FOLLOWS:

87 8846-2055 - For Life

87 8846-2056 - For a term of Ten (10) years
Concurrent with 87 8846-2055

DATE OF SENTENCE: 11-5-87 :101 Richard E. Fields
Presiding Judge

THE STATE OF SOUTH CAROLINA,
County of York

RECEIVED
NOV 10 1987

I, the undersigned Clerk of the Court of General Sessions in and for the county aforesaid, in said County of York, do hereby certify that the foregoing is a true copy of the sentence pronounced by the court in the case entitled William Alfred Thompson.

GIVEN under my Hand and the Seal of the said Court at York on the 5th day of Nov, A. D. 19 87.

M H Carroll Jr
Clerk of the Court of Common Pleas and General Sessions

Nichole H.

CLASSIFICATION SUMMARY REPORT DATED 01/10/05 C023981
 SCDC# 145029 THOMPSON, WILLIAM ALFRED FBI# 75999X8
 OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
 INSTITUTION .: BROAD RIVER CORR. INST. FORM.....: C0109A
 SECURITY/CUST.: 2 MINIMUM IN
 TOT INCARC SENT.....: 999 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 99/99/9999
 CENTRAL MONITORING.: YES PROJ PAROLE DATE: 08/24/2006
 MED CLASS: 3 MED PROB/WORK RESTRICT EWC JOB.: HORTICULTURE TRAINEE
 MENTAL CLASS: NMH (NO MENTAL HEALTH TRC) EDUC PGM.: NO CURR EDUC PROGRAM
 CURRENT PROGRAM.: NO CURRENT PROGRAM EWC LEVEL: 0F5 EEC LEVEL:
 AGE...: 46 ASSIGNMENT.: HORTICULTURE DETAIL

PREVIOUS NUMBERS:
 00107268

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	SENTENCE	START	U/V/U	QAT	INDICT		
ADSR ASSAULT & BATTERY	10	0	0	YORK		09/11/1987	N	3	87GG462056		
KIDNAPPING	999	99	999	YORK		09/11/1987	U	5	87GS462055		
PRIOR COMMITMENTS OVER 90 DAYS:											
08/03/81						0	YRS	18	MOS	0	DYS
DETAINEES (HOLD, WANTED, NOTIFY):											
NO DETAINEES											

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

02/13/01	POSSESSION OF CONTRABAND	OTHER
06/26/98	POSSESSION OF CONTRABAND	OTHER
01/18/94	INCITING/CREATING A DIST CONVICTED	MAJOR
01/18/94	REFUSING TO WORK CONVICTED	MINOR
12/06/91	POSSESSION OF CONTRABAND CONVICTED	MINOR
12/06/91	POSSESSION OF CONTRABAND CONVICTED	MAJOR
06/03/91	POSSESSION OF CONTRABAND CONVICTED	MAJOR
02/24/89	POSSESSION OF CONTRABAND CONVICTED	MAJOR

00107268

HISTORY OF MOVEMENTS:

11/08/04	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
11/08/04	RICHLAND CO	ABSENT WITH LEAVE (A)	MEDICAL
08/16/04	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/16/04	RICHLAND CO	ABSENT WITH LEAVE (A)	MEDICAL
11/04/03	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
11/04/03	RICHLAND CO	ABSENT WITH LEAVE (A)	MEDICAL
09/26/03	BROAD RIVER	INCARCERATED	RETURN FROM COURT
09/19/03	YORK CO	ABSENT WITH LEAVE (A)	TO COURT
05/06/94	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/04/94	BROAD RIVER R&E	INCARCERATED	LOCKUP-ADJUSTMENT COMM.
06/19/92	BROAD RIVER	INCARCERATED	RETURN FROM COURT
06/15/92	YORK CO	ABSENT WITH LEAVE (A)	TO COURT
10/14/88	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/10/88	YORK CO	ABSENT WITH LEAVE (A)	TO COURT
07/14/88	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
01/29/88	KIRKLAND	INCARCERATED	ADMINISTRATIVE
11/10/87	BROAD RIVER R&E	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
HORTICULTURE TRAINEE	05/04/98	08/00/00		3F5
MATERIAL HANDLING EQ	08/15/96	05/08/96	INMATE REQUEST	3F5

Nichole H.

