

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2011-CP-21-2264

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OCT 30 2012

S.C. Supreme Court

John Christopher Johnson,.....Petitioner,

vs.

Reginald C. Lloyd, Chief, State Law Enforcement Division, and the State
of South Carolina,.....Respondents.

APPENDIX

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

John Christopher Johnson, Respondent,

v.

Reginald C. Lloyd, Chief, State Law Enforcement
Division, and The State of South Carolina, Appellants.

Appellate Case No. 2011-193227

Appeal From Florence County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 5019
Heard June 6, 2012 – Filed August 1, 2012

REVERSED

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant Attorney
General Geoffrey K. Chambers, and Assistant Attorney
General Jared Q. Libet, all of Columbia, for Appellants.

Elise F. Crosby, of Crosby Law Firm, LLC, of
Georgetown, for Respondent.

WILLIAMS, J.: On appeal, Chief of State Law Enforcement Division, Reginald C. Lloyd, and the State of South Carolina (collectively, Appellants) argue the circuit court erred in finding John Christopher Johnson (Johnson) properly raised a claim for equitable relief and could be removed from the South Carolina Sex

Offender Registry (the registry). Additionally, Appellants contend the circuit court erred in concluding they waived their right to assert equitable defenses and erred in concluding Appellants failed to prove an equitable defense. We reverse.

FACTS/PROCEDURAL HISTORY

In May 2003, Johnson pled guilty to lewd act on a child under the age of sixteen in violation of Section 16-15-140 of the South Carolina Code (2003) (the lewd act statute).¹ Johnson was sentenced to ten years' imprisonment suspended upon the service of one hundred days and two years' probation. Johnson was also required to register as a sex offender pursuant to section 23-3-430(C)(11) (2007) (the registry statute).² Upon successful completion of his probationary sentence, Johnson learned the registry was not merely a condition of his probation, but that he was required to register as a sex offender for life.

In September 2009, Johnson brought a declaratory judgment action, alleging two causes of action and seeking to be removed from the registry.³ In his complaint, Johnson argues the requirement that he register as a sex offender constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.⁴ Johnson also challenges the requirement that he register, based on his conviction of the lewd act statute, as violating the Equal Protection Clause of

¹ S.C. Code Ann. § 16-15-140 (2003) ("It is unlawful for a person over the age of fourteen years to wilfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of the child.").

² Section 23-3-430(C)(11) (2007) provides, in pertinent part: "[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 . . . committing or attempting lewd act upon child under sixteen"

³ Johnson did not appeal his guilty plea or file a post-conviction relief action.

⁴ The Eighth Amendment to the United States Constitution reads: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

the Fourteenth Amendment to the United States Constitution.⁵ Additionally, in his prayer for relief, Johnson requested the circuit court to "order [Appellants] to remove [Johnson's] name from the Sex Offender Registry and for such other and further relief as may be deemed appropriate."

After filing responsive pleadings, Appellants moved to dismiss Johnson's complaint. On February 12, 2010, the circuit court entered an order denying Appellants' motion. Johnson subsequently filed a motion for summary judgment, which was denied by the circuit court on June 1, 2010. A bench trial was held on February 2, 2011, and the circuit court took the matter under advisement. The circuit court issued its order on March 1, 2011, declining to grant Johnson relief on his constitutional challenges, but concluding Johnson is entitled to equitable "personal relief in his unique circumstance[]." The circuit court further found that the legislative intent behind the registry was to protect the public from sexual offenders who may re-offend, and the circuit court concluded Johnson did not satisfy this criteria. Appellants filed a motion to reconsider, which was denied. This appeal followed.

STANDARD OF REVIEW

"A declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue." *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009) (citing *Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 231, 638 S.E.2d 685, 688 (2006)). Whether an individual must be placed on the sex offender registry is a question of law. *See generally Noisette v. Ismail*, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App. 1989) ("Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law."). When reviewing an action at law, our scope of review is limited to the correction of errors of law. *S.C. Dep't of Transp. v. Horry Cnty.*, 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011).

⁵ The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

LAW/ANALYSIS

I. Equitable Relief

Appellants assert the circuit court erred in finding Johnson raised a claim for equitable relief. Specifically, Appellants contend Johnson's complaint only alleges two legal causes of action. We agree.

"The character of an action is determined by the main purpose of the complaint." *Jacobs v. Serv. Merch. Co., Inc.*, 297 S.C. 123, 127, 375 S.E.2d 1, 3 (Ct. App. 1988) (internal citation omitted). An action which is essentially one at law is not converted into an equitable action because it is brought pursuant to the Uniform Declaratory Judgments Act. *See Legette v. Smith*, 226 S.C. 403, 415, 85 S.E.2d 576, 581 (1955). Moreover, "[w]hether an individual must be placed on the sex offender registry is a question of law." *Lozada v. S. C. Law Enforcement Div.*, 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) (internal citation omitted).

Although Johnson alleges two causes of action challenging the constitutionality of the registry statute and the lewd act statute, he maintains his declaratory judgment action raises a claim for equitable relief. However, an appellate court is not bound by a party's characterization of the actions. *Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 129 n.2, 399 S.E.2d 163, 164, n.2 (Ct. App. 1990) (internal citation omitted) (stating this court is not bound by a stipulation in the Statement of the Case when the record reflects differently). Notwithstanding Johnson's characterization of his complaint as equitable in nature, he sought a declaration from the circuit court that two statutes were unconstitutional. Specifically, Johnson asked the circuit court to find the requirement he register as a sex offender for life "impermissibly cruel and unusual punishment under the Eighth Amendment." Additionally, Johnson asked the circuit court to declare the registry requirement's distinctions between criminal sexual conduct with a minor in the second degree⁶ and the lewd act statute as "unconstitutionally violative of his constitutional rights." Johnson did not assert an additional cause of action seeking equitable relief. Rather, he is asking the circuit court to declare the relevant statutes unconstitutional, which is a question of law. *See Harkins v. Greenville Cnty.*, 340 S.C. 606, 621, 533 S.E.2d 886, 893 (2000) (holding an action for a

⁶ See § 16-3-655(B)(2) (2003).

declaratory judgment that a zoning ordinance is unconstitutional is an action at law).

On appeal, Johnson asserts language in his prayer for relief asking the circuit court to remove Johnson's name from the registry sufficiently raises an equitable cause of action. We disagree. Our courts have held that the "relief to be granted depends not upon that asked for in the prayer but it must be such as is warranted by some allegation contained in the pleadings." *Mortgage Loan Co. v. Townsend*, 156 S.C. 203, 226, 152 S.E. 878, 886 (1930); *see also Speizman v. Guill*, 202 S.C. 498, 515, 25 S.E.2d 731, 739 (1943) ("[I]f a complaint clearly states facts constituting only a legal cause of action and adds a prayer for equitable relief only . . . the prayer must yield to the true character of the action as determined by the facts stated in the complaint."). Here, Johnson's complaint only asserts two legal causes of action. Accordingly, we conclude the circuit court erred in finding Johnson properly asserted a claim for equitable relief.

II. Removal

Appellants also argue the circuit court erred in granting Johnson equitable relief by removing him from the registry. We agree.

"It is well known that equity follows the law." *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007). While equitable relief is generally available when there is no adequate remedy at law, an adequate legal remedy may be provided by statute. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent. *Lonchar v. Thomas*, 517 U.S. 314, 323 (1996). Indeed, a "court's equitable powers must yield in the face of an unambiguously worded statute." *Santee Cooper*, 298 S.C. at 185, 379 S.E.2d at 123.

Here, the registry statute found in section 23-3-430 of the South Carolina Code (2007) provides several avenues for an individual to be removed from the registry. Section 23-3-430(E) provides that the

[South Carolina Law Enforcement Division] shall
remove a person's name and any other information
concerning that person from the sex offender registry

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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 subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered.

In addition, section 23-3-430(F)(2) of the South Carolina Code (2007) states that an offender may be removed from the registry if he receives a pardon and "the pardon is based on a finding of not guilty specifically stated in the pardon." Finally, an offender may be removed from the registry if he receives a new trial following the discovery of new evidence and "a verdict of acquittal is returned at the new trial or entered with the state's consent." S.C. Code Ann. § 23-3-430(G) (2007).

There are several statutory methods in which Johnson can be removed from the registry; he simply does not qualify for them. Johnson failed to file an appeal or a post-conviction relief action, which could entitle him to relief under section 23-3-430(E). Moreover, Johnson has not been granted a pardon, nor has there been any newly-discovered evidence to warrant removing him from the registry. *See* § 23-3-430(F)(2) & (G). The General Assembly enacted an unambiguously worded statute that sets forth the legal remedies available to an individual on the registry. Because the sex offender registry statute provides an adequate remedy for Johnson, it was error for the circuit court to fashion an equitable remedy in this case.⁷

CONCLUSION

Accordingly, we reverse the circuit court's order removing Johnson from the registry for his conviction of a lewd act upon a child under sixteen.

REVERSED.

THOMAS and LOCKEMY, JJ., concur.

⁷ In light of our disposition herein, we decline to address the Appellants' remaining arguments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not address all issues on appeal when the disposition of one issue is dispositive).

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2011-CP-21-2264

John Christopher Johnson,.....Respondent,

vs.

Reginald C. Lloyd, Chief, State Law Enforcement Division, and the State
of South Carolina,.....Appellants.

RESPONDENT'S PETITION FOR REHEARING

TO: Jared Q. Libet, Esq., Geoffrey K. Chambers, Esq., Adam L. Whitsett, Esq.

YOU WILL PLEASE TAKE NOTICE that the Respondent, by and through undersigned counsel, hereby petitions the Court of Appeals for a Rehearing of the above-captioned appeal, heard June 6, 2012, and reversed by opinion filed August 1, 2012. Rule 221, SCACR.

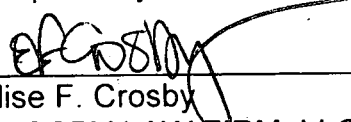
The grounds for his petition are that the following points were overlooked and/or misapprehended by the Court: (1) The Court misapprehended what Respondent was asking of the Court and consequently misapplied the standard of review. "Whether an individual must be placed on the sex offender registry is

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a question of law." (Op. p.3, citing *Noisette v. Ismail*, 299 S.C. 243, 247 (Ct. App. 1989). Respondent conceded as a matter of law and at trial that he was properly placed on the sex offender registry. The question for the Court was never whether Chris Johnson was legally on the Registry; the question was whether the circuit court had the authority to remove him. Thus, the Court misapprehended the nature of what the circuit court did and consequently did not apply the correct standard of review; and (2) The Court overlooked the fact that Christopher Johnson was a minor at the time when it concluded "the sex offender registry statute provides an adequate remedy" for him, where the trial court specifically found it did not.

Support for Respondent's request is further provided by way of Memorandum, Rule 240 SCACR.

Respectfully submitted,


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9

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2011-CP-21-2264

John Christopher Johnson,.....Respondent,

vs.

Reginald C. Lloyd, Chief, State Law Enforcement Division, and the State of
South Carolina,.....Appellants.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

FACTUAL AND PROCEDURAL HISTORY RELEVANT TO REHEARING

Respondent craves reference to the factual findings of the trial court:

"This court finds the Plaintiff, John Christopher Johnson, pled guilty May 12, 2003, to Lewd Act Upon a Minor... He was 17 at the time of both the offense and plea. ...[His] criminal conduct was limited to kissing a 13 year old girl. This court further finds they kissed each other consensually... Moreover, I find the parties did not engage in ...sexual activity as it is defined by § 16-15-375, S.C. Code of Laws. This court further finds that, as a consequence of his conviction, Plaintiff must register on the South Carolina Sex Offender Registry...and comply with its provisions for the rest of his life."

Respondent's sentence was suspended upon service of one hundred days and two years' probation. According to the testimony and this Court, he did not learn of his status as a lifelong sex offender until the completion of his probation. Op. p. 2. He was a minor at

the time of his release from custody. (R. p. 104:14-15.) This Court acknowledges Respondent did not know of his injury until more than two years after his sentence—nineteen or twenty at the earliest. Christopher testified he did not know until he had completed a job training program and was preparing to ship out in the U.S. military and the registry people came looking for him. (R. 103-104.) He brought his claim for relief at age twenty-three. (R. 40:17).

ARGUMENT FOR REHEARING

To support his request, Respondent submits the following “were overlooked or misapprehended by the Court.” Rule 221(a), SCACR:

I. The Court misapprehended the question and so applied the wrong standard of review

This Court found “whether an individual must be placed on the sex offender registry is a question of law” and consequently applied a “correction of errors of law” standard of review. (Op. pp. 3-4). But, Respondent conceded as a matter of law and at trial that he was properly placed on the sex offender registry. **The question for the Court was never whether Christopher Johnson was legally on the Registry; the question was whether a circuit court had the power to remove him.** Thus, the Court misapprehended the question and consequently applied the wrong standard of review.

Twice in its opinion, the Court states “whether an individual must be placed on the sex offender registry is a question of law.” Op. pp. 3-4. Both cites come from *Lozada v. S.C. Law Enforcement Div.*, 395 S.C. 509 (2011) (citing *Noisette v. Ismail*, 299 S.C. 243, 247 (Ct. App. 1989) a declaratory judgment case on a coverage claim.) Appellants provided *Lozada* by way of Rule 208(b)(7) SCACR supplement, after briefing. Respondent

was not able to responsively brief the distinction but was prepared to distinguish it at oral argument. However, Appellants did not argue that case. Respondent submits they may not have chosen to argue it because of the realization *Lozada* answers a legal question not asked here: whether an individual must be placed on the registry for an offense. The court in *Lozada* was asked whether a Pennsylvania offense required registry here. But Christopher never challenged his placement on the registry for his offense; He just asked to be removed. He submits the Court was misled by the state's letter and *Lozada* being part of its file, without being offered for responsive brief or oral argument.

For the standard of review, the Court cites *Noisette* and *Lozada*. In both, the matter was a question of law (whether there was insurance coverage; whether an out-of-state statute met elements of a South Carolina offense.) Because this Court misapprehended the "whether" question as a legal one that was not asked, it applied the wrong standard.

In *Noisette*, the court said "a declaratory judgment action is like a chameleon. Its color is determined by its background, i.e., the underlying action." *Id.* This court in *Noisette* notably cites *Felton v. Chandler*, 201 Ga. 347, 39 S.E.2d 654 (1946), a case "wherein a declaratory judgment action [was] held to be one at law *since the prayer for relief did not seek injunctive or other equitable relief.*" (emphasis added.)

Christopher petitioned for Declaratory Judgment. (R. 21). His factual recitation includes that he is not eligible for any statutory legal remedy, and that he suffers grievous consequences. (R. 21-23). It is a fact-at-law that lewd act on a minor is a registry offense. To be removed he had to prevail at trial on the constitutional claims, or his plea for equitable relief. Op. p. 3. In only looking at whether a lewd act conviction makes one a

sex offender, this Court overlooks whether the trial court had the equitable power to remove him regardless. The trial court found Christopher's case "is properly one for declaratory judgment and this court has jurisdiction to grant him relief."¹ The court specifically found he made a claim for:

equitable relief, enjoining Defendant Reginald C. Lloyd from keeping Plaintiff on the SLED-maintained South Carolina Sex Offender Registry, and ordering Plaintiff removed from it; and other or further equitable relief as the court deems appropriate. (R. 16) (emphasis added)

In support of the instant motion, he submits this Court misapprehended the question and therefore overlooked his arguments (Brief pp. 2-5), and its own precedent (*Matsell v. Crowfield Plantation Community Services Ass'n, Inc.*, 393 S.C. 65 (S.C. App. 2011); *Mortgage Loan Company v. Townsend*, 156 S.C. 203 (1930) and its progeny. If a court order commanding someone to undo some wrong or injury is injunctive, it is equitable. Like the changeable color of the chameleon cited by this Court, Respondent pled facts supporting both legal and equitable relief, his prayer for relief was for both, but the relief he got was only equitable. The standard of review is necessarily that for the equitable relief granted. The correct standard is to "affirm the findings of fact...in an equity case unless the appellant satisfies this court that the preponderance of the evidence is against the findings of the trial court." *Lewis v. Lewis*, 392 S.C. 187 (2011).

This Court should permit Respondent to be reheard under the equitable standard of review for the question presented (can the circuit court order his removal?), not an inapplicable legal standard of review for a question never asked. This Court did not opine

1. This Court found "Johnson brought a declaratory judgment action, alleging two causes of action and

the evidence was against the trial court's finding the record "*full of reasons*" to support its granting equitable relief in this case.

- II. The Court overlooked the fact that Christopher was a minor at the time of his conviction when it concluded the statutory remedies were adequate in this case.

This Court states "because the sex offender registry statute provides an *adequate remedy* for Johnson, it was error for the circuit court to fashion an equitable remedy..." Op. p. 5, emphasis added. In deciding the remedies available were "adequate" for Christopher, the Court overlooked that he suffered the disability of minority. By footnote, the Court declined to address Appellants' and Respondent's equitable arguments, and the trial court's findings with regard to minority, including "[t]he delay "for a young man to recognize the collateral consequences of a plea and registration when he was a minor is not unreasonable under the circumstances." (R. 20.)

"The registry statute...provides several avenues for an individual to be removed from the registry" Op. p. 5. These legal means were also presented to the trial court: Appeal, post-conviction relief, new trial, pardon, and declaratory judgment action (R. 64:17-25; 65:1-25.)

Appeal. Under §18-3-30, SC Code, Christopher had ten days after sentence to appeal. He was a minor in the custody of the State when that right expired. The unchallenged fact is he did not know he was required to register at that time. This Court overlooked that fact when it determined the remedy of appeal was adequate *for him*.

Post-Conviction Relief. Under §17-27-45 SC Code, PCR must be filed within one

seeking to be removed from the registry." Op. at p.2 (emphasis added.)

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year of conviction, or remittitur. During that time, Christopher was 17 (a minor) and 18, still unaware the registry was not probation-related. This Court overlooked that fact when it determined the remedy of PCR was adequate *for him*.

New Trial. Christopher never argued he was eligible for a new trial based on after-discovered evidence; his testimony has consistently been he did kiss the girl.

Pardon. Under §23-3-430(F)(2) SC Code, Christopher is not eligible to be removed by Governor's pardon. As stated, that would require a finding of not guilty, and his testimony is he did kiss the girl.

The only "adequate legal remedy" possible was declaratory judgment action. Christopher submits this Court overlooked his disability when concluding his legal remedies were adequate. Had the statutory door not been locked to him during his minority and when he did know about the registry, he speculates he would almost certainly have been granted PCR for ineffective assistance of counsel in pleading guilty to a felony sex offense for kissing a teenage girl, making him a registered sex offender for life.

For rehearing, Respondent submits the courts and legislature have long been mindful of tolling periods for the disability of being a minor. There are numerous examples of expansions of time before door-closing, found for example in negligence cases, Tort Claims Act cases, civil sexual abuse cases, and medical negligence cases, expanding time for filing up to age twenty-seven.

Because this Court overlooked Respondent's minority, its finding the legal remedies "adequate" *for him* is a substitution of judgment for the trial court's, which heard the case and concluded there was no adequate remedy at law. (R. 16, citing *Santee Cooper*

Resort, Inc. v. South Carolina Public Service Comms'n, 298 S.C. 179 (1989) (equity applies "where there is no adequate remedy at law.")

Because the correct standard is to "affirm the findings of fact...in an equity case unless the appellant satisfies this court that the preponderance of the evidence is against the findings of the trial court," *Lewis, supra.*, this Court overlooked Christopher's disability of minority in concluding his remedies at law were adequate for him when the trial court found they were not.

CONCLUSION

For the reasons cited above, including: (1) the Court misapprehended the question and so applied the wrong standard of review; and (2) The Court overlooked the fact that Christopher Johnson was a minor at the time when it concluded the statutory remedies were adequate for him, Respondent respectfully requests a rehearing.

Respectfully submitted,



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Date: Aug 8, 2012
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16

The South Carolina Court of Appeals

John Christopher Johnson, Respondent,

v.

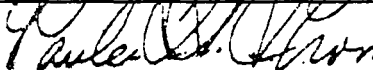
Reginald C. Lloyd, Chief, State Law Enforcement
Division, and The State of South Carolina, Appellants.

Appellate Case No. 2011-193227

ORDER

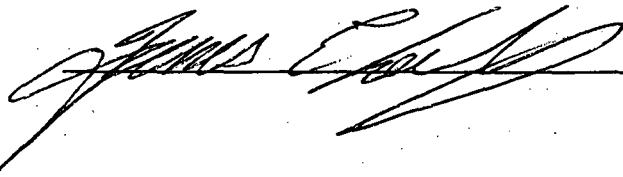
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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

J. Williams

J. Thomas



J. Lockemy

Columbia, South Carolina

FILED

20 September 2012

cc:

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Jared Quante Libet

Alan McCrory Wilson

Elise Freeman Crosby

Geoffrey Kelly Chambers

Adam L Whitsett

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William Henry Seals, Jr., Circuit Court Judge

Case No. 2011193227

John Christopher Johnson, ... Respondent,
v.
Reginald C. Lloyd, Chief, State Law Enforcement Division, and The State of South
Carolina, ... Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

John Christopher Johnson,
Plaintiff/ Petitioner,

vs.

