

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Greenwood County  
The Honorable Frank R. Addy, Jr., Circuit Court Judge

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JAN 17 2014

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ANTHONY NATION,

APPELLANT.

APPELLATE CASE NO. 2011-199726

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PETITION TO ARGUE AGAINST PRECEDENT

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In his appeal, Appellant Anthony Nation asks this Court to declare that satellite monitoring violates the *ex post facto* clauses, double jeopardy clauses, the prohibitions against cruel and unusual punishment, procedural and substantive due process clauses, and the equal protection clauses of the United States and South Carolina Constitutions. He also asks this Court to declare that satellite monitoring violates his right to privacy protected by the South Carolina Constitution. The Court scheduled this case for oral argument on Wednesday, February 5, 2014. Pursuant to Rule 217, SCACR, Appellant Nation petitions for leave to argue against this Court's precedent in In re Justin B., 405 S.C. 391, 747 S.E.2d 774 (2013); State v. Dykes, 403 S.C. 499, 744 S.E.2d 505 (2013); State v. Walls, 348 S.C. 26, 558 S.E.2d 524 (2002); Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003); and In re Ronnie A., 355 S.C. 407, 585 S.E.2d 311 (2003). The grounds for this petition are as follows:

1) Appellant contends that South Carolina's *current* sex offender registry is more punitive than when the Supreme Court of the United States decided Smith v. Doe, 538 U.S. 84 (2003) and this Court decided Walls and Ronnie A. See Brief of Appellant, p. 17.

2) This Court, nevertheless, continues to rely on this older precedent. In footnote 9 of Dykes this Court relied on Smith v. Doe as "rejecting an *ex post facto* challenge where sex offender registration and monitoring requirements are civil in nature." 403 S.C. at 510, n. 9, 744 S.E.2d at 511, n. 9. In Justin B., this Court relied on Smith v. Doe as "holding that the imposition of restrictive measures on sex offenders adjudged to be potentially dangerous is a legitimate non-punitive governmental objective." 405 S.C. at 395, 747 S.E.2d at 776.

3) As discussed in detail in the Reply Brief of Appellant, Argument I, the actual holding in Smith v. Doe, respectfully, does not support this Court's continued reliance on that case because the United States Supreme Court left open that a more restrictive sex offender registry scheme might be viewed as punitive.

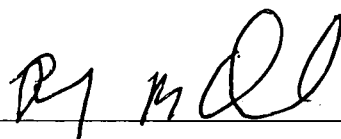
4) Other jurisdictions have held modern incarnations of the sex offender registry to be punitive. *E.g.* Doe v. State, 189 P.3d 999, 1009 (Alaska 2008) (holding sex offender registry violates *ex post facto* clause of state constitution); Starkey v. Oklahoma Department of Corrections, 2013 OK 43, 305 P.3d 1004, 1019 (2013) (applied the "analytical framework used in Smith v. Doe and later in Doe v. State" and held retroactive application of punitive provisions of that state's sex offender registry violated the *ex post facto* prohibition); Doe v. Dep't of Pub. Safety & Corr. Servs., 430 Md. 535, 568, 62 A.3d 123, 143 (2013) ("The application of the statute has essentially the same effect upon Petitioner's life as placing him on probation and imposing the punishment of

shaming for life, and is, thus, tantamount to imposing an additional sanction for Petitioner's crime.”); State v. Williams, 129 Ohio St. 3d 344, 348, 952 N.E.2d 1108, 1112 (2011) (Court stated, “the statutory scheme has changed dramatically since this court described the registration process imposed on sex offenders as an inconvenience ‘comparable to renewing a driver's license’” and held its statute violated the *ex post facto* clause of the Ohio Constitution); State v. Letalien, 2009 ME 130, 985 A.2d 4 (2009) (held retroactive application of SORNA of 1999 violated *ex post facto* prohibitions by increasing registration duty of certain offenders from fifteen years to their entire lifetimes and imposing a quarterly in-person verification requirement, without affording an opportunity for relief from those duties at discretion of sentencing court.); Wallace v. State, 905 N.E.2d 371, 384 (Ind., 2009) (held retroactive application of sex offender registry “violates the prohibition on *ex post facto* laws contained in the Indiana Constitution because it imposes burdens that have the effect of adding punishment beyond that which could have been imposed when his crime was committed.”).

5) Unlike the appellants in Justin B. and Dykes, Appellant Nation presented evidence to the lower court illustrating the punitive nature of satellite monitoring. Thus, this appeal is the first opportunity for this Court to consider these arguments.

Appellant, therefore, respectfully requests that he be allowed to argue that this Court should overrule, modify or limit Justin B., Dykes, Walls, Hendrix, and Ronnie A as they apply to each issue in this case.

Respectfully submitted,

By  \_\_\_\_\_

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January 17, 2014

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THE STATE,

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Petition to Argue Against Precedent in the above referenced case has been served upon Matthew Bachanan, Esquire, at South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250, this 17<sup>th</sup> of January, 2014.

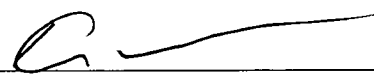


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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 17<sup>th</sup> of January, 2014.

  
\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: August 21, 2023.