SONO# 1-5029 THOMPSON, WILLIAM ALFRED		(CONTINUED)	
SWIP & RECEIVING CLK	01/22/96	03/14/96	PROMOTION 5F5
CUSTODIAN HELPER	05/19/95	01/21/96	INMATE REQUEST 5F7
GENERAL WORKER	04/28/94	05/18/95	PROMOTION 7F7
SENIOR GROUNDSKEEPER	04/19/92	01/18/94	UNSAT JOB PERFORM 3F7
SENIOR GROUNDSKEEPER	02/26/92	06/15/92	COURT 3F7
LANDSCAPE BARIENER	12/30/91	02/25/92	LATERAL TRANSFER 3F5
FURNITURE REPAIR HEL	11/19/91	12/29/91	PROMOTION 3F5
CUSTODIAN HELPER	10/15/91	11/18/91	INMATE REQUEST 3F7
GENERAL WORKER	08/04/90	10/14/91	PROMOTION 7F7
LAUNDRY ROOM ATTENDEA	04/19/90	08/05/90	INMATE REQUEST 5F7
SENIOR GROUNDSKEEPER	04/12/89	04/18/90	INMATE REQUEST 3F7
MACHINE OPERATOR	01/05/89	04/11/89	LATERAL TRANSFER 3F7
HORTICULT/SEMI-SKILL	10/15/88	01/04/89	PROMOTION 5F5
HORTICULT/SEMI-SKILL	10/11/88	10/14/89	AUTO-INST. TRANSFER 5F5
HORTICULTURE TRAINEE	08/24/88	10/10/88	PROMOTION 7F7
FOOD SERVICE AIDE	07/15/88	08/16/88	MEDICAL 5F7
SHIPP & RECEIVING CL	04/01/88	07/14/88	INSTIT TRANSFER 3F5
WAREHOUSE ATTENDANT	02/08/88	03/31/88	PROMOTION 5F5

HISTORY OF EARNED EDUCATION CREDITS:

SEC	START DATE	END DATE	TERMINATION REASON
-----	------------	----------	--------------------

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

SENTENCE

018

STATE OF SOUTH CAROLINA
York COUNTY

CASE NO. 87-GS-462

The defendant William Black Stegman is committed to the State Department of Corrections/County for a term of life months/years and/or to pay a fine of \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable**, the balance suspended with probation for _____ months/years.

Restitution**

Yes/No

to be paid _____

For physical injury \$ _____

property damage \$ _____

to clerk for _____

Other conditions

Consensual with 87-65-46-2056

Date

11-5-87

Richard [Signature]

Presiding Judge

Costs and Assessments

FINE \$ _____
COST \$ no
CCA \$ _____
FEES \$ yes
TOTAL \$ _____

FEB 2 3 50 PM '95
Col. Berfield
ROD BERTFIELD
CLERK OF COURT
YORK COUNTY, S.C.

CERTIFIED TRUE COPY

M. J. Carver, Jr.
Clerk of Court

**Pay to Victim's Compensation Fund if subrogated.



State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

INMATE RECORDS OFFICE
2004 JUN 22 AM 10:43

LEE S. ALFORD
JUDGE

MOSS JUSTICE CENTER
1675-1J YORK HIGHWAY
YORK, SOUTH CAROLINA 29745-7434
TELEPHONE: (803) 628-3048
FAX: (803) 628-3139
E-MAIL: lsalford@scjd.state.sc.us

June 15, 2004

Jon Ozmint, Director
SC Department of Corrections
P. O. Box 21787
4444 Broad River Road
Columbia, SC 29221-1787

RE: William Alfred Thompson #145029, BRCI Congaree Room 131

Dear Mr. Ozmint:

William Alfred Thompson has filed a motion with the Court seeking a clarification that his convictions for Kidnapping and Aggravated Assault and Battery (87-GS-46-2055 and 87-GS-46-2056) did not involve a sexual assault or sexual offense and therefore do not require him to register as a sexual offender.

Judge Fields, now retired, apparently was the judge at disposition. I am the Chief Administrative Judge for the Sixteenth Judicial Circuit and the motion has been referred to me. I have reviewed the warrants and investigative reports in these cases (same incident). Solicitor Tommy Pope has discussed the cases with Sheriff Bruce Bryant. Neither of them is aware of any allegation of any sexual misconduct involved in either of the charges against Mr. Thompson. It would appear therefore that there were no factual allegations in these cases which would require sexual offender registration.

If you have any question please let me know. With kind personal regards, I am

Yours very truly,

A handwritten signature in cursive script, appearing to read "Lee S. Alford".

Lee S. Alford
Chief Administrative Judge for the Sixteenth Judicial Circuit

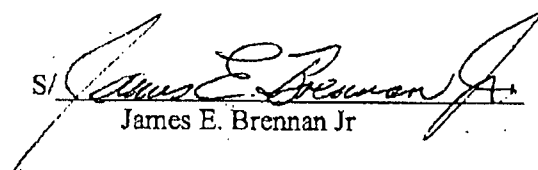
**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF CLASSIFICATION AND INMATE RECORDS**

INMATE CORRESPONDENCE

INMATE: William Thompson
INSTITUTION: Broad River CI
SCDC#: 145029
FROM: James E. Brennan Jr, Supervisor, Document Processing Section
Inmate Records Office
SUBJECT: Sex Registry
DATE: 7-12-04

- | | | | |
|-------------------------------------|---------------------|--------------------------|-------------|
| <input type="checkbox"/> | Probation Violation | <input type="checkbox"/> | Jailtime |
| <input type="checkbox"/> | Time/Sentence | <input type="checkbox"/> | Detainers |
| <input type="checkbox"/> | Parole | <input type="checkbox"/> | Max-Out |
| <input type="checkbox"/> | 85% | <input type="checkbox"/> | Expungement |
| <input checked="" type="checkbox"/> | Other | | |

Per letter from Judge Lee S. Alford, Chief Administrative Judge for the Sixteenth Judicial Circuit, you have been removed from the Sex Registry requirement.