Reginald C. Lloyd, Chief,
State Law Enforcement Division, and
The State of South Carolina,
Defendant,

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-21-02264

ORDER

Denying Defendant State of South Carolina's
Motion to Dismiss

2010 FEB 12 PM 12:49
CLERK OF COURT
C.C.P. & G.S.
FLORENCE COUNTY, SC

HEARING DATE: January 19, 2010
PRESIDING JUDGE: Honorable Thomas A. Russo
PLAINTIFF's ATTORNEY: Elise F. Crosby
DEFENDANTS' ATTORNEY: Geoffrey Chambers, Assistant Attorney General
COURT REPORTER:

THIS MATTER comes before the court upon motion of the Defendant State of South Carolina to be dismissed as a Defendant under Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action.

Present at the hearing were Plaintiff and his attorney and the attorney for the moving party, Defendant state of South Carolina. After reviewing the motion, Plaintiff's memorandum in response, and hearing from the parties, the court makes the following findings of fact and conclusions of law:

Plaintiff's action is for declaratory judgment as to both defendants. Plaintiff makes three claims for declaratory judgment:

- 1) declaring the requirement he register as a sex offender for rest of his life impermissibly cruel and unusual under the Eighth Amendment;
- 2) declaring the distinctions between sections 16-3-655(B)(2) (criminal sexual conduct), 16-15-140 (lewd act upon a minor), and 23-3-430(C)(5) of the S. C. Code of Laws (1976, as amended), unconstitutionally violative of his constitutional rights to equal protection of the laws; and

CERTIFIED A TRUE COPY
Christine Red-Sparin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

- 3) directing Defendant(s) to remove his name from the Sex Offender Registry.

The first two claims are for declaratory judgment on the constitutionality of legislation. Petitioner alleges that changes to both the substantive law¹ and the Sex Offender Registry law² applying a "Romeo" exemption to seventeen year old persons convicted of criminal sexual conduct with a minor, second degree, violate the equal protection of the laws to a person like himself, convicted at seventeen of lewd act on a minor³ and required to register as a sex offender rather than getting the benefit of the Romeo exemption. Additionally, he claims these same discrepancies and the resultant requirement he register as a sex offender violate the Eight Amendment. The third claim is for administrative relief, or removal from the Sex Offender Registry.

In considering the State's motion to dismiss on the pleadings, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The Court should not grant the Rule 12(b)(6) motion to dismiss "if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory." Id.

THIS COURT FINDS:

1. Based on the four corners of the pleadings, Petitioner states a claim for which relief may be granted.

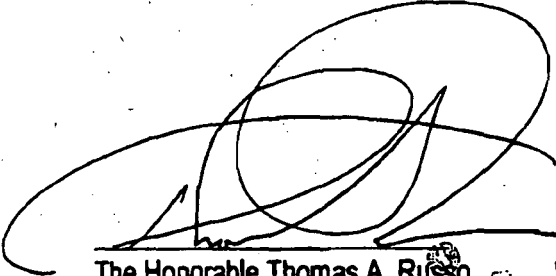
¹ Criminal Sexual Conduct with a Minor, 2d degree, § 16-3-655(B), SC Code of Laws, as amended

² § 23-3-430, SC Code of Laws, as amended, and as cited in the Complaint

2. The petition alleges the State's enactment of certain provisions of the South Carolina Code violate his constitutional rights under the Eighth and Fourteenth Amendments.
 3. In his pleadings, Petitioner alleges, because of the discrepancies in the South Carolina Code, he is required to register as a sex offender for a conviction for non-sexual-battery conduct with a thirteen year old , while a similarly-situated seventeen year old convicted of criminal sexual conduct is legislatively exempted from the sex offender registry requirement.
 4. The State is a body politic and enacts legislation through the Legislature and Governor, and Petitioner properly names the State as a necessary party.
 5. An action to declare portions of the State's Code of Laws unconstitutional is an action against the State.
 6. Defendant Reginald C. Lloyd's duty to maintain the Sex Offender Registry is created by statute.
- Therefore, dismissal of the State as a party could destroy this Court's ability to provide relief.

The pleadings, viewed in the light most favorable to the Plaintiff, may indeed entitle him to relief under his theories. Thus, this Court DENIES the State of South Carolina's motion to dismiss for failure to state a claim.

AND IT IS SO ORDERED.


The Honorable Thomas A. Russo
Twelfth Judicial Circuit

2/5/2010

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CORRECTIONAL INSTITUTION
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February 5, 2010

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FLORENCE COUNTY, SC #

11-11

5

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

John Christopher Johnson)

Plaintiff,)

vs.)

Reginald C. Lloyd, Chief, South
Carolina Law Enforcement Division,
and the State of South Carolina,)

Defendants.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-21-02264

Order Denying Summary Judgment

FILED
JUN -1 PM 12:38
CLERK OF COURT
FLORENCE COUNTY, SC

This matter comes before the court by motion of the Plaintiff for Summary Judgment.

Background

In 2003 John Christopher Johnson pled guilty to lewd act on a minor, SC Code Ann. §16-15-140. Because Mr. Johnson pled guilty to lewd act on a minor he was required to register as a sex offender pursuant to S. C. Code Ann. §23-3-430(C)(11). The present action was brought by Mr. Johnson petitioning the court to remove his name from the sex offender registry on grounds that South Carolina's Sex Offender Registry violates the Eighth Amendment ban against cruel and unusual punishment and S. C. Code Ann. §16-15-140, the lewd act on a minor statute, violates Fourteenth Amendment equal protection.

WFS

8th Amendment Ban Against Cruel and Unusual Punishment

Persons required to register as sex offenders have used the Eighth Amendment ban on cruel and unusual punishment to attack sex offender registry statutes in numerous states and have failed because Courts have held sex offender registry statutes are regulatory civil statutes and not punitive in nature. *State v. Ortiz*, 925 N.E.2d 662 (OH App. 2010); *Rainer v. State*, 690 S.E.2d 827 (GA 2010); *State v. Peppers* 690 S.E.2d 770, N.C.App., 2010; *U.S. v. Davis* 352 Fed.Appx. 270 C.A. 10 (Okla. 2009); *Doss v. State* 772 N.W.2d 270 (Iowa App. 2009); *Com v. Becker* 879 N.E.2d 691 Mass.App.Ct. 2008); *Johnson v. Terhune* 184 Fed.Appx. 622 (Cal. 2006); *ACLU of NM v. City of Albuquerque* 137 P.3d 1215 (N.M.App. 2006); *Creekmore v. Attorney General of Texas* 341 F.Supp. 2d 648 (E.D.Tex. 2004).

Similar to other states, South Carolina's sex offender registry is not punitive, but rather a civil and remedial statute. *Hendrix v. Taylor* 353 S.C. 542, 579 S.E.2d 320 (2003); *State v. Walls* 348 S.C. 26, 558 S.E.2d 524 (2002) (holding that the sex offender registry is civil and remedial and not punitive for purposes of the *ex post facto* clause.)

Because the South Carolinas sex offender registry, S. C. Code Ann. §23-3-400 *et seq.* is not punitive in nature, but rather a civil and remedial law, the Eighth Amendment ban against cruel and unusual punishment does not apply. Summary Judgment is denied on grounds that the sex offender registry, a non-punitive civil and remedial statute, by definition can't violate the Eighth Amendment ban on cruel and unusual punishment.

Fourteenth Amendment Equal Protection

The Plaintiff maintains that had he had sexual intercourse with his victim, he would be entitled to protection against registration under the 'Romeo' provisions

WKS #2

contained in the Criminal Sexual Conduct with Minors and Sex Offender Registry statutes, S. C. Code Ann. §16-3-655 and §23-3-430(C)(5) respectively. However, the Plaintiff pled guilty to lewd act on a minor, S. C. Code Ann. §16-15-140, which has no 'Romeo' provision. Because §16-15-140 has no 'Romeo' provision and some other sex offenses do have a 'Romeo' provision, the Plaintiff alleges §16-15-140 is unconstitutional on Fourteenth Amendment equal protection grounds.

In order to qualify for equal protection of the laws, the Plaintiff must show that similarly situated persons received disparate treatment. *Grant v. South Carolina Coastal Council* 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995). To show he was similarly situated, the Plaintiff stated a seventeen year old who had sexual intercourse with a thirteen year old girl and was convicted of Criminal Sexual Conduct with a Minor, §16-3-655, would not be required to register because of a 'Romeo' provision in the sex offender registry statute at §23-3-430(C)(5). This 'Romeo' provision contained in the Sex Offender Registry Statute states:

(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

LMS:AS

and is not required to register pursuant to the provisions of
this article;

When we examine §16-3-655 we note that the statute has been re-numbered and there is no "Section §16-3-655(3)." Thus we look at the historical statute to determine the meaning of "Section §16-3-655(3)." Upon examination of the history of we find that 2005 Act Number 94, § 1, effective June 1, 2005 changed sections 1, 2, and 3 to letters. Section 16-3-655(3) prior to 2005 read as follows:

(1) A person is guilty of criminal sexual conduct with a minor in the first degree if the actor engages in sexual battery with a victim who is less than eleven years of age. .

-- (2) A person is guilty of criminal sexual conduct with a minor in the second degree if the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age.

(3) A person is guilty of criminal sexual conduct with a minor in the second degree if the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim.

It is clear the 'Romeo' provision in §23-3-430(C)(5) refers to the historical pre 2005 statutory text provided in §16-3-655(3). This historical statute described a victim who was "at least fourteen years of age but who is less than sixteen years of age."

Pursuant to §23-3-430(C)(5) a person convicted under the historical §16-3-655(3) who is less than eighteen years of age that had consensual sex with a victim between the ages of fourteen and sixteen as described in §16-3-655(3) is not required to register as a sex offender.

WLS 4

In the case at hand the Plaintiff was seventeen years old and his victim was less than fourteen years old. The victim's age is less than the fourteen to sixteen years old age range prescribed pursuant to §23-3-430(C)(5). Therefore the Plaintiff is not similarly situated to a person described in §23-3-430(C)(5) who is convicted of criminal sexual conduct with a minor but is not required to register. Because the Plaintiff's victim was less than fourteen years old, the Plaintiff cannot claim he is similarly situated to a person receiving disparate treatment. Therefore the Plaintiff's equal protection claim fails.

In a different set of facts where a Plaintiff is similarly situated, the Plaintiff must overcome the presumption that the legislature acted in a constitutional manner and must prove lack of a rational basis. *Brown v. County of Horry* 308 S.C. 180, 417 S.E.2d 565 (1992). Furthermore, the court grants great deference to a legislatively created classification and the classification will be sustained if it is not arbitrary and there is any reasonable hypothesis to support it. *Davis v. County of Greenville* 313 S.C. 459, 443 S.E.2d 383 (1984). In hearing this motion for summary judgment, no evidence was provided that the legislatures intent to provide a 'Romeo' provision in one sex offense and not in others is purely arbitrary.

Lewd acts on a minor, §16-15-140, is held as a different offense and not a lesser included of §16-3-655, criminal sexual conduct with a minor. *Campbell v. State* 342 S.C. 100, 535 S.E.2d 928 (2000); *State v. Norton* 286 S.C. 95, 332 S.E.2d 531 (1985), (A person can be re-indicted for lewd act on a minor following an acquittal for criminal sexual conduct with a minor). It is therefore the legislature's prerogative to determine penalties and exceptions for these different crimes. It is assumed that inclusion of exceptions such as a 'Romeo' provision are debated and the result of the legislature's

WISAS

decision to provide or not provide a 'Romeo' provision is based on some rational basis.

In the case at hand, a plausible rational basis not to provide a 'Romeo' provision in §16-

15-140 is to provide strict liability for lewd acts on children less than 16 years old

because of the potential heinous nature of and horrible psychological impact lewd and

lascivious acts have on children. This proposed rational basis is similar in nature to the

rational basis that upheld differences in sentencing guidelines between crack cocaine and

powder cocaine. State v. Brown 317 S.C. 55, 451 S.E.2d 888 (1994), (harsher penalties

to prevent rise of use of a new form of cocaine is adequate rational basis.)

The plaintiff fails to show he is similarly situated to a person not required to register as a sex offender pursuant to §23-3-430(C)(5), and failed to show the legislature lacks a rational basis for treating persons convicted under §16-15-140 differently from persons convicted under §16-3-655. Therefore the plaintiff has not met the burden of proof necessary for summary judgment.

WIS #6

Conclusion

Summary Judgment requires a showing that a person is entitled to a verdict as a matter of law and no material facts are in dispute. *George v. Fabri* 345 S.C. 440, 548 S.E.2d 868 (2001). In the present case the plaintiff has failed to show he is entitled to judgment as a matter of law on grounds that S.C. Code Ann. §23-3-430 violates the Eighth Amendment ban against cruel and unusual punishment because the law is not punitive in nature and the Eighth Amendment does not apply. Second, the Plaintiff is not entitled to have §16-15-140 found unconstitutional on equal protection grounds because he has failed to show he is similarly situated to another group of people who are treated preferentially under the law. The Plaintiff has also failed to show the legislature lacked rational basis for treating people convicted of different sex offenses differently.

Summary Judgment is denied.

IT IS SO ORDERED


The Honorable William H. Seals, Jr.
Circuit Court Judge

May 28, 2010

FILED
2010 APR -1 PM 12:38
GENIE REEL-SHEARIN
CCOP & OS
PLAQUEMINE COUNTY, ALA

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-21-02264

John Christopher Johnson,
Plaintiff/ Petitioner,

vs.

Reginald C. Lloyd, Chief,
State Law Enforcement Division, and
The State of South Carolina,
Defendant,

ORDER

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FLORENCE COUNTY S

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THIS MATTER came before the court February 2, 2011 upon Petition of the Plaintiff, filed September 28, 2009, seeking declaratory relief. 1

Present at the call of the case were Plaintiff, attorneys for the parties, and the parties' witnesses. The court heard testimony from the following: Investigator Scott Dangerfield, Deputy Randall Carmichael, Victim #1, Paula Miller, Victim #2, Plaintiff and Tiffany McDaniel. The court reviewed the following items of evidence, entered without objection: warrant H020145, indictment 2003-GS-45-93, sentencing sheet, Notice of Sex Offender Registry, Sex Offender Registry Fee paperwork, 2003 statement of Victim #1, 2009 affidavit of Victim #1, letter from Court Administration about 2003 transcript, general circulation paper "Carolina Mugshots," and discovery requests and responses between the parties. After reviewing the pleadings and the evidence presented, the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

This court has the power to make findings of fact pursuant to the Declaratory Judgment Act, §15-53-

1 Court reporter: Krystal Smith

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

20, SC Code of Laws, Hazel v. State, 659 S.E. 2d 137 (2008.)

This court finds the Plaintiff, John Christopher Johnson, pled guilty May 12, 2003, to Lewd Act Upon a Minor, based on a charge from January 2003. He was 17 at the time of both the offense and plea. This court finds the plaintiff's criminal conduct was limited to kissing a 13 year old girl. This court further finds they kissed each other consensually. This court employs the term "consensual" as it is commonly understood and as it is used by the General Assembly in the S.C. Code of Laws.² Moreover, I find the parties did not engage in any conduct that would rise to the level of sexual battery, or even sexual activity as it is defined by § 16-15-375, S.C. Code of Laws.

This court further finds that, as a consequence of his conviction, Plaintiff must register on the South Carolina Sex Offender Registry pursuant to § 23-3-430(A)(11), S.C. Code of Laws, and comply with its provisions for the rest of his life.

Victim #1, the victim identified in the indictment, now 21, testified she was 13 at the time, turning 14 in March. Both she and the Plaintiff testified they knew each other from the neighborhood where they lived with their mothers, who both also testified. Victim #1 testified she and three female friends were "hanging out" in Hemingway, S.C. and rode with one of the girls to meet three boys at a motel. Consistent with her statement to law enforcement at the time, Victim #1 testified to this court that over the course of the night, she and the other teens in the room together ate, watched t.v., and shared beer and cigarettes. She testified she kissed the Plaintiff, Chris Johnson, voluntarily and consensually, and that they gave each other "hickeys." She testified this was the extent of their conduct. She testified that at no time were either of them naked and specifically testified that none of the conduct defined as sexual activity under § 16-15-375 occurred.

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² e.g. §§16-3-655(b)(2), 23-3-430(C)(5)

Victim #1's testimony was corroborated by the testimony of Plaintiff, Miss Matthews, and Deputy Carmichael. Deputy Carmichael testified Plaintiff was arrested on a warrant sworn out by Ms. McDaniel, Victim #1's mother, who testified and corroborated this. Deputy Carmichael further testified his investigation revealed no evidence of behavior other than kissing. Both Deputy Carmichael and Victim #1 testified they were surprised to learn Plaintiff was required to register as a sex offender.

Investigator Dangerfield testified he is responsible for registering and monitoring sex offenders in Florence County. He testified Plaintiff is and has been compliant with the Registry requirements, which include but are not limited to: registering and paying a \$150 fee biannually; notifying him immediately of all residence changes; notifying him of all Internet Service Providers, email accounts, and electronic usernames; immediately notifying him of all vehicle and boat purchases, title transfers, and VIN numbers; and notifying him of descriptions, ownership information, and associated VIN numbers for all vehicles Plaintiff uses or borrows. He further testified Plaintiff has not been identified at any time with a "predator status." He testified South Carolina's Sex Offender Registry is lifelong.

Ms. Miller, Plaintiff's mother, testified she was unable to hire an attorney for her son when he was seventeen. Upon his conviction, she testified he was not allowed to return to her home and finish high school because of the Sex Offender restrictions on where her son could live. She testified to myriad detrimental effects this registry has had on her son and his young family, including, among other things, Plaintiff's appearances in the color publication "Carolina Mugshots" as being a Sex Offender, having been convicted of Lewd Act on a Child.

Plaintiff testified to the facts of his underlying offense, consistent with Victim #1's testimony. He further testified he pled guilty because he "did kiss her." He testified at no time was he made aware of the Sex Offender Registry, until he registered with his probation officer. Among his restrictions as a Sex Offender:

waiver of confidentiality of mental health treatment; no contact with unrelated minors under age 18; no going within 1,000 feet of places "frequented by persons under 18" such as pools, shopping malls, arcades, or theaters without prior authorization; no use of computer without prior authorization; no possession of sexually explicit material; no alcohol consumption; restrictions on residency within 1,000 feet of schools, daycares, shopping malls, and other places frequented by minors; and more. The court finds Plaintiff was himself a minor at the time he registered, having turned seventeen the October before the offense date in January. Plaintiff testified to the adverse impact of the Sex Offender Registry on his education and employment, including having to drop out of high school, and missed employment opportunities because he could not utilize a CDL to make deliveries to schools. He testified the Registry "destroyed" his future. He testified that he is now a father of a five year old son, and the problems he encounters related to him being a Sex Offender as a parent regarding his son's schooling, recreational sports, and family life. He further testified to his humiliation as the restrictions regard his inability to do things with his son and his struggle to overcome the public presumption that he "held down a child" and committed a sex crime on a child.

The court finds the record is full of reasons to support a finding that Plaintiff is entitled to personal relief in his unique circumstances.

CONCLUSIONS OF LAW

Plaintiff's action is properly one for declaratory judgment and this court has jurisdiction to grant him relief. As regards a constitutional challenge to a statute, "[a] party should seek declaratory judgment from the circuit court..." Video Gaming Consultants, Inc. v. South Carolina Dep't of Revenue, 342 S.C. 34 (2000) (quoting Evans v. State, 44 S.C. 60 (2001)). Plaintiff makes a fourfold claim for relief:

- 1) declaring the requirement he register as a sex offender for rest of his life impermissibly cruel and unusual under the 8th Am., U.S. Const.;

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- 2) declaring the distinctions between §§ 16-3-655(B)(2) (criminal sexual conduct with a minor 2d degree), 16-15-140 (lewd act upon a minor), and 23-3-430(C)(5) of the S. C. Code of Laws (1976, as amended), unconstitutionally violative of his right to equal protection of the laws under the 14th Am., U.S. Const., as the distinctions relate to a "Romeo" exemption for consensual sex but none for lewd act;
- 3) equitable relief, enjoining Defendant Reginald C. Lloyd from keeping Plaintiff on the SLED-maintained South Carolina Sex Offender Registry, and ordering Plaintiff removed from it; and
- 4) other or further equitable relief as the court deems appropriate.

This court declines to grant Plaintiff relief on his constitutional claims. Equitable personal relief, however, is appropriate in this case.

"Equity abhors a wrong without a remedy." Key Corp. Capital, Inc. v. County of Beaufort, 360 S.C. 513, 602 S.E.2d 104 (S.C. App. 2004) citing State ex. rel. Daniel v. Strong, 185 S.C. 27, 43, 192 S.E. 671, 678 (1937.) "Equity is reserved for situations where there is no adequate remedy at law." Id. at 107 (citing Santee Cooper Resort, Inc., v. South Carolina Public Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).) This is just such a situation.