S/ 
James E. Brennan Jr

cc: Central Record
Casemanager

IN THE UNITED STATES DISTRICT COURT
FOR THE DIVISION OF SOUTH CAROLINA
COLUMBIA DIVISION

FILED

JAN 13 2005

LARRY W. PROPES, CLERK
COLUMBIA, S. C.

WILLIAM A. THOMPSON #145029,)
)
 PLAINTIFF,)
)
 -vs-)
)
 JON OZMINT, DIRECTOR, S.C. DEPT.)
 OF CORR.; DENNIS PATTERSON,)
 RECORDS, S.C. DEPT. OF CORR.,)
)
 DEFENDANTS.)

3: 04-22109-17BC

**AFFIDAVIT OF
MARY COLEMAN**

PERSONALLY appeared before me, Mary Coleman, who, being first duly sworn,
deposes and states as follows:

1. My name is Mary Coleman. I am employed by the South Carolina Department of Corrections as the Chief of the Inmate Grievance Branch.
2. William Thompson, #145029, filed a grievance in July 1998 complaining that he was listed in error on the parole list as a sex offender.
3. SCDC's final response to this grievance was on November 25, 1998.
4. Thompson filed another grievance regarding his status as a sex offender in November 2000.
5. SCDC's final response to this grievance was on March 9, 2001.
6. Thompson appealed to the Administrative Law Judge Division on July 17, 2001.
7. Attached are copies of the grievance documents which are kept by my office in the ordinary course of business.

FURTHER, Affiant Sayeth Naught.

Mary Coleman
MARY COLEMAN

SWORN TO BEFORE ME THIS
7th DAY OF JANUARY, 2005.

Beverly Baker (L.S.)
Notary Public for South Carolina
My Commission Expires: 6/17/2012

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

09 98

STEP 1

INMATE NAME: William Thompson
 SCDC NUMBER: 145029
 INSTITUTION: BRCI
 HOUSING UNIT: Congaree 250
 WORK ASSIGNMENT: Ground Maint.

Office Use Only
 Grievance No. BRCI-0357-98
 Code: General _____
 Nelson _____
 Adj. Com. _____
 Class. _____
 Date Received 7/9/98
 IGC Initials RT

STATE GRIEVANCE (Include documentation, and date of incident; if SCDC Policy, indicate which policy; if Nelson Decree, specify which section of decree)

A list for Feb. 18th parole date was posted in the dorm, (Monticello). This list had me listed as a sex offender of which I am not. I wrote the grievance office about this matter, and even sent a copy of the parole list, that was said could not be found for that day. But nothing has been done about it, and now I'm thought of as a sex offender.

ACTION REQUESTED: I don't know what to do about it, but something should be done. Parole would be nice, of which I qualify, but have been turned down for bogus reasons.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

William Thompson 7-9-98
 Grievant Signature Date

INFORMAL RESOLUTION BY IGC:

I spoke with Ms. James, Classification Program Assistant, and checked the system. The system has been corrected and no longer indicates you as a sex offender. Ms. James stated she spoke with you, showed you the correction in the system and explained to you that you are no longer being considered as a sex offender. Hopefully, this addresses your concerns in this matter.

- I accept the informal resolution and consider the matter closed.
- I do not accept the informal resolution. I wish to appeal to the Warden.

Ken Raines 7/23/98
 IGC Signature Date

William Thompson 7-23-98
 Grievant Signature Date

WARDEN'S DECISION AND REASON:

The system has been changed and according to your SCDC records you are not considered nor listed as a sex offender. I consider this matter resolved.

[Handwritten Signature] 7/27/98
Warden Signature Date

I hereby acknowledge receipt of the Warden's response. My signature in no way indicates my acceptance of the decision.

[Handwritten Signature] 7-30-98
Grievant Signature Date

[Handwritten Signature] 7/30/98
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within seven (7) days of an alleged incident; Policy or Nelson at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the Regional Director within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

William Thompson #145029,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

ORDER OF DISMISSAL

DOCKET NO. 01-ALJ-04-00423-AP
GRIEVANCE NO. BRCI 1091-00


It is fundamental that "every court has the power and duty to determine whether or not it has jurisdiction of a cause presented to it for determination." Bridges v. Wyandotte Worsted Co., 243 S.C. 1, 8, 132 S.E.2d 18, 21 (1962). Accordingly, the "lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court." Lake v. Reeder Constr. Co., 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct. App. 1998).

In Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), the South Carolina Supreme Court held that inmates may seek review of final decisions of the Department of Corrections in "non-collateral" or administrative matters (i.e., those matters in which an inmate does not challenge the validity of a conviction or sentence) by appealing those decisions to the Administrative Law Judge Division (ALJD) pursuant to the South Carolina Administrative Procedures Act. Id. at 376, 527 S.E.2d at 754. In McNeil v. South Carolina Department of Corrections, the ALJD, sitting en banc, held that this tribunal's jurisdiction to hear inmate appeals under Al-Shabazz is limited to: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status, and (2) cases in which the Department has taken an inmate's created liberty interest as punishment in a major disciplinary hearing. McNeil v. S.C. Dep't of Corrections, No. 00-ALJ-04-00336-AP, slip op. at 4-5 (S.C. Admin. Law Judge Div. Sept. 5, 2001) (en banc).

Here, Appellant contends that he should not be required to register as a sex offender as a result of his kidnapping conviction. This grievance is not a challenge to the calculation of a sentence, sentence-related credits, or custody status. Nor is Appellant the object of punishment in a major disciplinary hearing. Accordingly, this tribunal does not have jurisdiction over this appeal.

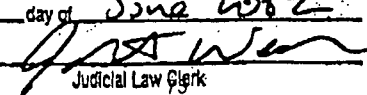
IT IS THEREFORE ORDERED that the above-captioned appeal is **DISMISSED** for lack of jurisdiction.

AND IT IS SO ORDERED.


JOHN D. GEATHERS
Administrative Law Judge

June 3, 2002
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 3rd day of June 2002
By: 
Judicial Law Clerk


FILED
JUN 03 2002

ADMIN. LAW JUDGE DIV.

ETY

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r the age of seventeen South Carolina, or is not been determined, ment agency. venteen years of age South Carolina, or is not been determined, ment agency. a prescribed form for missing child to a law

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S.C. LAW-ENFORCEMENT DIVISION

§ 23-3-430

offenses, are impaired by the lack of information about these convicted offenders who live within the law enforcement agency’s jurisdiction.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994.

§ 23-3-410. Registry to be operated by State Law Enforcement Division.

The registry is under the direction of the chief of the State Law Enforcement Division (SLED) and may be organized and structured in a manner as the chief considers appropriate to ensure the availability of information regarding the location of persons convicted of certain offenses. SLED shall develop and operate the registry to collect, analyze, and maintain information, to make information available to every enforcement agency in this State and in other states, and to establish a security system to ensure that only authorized personnel may gain access to information gathered under this article.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994.

Cross references—

State Law Enforcement Division, see § 23-3-10 et seq.

§ 23-3-420. Promulgation of regulations.

The State Law Enforcement Division shall promulgate regulations prescribing:

- (1) procedures for accepting and disseminating information maintained;
- (2) the confidentiality of the data and information maintained in the registry;
- (3) the proper disposition of all obsolete data;
- (4) forms necessary for the efficient and proper operation of the registry.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994.

Cross references—

State Law Enforcement Division, see § 23-3-10 et seq.

§ 23-3-430. Particular convictions rendering person a “sex offender”.

Any person, regardless of age, residing in the State of South Carolina who has been convicted in this State, or who has been convicted in any comparable court in the United States, or who has been convicted in the United States federal courts, of the offenses described below or of similar offenses in other jurisdictions shall be required to register pursuant to the provisions of this Article. For purposes of this article, a person convicted of any of these offenses shall be referred to as an offender.

- (1) criminal sexual conduct in the first degree (Section 16-3-652)
- (2) criminal sexual conduct in the second degree (Section 16-3-653)
- (3) criminal sexual conduct in the third degree (Section 16-3-654)
- (4) criminal sexual conduct with minors (Section 16-3-655)
- (5) engaging a child for sexual performance (Section 16-3-810)
- (6) producing, directing or promoting sexual performance by a child (Section 16-3-820)
- (7) criminal sexual conduct: assaults with intent to commit (Section 16-3-656)
- (8) kidnapping (Section 16-3-910)
- (9) incest (Section 16-15-20)

For latest statutes or assistance call 1-800-527-0430

49

§ 23-3-430 LAW ENFORCEMENT AND PUBLIC SAFETY

- (10) buggery (Section 16-15-120)
- (11) indecent exposure (Section 16-15-130)
- (12) committing or attempting lewd act upon child under fourteen (Section 16-15-140)
- (13) eavesdropping or peeping (Section 16-17-470)
- (14) conspiracy to kidnap (Section 16-3-920)
- (15) violations of Article 3, Chapter 15 of Title 16 involving a minor which violations are felonies.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994.

§ 23-3-440. Notification of sheriff and SLED of offender's release, probation, or change of residence; juvenile offenders.

(1) Prior to an offender's release from the Department of Corrections after completion of the term of imprisonment, or being placed on parole, the Department of Corrections or the Department of Probation, Parole and Pardon Services, as applicable, shall notify the sheriff of the county where the offender intends to reside and SLED that the offender is being released and has provided an address within the jurisdiction of the sheriff for that county. The Department of Corrections shall provide verbal and written notification to the offender that he must register with the sheriff of the county in which he intends to reside within twenty-four hours of his release. Further, the Department of Corrections shall obtain descriptive information of the offender, including a current photograph prior to release.

(2) The Department of Probation, Parole and Pardon Services shall notify SLED and the sheriff of the county where an offender is residing when the offender is sentenced to probation or is a new resident of the State who must be supervised by the department. The Department of Probation, Parole and Pardon Services also shall provide verbal and written notification to the offender that he must register with the sheriff of the county in which he intends to reside. An offender who is sentenced to probation must register within ten days of sentencing. Further, the Department of Probation, Parole and Pardon Services shall obtain descriptive information of the offender, including a current photograph that is to be updated annually prior expiration of the probation sentence.