The purpose of the Sex Offender Registry is "to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes." State v. Walls, 348, S.C. 26, 31, 558 S.E.2d 524, 526 (2002.) Although convicted of Lewd Act on a Child, the facts before this court do not support a finding that Plaintiff is or ever was a child molester. Investigator Dangerfield testified Plaintiff has not been flagged for risk of predation or recidivism. All parties involved testified the conduct for which Plaintiff is required to register as a Sex Offender was to kiss a consenting thirteen year old girl when he was barely seventeen. The court is mindful that kissing is behavior sought out and engaged in by many if not most teenagers in this state. The criminalization of this conduct is not before this court. What is before this court is Plaintiff's request that he be removed from the burdens, restrictions, and obligations of the Sex Offender Registry on the remainder of his

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life. This is a request in which the now-adult victim #1 joins.

Under the facts of Plaintiff's case, the requirement of lifelong Sex Offender Registry is wildly disproportionate to the underlying conduct. "The concept of proportionality is central to the Eighth Amendment." Graham v. Florida, ___ U.S. ___, 130 S.Ct. 211, (2010.) This court notes, however, the South Carolina Supreme Court has determined "registering as a sex offender is a non-punitive imposition." Walls, supra. As noted, this court declines to grant constitutional relief. However, justice compels a remedy for this particular situation.

South Carolina courts have long observed that equity "looks beneath rigid rules of law to seek substantial justice." Drury Development Corp. v. Foundation Insurance Co., et. al, 380 S.C. 97, 668 S.E.2d 798, 801 (2008) citing State ex. rel Daniel, supra. Substantial justice is served in this case by granting Plaintiff personal relief. Principles of justice and right compel this court to grant Plaintiff's request for removal from the South Carolina Sex Offender Registry.

THEREFORE, IT IS THE JUDGMENT OF THIS COURT THAT:

1. Plaintiff has established his claim for relief by evidence satisfactory to the court;
2. Defendant Reginald C. Lloyd, Chief, South Carolina Law Enforcement Division, is hereby ordered to remove Plaintiff's name from the South Carolina Sex Offender Registry within ten (10) days of the date of service of this Order.

AND IT IS SO ORDERED.



The Honorable William Henry Seals Jr.
Circuit Court Judge

CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

John Christopher Johnson,
Plaintiff/ Petitioner,

vs.

Reginald C. Lloyd, Chief,
State Law Enforcement Division, and
The State of South Carolina,
Defendant,IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-21-02264ORDER
DENYING DEFENDANTS' MOTION TO ALTER
OR AMEND JUDGMENTFILED
2011 MAY 13 AM 11:22
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

THIS MATTER comes before the court upon motion of the Defendants to Alter, Amend, or Set Aside Judgment under Rule 59(e), SCRPC. The court reviewed the motion and memoranda and advised the parties it would decide the motion without oral argument.

This case was brought as a Petition for Declaratory Relief for removal from the South Carolina Sex Offender Registry. By Order dated March 1, 2011, this court granted Petitioner relief. Defendants now argue the court erred, premising their argument on equitable estoppel by acquiescence and laches. Defendants argue Plaintiff only pled constitutional and legal arguments for relief and is not eligible for equitable relief because of estoppel by acquiescence and laches.

Plaintiff did raise equitable claims for relief to this court, both in his Petition and at trial. His Complaint was a Petition for Declaratory Judgment. "A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland County*, 303 S.C. 354, 356 (1991). Plaintiff's Petition sets forth four claims for relief: two constitutional claims, one claim for injunctive relief ("ordering Defendants to remove Plaintiff/Petitioner name from the Sex Offender Registry"), and lastly, a claim "for such other and further relief as may be deemed appropriate." (Petition at 5.) At trial, he reiterated his

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

claim for equitable relief. This court was well within its authority to deny the constitutional claims but grant relief on the equitable claims.

Plaintiff's claims were not barred by either acquiescence or laches. Equitable estoppel is an affirmative defense that must be pled. Neither Defendant raised any affirmative defenses in responsive pleadings. "The failure to plead an affirmative defense is deemed a waiver of the right to assert it." *Parrish v. Allison*, 376 S.C. 308 (S.C.App. 2007) (citing *Adams v. B & D, Inc.*, 297 S.C. 416 (1989)). The proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court. *Walsh v. Woods*, 371 S.C. 319 (Ct. App. 2006.) A party cannot use a motion to reconsider to present an issue that could have been raised prior to the judgment but was not. *Dixon v. Dixon*, 362 S.C. 388 (2005). Even if Defendants had properly raised affirmative equitable defenses, they failed to meet their burden of proving either. A defendant "asserting an affirmative defense bears the burden of its proof." *Youmans v. S.C. Dep't of Transp.*, 380 S.C. 263, 281-82 (Ct.App.2008.)

The elements of equitable estoppel are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) prejudicial change in position of the party claiming estoppel. *Murphy v. Hagan*, 275 S.C. 334, 338 (1980). As Defendants point out, Plaintiff brought his claim six years after first registering as a sex offender. Plaintiff testified he did not know prior to pleading guilty that there was a registry requirement. He further testified he believed the registry requirement, initially handled by his probation agent, would end when his probation ended. Defendants include that initial registration as an Exhibit to the instant motion. As this court noted in the Order, Plaintiff was himself a minor at the time of that registration. To meet its burden here the State must show: (1) an unrepresented indigent minor, forced to drop out of school and move away from his mother, had the means to access the true facts about the Sex Offender Registry; (2) the State relied on his acquiescence in registering; and (3) the State

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was prejudiced. The State does not meet its burden.

Similarly, a party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. *Robinson v. Estate of Harris*, Op. no. 26864 (SC August 16, 2010) (citing *Hallums v. Hallums*, 296 S.C. 195, 199 (1988)). This court distinguishes the instant case from the facts in *Robinson*, where the court found waiting thirty-nine years to assert one's rights was an example of "a flagrant and egregious delay represent[ing] the quintessential situation that the doctrine of laches was intended to protect." *Id.* In contrast, a six-year delay for a young man to recognize the collateral consequences of a plea and registration when he was a minor is not unreasonable under the circumstances, and certainly not the type of flagrant and egregious delay that would bar this court's granting him relief due to laches. Even if Defendants had raised this affirmative defense to the court, they failed to meet their burden to show the delay was unreasonable and prejudiced the State.

This court granted equitable relief on Plaintiff's properly-pled petition, noted the case presented unique circumstances, and found substantial justice served in this case by granting personal equitable relief. Defendants do not meet their burden to establish equitable estoppel to support this court's altering, amending, or setting aside its judgment, and Defendants' Rule 59(e) Motion is hereby DENIED.

AND IT IS SO ORDERED.



The Honorable William Henry Seals, Jr.
Circuit Court Judge

May 12, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

John Christopher Johnson,)
Plaintiff/ Petitioner,)
vs.)Reginald C. Lloyd, Chief,)
State Law Enforcement Division, and)
The State of South Carolina,)
Defendant,)IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-21- 2264COMPLAINT

Petition for Declaratory Judgment

(Non-jury)

2009 SEP 28 PM 12:47
FLORENCE COUNTY, SC

Petitioner would respectfully show unto this Honorable Court, and allege as follows:

1. That Petitioner John Christopher Johnson is a resident of the County of Florence, State of South Carolina.
2. That Respondent Reginald C. Lloyd is the Chief of the State Law Enforcement Division, maintaining the Sex Offender Registry for the State of South Carolina. The present action is an action in part for declaratory judgment regarding certain provisions of the Sex Offender Registry and pursuant to §23-3-410, S.C. Code of Laws, as amended, the Sex Offender Registry is under the direction of Defendant Lloyd.
3. That the State of South Carolina, a sovereign state and body politic, enacts its legislation through its State Legislature (General Assembly and Senate) and Governor. The present action is an action in part for declaratory judgment regarding the constitutionality of provisions of the South Carolina Code of Laws, specifically, § 23-3-430, Sex Offender Registry legislation, as it applies differently to § 16-3-655(B) (criminal sexual conduct with a minor, second degree) and § 16-3-16-15-140 (lewd act on a minor.)
4. That in 2003, when he was seventeen, Petitioner was arrested for Lewd Act on a Minor.
5. That the facts of the case, as evidenced by the warrant and the alleged victim, are that Petitioner kissed a thirteen year old girl while in a motel room with her.

CERTIFIED A TRUE COPY

Reginald C. Lloyd - Shearin
CLERK OF COURT C.P & G.S.
FLORENCE COUNTY, S.C.

6. That on May 12, 2003, seventeen year old Petitioner, represented by a part-time public defender, pled guilty to Lewd Act on a Minor in Williamsburg County, South Carolina.
7. That on May 19, 2003, seventeen year old Petitioner registered as a sex offender.
8. That Petitioner has registered as required since that time.
9. That, in 1996, and prior to Plaintiff/Petitioner's conviction, the South Carolina General Assembly changed the Sex Offender Registry law, Section 23-3-430(C)(5), S.C. Code of Laws, to exempt persons eighteen and under convicted of consensual criminal sexual conduct (sexual battery) on a minor in the second degree from the requirements of the registry. This is known as the "Romeo provision" of the Sex Offender Registry law.
10. That the South Carolina General Assembly also similarly changed the Criminal Sexual Conduct with a Minor in the Second Degree law, Section 16-3-655(B)(2), S.C. Code of Laws, to exempt a defendant aged 18 or under from culpability under the criminal statute for consensual sexual conduct (sexual battery, i.e. intercourse, penetration, or oral sex) with a minor aged 14 or over. This is known as the "Romeo provision" of the Criminal Sexual Conduct (CSC) law.
11. That, because of the Romeo provision of the CSC with a Minor Law, which provides the criminal charge does not even apply within a certain age group, the Romeo provision of the Sex Offender Registry law applies only to persons eighteen and under convicted of consensual sexual conduct upon a minor in the second degree (aged eleven – fourteen.)
12. That the Legislature made no such Romeo provision for consensual cases in which the evidence falls short of sexual battery but involves only kissing or touching. Lewd Act on a Minor, Section 16-15-140, S.C. Code of Laws, as amended, remains a criminal offense applicable to persons sixteen or older committing a lewd act on a person fourteen or younger.

13. That, under Section 23-3-430 (F), even if Petitioner was pardoned by the Governor, Petitioner "may not be removed" from the Sex Offender Registry unless the Attorney General notifies Defendant that the conviction "was reversed, overturned, or vacated on appeal." Section 23-3-430(E), S.C. Code of Laws, as amended.

14. That Petitioner did not file a timely appeal of his conviction, nor did he timely file an application for Post-conviction Relief.

15. That, upon information and belief, Petitioner has suffered and continues to suffer grievous consequences as an adult from being a registered sex offender, including:

- (a) forfeiture of his \$20,000 signing bonus with the United States Army;
- (c) permanent ban from volunteering with most youth events, including his own young son's teams or activities, where those include sporting, church, or school events.
- (d) limited employment opportunities; and
- (e) embarrassment and humiliation for himself and his relatives.

FOR A FIRST CAUSE OF ACTION
(Violation of Eighth Amendment)

16. The above set forth facts are made part of this cause of action through incorporation by reference.

17. That Defendant's requiring Plaintiff/Petitioner to register as a sex offender for life for teenaged consensual kissing is an infliction of a cruel and unusual punishment in violation of Petitioner's rights under the Eighth Amendment to the U.S. Constitution, applicable to the State of South Carolina through the Fourteenth Amendment: *Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

18. That Petitioner is entitled to an Order of this Court concluding the provisions of the Sex Offender Registry law, §23-3-410, S.C. Code of Laws, as applied to consensual teenage conduct under the Lewd Act on

a Minor statue, §16-15-140, S.C. Code of Laws, are excessive in violation of the Eight Amendment to the U.S. Constitution.

19. That Petitioner is entitled to an Order of this Court directing Defendant Lloyd to remove his name from the Sex Offender Registry immediately.

FOR A SECOND CAUSE OF ACTION
(Violation of Fourteenth Amendment)

20. The above set forth facts are made part of this cause of action through incorporation by reference.

21. That the Fourteenth Amendment to the U.S. Constitution, Section I, provides: *[No state shall] deny to any person within its jurisdiction the equal protection of the laws.*

22. That the State of South Carolina, by enacting Romeo provisions for consensual teenage sex partners in both the substantive criminal law and the sex offender registry law, but failing to enact a similar provision for consensual teenage kissing partners, impermissibly extended an unwarranted benefit to one class while failing to extend the same benefit to the class of sixteen, seventeen, and eighteen-year olds convicted of lesser behavior, thereby denying Plaintiff/Petitioner the equal protection of the laws;

23. That the State of South Carolina has established no rational basis reasonably tied to a governmental interest for its distinction;

24. That this distinction is patently absurd on its face;

25. That Defendants' requiring Petitioner to register as a sex offender is fundamentally unfair in his fact situation, and is in violation of the Equal Protection of the Laws.

26. That Petitioner is entitled to an Order of this Court concluding the provisions of the Sex Offender Registry law, §23-3-410, S.C. Code of Laws, as applied to consensual teenage conduct under the Lewd Act on a Minor statue, §16-15-140, S.C. Code of Laws, is in violation of Plaintiff's rights to equal protection of the laws

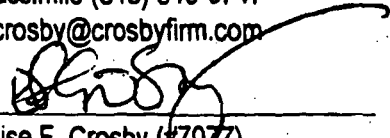
under the Fourteenth Amendment because of the state's unequal and unconstitutional distinction between CSC and lewd act on a minor.

27. That Petitioner is entitled to an Order of this Court directing Defendant Lloyd to remove his name from the Sex Offender Registry immediately.

WHEREFORE, Plaintiff/Petitioner prays this Court for an Order:

- 1) declaring Plaintiff/Petitioner's lifelong sex offender registry requirement impermissibly cruel and unusual punishment under the Eighth Amendment;
- 2) declaring the distinctions between sections 16-3-655(B)(2), 16-15-140, and 23-3-430(C)(5) of the S. C. Code of Laws (1976, as amended), unconstitutionally violative of Plaintiff/Petitioner's constitutional rights;
- 3) ordering Defendants to remove Plaintiff/Petitioner's name from the Sex Offender Registry; and
- 4) and for such other and further relief as may be deemed appropriate.

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BY: 

Elise F. Crosby (#7077)
ATTORNEY FOR PLAINTIFF

Georgetown, South Carolina
September 22, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

John Christopher Johnson)

Civil Action No.: 2009-CP-21-02264

Plaintiff,)

ANSWER of Defendant
Reginald C. Lloyd, Chief,
South Carolina Law Enforcement
Division

-vs-)

Reginald C. Lloyd, Chief, South
Carolina Law Enforcement Division,
and the State of South Carolina,)

Defendants.)

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CLERK OF COURT
FLORENCE COUNTY, S.C.

**Answer of Defendant South Carolina Law
Enforcement Division Chief Reginald C. Lloyd**

Reginald C. Lloyd, Chief, South Carolina Law Enforcement Division, in answer
to the Complaint filed September 28, 2009, will respectfully show the Court that:

1. Reginald C. Lloyd (hereinafter "Defendant") denies each and every allegation contained in the Petition not hereinafter specifically admitted, modified, or explained.
2. The allegations of paragraph 1 are denied upon lack of sufficient information to form a belief.
3. Upon information of belief, Defendant admits Defendant is the Chief of the South Carolina State Law Enforcement Division ("SLED"). In response to paragraphs 2 and 3 of the Complaint, reference would be craved to the South Carolina State Constitution, cited statutory provisions and the public record. As to any other

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Amie Bell Shearin

CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

allegations of paragraphs 1 and 2, these are denied upon lack of sufficient information to form a belief.

4. In response to paragraph 4, Respondent would refer to all matters which are public record. As to any remaining allegations of paragraph 4, these are denied upon lack of sufficient information to form a belief.
5. In response to paragraph 5, Respondent would refer to all matters which are public record. As to any remaining allegations of paragraph 5, these are denied upon lack of sufficient information to form a belief.
6. In response to paragraph 6, Respondent would refer to all matters which are public record. As to any remaining allegations of paragraph 6, these are denied upon lack of sufficient information to form a belief.
7. In response to paragraph 7, Respondent would refer to all matters which are public record. As to any remaining allegations of paragraph 7, these are denied upon lack of sufficient information to form a belief.
8. In response to paragraph 8, Respondent would refer to all matters which are public record. As to any remaining allegations of paragraph 8, these are denied upon lack of sufficient information to form a belief.
9. In response to paragraph 9 of the Complaint, reference would be craved to cited statutory provisions and to the public record. As to any remaining allegations of paragraph 9, these are denied upon lack of sufficient information to form a belief.
10. In response to paragraph 10 of the Complaint, reference would be craved to cited statutory provisions and to the public record. As to any remaining allegations of paragraph 10, these are denied upon lack of sufficient information to form a belief.

11. In response to paragraph 11 of the Complaint, reference would be craved to cited statutory provisions. As to any remaining allegations of paragraph 11, these are denied upon lack of sufficient information to form a belief.
12. In response to paragraph 12 of the Complaint, reference would be craved to cited statutory provisions and to the public record. As to any remaining allegations of paragraph 12, these are denied upon lack of sufficient information to form a belief.
13. In response to paragraph 13 of the Complaint, reference would be craved to cited statutory provisions. As to any remaining allegations of paragraph 13, these are denied upon lack of sufficient information to form a belief.
14. In response to paragraph 14, Respondent would refer to all matters that are public record. As to any remaining allegations of paragraph 14, these are denied upon lack of sufficient information to form a belief.
15. Allegations of paragraph 15 are denied upon lack of sufficient information to form a belief.
16. No response in necessary to paragraph 16, however any allegations not previously addressed are denied.
17. Defendant denies allegations of paragraph 17.
18. Allegations of paragraph 18 are denied.
19. Allegations of paragraph 19 are denied.
20. No response in necessary to paragraph 20, however any allegations not previously addressed are denied.

21. In response to paragraph 21 of the Complaint, reference would be craved to cited provisions of the United States Constitution. As to any remaining allegations of paragraph 21, these are denied upon lack of sufficient information to form a belief.
22. The allegations of paragraph 22 are denied.
23. The allegations of paragraph 23 are denied.
24. The allegations of paragraph 24 are denied.
25. The allegations of paragraph 25 are denied.
26. The allegations of paragraph 26 are denied.
27. The allegations of paragraph 27 are denied.

WHEREFORE, Defendant Reginald C. Lloyd, through his undersigned counsel, prays that this Court inquire into this matter and protect the safety of the citizens of South Carolina and for such other relief that the Court deems appropriate.

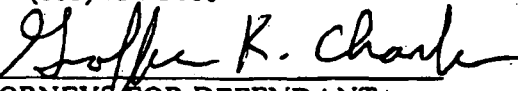
HENRY D. McMASTER
Attorney General

DAVID SPENCER
Assistant Attorney General

GEOFFREY K. CHAMBERS
Assistant Attorney General

P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3680

By:



ATTORNEYS FOR DEFENDANT
REGINALD C. LLOYD, CHIEF, SOUTH
CAROLINA LAW ENFORCEMENT
DIVISION

November 24, 2009

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

John Christopher Johnson,
Plaintiff/ Petitioner,

vs.

Reginald C. Lloyd, Chief,
State Law Enforcement Division, and
The State of South Carolina,
Defendant,IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-21-02264Plaintiff's Memorandum in Opposition to
State of South Carolina's Motion to Dismiss

NOW COMES the Plaintiff, by and through undersigned counsel, and respectfully submits this memorandum in opposition to Defendant State of South Carolina's Rule 12(b)(6) SCRCP Motion to Dismiss for failure to state facts sufficient to constitute a cause of action.

Petitioner Christopher Johnson brought this action for declaratory judgment as to both defendants Reginald C. Lloyd, the Chief of the South Carolina Law Enforcement Division ("Chief Lloyd" and "SLED") and the State of South Carolina ("the State.") The State seeks dismissal under Rule 12(b)(6).

Christopher Johnson is asking for an Order of this Court concluding the provisions of the State's Sex Offender Registry law, §23-3-410, S.C. Code of Laws, as applied to consensual teenage kissing conduct under the Lewd Act on a Minor statute, §16-15-140, S.C. Code of Laws, are: (1) excessive in violation of the Eight Amendment to the U.S. Constitution, and, (2) in violation of his rights to equal protection of the laws under the Fourteenth Amendment because of the state's disparate treatment in both the substantive law and the sex offender law of Criminal Sexual Conduct with a Minor and Lewd Act on a Minor. Mr. Johnson's claim states a valid claim for relief and this Court should not dismiss it.

In considering the State's motion to dismiss on the pleadings, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The Court should not grant the Rule 12(b)(6) motion to dismiss "if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory." Id. Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

Mr. Johnson seeks both legislative and administrative relief. He makes three claims for declaratory judgment¹:

- 1) declaring the requirement he register as a sex offender for rest of his life impermissibly cruel and unusual under the Eighth Amendment;
- 2) declaring the distinctions between sections 16-3-655(B)(2) (sexual battery), 16-15-140 (lascivious conduct not rising to the level of sexual battery), and 23-3-430(C)(5) of the S. C. Code of Laws (1976, as amended), unconstitutionally violative of his constitutional rights to equal protection of the laws; and
- 3) directing Defendant(s) to remove his name from the Sex Offender Registry.