(3) The Department of Juvenile Justice shall notify SLED and the sheriff of the county where an offender is residing when the offender is released from a Department of Juvenile Justice facility or when the Department of Juvenile Justice is required to supervise the actions of the juvenile. The Department of Juvenile Justice must provide verbal and written notification to the juvenile and his parent, legal guardian, or custodian that the juvenile must register with the sheriff of the county in which the juvenile resides. The juvenile must register within twenty-four hours of his release or within ten days if he was not confined to a Department of Juvenile Justice's facility.

(4) The Department of Corrections, the Department of Probation, Parole and Pardon Services, and the Department of Juvenile Justice shall provide to SLED the initial registry information regarding the offender prior to his release from imprisonment or relief of supervision. This information shall be collected in the event the offender fails to register with his county sheriff.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994.

Cross references—

State Law Enforcement Division, see § 23-3-10 et seq.

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For latest statutes or assistance call 1-800-527-0430

§ 23-3-4.

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§ 23-3-4

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§ 23-3-4

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§ 23-3-400 LAW ENFORCEMENT AND PUBLIC SAFETY

communities, conduct investigations, and apprehend offenders who commit sex offenses, are impaired by the lack of information about these convicted offenders who live within the law enforcement agency's jurisdiction.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994; 1996 Act No. 444, § 16, eff June 18, 1996.

Effect of Amendment—

The 1996 amendment made no apparent change in this section.

§ 23-3-410. Registry to be operated by State Law Enforcement Division.

The registry is under the direction of the chief of the State Law Enforcement Division (SLED) and shall contain information the chief considers necessary to assist law enforcement in the location of persons convicted of certain offenses. SLED shall develop and operate the registry to collect, analyze, and maintain information, to make information available to every enforcement agency in this State and in other states, and to establish a security system to ensure that only authorized persons may gain access to information gathered under this article.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994; 1996 Act No. 444, § 16, eff June 18, 1996.

Effect of Amendment—

The 1996 amendment substituted "shall contain information" for "may be organized and structured in a manner as", substituted "necessary to assist law enforcement in" for "appropriate to ensure the availability of information regarding", and substituted "persons" for "personnel" preceding "may gain access".

Cross references—

State Law Enforcement Division, see § 23-3-10 et seq.

§ 23-3-420. Promulgation of regulations.

The State Law Enforcement Division shall promulgate regulations to implement the provisions of this article.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994; 1996 Act No. 444, § 16, eff June 18, 1996.

Effect of Amendment—

The 1996 amendment substituted "to implement the provisions of this article." for "prescribing", and deleted items (1) through (4).

Cross references—

State Law Enforcement Division, see § 23-3-10 et seq.

§ 23-3-430. Particular convictions rendering person a "sex offender".

(A) Any person, regardless of age, residing in the State of South Carolina who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State of an offense described below, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in any comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of a similar offense, or who has been convicted of, adjudicated delinquent of, pled guilty or nolo contendere 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.

(B) For purposes of this article, a person who remains in this State for a total of thirty days during a twelve-month period is a resident of this State.

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LAW ENFORCEMENT DIVISION

§ 23-3-430

states; and to establish a security system to ensure that only authorized persons may gain access to information gathered under this article.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994; 1996 Act No. 444, § 16, eff June 18, 1996; 1998 Act No. 384, § 1, eff June 12, 1998.

Effect of Amendment—

The 1996 amendment substituted "shall contain information" for "may be organized and structured in a manner as", substituted "necessary to assist law enforcement in" for "appropriate to ensure the availability of information regarding", and substituted "persons" for "personnel" preceding "may gain access".

The 1998 amendment reprinted this section with no apparent change.

Cross References—

State Law Enforcement Division, see § 23-3-10 et seq.

§ 23-3-420. Promulgation of regulations.

The State Law Enforcement Division shall promulgate regulations to implement the provisions of this article.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994; 1996 Act No. 444, § 16, eff June 18, 1996; 1998 Act No. 384, § 1, eff June 12, 1998.

Effect of Amendment—

The 1996 amendment substituted "to implement the provisions of this article." for "prescribing.", and deleted items (1) through (4).

The 1998 amendment reprinted this section with no apparent change.

Cross References—

State Law Enforcement Division, see § 23-3-10 et seq.

§ 23-3-430. Particular convictions rendering person a "sex offender".

(A) Any person, regardless of age, residing in the State of South Carolina who in this State has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense described below, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in any comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of a similar offense, or who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere 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.

(B) For purposes of this article, a person who remains in this State for a total of thirty days during a twelve-month period is a resident of this State.

(C) For purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as an offender:

- (1) criminal sexual conduct in the first degree (Section 16-3-652);
 - (2) criminal sexual conduct in the second degree (Section 16-3-653);
 - (3) criminal sexual conduct in the third degree (Section 16-3-654);
 - (4) criminal sexual conduct with minors, first degree (Section 16-3-655(1));
 - (5) criminal sexual conduct with minors, second degree (Section 16-3-655(2) and (3)).
- If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct or consensual sexual conduct between

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§ 23-3-430 LAW ENFORCEMENT AND PUBLIC SAFETY

persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article;

- (6) engaging a child for sexual performance (Section 16-3-810);
- (7) producing, directing, or promoting sexual performance by a child (Section 16-3-820);
- (8) criminal sexual conduct: assaults with intent to commit (Section 16-3-656);
- (9) incest (Section 16-15-20);
- (10) buggery (Section 16-15-120);
- (11) committing or attempting lewd act upon child under sixteen (Section 16-15-140);
- (12) peeping (Section 16-17-470);
- (13) violations of Article 3, Chapter 15 of Title 16 involving a minor which violations are felonies;
- (14) a person, regardless of age, who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of indecent exposure or of a similar offense in other jurisdictions 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;
- (15) kidnapping (Section 16-3-910) except when the court makes a finding on the record that the offense did not include a criminal sexual offense.

(D) Upon conviction, adjudication of delinquency, 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 solicitor.

(E) SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in Section 23-3-430(C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994; 1996 Act No. 444, § 16, eff June 18, 1996; 1998 Act No. 384, § 1, eff June 12, 1998.

Effect of Amendment—

The 1996 amendment designated the first sentence of the first paragraph as subsection (A), designated the second sentence of the first paragraph as subsection (C), and added subsections (B) and (D); in subsection (A), as so designated, inserted ", adjudicated delinquent, pled guilty or nolo contendere" following "convicted" throughout, inserted "of an offense described below" following "in this State", and substituted "of a similar offense, or who has been convicted of, adjudicated delinquent of, pled guilty or nolo contendere to an offense for which the person was required to register in the state where the conviction or plea occurred" for ", of the offenses described below or of similar offenses in other jurisdictions"; in subsection (C) in the introductory matter substituted "the following" for "these", in item (4) substituted ", first degree (Section 16-3-655(1))" for "(Section 16-3-655)", deleted items (8) and (11), redesignated items (5) through (7) as items (6) through (8), added a new item (5), redesignated items (12), (13) and (15) as items (11) through (13), and completely revised item (14); and made nonsubstantive changes.

The 1998 amendment, in subsection (A), made nonsubstantive changes; and in subsection (C), rewrote the introductory paragraph, made nonsubstantive changes in item (5), in item (11) substituted "under sixteen" for "under fourteen", in item (12) deleted "eavesdropping or"

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preceding "peeping",
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Cross References—
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Research and Practice
21A Am Jur 2d, Crim
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Annotations—
Statutes or ordinance
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§ 23-3-440.
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LAW ENFORCEMENT DIVISION

§ 23-3-440

preceding "peeping", in item (14) inserted "adjudicated delinquent," in three places, and added item (15).

Cross References—

Court-ordered psychiatric or psychological treatment for children adjudicated for certain sex offenses listed in this section, see § 23-3-500.

Research and Practice References—

21A Am Jur 2d, Criminal Law § 1031.

70A Am Jur 2d, Sodomy § 100.

Annotations—

Statutes or ordinances requiring persons previously convicted of crime to register with designated officials. 82 ALR2d 398.

§ 23-3-440. Notification of sheriff and SLED of offender's release, probation, or change of residence; juvenile offenders.

(1) Prior to an offender's release from the Department of Corrections after completion of the term of imprisonment, or being placed on parole, the Department of Corrections or the Department of Probation, Parole, and Pardon Services, as applicable, shall notify the sheriff of the county where the offender intends to reside and SLED that the offender is being released and has provided an address within the jurisdiction of the sheriff for that county. The Department of Corrections shall provide verbal and written notification to the offender that he must register with the sheriff of the county in which he intends to reside within twenty-four hours of his release. Further, the Department of Corrections shall obtain descriptive information of the offender, including a current photograph prior to release.

(2) The Department of Probation, Parole, and Pardon Services shall notify SLED and the sheriff of the county where an offender is residing when the offender is sentenced to probation or is a new resident of the State who must be supervised by the department. The Department of Probation, Parole, and Pardon Services also shall provide verbal and written notification to the offender that he must register with the sheriff of the county in which he intends to reside. An offender who is sentenced to probation must register within ten days of sentencing. Further, the Department of Probation, Parole, and Pardon Services shall obtain descriptive information of the offender, including a current photograph that is to be updated annually prior to expiration of the probation sentence.

(3) The Department of Juvenile Justice shall notify SLED and the sheriff of the county where an offender is residing when the offender is released from a Department of Juvenile Justice facility or when the Department of Juvenile Justice is required to supervise the actions of the juvenile. The Department of Juvenile Justice must provide verbal and written notification to the juvenile and his parent, legal guardian, or custodian that the juvenile must register with the sheriff of the county in which the juvenile resides. The juvenile must register within twenty-four hours of his release or within ten days if he was not confined to a Department of Juvenile Justice's facility. The parents or legal guardian of a person under seventeen years of age who is required to register under this chapter must ensure that the person has registered.

(4) The Department of Corrections, the Department of Probation, Parole, and Pardon Services, and the Department of Juvenile Justice shall provide to SLED the initial registry information regarding the offender prior to his release from impris-

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LAW ENFORCEMENT DIVISION

§ 23-3-430

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HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994; 1996 Act No. 444, § 16, eff June 18, 1996; 1998 Act No. 384, § 1, eff June 12, 1998.