I. The legislative claims

Mr. Johnson's first two claims are for declaratory judgment on the constitutionality of legislation. His Petition properly names the State as a necessary and indispensable party. The Petition alleges that the State

¹ Complaint, p. 5

is a "body politic" and enacts legislation through the Legislature and Governor (Petition, p. 1 no. 3). This is not fairly debatable. The petition alleges the State's enactment of certain provisions of the South Carolina Code violate his constitutional rights under the Eighth and Fourteenth Amendments. Namely, he alleges that changes to both the substantive law² and the Sex Offender Registry law³ applying a "Romeo" exemption to seventeen year old persons convicted of criminal sexual conduct with a minor, second degree violate the equal protection of the laws to a person like himself, convicted at seventeen of lewd act on a minor⁴ and required to register as a sex offender rather than getting the benefit of the Romeo exemption. Because criminal sexual conduct requires sexual battery (intercourse or intrusion) and lewd act does not, the absurd legislative result is either mere oversight or a blatant equal protection violation, and its resultant requirement that Mr. Johnson meet the onerous burdens of the Sex Offender Registry is excessive punishment. Either way, Mr. Johnson is entitled to seek this Court's review to redress his grievance, and he does so in his Petition.

An action to declare portions of the State's Code of Laws unconstitutional is clearly an action against the State. The State argues in its Motion that "[t]here is no requirement that the State of South Carolina be named as a party to challenge the constitutionality of a state statute. ...the State of South Carolina is not a necessary party when alleging a violation of constitutional rights by Defendant Reginald C. Lloyd's action in fulfilling *duties created by statute*." (Motion at 2, emphasis added.) Perhaps the State misread the Complaint but it almost makes Mr. Johnson's argument for him: Chief Lloyd's duties are, in fact, *created by statute*. This Court will not direct him to shirk those duties absent its finding that the State's statutes are unconstitutional. Chief Lloyd has no ability to make or change the law. Therefore, dismissal of the State as a party would effectively gut Mr. Johnson's claim and this Court's ability to provide relief.

² Criminal Sexual Conduct with a Minor, 2d degree, § 16-3-655(B), SC Code of Laws, as amended

³ § 23-3-430, SC Code of Laws, as amended, and as cited in the Complaint

⁴ § 16-15-140, SC Code of Laws, as amended.

There is no allegation Mr. Johnson's petition is defective in stating his constitutional claims, and his pleadings, viewed in the light most favorable to his case, may indeed entitle him to relief under his theories. Thus, this Court's granting of a motion to dismiss the State for failure to state a claim would be improper.

II. The administrative claim

Mr. Johnson's Petition alleges that Defendant Lloyd is the Chief of SLED and the Sex Offender Registry is within his control.⁵ Therefore, Mr. Johnson would likely concede his third request—that his name be removed from the Sex Offender Registry—might properly be directed only to Defendant Chief Lloyd and not to the State of South Carolina, the moving party in the instant motion. However, the State makes no distinction among the causes of action in its argument to be dismissed entirely, and, critically, Chief Lloyd's Answer does not admit he is in charge of the Sex Offender Registry. He admits he is the Chief of SLED, but craves reference to the "state constitution, cited statutory provisions and the public record" and denies any other allegations upon lack of sufficient information to form a belief." (Answer of Defendant Lloyd at 1,2.) As such, and with every doubt resolved in Mr. Johnson's favor, he cannot know at this point whether it is actually the State or Chief Lloyd that has the ability to remove him from the Sex Offender Registry, and so the motion must be resolved in his favor.

III. Conclusion

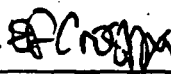
First, Mr. Johnson's claims contain factual allegations, properly pled, and the State's motion to be dismissed as a defendant in an action challenging the constitutionality and application of state laws should be resolved in his favor. Secondly, the State asserts its defense by motion rather than responsive pleading, and—if this Court is inclined to consider matters outside the pleadings over Petitioner's objection—the motion is to be

⁵ Complaint at 1, ¶ 2

treated as one for summary judgment (See Rule 12(b)(6)). Under the summary judgment standard, the State must show "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Even under this standard, the State's motion fails and should be denied.

Respectfully submitted,

CROSBY LAW FIRM, LLC



Elise F. Crosby (#7077)
Attorney for Plaintiff
405 Dozier Street
Georgetown, S.C. 29440
Telephone (843) 546-3103
Facsimile (843) 546-0747
ecrosby@crosbyfirm.com

Georgetown, South Carolina
January 14, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

John Christopher Johnson,)
Plaintiff/ Petitioner,)

vs.)

Reginald C. Lloyd, Chief,)
State Law Enforcement Division, and)
The State of South Carolina,)
Defendant,)IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-21-02264Plaintiff's Notice of Motion and
Motion for Summary JudgmentTO: THE HONORABLE HENRY D. MCMASTER and GEOFFREY K. CHAMBERS, ESQUIRE, attorneys
for Defendants.

YOU WILL PLEASE TAKE NOTICE that the plaintiff, by and through undersigned counsel, will move before this Court on the tenth day after service hereof, or at such other time and place as is convenient for the Court and counsel, for an Order granting Summary Judgment for the Plaintiff under Rule 56, SCRPC.

The bases for this motion are as follows:

Default/Summary Judgment as to Defendant State of South Carolina

Defendant State of South Carolina ("the State") was served October 21, 2009 (EX. A Affidavit of Service). The State timely filed and served its Notice of Motion and Motion to Dismiss under Rule 12(b)(6), SCRPC, which motion was heard January 19, 2010. The motion was denied by Order filed February 12, 2010, (EX. B) and served February 19, 2010 (EX. C). More than 30 days have passed without an Answer.

Rule 55(e) SCRPC provides that "no judgment by default shall be entered against the state of South Carolina or an officer or agency thereof...unless the claimant establishes his claim to relief by evidence satisfactory to the court." Therefore, although judgment by default might otherwise be proper, Plaintiff seeks to establish his claim by evidence satisfactory to the court--in other words, summary judgment.

This motion is made on the following grounds: The Plaintiff's first two claims are for declaratory judgment on the constitutionality of legislation. His Petition alleges the State's enactment of certain provisions of the South Carolina Code violate his constitutional rights under the Eighth and Fourteenth Amendments: Namely, he alleges that changes to both the substantive law¹ and the Sex Offender Registry law² applying a "Romeo" exemption to seventeen year old persons convicted of criminal sexual conduct with a minor, second degree violate the equal protection of the laws to a person like himself, convicted at seventeen of lewd act on a minor³ and required to register as a sex offender rather than getting the benefit of the Romeo exemption. Because criminal sexual conduct requires sexual battery (intercourse or intrusion) and lewd act does not, the absurd legislative result is either mere oversight or a blatant equal protection violation, and its resultant requirement that Plaintiff meet the onerous burdens of the Sex Offender Registry is excessive punishment.

The offense for which he was indicted is undisputed (Ex. D, indictment) and involved conduct expressly limited to a seventeen year old boy kissing a thirteen year old girl. (See Ex. E, Affidavit of victim #1.)

Thus, Plaintiff seeks a judgment from this court declaring the requirement that Plaintiff register as a sex offender for rest of his life impermissibly cruel and unusual under the Eighth Amendment, the distinctions between sections 16-3-655(B)(2), 16-15-140 and 23-3-430(C)(5) of the S. C. Code of Laws unconstitutionally violative of his constitutional rights to equal protection of the laws, and ordering the state to remove plaintiff's name from the Sex Offender Registry.

The statutes are unambiguous, the State has not answered, and there are no genuine issues as to any material fact. Therefore, Plaintiff is entitled to judgment as a matter of law on this issue.

¹ Criminal Sexual Conduct with a Minor, 2d degree, § 16-3-655(B), SC Code of Laws, as amended

² § 23-3-430, SC Code of Laws, as amended, and as cited in the Complaint

³ § 16-15-140, SC Code of Laws, as amended

Summary Judgment as to Defendant Reginald C. Lloyd, Chief, South Carolina Law Enforcement Division

Summary Judgment under Rule 56, SCRPC, as to Defendant Reginald C. Lloyd, Chief, South Carolina Law Enforcement Division ("Chief Lloyd") would be necessitated by this court's granting summary judgment as to Defendant State of South Carolina. It is Chief Lloyd's duty to maintain the South Carolina Sex Offender Registry and include Plaintiff's name on it. Thus, if the court enters declaratory judgment as to the State by default and/or summary judgment, declaring (1) the requirement that Plaintiff register as a sex offender for rest of his life impermissibly cruel and unusual under the Eighth Amendment, and (2) the distinctions between sections 16-3-655(B)(2), 16-15-140 and 23-3-430(C)(5) of the S. C. Code of Laws unconstitutionally violative of his constitutional rights to equal protection of the laws, such findings would necessitate this court's ordering the state to remove the plaintiff's name from the Sex Offender Registry. Such a result would naturally moot any nonsensical defense Chief Lloyd might raise in an attempt to maintain a void and invalid entry on the Sex Offender Registry.

Therefore, as there are no genuine issues as to the material fact that Chief Lloyd maintains the state Sex Offender Registry, if this court grants summary judgment as to the State, Plaintiff would be entitled to judgment as a matter of law. This court should consequently and necessarily grant summary judgment as to Chief Lloyd, and grant the declaratory relief sought.

Defendants will be provided with proper notice of the hearing date, time, and place, in order to appear and present such defenses as deemed necessary and appropriate. This motion is based on the South Carolina Rules of Civil Procedure and applicable law, and such memoranda, exhibits, and affidavits which may be submitted by Plaintiff before or at hearing on this motion, and any other matters the court may permit. Plaintiff will appear in support of his demand for such judgment and declaratory relief.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

Respectfully submitted,



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ecrosby@crosbyfirm.com
Attorney for Plaintiff

Date: APR 2, 2010
Georgetown, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

John Christopher Johnson,
Plaintiff/ Petitioner,

vs.

Reginald C. Lloyd, Chief,
State Law Enforcement Division, and
The State of South Carolina,
Defendant,IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-21-02264ORDERDenying Defendant State of South Carolina's
Motion to DismissFILED
2010 FEB 12 PM 12:49
CORINNE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

HEARING DATE:	January 19, 2010
PRESIDING JUDGE:	Honorable Thomas A. Russo
PLAINTIFF'S ATTORNEY:	Elise F. Crosby
DEFENDANTS' ATTORNEY:	Geoffrey Chambers, Assistant Attorney General
COURT REPORTER:	

THIS MATTER comes before the court upon motion of the Defendant State of South Carolina to be dismissed as a Defendant under Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action.

Present at the hearing were Plaintiff and his attorney and the attorney for the moving party, Defendant state of South Carolina. After reviewing the motion, Plaintiff's memorandum in response, and hearing from the parties, the court makes the following findings of fact and conclusions of law:

Plaintiff's action is for declaratory judgment as to both defendants. Plaintiff makes three claims for declaratory judgment:

- 1) declaring the requirement he register as a sex offender for rest of his life impermissibly cruel and unusual under the Eighth Amendment;
- 2) declaring the distinctions between sections 16-3-655(B)(2) (criminal sexual conduct), 16-15-140 (lewd act upon a minor), and 23-3-430(C)(5) of the S. C. Code of Laws (1976, as amended), unconstitutionally violative of his constitutional rights to equal protection of the laws; and

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Corinne Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

- 3) directing Defendant(s) to remove his name from the Sex Offender Registry.

The first two claims are for declaratory judgment on the constitutionality of legislation. Petitioner alleges that changes to both the substantive law¹ and the Sex Offender Registry law² applying a "Romeo" exemption to seventeen year old persons convicted of criminal sexual conduct with a minor, second degree, violate the equal protection of the laws to a person like himself, convicted at seventeen of lewd act on a minor³ and required to register as a sex offender rather than getting the benefit of the Romeo exemption. Additionally, he claims these same discrepancies and the resultant requirement he register as a sex offender violate the Eight Amendment. The third claim is for administrative relief, or removal from the Sex Offender Registry.

In considering the State's motion to dismiss on the pleadings, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The Court should not grant the Rule 12(b)(6) motion to dismiss "if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory." Id.

THIS COURT FINDS:

1. Based on the four corners of the pleadings, Petitioner states a claim for which relief may be granted.

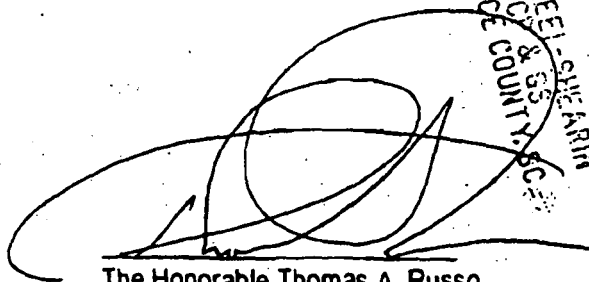
¹ Criminal Sexual Conduct with a Minor, 2d degree, § 16-3-655(B), SC Code of Laws, as amended

² § 23-3-430, SC Code of Laws, as amended, and as cited in the Complaint

2. The petition alleges the State's enactment of certain provisions of the South Carolina Code violate his constitutional rights under the Eighth and Fourteenth Amendments.
3. In his pleadings, Petitioner alleges, because of the discrepancies in the South Carolina Code, he is required to register as a sex offender for a conviction for non-sexual-battery conduct with a thirteen year old , while a similarly-situated seventeen year old convicted of criminal sexual conduct is legislatively exempted from the sex offender registry requirement.
4. The State is a body politic and enacts legislation through the Legislature and Governor, and Petitioner properly names the State as a necessary party.
5. An action to declare portions of the State's Code of Laws unconstitutional is an action against the State.
6. Defendant Reginald C. Lloyd's duty to maintain the Sex Offender Registry is created by statute. Therefore, dismissal of the State as a party could destroy this Court's ability to provide relief.

The pleadings, viewed in the light most favorable to the Plaintiff, may indeed entitle him to relief under his theories. Thus, this Court DENIES the State of South Carolina's motion to dismiss for failure to state a claim.

AND IT IS SO ORDERED.



The Honorable Thomas A. Russo
Twelfth Judicial Circuit

2/5/2010

February 5th, 2010

#4

FILED
2010 FEB 12 PM 12:49
CONNIE REEL-SHEARIN
CCOP & GS
FLORENCE COUNTY, SC



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ELISE F. CROSBY
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February 19, 2010

Geoffrey K. Chambers, Esq.
Assistant Attorney General
S.C. Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

RE: John Christopher Johnson v. Reginald C. Lloyd, Chief, South Carolina Law Enforcement Division, and the State of South Carolina Case Number: 2009-CP-21-02264

Dear Mr. Chambers:

Enclosed is a clocked copy of the ORDER-Denying Defendant State of South Carolina's Motion to Dismiss.

With kindest regards,

Sincerely,

Elise F. Crosby

Elise F. Crosby

Enc.
EFC/sms

CERTIFICATE OF SERVICE

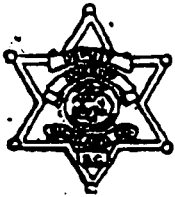
I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ U.S. Mail, ☐ emailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 19th day of February, 2010

CROSBY LAW FIRM

BY:

Sheree M. Stern



Richland County Sheriff's Department

44

AFFIDAVIT OF SERVICE
or NON-SERVICE

Date Entered: 10/13/2009
File Number: C200912703
DSS Number: 0
Foreign Case #:
Court Date: 01/01/1900

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Date _____

Plaintiff Attorney

Crosby Law Firm 405 Dozier St. Georgetown, SC 29440
Phone: (843)546-3103 Work:

Plaintiff

John C. Johnson 0
Phone: Work:

Defendant(s)

Henry McMaster, Atty. Gen. 1000 Assembly St. Room 519 Columbia, SC 29201
Phone: Work:

PERSONALLY APPEARED Before Me P. Wilkes, duty sworn says that he/she served, or attempted to serve, the following civil paper(s):

Summons & Complaint

1

on the defendant, HENRY McMASTER, Atty. Gen., as follows:

() By personally handing the process to the defendant at _____, SC
(Street) (City)
on _____
(Date/Time)

() By handing the process to _____ at _____
(Name of Person Served/Relationship) (Street)
_____, SC on _____, a person of suitable age and discretion then residing in
(City) (Date/Time)
the defendant's usual place of abode.

☒ By handing the process to Courtney Jackson the registered corporate agent or officer of the company at
(Name of Person Served/Company Name)
1000 Assembly St. Columbia, SC on 10/21/09 - 9:30 AM and leaving him/her a copy.
(Street) (City) (Date/Time)

() WAS UNABLE to locate and serve the above process on the defendant, after diligent efforts by checking the City/Telephone Directory, and going to the address given for the defendant, and by questioning persons in the vicinity of the address.
THE PROCESS IS RETURNED UNEXECUTED.

() COMMENTS: _____

Deponent knows the person served to be the defendant and Deponent is not a party to the action.
SWORN TO Before me this

21 day of October, 2009.

P. Wilkes 51195
Deputy Sheriff, Richland County

Kenneth Coleman
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES August 11, 2014
P.O. Box 143 Columbia, SC 29202
Office: (803) 576-3151 Fax: (803) 576-1898

WITNESSES

HPD

Sandy Thompson

H 020145, 020146, 020147, 020148
ARREST WARRANT NO. 020149 & H 020151
& H 020152

D/A: 1/25/03

ACTION OF GRAND JURY

True Bill

Foreman of Grand Jury

Devenia Whitefield

VERDICT

Foreman of Petit Jury

Date:

The State of South Carolina.

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

MAY TERM 2003

THE STATE

vs.

JONATHAN CAIR

CHRIS JOHNSON

CLIFFORD B. OWENS

JESSICA THOMPSON

Indictment for

CONTRIBUTING TO THE DELINQUENCY OF A
MINOR - (TWO COUNTS), CRIMINAL
CONSPIRACY AND LEWD ACT UPON A MINOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
 CONTRIBUTING TO THE
 DELINQUENCY OF A MINOR - (TWO
 COUNTS), CONSPIRACY AND LEWD
 ACT UPON A MINOR

At a Court of General Sessions, convened on May 12, 2003, the Grand Jurors of
 Williamsburg County present upon their oath:

**COUNT ONE - CONTRIBUTING TO THE DELINQUENCY OF
 A MINOR**

That one JONATHAN CAIN, one CLIFFORD B. OWENS, and one CHRIS JOHNSON did in Williamsburg County on or about July 18, 2003 and January 19, 2003, violate Code Section 16-17-490 of the *Code of Laws of South Carolina* (1976), as amended, in that he being a person over the age of eighteen (18), did knowingly and willfully contribute to the delinquency of a minor, to wit: Victim #1, age (13) by encouraging, aid or cause or influence her to violate the law or municipal ordinance by offering her an alcoholic beverage and cigarettes for consumption.

**COUNT TWO - CONTRIBUTING TO THE DELINQUENCY OF
 A MINOR**

That one JONATHAN CAIN one CLIFFORD B. OWENS, and one CHRIS JOHNSON did in Williamsburg County on or about July 18, 2003 and January 19, 2003, violate Code Section 16-17-490 of the *Code of Laws of South Carolina* (1976), as amended, in that he being a person over the age of eighteen (18), did knowingly and willfully contribute to the delinquency of a minor, to wit: Victim #3, age (12) by encouraging, aid or cause or influence her to violate the law or municipal ordinance by offering her an alcoholic beverage and cigarettes for consumption.

COUNT THREE - CRIMINAL CONSPIRACY

That one JESSICA THOMPSON did in Williamsburg County on or about July 18, 2003 and January 19, 2003, unlawfully and wilfully, conspire along with Jonathan M. Cain, Clifford D. Owens and Chris Johnson to commit the offense of Contributing to the Delinquency of a Minor by encouraging Victim #1, age (13), Victim #2, age (13) and Victim #3, age (12) to spend the night with them at a hotel where the minors could consume alcohol and cigarettes, in violation of Code Section 16-17-410, *South Carolina Code of Laws* (1976), as amended.

COUNT FOUR - LEWD ACT UPON A MINOR

That one **CHRIS JOHNSON** being over the age of fourteen years (DOB: 10/12/18) did in Williamsburg County on or about July 18, 2003 and January 19, 2003, wilfully and lewdly commit or attempt a lewd or lascivious act upon or with the body of victim #1, a child under the age of sixteen years, to wit: 13 years of age, by kissing and touching parts of her body with the intent of arousing, appealing to or gratifying the lust, passions, and sexual desires of himself and/or the child, in violation of Code Section 16-15-140, *South Carolina Code of Laws* (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

C. Kelly Jester
SOLICITOR

5/4/09

48

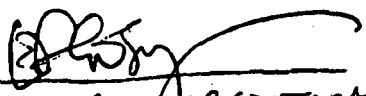
To whom it may concern:

My name is victim #1 and I am 20 years old. ~~Back~~ when I was 13 years old going on 14 I met a 17 year old boy named Chris Johnson. Couple of friends of my mine including Chris went to a hotel called the Coachman Inn and stayed overnight. Chris and I kissed on the bed and did not have sex. ~~When the police came~~ I can't remember when the police came but it was either the night ~~before~~ or the ~~same~~ next morning. When the police got involved I knew he got into trouble and I haven't seen or heard from him since all the stuff went on. My mom Tiffany McDaniel talked with the police and I never knew he had to register as a sex offender or go to prison. I didn't know he had to register as a sex offender until I received a letter in the mail in April 2009. We kissed and never had sex and I can't believe he has to register as a sex offender!! I support that he gets removed from being a sex offender because we was young and stupid and I had no doings whatsoever. My mom did it all.