Effect of Amendment—

The 1996 amendment made no apparent change in this section.

The 1998 amendment made a nonsubstantive change.

Research and Practice References—

Note, Duty to warn and public notification of the release of sex offenders, 49 SC L. Rev 1131, Summer 1998.

§ 23-3-410. Registry to be operated by State Law Enforcement Division.

The registry is under the direction of the chief of the State Law Enforcement Division (SLED) and shall contain information the chief considers necessary to assist law enforcement in the location of persons convicted of certain offenses. SLED shall develop and operate the registry to collect, analyze, and maintain information; to make information available to every enforcement agency in this State and in other states; and to establish a security system to ensure that only authorized persons may gain access to information gathered under this article.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994; 1996 Act No. 444, § 16, eff June 18, 1996; 1998 Act No. 384, § 1, eff June 12, 1998.

Effect of Amendment—

The 1996 amendment substituted "shall contain information" for "may be organized and structured in a manner as", substituted "necessary to assist law enforcement in" for "appropriate to ensure the availability of information regarding", and substituted "persons" for "personnel" preceding "may gain access".

The 1998 amendment reprinted this section with no apparent change.

Cross References—

State Law Enforcement Division, see § 23-3-10 et seq.

§ 23-3-420. Promulgation of regulations.

The State Law Enforcement Division shall promulgate regulations to implement the provisions of this article.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994; 1996 Act No. 444, § 16, eff June 18, 1996; 1998 Act No. 384, § 1, eff June 12, 1998.

Effect of Amendment—

The 1996 amendment substituted "to implement the provisions of this article." for "prescribing," and deleted items (1) through (4).

The 1998 amendment reprinted this section with no apparent change.

Cross References—

State Law Enforcement Division, see § 23-3-10 et seq.

§ 23-3-430. Particular convictions rendering person a "sex offender".

(A) Any person, regardless of age, residing in the State of South Carolina who in this State has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense described below, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in any comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of a similar offense, or who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense for which the person was required to register in the state where the

§ 23-3-430 LAW ENFORCEMENT AND PUBLIC SAFETY

conviction or plea occurred, shall be required to register pursuant to the provisions of this article.

(B) For purposes of this article, a person who remains in this State for a total of thirty days during a twelve-month period is a resident of this State.

(C) For purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as an offender:

- (1) criminal sexual conduct in the first degree (Section 16-3-652);
- (2) criminal sexual conduct in the second degree (Section 16-3-653);
- (3) criminal sexual conduct in the third degree (Section 16-3-654);
- (4) criminal sexual conduct with minors, first degree (Section 16-3-655(1));
- (5) criminal sexual conduct with minors, second degree. If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16-3-655(3) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article;
- (6) engaging a child for sexual performance (Section 16-3-810);
- (7) producing, directing, or promoting sexual performance by a child (Section 16-3-820);
- (8) criminal sexual conduct: assaults with intent to commit (Section 16-3-656);
- (9) incest (Section 16-15-20);
- (10) buggery (Section 16-15-120);
- (11) committing or attempting lewd act upon child under sixteen (Section 16-15-140);
- (12) peeping (Section 16-17-470);
- (13) violations of Article 3, Chapter 15 of Title 16 involving a minor;
- (14) a person, regardless of age, who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of indecent exposure or of a similar offense in other jurisdictions 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;
- (15) kidnapping (Section 16-3-910) of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;
- (16) kidnapping (Section 16-3-910) of a person under eighteen years of age except when the offense is committed by a parent;
- (17) criminal sexual conduct when the victim is a spouse (Section 16-3-658);
- (18) sexual battery of a spouse (Section 16-3-615);
- (19) sexual intercourse with a patient or trainee (Section 44-23-1150).

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(D) Upon conviction or nolo contendere of a sex offender, the court may order as a condition of probation that the offender register.

(E) SLED shall require that person from whom the Attorney General receives a nolo contendere plea, or a person who has been turned, or vacated,

HISTORY: 1999-18, 1996; 11

Effect of Amendment

The 1996 amendment designated the words "and (D); in subsection (C) "nolo contendere" followed by "in this State", "delinquent or, or a person who registers in the state of similar offenses "the following" "(Section 16-3-1 through (8), add and completely:

The 1998 amendment rewrote the intent and substituted "unlawful" preceding "peeping" item (15).

The 1999 amendment violations be felt

Cross Reference: Court-ordered offenses listed in

Research and P
21A Am Jur 2
70A Am Jur 2

Annotations—
Statutes or other officials. 82 ALI

§ 23-3-4
Registration of Sex Offenders

(1) Prior to the completion of the sentence or term of confinement of a sex offender, the court shall, as applicable, order the offender to register as applicable in the state of residence and in any other state in which the offender shall provide with the sheriff or police officer the name and address of his or her place of residence and the name and address of his or her place of employment.

(2) The Department of Corrections shall provide the sheriff or police officer with the name and address of the offender's place of residence and the name and address of the offender's place of employment.