Sincerely,

Victim #1

Sworn to before me this 4th
day of May, 2009


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 10/30/2016

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

John Christopher Johnson,)

Plaintiff,)

-vs-)

Reginald C. Lloyd, Director,
South Carolina Law Enforcement
Division)

Defendants.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-21-02264

ANSWER FOR DEFENDANT STATE OF
SOUTH CAROLINAFILED
2010 APR 12 PM 3:23
CORINNE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, S.C.

Defendant, State of South Carolina, though undersigned counsel, Answers the Complaint as follows:

I. By way of introduction, Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.

For the First Defense

1. Concerning the allegations in paragraph 1, Defendant does not contest the residence of Plaintiff for purposes of venue only.
2. Defendant admits the allegations in paragraph 2.
3. In response to paragraph 3, Defendant would crave reference to the South Carolina State Constitution, cited statutory provisions, and public record. The second sentence of paragraph 3

CERTIFIED: A TRUE COPY

*Corinne Reel-Shearin*CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

appears to pertain to legal argument and/or description of the action, and calls for legal basis upon which no answer is required. To the extent an answer is required, Defendant denies such allegations.

4. In response to paragraph 4, Defendant would refer to all matters which are public record and deny any remaining allegations upon lack of sufficient information to form a belief.

5. In response to paragraph 5, Defendant would note that the indictment upon which Plaintiff pled guilty alleges the following:

[Plaintiff] did on or about July 18, 2003 and January 19, 2003, willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body [of the victim], . . . 13 years of age, by kissing and touching parts of her body with the intent of arousing, appealing to or gratifying the lust, passions, and sexual desires of himself and/or the child, in violation of Code Section 16-15-140

To the extent that the allegations in paragraph 5 are inconsistent with the indictment, Defendant denies such allegations, including the allegation that Plaintiff merely kissed his thirteen year old victim.

6. In response to paragraph 6, Defendant would refer to all matters which are public record. As to any remaining allegations of paragraph 6, these are denied upon lack of sufficient information to form a belief.

7. In response to paragraph 7, Defendant would refer to all matters which are public record. As to any remaining allegations of paragraph 7, these are denied upon a lack of sufficient information to form a belief.

8. In response to paragraph 8, Defendant would refer to all matters which are public record.

As to any remaining allegations of paragraph 8, these are denied upon a lack of sufficient information to form a belief.

9. Paragraph 9 calls for a legal conclusion to which no response is necessary.

10. Paragraph 10 calls for a legal conclusion to which no response is necessary.

11. Paragraph 11 calls for a legal conclusion to which no response is necessary.

12. Paragraph 12 calls for a legal conclusion to which no response is necessary.

13. Paragraph 13 calls for a legal conclusion to which no response is necessary.

14. Defendant does not deny the allegations in paragraph 14.

15. Defendant lacks sufficient information to respond to the allegations in paragraph 15 and therefore denies these allegations.

16. Defendant would refer to its responses to the allegations in paragraphs 1-15 in response to the allegations of paragraph 16.

17. Defendant denies the allegations in paragraph 17.

18. Defendant denies the allegations in paragraph 18.

19. Defendant denies the allegations, including the request for relief, in paragraph 19.

20. Defendant would refer to its responses to the allegations in paragraphs 1-19 in response to the allegations of paragraph 20.

21. Paragraph 21 calls for a legal conclusion to which no response is necessary.

22. Defendant denies paragraph 22.

23. Defendant denies paragraph 23.

- 24. Defendant denies paragraph 24.
- 25. Defendant denies paragraph 25.
- 26. Defendant denies paragraph 26.
- 27. Defendant denies paragraph 27.
- 28. Defendant denies Plaintiff is entitled to the relief requested in items 1-4, in Plaintiff's prayer for relief.

FOR THE SECOND DEFENSE

- 29. Defendant would refer to its responses to paragraphs 1-28.
- 30. Defendant has failed to make any factual allegations against the State of South Carolina, separate and apart from its agencies and subdivisions. Accordingly, no relief is available against the State of South Carolina, separate from its agencies and subdivisions.

31. That the South Carolina Law Enforcement Division (SLED) is the agency responsible for maintaining the Sex Offender Registry, and therefore, is the only proper party to this action.

CONCLUSION

For the reasons set forth herein, the relief sought in the Complaint should be denied and all claims against Defendants should be dismissed with prejudice.

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DAVID SPENCER
Assistant Attorney General

GEOFFREY K. CHAMBERS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

ATTORNEYS FOR DEFENDANT
STATE OF SOUTH CAROLINA

April 9, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

John Christopher Johnson)

Plaintiff,)

-vs-)

Reginald C. Lloyd, Chief, South
Carolina Law Enforcement Division,)
and the State of South Carolina,)

Defendants.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-21-02264

NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59(e)FILED
2011 MAR 15 AM 10:44
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC**TO: John Christopher Johnson**

PLEASE TAKE NOTICE that the South Carolina Office of the Attorney General, on behalf of Defendants Reginald Lloyd and the State of South Carolina, through the undersigned attorneys, will move within ten days before the Court of Common Pleas, Florence County, or at another time and place as is convenient to the Court and counsel, for an altered or amended judgment pursuant to Rule 59(e) based on the equitable defenses of Estoppel by Acquiescence and Laches.

ARGUMENT

On February 2, 2011 the court heard arguments regarding Mr. Johnson's status as a sex offender in South Carolina. The South Carolina Attorney General's Office received written notice that an order granting Mr. Johnson equitable relief from his duty to register as a sex offender on March 4, 2010.

Because Mr. Johnson pled guilty to lewd act on a minor in 2003, he is required to register as a sex offender pursuant to South Carolina Code Section 23-3-430(C)(11). Mr. Johnson does not qualify for the measures provided by the legislature for removal from the sex offender registry because he does not have a pardon stating he is not guilty as required by Section 23-3-430(F), and Mr. Johnson's guilty plea has not been reversed, overturned, or vacated on appeal as required by Section 23-3-430(E).

Though Mr. Johnson only pled constitutional and legal arguments for relief in his Petition for Declaratory Judgment, at a hearing on this matter he asked for and was granted equitable relief. Mr. Johnson is not eligible for such relief because of Estoppel by Acquiescence and Laches. A person invoking Laches is asserting that an opposing party has "slept on its rights," and that, as a result of this delay, that other party is no longer entitled to its original claim. Put another way, failure to assert one's rights in a timely manner can result in a claim being barred by laches. Acquiescence is a legal term used to describe an act of a person in knowingly standing by without raising any objection to an infringement of his rights, when someone else is unknowingly and honestly putting in his resources under the impression that the said rights actually belong to him. Consequently, the person whose rights are infringed cannot anymore make a claim against the infringer or succeed in an injunction suit due to his conduct.

Mr. Johnson pleaded guilty to the charge of lewd act on a minor in 2003 and served 100 days in prison. Following his release from prison he was notified of his duty to register as a sex offender, and signed a document explaining his registration duties as a convicted sex offender. This document signed by Mr. Johnson on May 19, 2003, clearly

states, "Any person required to register under this program shall be required to register annually for life" (see attached.)

Mr. Johnson waited over six years before filing on September 28, 2009, a petition for declaratory judgment on his sex offender registry status. At the hearing of his petition for declaratory judgment, many witnesses were presented that were chosen by the petitioner as favorable witnesses. The petitioner maintains relationships with those who can present the petitioner in a favorable light and downgrade the seriousness of a lewd act on a minor charge that resulted in 100 days of imprisonment and five years of probation. On the other hand, the State prepares for a case, brings the case to trial, and loses contact with witnesses and facts related to the crime as time progresses. By waiting six years, the petitioner places himself in an advantageous position to make an equitable argument for relief from duty to register.

Because the Petitioner waited over six years from his constructive knowledge of lifetime registry imputed by his signature on the attached document, he should not be eligible for equitable relief from his duty to register. The petitioner sat on his rights, and/or acquiesced to his duty to register for over six years before bringing this challenge. Both Laches and Estoppel by Acquiescence bar equitable relief for the Petitioner.

CONCLUSION

This motion is made pursuant to applicable statutory and case law of the State of South Carolina, as well as applicable South Carolina Court Rules, including, but not limited to, Rule 59(e) of the South Carolina Rules of Civil Procedure; and upon such additional evidence, information, and argument as the Court may receive.

(signatures on next page)

ALAN WILSON
Attorney General

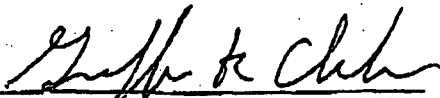
JOHN W. McINTOSH
Chief Deputy Attorney General

DAVID SPENCER
Assistant Attorney General

GEOFFREY K. CHAMBERS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211
(803) 734-3680

BY:



ATTORNEY FOR DEFENDANT
THE STATE OF SOUTH CAROLINA

March 14, 2011

58

South Carolina Department of Probation, Parole and Pardon Services Notice of Sex Offender Registry

Pursuant to 23-3-430 of the Code of Laws of South Carolina, any person who has been convicted of, adjudicated delinquent of, pled guilty or nolo contendere to an offense deemed sexual in nature must register with the Sheriff's Office in their county of residence. The offenses set out below or similar offenses from other jurisdictions require registration as indicated.

Persons being released from the Department of Corrections at the completion of their sentence, to an early release program, to extended work release, or upon parole must register with the Sheriff's Office in their county of residence within 24 hours of release.

Persons sentenced to probation or new residents of the state who must be supervised by the Department of Probation, Parole and Pardon Services must register with the Sheriff's Office in their county of residence within 10 days of sentencing or moving to the county.

Any person required to register under this program shall be required to register annually for life.

A person must send written notice of a change of address to the County Sheriff's Office where he resides and used to reside within 10 days of establishing a new residence.

Failure to register as required, or willfully giving false information when registering, is punishable by:

- 1) 90 days, no part of which shall be suspended for a first offense.
- 2) 1 year, no part of which shall be suspended for a second offense.
- 3) 3 years, 3 years of which shall not be suspended for a third or subsequent offense.

OFFENSES WHICH WARRANT REGISTRATION

16-3-682	Criminal Sexual Conduct 1st Degree
16-3-683	Criminal Sexual Conduct 2nd Degree
16-3-684	Criminal Sexual Conduct 3rd Degree
16-3-685(1)	Criminal Sexual Conduct with Minors 1st Degree
16-3-685(2)	Criminal Sexual Conduct with Minors 2nd Degree
16-3-685(3)	Criminal Sexual Conduct with Minors 2nd Degree
16-3-686	Criminal Sexual Conduct: Assault with Intent to Commit
16-3-610	Engaging a Child for Sexual Performance
16-3-620	Producing, Distributing or Promoting Sexual Performance by a Child
16-3-610	Kidnapping
16-15-20	Indecent Exposure
16-15-130	Burglary
16-15-130	Indecent Exposure
16-15-140	Committing or Attempting Lewd Act Upon a Child Under Sixteen
16-15-305	Dissemination, Producing or Promoting Obscenity
16-15-335	Unlawful to Hire, Employ, Use or Permit any Person Under 18 to do anything Defined in statutes as Obscene
16-15-345	Unlawful to Disseminate Obscene Material to Any Person Under the Age of 18 Years
16-15-355	Additional Penalty for Disseminating Obscene Material to any Minor 12 Years or Younger
16-15-385	Dissemination of Obscene Materials to Minors is Unlawful
16-15-387	Employing Person Under 18 to Appear in a Public Place in a State of Sexually Explicit Nudity
16-15-395	Sexual Exploitation of a Minor 1st Degree
16-15-405	Sexual Exploitation of a Minor 2nd Degree
16-15-410	Sexual Exploitation of a Minor 3rd Degree
16-15-415	Promoting Prostitution of a Minor
16-15-425	Participating in the Prostitution of a Minor
16-17-475	Peeping

Specifically ordered to register by a court of this or another jurisdiction

NOTE: All "attempts to commit" and "accessory before the fact of" any crime enumerated above would be included.

Unless it is ordered by the sentencing court that they do not have to register.
If it is ordered by the sentencing court.
When a minor is involved.

I, (Print Offender's Name) Chris Johnson understand that if I was convicted of any sex offense listed in section 23-3-430 of the Code of Laws of South Carolina, I must abide by the registry conditions set forth in Title 23, Chapter 3, Article 7. I have received notice of this requirement both orally and in writing.

My Address Will Be:	Street	City	State	Zip	County
	REDACTED	Hemingway	SC	29554	45
Offender's Signature	[Signature]				
Witness Signature	[Signature]				
	SODCS				
	SIDC				
	Date				
					5, 19, 03

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS)

COUNTY OF FLORENCE)

CASE NO. 2009-CP-21-2264)

JOHN CHRISTOPHER JOHNSON,)

Plaintiff,)

-vs-)

TRANSCRIPT OF RECORD)

REGINALD C. LLOYD, CHIEF,)
STATE LAW ENFORCEMENT)
DIVISION, AND THE STATE OF)
SOUTH CAROLINA,)

Defendants.)

February 2, 2011
Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM HENRY SEALS, JR., Judge

A P P E A R A N C E S:

ELISE FREEMAN CROSBY
Attorney for the Plaintiff

GEOFFREY K. CHAMBERS, Esquire
Attorney for the Defendants

KRYSTAL-J. SMITH
Family Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
OPENING STATEMENTS				
Ms. Crosby	5			
Mr. Chambers	10			
SCOTTIE L. DANGERFIELD				
Ms. Crosby	12			
Mr. Chambers		18		
Victim #1				
Ms. Crosby	19			
Mr. Chambers		30		
RANDALL CARMICHAEL				
Ms. Crosby	32			
PAULA MILLER				
Ms. Crosby	34			
JOHN CHRISTOPHER JOHNSON				
Ms. Crosby	40			
Mr. Chambers		52		
TIFFANY McDANIEL				
Mr. Chambers	59			
Ms. Crosby		63		
Victim #1 (recalled)				
Ms. Crosby			66	

INDEX (CONTINUED)WITNESSDIRECTCROSSREDIRECTRECROSS

Victim #2

Ms. Crosby

67

Mr. Chambers

67

Court Reporter Certification

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P1	Probation and Parole Form	12	29
P2	Sex Offender Registry Form	12	29
P3	Statement of Victim #1	26	29
P4	Affidavit of Victim #1	28	29
P5	Arrest Warrant	32	33
P6	The Mug Shots newspaper	37	38
P7	Warrant for Court	42	52
P8	Sentence	42	52
P9	Sex Offender Probation Requirements	46	52
P10	Letter from Court Administration	56	56
P11	Requests for Admission	56	57
D1	Requests for Admission packet		58

1 FEBRUARY 2, 2011

2 (WHEREAS this matter was scheduled for a hearing in the
3 Court of Common Pleas Non-Jury, the Plaintiff appeared along
4 with his counsel of record. The Defendants were represented
5 by their counsel of record. The hearing began at 1:58 p.m.
6 and ended at 3:25 p.m.)

7 THE COURT: I'm ready to hear from the Plaintiff whenever
8 you're ready.

9 MS. CROSBY: Thank you, Your Honor. May it please the
10 Court.

11 THE COURT: Sure.

12 MS. CROSBY: This Court was actually -- is actually the
13 Court that heard our Summary Judgment motion. So I think you
14 might be a little bit aware of the circumstances. I would --
15 Not knowing sort of the best way to proceed, I thought since
16 this case has turned out at least for me to be rather complex
17 in its simplicity that I might be able to give a brief
18 overview of Mr. Johnson and what he's seeking in this Court
19 and the fact that this Court is the right place for him to do
20 so and then go into our facts and evidence.

21 THE COURT: Please do so.

22 MS. CROSBY: Chris Johnson, who sits here today, was
23 convicted at age seventeen for Lewd Act on a Minor. That was
24 his charge. The victim in his case was thirteen at the time.
25 I don't think it's disputed and I would submit that the facts

1 that come out today will -- that it will be undisputed that he
2 was and the warrant and the indictment say that he was
3 convicted for kissing and touching the body of victim #1
4 who was thirteen years old at the time. There's no dispute
5 that the conduct was consensual and there's no allegation that
6 it involved anything more than kissing and touching her body.

7 MS. CROSBY: Chris finds himself not only convicted of
8 the Lewd Act on a Minor charge, which setting that aside for
9 some other day, he is also a registered sex offender. In
10 South Carolina, the Sex Offender Registry is lifelong, a
11 lifelong sanction. He's got to be a registered sex offender
12 for the rest of his life.

13 And, Your Honor, that he pled guilty to anything for
14 being seventeen and kissing a thirteen year old girl is bad
15 enough, but that's he got to be a lifelong registered sex
16 offender is really why we are here.

17 Without getting too much into my argument, which I know
18 I'm not supposed to do right now, I would just lay out kind of
19 the way we approach this is there were five doors through
20 which he could possibly walk in order to get some relief from
21 this Sex Offender Registry.

22 Number one would be appeal. That door is tightly closed
23 at this point.

24 Number two would be post conviction relief. That door is
25 tightly closed at this point as well. There's no after

1 discovered evidence. He didn't find out about the Sex
2 Offender Registry until he was released and he didn't pursue
3 Post Conviction Relief.

4 MS. CROSBY: There is -- He could file a writ and a
5 motion for a new trial, but he's not able to do that. That
6 door is also closed, Your Honor, because unless there's
7 something I have not been able to discover, there's no after
8 discovered evidence. There's no newly discovered evidence.
9 The charge is -- was at the time what he was convicted of. He
10 pled guilty. That's done.

11 Pardon. Pardon seems like a very legitimate path for him
12 to take, but our Sex Offender Registry Law under Title 23
13 actually excludes specifically pardon cases from being removed
14 from the Sex Offender Registry, even if they're pardoned
15 unless there's a specific finding of Not Guilty, which again
16 that goes back to the after discovered evidence for the
17 appeal. That's not going to happen here. He pled guilty.
18 He's convicted of that. So pardon on the criminal charge
19 would work. It absolutely will not work on the registry
20 charge.

21 The final -- The fifth and final door that remains
22 cracked open today before this Court, Your Honor, is this
23 Court. It is the Circuit Court of Common Pleas and the
24 Declaratory Judgment Act actually gives him the right to come
25 to court and our Supreme Court has upheld that on a couple of

1 different occasions and said that the Circuit Court of Common
2 Pleas is the appropriate place for him to seek relief with
3 regard to the Sex Offender Registry. It is appropriate and
4 legal for this Court to make findings of fact with regard to
5 underlying facts of the sex offense for which he was required
6 to register and to seek the relief that he seeks.

7 MS. CROSBY: His -- His action is four-fold and I believe
8 Your Honor has a copy of the Complaint. Turning to the last
9 page, it's basically the relief he seeks. He's got two
10 constitutional claims, the first of which is the 8th Amendment
11 to the U.S. Constitution and the, I have to refresh my memory,
12 Article I Section 15 of the South Carolina Constitution with
13 regard to cruel and unusual punishment.

14 The -- The argument there, which obviously I will make
15 after the close of the evidence, is that as the Supreme Court
16 has pointed out in Legrand vs. Florida case from 2010, the
17 analysis has got to turn on whether the sanction is
18 proportionate to the offense and finding the nature of the
19 offense is within the purview of this Circuit Court.

20 Your Honor, with regard to his second constitutional
21 claim, he's asking this Court to declare the application of
22 the Sex Offender Registry Law to Lewd Act on a Minor as
23 opposed to the way the Sex Offender Registry Law is applied to
24 Criminal Sexual Conduct with a Minor and other, frankly,
25 crimes that are listed as sex offenses that have little

1 exemptions. That law has been tweaked over the years by the
2 General Assembly and there are little exemptions, fact based
3 exemptions, for different -- whether it's Indecent Exposure, I
4 think there's one for Kidnapping, Assault and Battery High and
5 Aggravated Nature, Criminal Sexual Conduct with a Minor.

6 MS. CROSBY: He -- There's not any such exemption even
7 possible for one convicted of Lewd Act on a Minor. There's no
8 -- And specifically the one with CSC with a Minor that we're
9 talking about here, it has a consent issue and that's not even
10 mentioned by the legislature with regard to someone situated
11 as Chris Johnson is. So we would argue that. We would ask
12 this Court to declare that that's just an equal protection
13 violation, Your Honor.

14 His last two claims are claims for equitable relief. His
15 third claim or his third request is for the Court to direct
16 Chief Floyd to remove his name from the Sex Offender Registry
17 and I would submit that that's a claim brought in equity and
18 finally for such other and further relief as made deemed
19 appropriate upon the facts, Your Honor.

20 The State of -- The State Supreme Court has said if the
21 issue is a constitutional challenge to the statute, the
22 parties should seek declaratory judgment from the Circuit
23 Court. That's Evans versus State, South Carolina Supreme
24 Court from 2001, citing the Video Gaming Consultants case from
25 2000 and I have a copy of that, Your Honor. Mr. Chambers

1 already has it.

2 MS. CROSBY: And the Court has also found that the
3 Declaratory Judgment Act at Article 15-50 or Section 15-53-20
4 is applicable in cases seeking declaratory judgment relative
5 to the Sex Offender Registry. That comes from the case of
6 Hazel v. State. That's Supreme Court 2008. The Court said
7 the judge in a Court of Common Pleas properly determined
8 Respondent's status as affected by 23-3-430 and that would be
9 the Sex Offender Registry statute and in that case the State
10 actually argued that the Court of Common Pleas could not make
11 a factual finding regarding the underlying criminal offense
12 for which he was registered, but the Supreme Court in the
13 Hazel case said that it absolutely could and I have a copy of
14 the Hazel case as well.

15 So that's basically an overview of Chris' -- Chris' case
16 and the relief that he seeks and now I'll get started with the
17 facts.

18 THE COURT: All right. Would you like to add anything
19 before we begin, Mr. Chambers?

20 MR. CHAMBERS: Yes, Your Honor. As opposing counsel
21 stated, Mr. Johnson pled guilty in 2003 to Lewd Act on a
22 Minor. It involved -- It involved a situation where he and
23 two twenty-one year old males and a seventeen year old female
24 had a thirteen year old and a twelve year old in a hotel room
25 overnight. The incident reports indicate that -- that -- that

1 there were hickeys all over the body of -- all over the torso
2 of the thirteen year old minor. Mr. Johnson pled guilty to
3 these charges in Williamsburg County in the spring of 2003.

4 MR. CHAMBERS: The State would argue that -- that Mr.
5 Johnson pursuant to that guilty plea would be required to
6 register under Section 4 -- under Section 23-3-430.
7 Furthermore, as far as the constitutional issues that are
8 raised by opposing counsel, the State's position is that -- is
9 that it's not cruel and unusual punishment because as stated
10 by the Supreme Court in Hendrix versus Taylor, it is not
11 punishment at all and therefore that does not apply.

12 Furthermore, a conviction -- As far as any privacy
13 issues, the conviction is public record and therefore we are
14 not -- By making it available on the Sex Offender Registry, we
15 are not really putting anything out there that is not public
16 record and the fact that he was convicted -- that he was
17 convicted or pled guilty is also not a violation of due
18 process because he had his due process on this back in 2003.

19 THE COURT: Ms. Crosby, anytime you're ready you can call
20 your first witness.

21 MS. CROSBY: Thank you, Your Honor. The Plaintiff calls
22 Investigator Scott Dangerfield.

23 CLERK: Please step up to the witness stand and place
24 your left hand on the Bible and raise your right hand. Do you
25 swear or affirm the testimony you give in this case will be

1 the truth, the whole truth and nothing but the truth, so help
2 you God?

3 INVESTIGATOR DANGERFIELD: I do.

4 CLERK: Please be seated. Please state your name for the
5 record.

6 INVESTIGATOR DANGERFIELD: It's Scottie L. Dangerfield.

7 INVESTIGATOR SCOTTIE L. DANGERFIELD,
8 being first duly sworn, testifies as follows:

9 DIRECT EXAMINATION OF INVESTIGATOR DANGERFIELD BY MS. CROSBY:

10 Q: Investigator Dangerfield, could you please tell the Court
11 where you're employed and what your position is there?

12 A: I'm employed at the Florence County Sheriff's Office and
13 I am the Sex Offender Registry investigator there and I've
14 been employed there involved with the Sheriff's Office since
15 1995.

16 Q: Is Christopher Johnson one of the sex offenders whom you
17 supervise?

18 A: He is.

19 MS. CROSBY: Your Honor, as a housekeeping matter we --
20 We had discussed our exhibits and I have not marked them
21 previously, but I don't know if they are without objection.
22 We'll do this one at a time.

23 (The Probation and Parole form was marked as Plaintiff's
24 Exhibit Number 1 for ID only and the Sex Offender Registry
25 form was marked as Plaintiff's Exhibit Number 2 for ID only.)

1 Q: Investigator, I am showing you what have been marked for
2 ID as Plaintiff's 1 and 2 and ask you if you recognize those?

3 A: The yellow form is Number 1. I think that's a Probation
4 and Parole form. Sometimes I'm given these copies when they
5 first come in if they're to report to Probation and Parole.
6 This is a copy of a old Sex Offender Registry that would
7 possibly have been his when he was first discharged out on
8 probation or if he was discharged from the Department of
9 Corrections.

10 Q: Do you have a more recent form?

11 A: I do.

12 Q: Okay.

13 A: I actually brought in his last form when he came in in
14 October.

15 Q: Okay, do you have a copy of that?

16 A: I do not.

17 Q: Okay.

18 A: I would be glad to let you look at this one.

19 Q: Could I share it just for the Court's edification
20 purposes?

21 A: You can.

22 Q: Has Mr. Johnson been compliant with his registry
23 requirements?

24 A: Yes, ma'am, under the time that I've been over his
25 registry he has been.

1 Q: How often does he have to register?

2 A: He reports bi-annually under the charge that he has and
3 that's in the month of his birth and six months thereafter, so
4 he reports every October and every year during the month of
5 April.

6 Q: And what if any cost is associated with that?

7 A: Each sex offender in the State of South Carolina is
8 required to pay a hundred and fifty dollar annual registration
9 fee and he -- He has paid that and he's current for the year
10 2010.

11 Q: Have you made Mr. Johnson aware of his sex offender
12 related restrictions?

13 A: I have not. He has not been in this year for -- for the
14 new changes in the laws and he will be getting all of that
15 when he comes in in April and there have been -- There have
16 been several changes to the registry and to certain
17 requirements that he'll have to meet.

18 Q: What are those requirements about which you will make him
19 aware?

20 A: There have been different laws added to come into
21 compliance with Adam Walsh. There's different information
22 that we have to collect.

23 Q: Such as?

24 A: We're also -- Some of it's like internet service
25 providers. That's information that we'll be collecting.

1 We're also collecting palm prints. Residency restrictions go
2 into place with the State of South Carolina on February the
3 14th of this year. That is only under four charges at this
4 time and, of course, those are subject to change, but his
5 charge I don't think is affected by that. Also, they have put
6 into effect the Tier III offenders, which will have to
7 register four times a year and there again I don't think he
8 will be affected by that charge.

9 Q: What is the requirement with regard to the internet
10 service provider?

11 A: That will just require anyone with internet access within
12 the State if you are a registered sex offender, you will have
13 to provide us your internet service provider, which would be
14 whoever provides the internet service to that address whether
15 it be Time Warner Cable or whoever owns that and then we would
16 have to have e-mail accounts as far as the name of your e-mail
17 accounts. If you have chat, as far as Yahoo or Messenger,
18 then you would provide us with the screen names that you are
19 using. We would not have access to any passwords or anything.

20 Q: Okay and have you previously made him aware of
21 restrictions, the old restrictions, related to them?

22 A: Everything that's on his current registry he's made aware
23 of each time he comes in and registers and he signs this and
24 initials it in multiple locations to assure myself and -- and
25 to make aware of to anyone that has questions that he has been

1 advised of all of his requirements and what he must do.

2 Q: What are his requirements with regard to getting a new
3 car or any car?

4 A: If he changes vehicles, he's required -- He used to have
5 ten business days to notify us. Now he has three business
6 days. He has to provide us with the make and model of the
7 vehicle, tag numbers, VIN numbers, the color of the
8 automobile, who it's registered to and there again, it doesn't
9 have to be a car that he is actually owning. It could be the
10 car that he's driving. If he's driving a parent's car, a
11 wife's car, you know, a family member's car, he has to provide
12 that information to us.

13 Q: What about with regard to a boat?

14 A: A boat is the same thing. If he owns a vessel within the
15 State of South Carolina, he has to give us the hull ID
16 numbers, where that boat is docked at, if it's, you know, kept
17 in a -- in a slip somewhere. He has to provide us that
18 information.

19 Q: What about with regard to passport or travel
20 restrictions?

21 A: Passport and travel restrictions under the state law we
22 don't have any that I'm aware of under our supervision.
23 That's all taken care of when he obtains those documents, you
24 know, through the federal status.

25 Q: Okay. You were talking about that there are different

1 tiers that are coming into place. Is his category
2 characterized as a predator status?

3 A: He is just considered an adult offender and we -- We
4 don't do the statuses other than the charges. Predator status
5 is not done by us. It's done by the sex -- the Sexually
6 Violent Predator division through the Attorney General's
7 Office and an entity in that issue.

8 Q: Has he been flagged in any way as a risk to re-offend?

9 A: I'm not aware of that and that's not something that we
10 would -- we would do.

11 Q: So you have not flagged him in any way as a risk to re-
12 offend?

13 A: That is not something that -- that we do as a law
14 enforcement agency.

15 Q: Is it within your power, Investigator Dangerfield, to
16 remove someone from the Sex Offender Registry?

17 A: No, ma'am, it's not.

18 Q: If this Court ordered that his name be removed, would you
19 comply?

20 A: I would have no choice but to comply if -- if a court
21 order comes down. That -- That's where we get our rulings
22 from and that's what we comply to.

23 Q: Thank you, nothing further. Please answer any questions
24 Mr. Chambers has.

25 THE COURT: Mr. Chambers?

1 MR. CHAMBERS: Yes.

2 CROSS EXAMINATION OF INVESTIGATOR DANGERFIELD BY MR. CHAMBERS:

3 Q: Mr. Dangerfield, you talked about some new requirements?

4 A: Yes, sir.

5 Q: Such as boat registration and hull number?

6 A: Right.

7 Q: They have to report to you any registration or license
8 tag changes or vehicle changes. Would the State already have
9 that information?

10 A: They -- They would have that in the DMV files.

11 Q: And in your having this in one place, would that aid law
12 enforcement?

13 A: That's correct.

14 Q: And so these changes especially on e-mail accounts, you
15 said that you don't have passwords, right?

16 A: No, we don't.

17 Q: So you can't look at his e-mail?

18 A: That's correct.

19 Q: But if an e-mail account were to pop up let's say in a
20 sting operation or -- or in contacting a minor
21 inappropriately, would that aid you in finding the person that
22 was behind that e-mail?

23 A: That's correct. That is the purpose behind adding that
24 information into the registry.

25 MR. CHAMBERS: Okay. No further questions, Your Honor.

1 THE COURT: Anything further, Ms. Crosby?

2 MS. CROSBY: No, Your Honor, and I would ask that Mr.
3 Dangerfield be excused.

4 THE COURT: Any objections?

5 MR. CHAMBERS: No, Your Honor.

6 MR. DANGERFIELD: Thank you, Judge.

7 (The witness left the witness stand and left the
8 courtroom.)

9 THE COURT: When you're ready you can call your next
10 witness.

11 MS. CROSBY: The Plaintiff calls Victim #1 .

12 CLERK: Please place your left hand on the Bible and
13 raise your right hand. Do you swear or affirm the testimony
14 you give in this case will be the truth, the whole truth and
15 nothing but the truth, so help you God?

16 Victim #1 : I do.

17 CLERK: Please be seated and state your name for the
18 record.

19 Victim #1 : Victim #1 .

20 Victim #1 , being first duly
21 sworn, testifies as follows:

22 DIRECT EXAMINATION OF Victim #1 BY MS. CROSBY:

23 Q: Victim #1 , are you a little bit nervous?

24 A: Yes.

25 Q: You might want to scoot up to the microphone there.

1 Could you please tell the Court your date of birth?

2 A: 3/16/89.

3 Q: And that makes you how old?

4 A: Twenty-one.

5 Q: All right, let me take you back to January 18th, 2003.

6 You were thirteen going on fourteen?

7 A: Right.

8 Q: Is that correct?

9 A: Right.

10 Q: Where did you live back then?

11 A: Rolling Hills Trailer Park.

12 Q: Who did you live with in the Rolling Hill Trailer Park?

13 A: My mother.

14 Q: All right, that night of January 18th, 2003, and then the
15 next day, January 19th, 2003, could you tell the Court about
16 the girls that you were with that night and what y'all were
17 doing?

18 A: We was with -- I was with Ashley and ~~Victim #1~~ and Jessica
19 and we was all hanging out at Yank's convenience store.

20 Q: What is Yank's convenience store?

21 A: Yank's is where you can go and order food and eat there
22 and play games and stuff and they have like a little pawn shop
23 inside of the same place.

24 Q: Did your mama know you were at Yank's?

25 A: No.

1 Q: What happened at Yank's?

2 A: We ate and played games.

3 Q: What did y'all do after that?

4 A: Went to I think it was Jessica's mama's house or
5 something like that and they got clothes and we all went to
6 the Coachman Inn.

7 Q: To the where?

8 A: To the Coachman Inn Hotel in Hemingway.

9 Q: How did that come about? You went to Jessica's house?

10 A: I think it was her parents' house.

11 Q: Okay.

12 A: If I remember it.

13 Q: How did that -- How did you get there?

14 A: I don't quite remember who was driving, but we left there
15 and went in the vehicle to her house.

16 Q: Okay. Who is we?

17 A: Me and ~~Victim #2~~ and I think Ashley was with us. I'm not
18 sure. I can't remember.

19 Q: But that was girls. Is that correct?

20 A: Yeah, it was girls.

21 Q: Okay and who was wanting to go get the clothes?

22 A: I think it was Jessica.

23 Q: Okay and is Jessica -- Was she older than you?

24 A: Yeah.

25 Q: How old? How much older than you?

1 A: I don't remember. I know she was a little bit older than
2 I was.

3 Q: Okay and so when the group of girls got to the hotel, who
4 all was there?

5 A: It was me and Victim #2 and Ashley and Jessica, Chris, I
6 think his name's Cliff if I'm not mistaken and that's all I
7 can remember.

8 Q: Okay. Ashley, Victim #3?

9 A: Jessica.

10 Q: Jessica, you, Chris?

11 A: Mm-hmm.

12 Q: Cliff and did you say anybody else?

13 A: I don't think so.

14 Q: When you say Chris, who are you talking about?

15 A: Chris Johnson.

16 Q: Do you -- Is Chris Johnson here today?

17 A: Yeah.

18 Q: Do you see him?

19 A: Yeah. I hadn't seen him in years, but that's him.

20 Q: All right and what did y'all do?

21 A: We watched TV and ate and hung out like normal teenagers
22 would do.

23 Q: All right. Did there -- What happened between you and
24 Chris?

25 A: We just kissed really. I mean what -- What do you think

1 teenagers are going to do? I mean they're going to experience
2 things. I mean that's all we did though.

3 Q: Did you kiss him back?

4 A: Yeah.

5 Q: Do you remember if he gave you a hickey?

6 A: Yeah.

7 Q: Do you remember where it was?

8 A: If I remember, I think it was on my back and neck.

9 Q: Okay. Do you remember if you gave him a hickey?

10 A: I think so.

11 Q: All right and did you consent to kiss him?

12 A: Yeah.

13 Q: Do you consent to make out with him? Is that fair to
14 say?

15 A: Yes.

16 MR. CHAMBERS: Your Honor, I would object. The statutes
17 set the minimum age of consent on things like this at -- at
18 fourteen. That's the lowest age I could find on anything and
19 that was under CSC. Under Lewd Act the age of consent is now
20 sixteen. It used to be fourteen.

21 THE COURT: Your thoughts?

22 MS. CROSBY: I would say I'm getting factual consent, not
23 whether it's legal for her to consent or not.

24 MR. CHAMBERS: If the Court would note that it was not
25 legal consent, then I'm fine with this line of questioning.

1 THE COURT: All right, I going to overrule that.

2 MS. CROSBY: Thank you, Your Honor.

3 Q: So you agreed to kiss Chris?

4 A: Right.

5 Q: Is that correct?

6 A: Right.

7 Q: Did you know how old he was?

8 A: Not at the time I don't think so. I knew he wasn't, you
9 know, he was younger than twenty, but I don't know his exact
10 age.

11 Q: How did you know him?

12 A: We lived in the same trailer park.

13 Q: And had you seen him?

14 A: Like what you mean like see him?

15 Q: I mean had you ever seen him before that night?

16 A: After -- I mean before ---

17 Q: Like in your neighborhood or anything?

18 A: Well, I mean he moved in recently before it all went
19 down.

20 Q: Okay. Had you ever kissed him before?

21 A: No, not until that night.

22 Q: Okay. Had you ever kissed any other boy before that
23 night?

24 A: Yeah, but I couldn't tell you who.

25 Q: Did you and Chris get naked?

- 1 A: No.
- 2 Q: You're sure about that?
- 3 A: Positive.
- 4 Q: Okay. Did you and Chris have sex?
- 5 A: No.
- 6 Q: Did you have any kind of ---
- 7 A: No.
- 8 Q: --- intercourse?
- 9 A: I mean we French kissed, but other than that, no.
- 10 Q: Okay. Was he arousing your lusts, passions or sexual
- 11 desires, Victim #1?
- 12 A: No, ma'am.
- 13 Q: And we talked about these questions before today, right?
- 14 A: Mm-hmm.
- 15 Q: And I still have to ask you kind of a weird one. Did
- 16 Chris Johnson engage in any of the following sexual activities
- 17 with you? Masturbation?
- 18 A: No.
- 19 Q: Vaginal, anal or oral intercourse?
- 20 A: No.
- 21 Q: Touching your clothed or unclothed genitals, pubic area,
- 22 buttocks or breasts in an act of apparent sexual stimulation
- 23 or abuse?
- 24 A: No.
- 25 Q: Insert any part of his body into yours?

1 A: When we French kissed. Other than that, no.

2 Q: Okay. Have any of the other boys that you kissed prior
3 to that or subsequent to that been arrested for -- for you
4 kissing them?

5 A: No, but when me and my -- my boyfriend that I'm with now,
6 my mom and dad tried to have him locked up, but there was
7 never nothing they could do about it.

8 Q: All right. How did your mom find out about Chris?

9 A: I think somebody went back and told her. I'm not sure.

10 Q: Did she know that you were going to that hotel room that
11 night?

12 A: I don't think so.

13 Q: Well, what happened when she did find out?

14 A: She checked me, you know, to see if the marks was there
15 and stuff and then we went to the police department and that's
16 when it all got filed.

17 Q: She took you to the police department?

18 A: I think, yeah, if I can remember correctly.

19 Q: Did you cooperate with the officers?

20 A: Yes, ma'am.

21 Q: Do you remember if you gave a statement?

22 A: Yes, ma'am.

23 (A statement was marked as Plaintiff's Exhibit 3 for ID.)

24 Q: I'm showing you what's been marked for ID as Plaintiff's
25 3 and I ask you if you recognize that?

1 A: Yes, ma'am.

2 Q: What is it?

3 A: It's the statement I wrote at the police department.

4 Q: Could you read that please?

5 A: Read the whole thing?

6 Q: Yes.

7 A: "Ashley Matthews, which is Victim #2's sister, dropped us off
8 at Yank's about six ten, six fifteen. We went inside Yank's
9 and played games and talked to Jimmy Bellflowers until eight
10 thirty. Then Jessica Thompson walked in at eight thirty-five
11 and asked Victim #2 and us if we wanted to go stay with her and
12 Cliff at a hotel. Then Victim #2 called her mom and Miss Janice
13 said fine, to call our parents to see if we can go. Well, we
14 didn't call our parents. We just left Yank's with Jessica
15 Thompson, Cliff Owens, Jonathan Caine and Chris Johnson. When
16 we left Yank's, we went to Miss Donna's for -- Miss Donna's
17 for Jessica and Cliff to get clothes afterward.

18 We went to the hotel and Jonathan went into the hotel to
19 pay and me, Victim #3, Victim #2 and Jessica went up to the hotel and
20 put her stuff up there. After that us girls sat on the beds
21 watching BET and was eating barbeque sandwiches while the guys
22 were outside putting transmission fluid in Cliff's truck and
23 the guys come in and Cliff brung Miller Lite drinks in and
24 Chris and Jonathan offered us cigarettes while Cliff offered
25 us Miller Lite. Victim #3 and I drank after Victim #2 because we

1 split it on a -- We split it and smoked cigarettes, too.

2 Probably about ten o'clock after everybody was done
3 eating and drinking, we all was up just talking until twelve
4 and Victim #2 and Victim #3 was talking to Jonathan. Cliff and
5 Jessica was talking to each other and me and Chris was
6 talking. Then about one in the morning we all watched BET
7 again until about three. Victim #3 and Victim #2 went to sleep while
8 me and Chris was talking on the bed. Then probably three
9 thirty Victim #2 got on the floor with Jonathan and Victim #3 got up
10 and was talking with me and Chris and before they woke up
11 about three fifteen he gave me those four hickeys and I gave
12 him one on his neck, but nothing else happened.

13 Then it was about nine ten and we all got up and packed
14 their stuff and we left the hotel probably ten forty-five and
15 we left the hotel and went to BT Express, the gas store, so
16 Cliff could get gas and we ended up back at Victim #2's about
17 eleven, but Jonathan left the hotel about six Sunday morning."

18 Q: Is that what happened, Victim #1?

19 A: Yes, ma'am.

20 Q: When did you find out he had to register as a sex
21 offender?

22 A: About two years ago.

23 Q: And what occasioned that?

24 A: What do you mean?

25 Q: How did you find out?

1 A: Through you.

2 Q: All right and did you write an affidavit for the Court
3 about that at that time?

4 A: Yes, ma'am.

5 (An affidavit was marked as Plaintiff's Exhibit Number 4
6 for ID.)