LAW ENFORCEMENT DIVISION

§ 23-3-440

(D) Upon conviction, adjudication of delinquency, 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 solicitor.

(E) SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in Section 23-3-430(C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered.

HISTORY: 1994 Act No. 497, Part II, § 112A, eff July 1, 1994; 1996 Act No. 444, § 16, eff June 18, 1996; 1998 Act No. 384, § 1, eff June 12, 1998; 1999 Act No. 74, § 1, eff June 11, 1999.

Effect of Amendment—

The 1996 amendment designated the first sentence of the first paragraph as subsection (A), designated the second sentence of the first paragraph as subsection (C), and added subsections (B) and (D); in subsection (A), as so designated, inserted "adjudicated delinquent, pled guilty or nolo contendere" following "convicted" throughout, inserted "of an offense described below" following "in this State", and substituted "of a similar offense, or who has been convicted of, adjudicated delinquent of, pled guilty or nolo contendere to an offense for which the person was required to register in the state where the conviction or plea occurred" for "of the offenses described below or of similar offenses in other jurisdictions"; in subsection (C) in the introductory matter substituted "the following" for "these", in item (4) substituted "first degree (Section 16-3-655(1))" for "(Section 16-3-655)", deleted items (8) and (11), redesignated items (5) through (7) as items (6) through (8), added a new item (9), redesignated items (12), (13) and (15) as items (11) through (13), and completely revised item (14); and made nonsubstantive changes.

The 1998 amendment, in subsection (A), made nonsubstantive changes; and in subsection (C), rewrote the introductory paragraph, made nonsubstantive changes in item (5), in item (11) substituted "under sixteen" for "under fourteen", in item (12) deleted "eavesdropping or" preceding "peeping", in item (14) inserted "adjudicated delinquent," in three places, and added item (15).

The 1999 amendment, in (C); rewrote (5); in item (13), eliminated the requirement that the violations be felonies; rewrote item (15); and added items (16) through (19).

Cross References—

Court-ordered psychiatric or psychological treatment for children adjudicated for certain sex offenses listed in this section, see § 23-3-500.

Research and Practice References—

21A Am Jur 2d, Criminal Law § 1031.
70A Am Jur 2d, Sodomy § 100.

Annotations—

Statutes or ordinances requiring persons previously convicted of crime to register with designated officials. 82 ALR2d 308.

§ 23-3-440. Notification of sheriff and SLED of offender's release, probation, or change of residence; juvenile offenders.

(1) Prior to an offender's release from the Department of Corrections after completion of the term of imprisonment, or being placed on parole, the Department of Corrections or the Department of Probation, Parole, and Pardon Services, as applicable, shall notify the sheriff of the county where the offender intends to reside and SLED that the offender is being released and has provided an address within the jurisdiction of the sheriff for that county. The Department of Corrections shall provide verbal and written notification to the offender that he must register with the sheriff of the county in which he intends to reside within twenty-four hours of his release. Further, the Department of Corrections shall obtain descriptive information of the offender, including a current photograph prior to release.

(2) The Department of Probation, Parole, and Pardon Services shall notify SLED and the sheriff of the county where an offender is residing when the offender is

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CERTIFICATE OF COUNSEL

Respondent's counsel hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by Appellant in the Respondent's Designation of Matter.

RILEY, POPE & LANEY, LLC



DAMON C. WLODARCZYK

P.O. Box 11412

Columbia, South Carolina 29211

(803) 799-9993 – Office

(803) 239-1414 – Facsimile

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable L. Casey Manning, Circuit Court Judge

Case No.: 2004-CP-40-3521

William A. Thompson, #145029,

Appellant,

v.

Jon Ozmint, Director, S.C. Dept. of Corr;
Dennis Patterson, Records, S.C. Dept. of Corr.,

Defendants,

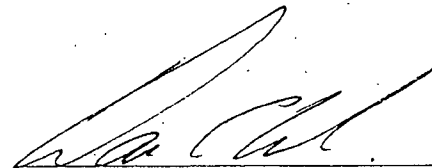
Of whom South Carolina Department of Corrections is the

Respondent.

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be served upon the persons named below the attached MOTION TO FILE AND SERVE APPENDIX TO THE FINAL BRIEF, APPENDIX TO THE FINAL BRIEF, AND FINAL BRIEF OF THE RESPONDENT in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

William A. Thompson #145029
KCI HC Rm. 122
4848 Goldmine Hwy.
Kershaw, SC 29067


Damon C. Wlodarczyk

Columbia, South Carolina
August 16, 2013

RECEIVED
AUG 16 2013

SC Court of Appeals

The South Carolina Court of Appeals

George Francis Brown, Appellant,

v.

Julie Kirck Brown, Respondent.

Appellate Case No. 2013-001259

The Honorable Alex Kinlaw, Jr.
Pickens County
Trial Court Case No. 2011DR3900084

ORDER

The time for serving and filing the initial brief of appellant and designation of matter is hereby extended until March 31, 2013. No further extensions will be granted absent extraordinary circumstances.

C. J.

Columbia, South Carolina

cc:

Robert Scott Dover, Esquire
Sarah Ganss Drawdy, Esquire
Kelvin R. Kearse, Esquire