7 Q: I'm showing you what's been marked for ID as Plaintiff's
8 4 and ask you if you recognize that?

9 A: Yes, ma'am.

10 Q: Is that the affidavit that you wrote a couple years ago?

11 A: Mm-hmm.

12 Q: And this all happened back in 2003, right?

13 A: Right.

14 Q: All right and have you talked to Chris since that night
15 in 2003?

16 A: No, ma'am.

17 Q: And do you understand why he's here today?

18 A: Yes, ma'am.

19 Q: What is your understanding?

20 A: I don't think he should be registered as a sex offender
21 because we were teenagers back in them days.

22 MS. CROSBY: Your Honor, I move Plaintiff's 1, 2, 3 and 4
23 into evidence.

24 THE COURT: Any objections?

25 MR. CHAMBERS: No objections, Your Honor.

1 THE COURT: Thank you. So 1, 2, 3 and 4 are into
2 evidence without objection.

3 MS. CROSBY: Please answer any questions Mr. Chambers
4 has. Thank you, Amber.

5 THE COURT: Mr. Chambers?

6 CROSS EXAMINATION OF Victim #1 BY MR. CHAMBERS:

7 Q: Victim #1, you said you were thirteen?

8 A: Yes, sir.

9 Q: Okay. Don't be nervous. I'm not -- I'm not going to
10 bite. I just had one question. You read a statement that you
11 had apparently written at the time.

12 A: Yes, sir.

13 Q: Is that correct?

14 A: Yes, sir.

15 Q: There's a statement right here that you signed. That's
16 your signature, isn't it?

17 A: This one right here?

18 Q: Yes, ma'am.

19 A: No, this is my mama.

20 Q: No, that's not? That's your mother, okay. That text
21 right there above that, does that look familiar to you?

22 A: I want to say yeah, but I just can't remember.

23 Q: Okay, that's fine, that's fine. This is the arrest
24 warrant. If I may, this is the arrest warrant. On the arrest
25 warrant it says that he stripped to his underwear and got in

1 the bed with you. Is that true?

2 A: I don't remember that.

3 Q: You don't remember?

4 A: I don't think so because I mean we didn't have sex or
5 anything like that.

6 Q: Okay.

7 A: I didn't get undressed and I don't think he got
8 undressed.

9 Q: Okay, but you did have hickies. Is that correct?

10 A: Yes, sir.

11 Q: And that's how your mother found out about this?

12 A: Yes, sir.

13 Q: Was she quite upset when she found out?

14 A: Oh, yeah.

15 Q: I understand.

16 MR. CHAMBERS: I have no further questions. Thank you.

17 THE COURT: Anything further?

18 MS. CROSBY: No, Your Honor.

19 THE COURT: You may step down. Call your next witness.

20 (The witness left the witness stand.)

21 MS. CROSBY: The Plaintiff calls Randall Carmichael.

22 CLERK: Please place your left hand on the Bible and
23 raise your right hand. Do you swear or affirm the testimony
24 you give in this case will be the truth, the whole truth and
25 nothing but the truth, so help you God?

1 MR. CARMICHAEL: I do.

2 CLERK: Please be seated and state your name for the
3 record.

4 MR. CARMICHAEL: Randall Carmichael.

5 RANDALL CARMICHAEL, being first duly
6 sworn, testifies as follows:

7 DIRECT EXAMINATION OF RANDALL CARMICHAEL BY MS. CROSBY:

8 Q: Mr. Carmichael, where are you employed and what is your
9 position there?

10 A: Williamsburg County Sheriff's Department.

11 Q: Where were you working in January 2003?

12 A: Hemingway Police Department.

13 Q: All right and how if at all did you come to be involved
14 in this case involving a group of boys and girls including
15 Chris Johnson and Victim #1 ?

16 A: Lieutenant Burt Powell was -- was working the night they
17 came in to report it and he passed that information on to me
18 and then Tiffany came in and -- and we started interviews.

19 Q: Tiffany is whom?

20 A: Powell.

21 Q: All right and did Mrs. Powell sign out a warrant for
22 anybody's arrest?

23 A: Yes, she did.

24 (An arrest warrant was marked for ID as Plaintiff's
25 Exhibit Number 5.)

1 Q: I'm showing you what's been marked for ID as Plaintiff's
2 5 and ask you if you recognize that?

3 A: Yes, I do.

4 Q: What is that?

5 A: It's an arrest warrant for Chris Johnson.

6 Q: And that's -- And Ms. Powell signed that warrant out. Is
7 that correct?

8 A: Yes.

9 Q: You did not sign it?

10 A: No, I didn't.

11 Q: Okay and in the course of your investigation did you have
12 any indication that anything that Chris and Victim#1 did was
13 anything other than consensual?

14 A: No, ma'am.

15 Q: All right and did you have anything to do with Chris
16 going on the Sex Offender Registry?

17 A: No, ma'am.

18 Q: Were you surprised to find out that he was on the Sex
19 Offender Registry?

20 A: Yes. I didn't find out until I talked with you.

21 Q: Thank you.

22 MS. CROSBY: Nothing further. I would move Plaintiff's 5
23 into evidence.

24 THE COURT: Any objections?

25 MR. CHAMBERS: No, Your Honor.

1 THE COURT: Plaintiff's Number 5 into evidence.

2 MS. CROSBY: Please answer any questions that Mr.
3 Chambers has.

4 MR. CHAMBERS: That is the arrest warrant I read into
5 evidence.

6 THE COURT: Any cross?

7 MR. CHAMBERS: I have no cross for this witness, Your
8 Honor. Thank you.

9 THE COURT: Thank you. Anything further?

10 MS. CROSBY: And if Mister -- I would ask that the
11 witness be excused, Your Honor.

12 THE COURT: Do you have objections?

13 MR. CHAMBERS: We have no opposition to excusing this
14 witness, Your Honor.

15 MR. CARMICHAEL: Thank you.

16 (The witness left the witness stand and left the
17 courtroom.)

18 MS. CROSBY: The Plaintiff calls Paula Miller.

19 CLERK: Please place your left hand on the Bible and
20 raise your right hand. Do you swear or affirm the testimony
21 you give in this case will be the truth, the whole truth and
22 nothing but the truth, so help you God?

23 MS. MILLER: Yes, I do.

24 CLERK: Please be seated and state your name for the
25 record.

1 MS. MILLER: My name is Paula Miller.

2 PAULA MILLER, being first duly sworn,
3 testifies as follows:

4 DIRECT EXAMINATION OF PAULA MILLER BY MS. CROSBY:

5 Q: Ms. Miller, how are you related to John Christopher
6 Johnson, the Plaintiff?

7 A: He's my son.

8 Q: Do you remember when Chris was arrested in 2003?

9 A: Yes, ma'am, I do.

10 Q: What happened?

11 A: We went to Hemingway Police Department and they arrested
12 him.

13 Q: All right.

14 A: He was taken to jail.

15 Q: And he pled guilty to that charge. Is that correct?

16 A: Yes, ma'am.

17 Q: And that was Lewd Act, Lewd Act on a Minor, right?

18 A: Yes, ma'am.

19 Q: And what happened to him after he pled guilty?

20 A: He went to jail. He went to prison.

21 Q: What were the -- Where did he go when he came back?

22 A: He had to go live with my aunt -- with my sister at my
23 mama's house, his aunt, because he could no longer live in my
24 neighborhood. He couldn't be nowhere around Victim #1. He could
25 not live in my neighborhood.

1 Q: What was your neighborhood?

2 A: Rolling Hills.

3 Q: How long had you lived in Rolling Hills?

4 A: I hadn't lived there -- When I moved there when this
5 happened, I hadn't lived there six weeks.

6 Q: Who did you live there with?

7 A: My baby boy, Nolan, and Chris.

8 Q: And how did you come to end up at Rolling Hills?

9 A: Me and my husband had divorced and then right after --
10 Well, before me and my husband divorced, my mama had died, my
11 older brother had died and then me and Dan divorced. So then
12 I moved to Rolling Hills.

13 Q: Was Chris -- How old was he then?

14 A: He was seventeen.

15 Q: And when is his birthday?

16 A: October 12th, 1985.

17 Q: So he had just turned seventeen four months earlier?

18 A: Yes, ma'am.

19 Q: Was he in school at the time?

20 A: Yes, ma'am.

21 Q: What school?

22 A: He was going to Hemingway High.

23 Q: All right. Ms. Miller, why didn't you hire an attorney
24 to represent Chris back in 2003?

25 A: I didn't have the money to hire an attorney. I thought

1 we needed a public defender. You know that's what they're
2 supposed to do is to help us. When we went and talked to him
3 on two separate occasions, he said this is crazy. This is
4 going to be thrown out. All they did was kiss. This is going
5 to be thrown out. Don't worry about it.

6 Q: What is your level of education?

7 A: I quit school in tenth grade.

8 Q: All right and where were you employed back at that time?

9 A: Piggly Wiggly.

10 Q: And where are you employed now?

11 A: I'm still at Piggly Wiggly.

12 Q: When did you find out that he was required to register as
13 a sex offender?

14 A: At nine o'clock the next morning after he got out of
15 prison. They called me at twelve o'clock midnight and asked
16 me do I want my son. I said, "Yes, sir, I do." So I went and
17 got him from Columbia and I went and got him and they told me
18 he had to be in Kingstree. Because he was going to be living
19 at my sister's house in Williamsburg, he had to be in
20 Kingstree at the Probation office by nine o'clock. So we had
21 him there at nine o'clock and she told me he had to register
22 and he was on five years probation, but she said in five years
23 everything would be over with and I -- I guess I'm stupid. I
24 thought that in five years everything was over with. It's not
25 over. It's -- It's a nightmare.

1 Q: What have you seen it do to Chris?

2 A: I've seen every dream he ever had destroyed. He can't
3 join the service. He can't -- He can't do anything basically.
4 He can't hardly get a job. He can't go to church. He can't
5 -- He can't go to family reunions. He can't take his son to
6 the water park. He can't take his son trick or treating. He
7 can't go to none of his brother's functions at school. My
8 baby boy is on the Honor Roll. He can't go to anything,
9 nothing, nothing.

10 He can't go to his son's graduation from kindergarten.
11 We had to take his son out of public schools because they got
12 a newspaper that circulates now with the sex offenders and
13 everything in it. Well, we had to take him out from the
14 picking and stuff and put him in private school so he's not
15 tormented so bad and please tell me where we can go that he's
16 not going to be tormented. It's not there.

17 Q: His son is how old?

18 A: He's six and this is for a kiss.

19 (A newspaper called The Mug Shot was marked for ID as
20 Plaintiff's Exhibit Number 6.)

21 Q: Paula, you talked about a newspaper. I'm showing you
22 what's been marked for ID as Plaintiff's 6. I ask you if you
23 recognize that?

24 A: Yes, ma'am, I do. I try to buy them up every time his
25 picture's in them. So do you know how humiliating it is for

1 this paper to come out in every store in town with your
2 child's picture in it over a kiss? It's humiliating.

3 Q: What is the paper called?

4 A: It's called The Mug Shot.

5 Q: And has Chris' picture been in that?

6 A: Several times.

7 Q: It's not in that one?

8 A: No, ma'am, it's not. I try to buy them up and throw them
9 away, not that it does any good. It just helps me some. It
10 helps my family some. After this happened, my baby was -- The
11 little boys in the neighborhood tried to run my little boy
12 over with the four wheeler. I had to move. It's not good.
13 It's not good. It's not right over a kiss.

14 MS. CROSBY: Your Honor, at this time I'd move State's --
15 Plaintiff's 6 into evidence.

16 THE COURT: Any objections?

17 MR. CHAMBERS: I have no objections.

18 THE COURT: Plaintiff's 6 is admitted in without
19 objection.

20 MS. CROSBY: Ms. Miller, please answer any questions Mr.
21 Chambers has for you.

22 THE COURT: Mr. Chambers?

23 MR. CHAMBERS: I have no questions for this witness, Your
24 Honor.

25 THE COURT: You may step down.

1 MS. MILLER: Thank you, sir.

2 (The witness left the witness stand.)

3 MS. CROSBY: The Plaintiff calls Chris Johnson.

4 CLERK: Please put your left hand on the Bible and raise
5 your right hand. Do you swear or affirm the testimony you
6 give in this case will be the truth, the whole truth and
7 nothing but the truth, so help you God?

8 MR. JOHNSON: Yes, ma'am.

9 CLERK: Please be seated and state your name for the
10 record.

11 MR. JOHNSON: John Christopher Johnson.

12 JOHN CHRISTOPHER JOHNSON, being first
13 duly sworn, testifies as follows:

14 DIRECT EXAMINATION OF JOHN CHRISTOPHER JOHNSON BY MS. CROSBY:

15 Q: Chris, please give the Court your date of birth and your
16 current address?

17 A: 10/12/1985, 529 South Deerfield, Johnsonville, South
18 Carolina.

19 Q: Chris, do you remember the events of January 18th and
20 19th, 2003?

21 A: Pretty much all of them, yes, ma'am.

22 Q: What happened?

23 A: We was out riding around. We all decided -- Me, Cliff
24 and all of us decided we was going to go to a motel room and
25 we went and got by Yank's and Jessica and them went in there

1 and they ended up coming back out with Victim #1. I don't know
2 the other little girl's name and we went to the motel room,
3 kissed and went to jail I guess. Hard memories.

4 Q: How did you know Victim #1 before that?

5 A: Just from the neighborhood.

6 Q: Did you know how old she was?

7 A: No, ma'am.

8 Q: Had you seen her around?

9 A: Just around the neighborhood. She was kind of boyfriend
10 girlfriend with a buddy that lived across the street.

11 Q: A buddy of yours that lived across the street?

12 A: Yes, ma'am.

13 Q: And the group of guys that you were with, how did you
14 know those guys?

15 A: I had hung around. I come to Hemingway every weekend to
16 my granny's house and I kind of raised up around Cliff and his
17 family. Cliff had dated Jessica, so I knew Jessica and
18 Jonathan. I just knew him from Cliff.

19 Q: Okay and was Cliff dating Jessica at the time?

20 A: Yes, ma'am.

21 Q: So how did you all get hooked up with these particular
22 girls I guess is what I'm trying to ask?

23 A: Jessica knew Victim #2 and Victim #1 and the other girl.

24 Q: Okay. All right, when y'all got in the room did you stay
25 in the room?

1 A: We went downstairs one time, but we come back up. Yeah,
2 we stayed in the room.

3 Q: Was there ever a time that you and Victim #1 were alone in
4 the room?

5 A: No, ma'am.

6 Q: All right. Did you kiss Victim #1?

7 A: Yes, ma'am.

8 Q: Did you French kiss Victim #1?

9 A: Yes, ma'am.

10 Q: Did Victim #1 kiss you back?

11 A: Yes, ma'am.

12 Q: Was there any time when y'all didn't agree to be kissing
13 each other that you were kissing?

14 A: No, ma'am.

15 Q: Did you give her a hickey?

16 A: Yes, ma'am, I did.

17 Q: Did she give you a hickey?

18 A: Yes, ma'am, she did.

19 Q: Did you take her clothes off?

20 A: No, ma'am.

21 Q: Were you trying to arouse the lusts, passions or sexual
22 desires of either one of you?

23 A: No, ma'am, just other than teenagers.

24 Q: How did you find out that you were in trouble for you and
25 Victim #1 kissing that night in the hotel room?

1 A: Chief Carmichael called me the next day or the day after.

2 Q: And Chief Carmichael was the gentleman that testified
3 earlier?

4 A: Yes, ma'am.

5 Q: And what did you do?

6 A: He asked me if I would come down to the station and I
7 told him yeah.

8 Q: So you turned yourself in?

9 A: Yes, ma'am.

10 Q: And you got arrested. Is that correct?

11 A: Yes, ma'am.

12 Q: All right and you were charged with Lewd Act on a Minor.
13 Correct?

14 A: Yes, ma'am.

15 Q: Did you know that Victim #1's mom was the one that signed out
16 that warrant on you?

17 A: Afterwards I did.

18 (A warrant for court was marked for ID as Plaintiff's
19 Exhibit Number 7 and a sentencing form was marked for ID as
20 Plaintiff's Exhibit Number 8.)

21 Q: I'm showing what's been marked for ID as Plaintiff's 7
22 and ask you if you recognize that?

23 A: It's where I had to go to court.

24 Q: Okay and in court you pled guilty. Right?

25 A: Yes, ma'am.

1 Q: All right and you were represented by the public
2 defender's office at the time. Is that correct?

3 A: Yes, ma'am.

4 Q: Did you know that this was a sex offender offense that
5 you'd have to register as a sex offender for?

6 A: No. I didn't never meet with the lawyer by myself. It
7 was always a group of us at the same time and when we went in
8 there, he had talked to all of us and he said the best way to
9 go would just be plead guilty because I did kiss her and we'd
10 come out of there.

11 Q: All right and I'm showing you what's been marked for ID
12 as Plaintiff's 8 and I ask you if you recognize that?

13 A: It's where the judge sentenced me.

14 Q: All right and did you in fact get sentenced?

15 A: Yes, ma'am.

16 Q: Do you remember what your sentence was?

17 A: It was ten years suspended to a hundred days and two
18 years probation.

19 Q: Oh, so you actually did go up to Columbia. Correct?

20 A: Yes, ma'am.

21 Q: And was that -- Did that come as a surprise to you,
22 Chris?

23 A: Yeah, I -- I thought I was just going to get out right
24 there and come home with the county.

25 Q: Did you have some other plans that night in fact?

1 A: Yeah, my cousin that had took me to court that day it was
2 his birthday.

3 Q: But you didn't go to the birthday party?

4 A: No, ma'am.

5 Q: Well, when did you find out you were required to register
6 as a sex offender?

7 A: When I got out of jail, I started my probation and I knew
8 I had to register then at Williamsburg and I registered and I
9 did my probation and I say about almost the beginning of my
10 second year of probation I moved into my daddy's house in
11 Andrews and I switched to Georgetown County and I finished out
12 my probation and I thought I --

13 Back then it was only one time a year to register. You
14 didn't have to see them twice a year. So when I finished my
15 probation and stuff I decided I was going to go off to school
16 and get my education. I thought I was all done, but when I
17 finished and signed up for the military and I went to have my
18 ship out date, I went to ship out and I was a couple months
19 late on being registered and they had been looking for me and
20 she found me and told me it was for life. I had to register.

21 Q: Was there a signing bonus associated with your -- with
22 that military service that you were going into?

23 A: I had a twenty -- twenty thousand dollar signing bonus
24 with all my college paid for.

25 Q: All right and where in the process of getting the ship

1 out date were you?

2 A: I was at the end. I had done had my ship out date. I
3 was shipping out May 2nd.

4 Q: And then Georgetown County found you and prior to that
5 had you been aware that you had to continue to register as a
6 sex offender?

7 A: No, ma'am, because I had done left, finished probation,
8 went to Tennessee, did my schooling, got my education and was
9 coming back to ship out.

10 Q: Why didn't you finish high school?

11 A: Because I went to jail.

12 Q: And you were seventeen at the time?

13 A: Yes, ma'am.

14 Q: When you got out, you were still seventeen. Weren't you?

15 A: Yes, ma'am.

16 Q: So you weren't able to rent an apartment on your own or
17 anything?

18 A: No, ma'am.

19 Q: And could you go back and live with your mom?

20 A: Unh-uh.

21 Q: Why not?

22 A: Because it was the same neighborhood in Rolling Hills as
23 ~~Victim #1~~ and I had to go stay with my aunt Ruthie in Williamsburg
24 County because that was the only other house I had that would
25 be stable enough to live in.

1 Q: Chris, were there certain conditions when you were on
2 probation as a sex offender?

3 A: Yes, ma'am.

4 (A Sex Offender Probation Requirements paper was marked
5 for ID as Plaintiff's 9.)

6 Q: I'm showing you what's been marked as Plaintiff's 9 and I
7 ask you if you recognize that?

8 A: Yes, ma'am.

9 Q: What is that?

10 A: It's what I had to agree to do as I was a sex offender on
11 probation.

12 Q: All right. Chris, how if at all does being a registered
13 sex offender affect your career path? Has it affected your
14 career path?

15 A: When I come out of Memphis school, I had a certificate of
16 inventory control specialist. I had a job offer at Merita
17 Bread Factory and with Pepsi. I had planned to be in the
18 military and have a warehouse job, but it ---

19 Q: You didn't ---

20 A: You can't ---

21 Q: I'm sorry.

22 A: You can't work a job when you got people in the facility
23 that know that you're a sex offender and then you got
24 companies that don't even hire sex offenders.

25 Q: All right. Let's go back to the military job. Did you

1 -- You didn't end up going into the military. Correct?

2 A: I just went to Memphis. That was it.

3 Q: They wouldn't in fact allow you in the military as a sex
4 offender. Correct?

5 A: The Georgetown County Sheriff's woman, Deputy Phillips,
6 she told my recruiter there was no paperwork on me on the
7 internet or anything about me being couldn't join the military
8 and when they did my background check and I joined. There was
9 not any paperwork until after Deputy Phillips had talked to me
10 from the Georgetown Sheriff's Office that I was going to be a
11 sex offender and I couldn't go in the military because I was a
12 convicted felon and I couldn't carry a gun and it wasn't but a
13 week after then that it ended up on the federal agent's thing
14 that I was a felon.

15 Q: Okay and you didn't get that signing bonus. Correct?

16 A: No, ma'am.

17 Q: All right. With regard to the Merita Bread Company, is
18 there anything specific with that? Was it a warehousing job?

19 A: Yes, ma'am.

20 Q: And why -- Why couldn't you take that job?

21 A: Merita goes into schools. They deliver bread. They go
22 into stores. It's a traveling job. You can't be around and
23 they don't hire sex offenders.

24 Q: What about the Pepsi Company?

25 A: Pepsi, I knew them pretty closely and they told me

1 straight up as soon as it was off my record I'd have a job,
2 but right then they couldn't risk their company.

3 Q: And that Pepsi job entailed what?

4 A: I had warehouse and I had C.E.L.'s at night. It'd be
5 kind of like my own operator and my own schedule.

6 Q: So would that have been a delivery job to schools?

7 A: Yes, ma'am, it would have.

8 Q: And you couldn't take that job?

9 A: No, ma'am.

10 Q: Because of you being a registered sex offender. Is that
11 right?

12 A: Yes, ma'am.

13 Q: How if at all does being a registered offender -- And
14 this is for the rest of your natural life. Is that your
15 understanding?

16 A: Yes, ma'am.

17 Q: How has that affected your family life?

18 A: Tore it to pieces, flushed it down the drain, pushed it
19 between a rock and a hard space. You kind of got to depend on
20 your mama. Preston has school, baseball, all the dreams that
21 I had I can't pursue with him.

22 Q: Like what?

23 A: School activities, friends, birthday parties, school,
24 church. All activities that contain him I can't do unless
25 it's just me and him. If it involves going downtown to the

1 rec department, you can count me out. My mama or somebody
2 have to take him if he's going to play. Go to McDonald's to
3 watch him slide down the slide, I can't do it. Being a sex
4 offender, if I'd have known it was for life, it may -- I might
5 have thought twice about having kids if I knew it was going to
6 be such a torment on them.

7 Q: Chris, do other people know that you're a registered sex
8 offender?

9 A: About everybody in the city of Johnsonville and
10 Hemingway.

11 Q: And you've got to give Investigator Dangerfield your
12 internet user names and this kind of thing. Is that correct?

13 A: Yes, ma'am.

14 Q: And all the information about your family's vehicles. Is
15 that correct?

16 A: Yes, ma'am.

17 Q: How does it invade your privacy?

18 A: Being a sex offender you really don't have no privacy.
19 Everything's open to everybody. It's got to be. You move
20 into a neighborhood, you got to go walk down the whole road
21 and tell everybody in the neighborhood or either they get on
22 the internet and see it. It's -- You don't really have no
23 privacy. You're likely to have a sheriff's office man stop by
24 tonight, not stop by for a week, two weeks, months, but they
25 just drop in.

1 Q: Does that feel like a punishment to you?

2 A: Yeah, in a way because I have to steady live with it with
3 people the way they look at me. They don't understand when
4 they look at the internet or on the book and they see
5 registered sex offender. It don't say he didn't hold some
6 little girl down and rape her, he just kissed a girl. It
7 don't say nothing about it. It don't give no description.
8 It's just first impression and that's the way they take it.

9 Q: All right. Chris, do you think child molesters ought to
10 be on the Sex Offender Registry?

11 A: I think they ought to be.

12 Q: Do you think that you ought to be?

13 A: Not for kissing.

14 Q: Why did you bring this action?

15 A: I brought this action because I -- I've got dreams in
16 life that I want to pursue and with this on me I can't. I
17 can't do nothing. I can't raise my kid to where he can do
18 activities. I can't get a good job and the way people look at
19 me it's just -- It's horrible to have somebody to walk by you
20 and then they get a few feet down and they turn their nose up
21 and start talking to the next friend he's a sex offender.

22 Q: Have you found out from Scott Dangerfield that people
23 have gotten removed with court orders?

24 A: In the past.

25 Q: And what are you asking this Court for?

1 A: I'm asking the Court to relieve me of the Sex Offender
2 Registry. I didn't do nothing but kiss a girl and she kissed
3 me back. I didn't hold her down and kiss her. I didn't force
4 her to kiss me. Everybody in here has done it and they've
5 kissed a girl when they was underage. They didn't get caught.
6 I just -- I want to be able to go to my son's school and the
7 people be in there like so all the truth all came out. They
8 only just kissed. They weren't -- It wasn't nothing like
9 that. Everybody will start seeing the real story instead of
10 he's just a sex offender and I just ask the Court to relive me
11 of having to register every year and being such a problem as
12 far as jobs and all activities.

13 MS. CROSBY: Court's indulgence.

14 Q: If you fail to register with Investigator Dangerfield on
15 the I guess it's the bi-annual basis or if you fail to pay the
16 fee, what is your understanding of what could happen to you?

17 A: I go back to jail and I serve my whole term.

18 Q: And when are you going to come off the Sex Offender
19 Registry if this Court does not grant your request?

20 A: When I die.

21 MS. CROSBY: Please, I move Plaintiff's 7, 8 and 6 and 9,
22 I think that's right, into evidence.

23 THE COURT: Any objections?

24 MR. CHAMBERS: No objections, Your Honor.

25 THE COURT: Seven, 8 and 9 are in evidence without

1 objection.

2 MS. CROSBY: Please answer Mr. Chambers' questions.

3 Thank you.

4 THE COURT: Counsel?

5 CROSS EXAMINATION OF JOHN CHRISTOPHER JOHNSON BY MR. CHAMBERS:

6 Q: Mr. Johnson, you talked about a number of things. One is
7 the military and you said that you wanted to go into the
8 military. Is that correct?

9 A: Correct.

10 Q: What branch of service?

11 A: I was going in as a Alpha One dispatcher, Echo 11,
12 National Guard Armory.

13 Q: National Guard, okay, Army. I have something in common
14 and that's that I was not accepted to the Coast Guard. I
15 applied to the Coast Guard and I was too heavy and they
16 wouldn't accept me, but the form that one fills out for
17 application to the branch, any of the branches of the service,
18 is about the same and you talked about them doing a background
19 check and finding this through the Sex Offender Registry, but
20 on that form what did you write down on the section that asks
21 about have you ever been in the back of a police car?

22 A: I put yes.

23 Q: And you wrote on that form that -- that you were -- had
24 pled guilty to Lewd Act on a Minor?

25 A: Yes, sir.

1 Q: Okay. So would you say that they found out about it
2 through the Sex Offender Registry or for the -- from the form
3 that you filled out?

4 A: Well, when they did my SLED check and it prints out on
5 the paper for your SLED check, I had no criminal record until
6 after my ship out date when the woman from Georgetown County
7 Sheriff's Office got it fixed in the computer.

8 Q: So you were doing this on or about the time that you got
9 out of -- out of prison?

10 A: No. Out of prison?

11 Q: How long - What -- What time frame relative to your
12 conviction?

13 A: I got out of prison in -- 2005, 2006.

14 Q: So you say -- You'd say that you had a windfall that this
15 wasn't on the computer on that time. Is that correct?

16 A: That's correct.

17 Q: All right. One other interesting thing, I notice things
18 about words that people use and I'll wind up in long
19 discussions like when most people pronounce salmon as in the
20 fish like salmon, but salmonella, which has the same first
21 word, we pronounce differently and I couldn't help but notice
22 one thing that you said that fascinated me. When you were --
23 When Ms. Crosby asked you who was in that hotel room, your
24 words were, "Victim #1 and I don't remember the other little
25 girl's name." So there were more than one little girls in

1 that room?

2 A: The girl that come with Victim #1.

3 Q: Okay.

4 A: And Victim #2.

5 Q: And you would consider Victim #1 as a little girl?

6 A: No, she was older than the other girl.

7 Q: Then why did you call her the other little girl?

8 A: Well, you ought to seen Victim #1 when I seen her when I was
9 younger.

10 Q: Right, but other little girl implies that there are more
11 than one. Is that not correct?

12 A: Yeah, if you're looking at it from my age now, yeah, I
13 call them a little girl.

14 Q: And you said that you don't mind people who are sex
15 offenders being on this registry. Is that correct?

16 A: If they did it. If they raped or something physically
17 harmed somebody, yeah, they deserve to be on it.

18 Q: If I had a thirteen year old daughter, would you
19 understand if I did not want her to come and spend the night
20 at your house?

21 MS. CROSBY: Objection, calls for speculation.

22 THE COURT: Sustained.

23 MR. CHAMBERS: Withdraw the question. Thank you, Mr.
24 Johnson.

25 THE COURT: Anything further?

1 MS. CROSBY: No, sir, Your Honor.

2 THE COURT: You may step down. Thank you. Call your
3 next witness.

4 (The witness left the witness stand.)

5 MS. CROSBY: Your Honor, I have no other witnesses. I do
6 have some documents. If we could, we want to submit them as
7 exhibits.

8 (There was a brief pause in the proceedings as counsel
9 conferred regarding the exhibits. A letter from Court
10 Administration was marked as Plaintiff's Exhibit Number 10 and
11 Requests for Admissions were marked as Plaintiff's Exhibit
12 Number 11.)

13 MS. CROSBY: Your Honor, the first I think is agreed
14 upon. It's the Plaintiff's.

15 MR. CHAMBERS: The letter from the Court Administration
16 regarding the transcripts being destroyed after five years is
17 fine, Your Honor.

18 MS. CROSBY: That's Plaintiff's 10. I move it into
19 evidence.

20 THE COURT: All right. Plaintiff's 10 is in evidence
21 without objection.

22 MS. CROSBY: The final item, Your Honor, is the Requests
23 to Admit to Chief Lloyd. We -- We submitted a Request to
24 Admit and they were all answered as to the State of South
25 Carolina and this is the original request including service to

1 Chief Lloyd. There's just one question that he didn't answer,
2 but it might take us a minute to ---

3 THE COURT: Okay.

4 MS. CROSBY: --- look at these records, Your Honor.

5 MR. CHAMBERS: Well, Your Honor, obviously there are two
6 Defendants here, the State of South Carolina, as well as Chief
7 Lloyd. I received an extensive Request to Admit on the State
8 of South Carolina and that one request that was sent
9 specifically for the other Defendant, which was Chief Lloyd, I
10 was not aware of. However, we may -- We probably did receive
11 it.

12 (There was a brief pause in the proceedings while counsel
13 conferred further.)

14 MR. CHAMBERS: For the record can we say that it was
15 failed to answer and therefore by default admitted?

16 THE COURT: Sure.

17 MR. CHAMBERS: But at -- On the other hand, I really feel
18 uncomfortable with that answer because it's not something that
19 -- that we would admit under those circumstances.

20 MS. CROSBY: Your Honor, I am sorry to hear that because
21 I really thought maybe the Attorney General's Office was
22 legitimately admitting that because what the Request to Admit
23 asked is directed to Defendant Chief Lloyd admit that if Sex
24 Offender Registry were discretionary on your part, you would
25 not register Mr. Johnson or any other similarly situated

1 individual convicted at seventeen of kissing and touching the
2 body of a thirteen year old female. So I kind of thought
3 maybe they were since the argument is likely to be that it's
4 not discretionary, it would be okay for for him to admit that
5 if it were discretionary, he would.

6 I don't want to do anything that makes them
7 uncomfortable, but I do have the proof of service and it was
8 the one. They were answered jointly and this is -- This was a
9 separate set for a separate Defendant and it wasn't answered.
10 So I would request that it's deemed admitted and if we can
11 stipulate that. I don't have any problems.

12 MR. CHAMBERS: I have the ---

13 THE COURT: Any objections to it being deemed admitted?

14 MR. CHAMBERS: Not if I can admit the entire package that
15 we received requesting admissions and I believe this is it.

16 MS. CROSBY: I don't have any objection.

17 MR. CHAMBERS: That's not it. I will find it.

18 MS. CROSBY: I don't have any objections.

19 THE COURT: Without objection we'll call it Plaintiff's
20 Number 11. You can enter it without objection.

21 MR. CHAMBERS: Okay.

22 MS. CROSBY: That's the Plaintiff's case, Your Honor.

23 THE COURT: All right. Thank you very much. Mr.
24 Chambers, anything you need to put into evidence?

25 MR. CHAMBERS: Yes, Your Honor.

1 THE COURT: I'm ready when you are.

2 MR. CHAMBERS: This is the document that I received here.

3 (The Requests for Admissions packet was marked as
4 Defendant's Exhibit Number 1.)

5 THE COURT: We're going to call that Defense Number 1?

6 MR. CHAMBERS: Yes, sir.

7 MS. CROSBY: Without objection.

8 THE COURT: Into evidence without objection.

9 MR. CHAMBERS: Thank you, Your Honor.

10 THE COURT: Go ahead and call your first witness.

11 MR. CHAMBERS: Your Honor, I would like to call at this
12 time Tiffany McDaniel.

13 CLERK: Please step up to the witness stand and place
14 your left hand on the Bible and raise your right hand. Do you
15 swear or affirm the testimony you give in this case will be
16 the truth, the whole truth and nothing but the truth, so help
17 you God?

18 MS. MCDANIEL: I will.

19 CLERK: Please be seated and state your name for the
20 record.

21 MS. MCDANIEL: I'm Tiffany McDaniel.

22 TIFFANY MCDANIEL, being first duly
23 sworn, testifies as follows:

24 DIRECT EXAMINATION OF TIFFANY MCDANIEL BY MR. CHAMBERS:

25 Q: Ms. McDaniel, you live in Johnsonville, South Carolina?

- 1 A: I do.
- 2 Q: And you are the mother of victim #1
- 3 A: I am.
- 4 Q: On January 18th/19th, 2003, where was your daughter?
- 5 A: Um..
- 6 Q: Where did you think your daughter should be?
- 7 A: She had asked my permission to go spend the night with
- 8 her friend, victim #2.
- 9 Q: And where was your daughter in fact?
- 10 A: In a hotel room with victim #1, her cousin victim #3, two
- 11 twenty-one year olds and two seventeen year olds.
- 12 Q: How old was your daughter at the time?
- 13 A: Thirteen.
- 14 Q: How old was victim #3 at the time?
- 15 A: Twelve.
- 16 Q: Were you aware of any charges filed resulting from --
- 17 from this incident?
- 18 A: Yes.
- 19 Q: What charges were those?
- 20 A: The two twenty-one year olds and the seventeen year old
- 21 female were charged with Contributing to the Delinquency of a
- 22 Minor and Chris was charged with Lewd Act on a Minor and I
- 23 cannot remember if it also carried the Contributing charge.
- 24 Q: What indicated to you that something might have gone on
- 25 that -- that -- that -- Or did you report this to the

1 sheriff's or to the police department?

2 A: I did.

3 Q: What indicated to you that you needed to report something
4 to the Police Department?

5 A: Victim #1's cousin Victim #3's mother Buffy called me and said,
6 "I need to talk to you. Can I come over?" "Sure." Her and
7 Victim #3 came over, we went in the bedroom and she proceeded to
8 tell me what Victim #3 had told her had happened the weekend
9 prior and said that to prove it I could look at a certain area
10 on Victim #1's body and see the proof. So I called Victim #1 into the
11 bedroom and had her lift her shirt.

12 Q: Well, what did you see?

13 A: She had two hickeys that were at least half dollar sized
14 on her torso.

15 Q: Do you know where on her torso? Do you remember?

16 A: One was around her breast area. The other one was like
17 breastbone to stomach area.

18 Q: Did she indicate where those came from?

19 A: Yes, she told me that reluctantly ---

20 MS. CROSBY: Objection.

21 MR. CHAMBERS: Hearsay?

22 MS. CROSBY: Hearsay.

23 MR. CHAMBERS: Okay.

24 MS. CROSBY: Okay.

25 Q: Did she -- Let's see. To your knowledge, was Mr. Johnson

1 responsible for those marks?

2 A: Yes.

3 Q: Was Mr. Johnson tried on -- on this matter or -- or did
4 he plead guilty?

5 A: Yes.

6 Q: Okay. Were you aware at the time that Mr. Johnson was
7 placed on the Sex Offender Registry?

8 A: No.

9 Q: When did you become aware of that?

10 A: When you called me.

11 Q: Okay. Do you believe that Mr. Johnson should be on the
12 registry?

13 A: Yes.

14 MS. CROSBY: Objection.

15 MR. CHAMBERS: Okay.

16 THE COURT: On what grounds?

17 MS. CROSBY: Calls for speculation and it's opinionated.

18 THE COURT: Any response, Mr. Chambers?

19 MR. CHAMBERS: Your Honor, this goes to the -- the
20 feelings of a -- of a victim's mother regarding her daughter
21 at the time. I don't think that she's speculating about how
22 she felt about that or her own personal beliefs on it.

23 THE COURT: Okay, I'm going to overrule that. Go ahead.

24 MS. CROSBY: Thank you, Your Honor.

25 Q: Do you -- Do you believe that Mr. Johnson should be on

1 the registry?

2 A: I do.

3 Q: Why do you believe that?

4 A: Anyone, male or female, that does anything to a minor,
5 whether molesting and when I say molesting I also include the
6 caressing of a body and leaving marks on them to having
7 intercourse with them, you're taking away something from a
8 child that they can't get back.

9 Q: I understand.

10 MR. CHAMBERS: No further questions, Your Honor. Thank
11 you, Ms. McDaniel. Please answer anything that Ms. Crosby may
12 have.

13 THE COURT: Ms. Crosby?

14 CROSS EXAMINATION OF TIFFANY MCDANIEL BY MS. CROSBY:

15 Q: Ms. Powell, you are the one who signed a warrant on
16 Christ Johnson, right?

17 A: Yeah, but I'm McDaniel.

18 Q: Oh, I'm sorry, Ms. McDaniel. I apologize for that.

19 A: Thank you.

20 Q: You signed out the warrant. You wanted him arrested. Is
21 that fair to say?

22 A: Not just him. It was all four of them.

23 Q: All right and they did in fact go to court and get
24 convicted of what you wanted them convicted of. Correct?

25 A: They did.

1 Q: And when he was offered a plea bargain you objected to
2 that, did you not?

3 A: I don't know, but the only thing I understood was when it
4 concerned Jessica, not him.

5 Q: Okay. Well, you and I spoke yesterday, didn't we?

6 A: Monday.

7 Q: Monday and you said something along the lines that you
8 didn't think ten days was enough. Is that your recollection?

9 A: For people that -- These four individuals took three
10 teenage girls into a hotel and gave them alcohol and
11 cigarettes and my daughter was -- Whatever was done to her, we
12 still don't know the facts. You know, they said that it was
13 too far out for them to even do a kit to find out if she had
14 intercourse.

15 Q: Well, you were concerned about that, weren't you?

16 A: Yes, I was.

17 Q: And does that come from your -- your personal history?

18 A: Yeah.

19 Q: And your personal history involved you not consenting.
20 Is that fair to say?

21 A: Yeah, I was raped when I was thirteen.

22 Q: All right.

23 MS. CROSBY: No further questions.

24 MR. CHAMBERS: Your Honor, objection again on the
25 consent, legal definition there.

1 THE COURT: Your response?

2 MS. CROSBY: Oh, my same position as earlier as I mean
3 factual consent, not legal.

4 THE COURT: I'll overrule that. Any redirect?

5 MR. CHAMBERS: No, Your Honor. Thank you, Ms. McDaniel,
6 for coming.

7 MS. MCDANIEL: Thank you.

8 (The witness left the witness stand.)

9 THE COURT: You can call your next witness.

10 MR. CHAMBERS: Your Honor, I have no more witnesses today
11 and I -- The only thing that -- Or we have -- We have no more
12 witnesses, Your Honor.

13 THE COURT: Anything further from either party?

14 MS. CROSBY: I don't think so, Your Honor. Court's
15 indulgence just for a moment.

16 THE COURT: Mr. Chambers, do you have an e-mail address
17 you can give me?

18 MR. CHAMBERS: Yes, Your Honor.

19 THE COURT: What would that be?

20 MR. CHAMBERS: It's ---

21 THE COURT: Or do you have a card?

22 MR. CHAMBERS: I did not bring one with me. I can write
23 it down for you. Your Honor, if I may approach?

24 THE COURT: Sure. Anything further?

25 MS. CROSBY: Brief reply, Your Honor. The Plaintiff

1 recalls Victim #1

2 (The previously sworn witness returned to the witness
3 stand.)

4 REDIRECT EXAMINATION OF Victim #1 BY MS. CROSBY:

5 Q: Victim #1, just a question and I hate to get into these kind
6 of old facts, but did you have a hickey from Chris Johnson on
7 your tummy?

8 A: Not that I remember.

9 MS. CROSBY: Okay, that's all.

10 THE COURT: Anything further?

11 MR. CHAMBERS: No further questions, Your Honor.

12 THE COURT: Thank you.

13 (The witness left the witness stand.)

14 MS. CROSBY: And the Plaintiff calls Victim #2

15 CLERK: Please place your left hand on the Bible and
16 raise your right hand. Do you swear or affirm the testimony
17 you give in this case will be the truth, the whole truth and
18 nothing but the truth, so help you God?

19 MS. MATTHEWS: I do.

20 CLERK: Please be seated and state your name for the
21 record.

22 MS. MATTHEWS: Victim #2

23 Victim #2, being first duly
24 sworn, testifies as follows:

25 DIRECT EXAMINATION OF Victim #2 BY MS. CROSBY:

1 Q: Ms. Matthews, how old are you now?

2 A: I'm twenty-one.

3 Q: And were you in the hotel room with Chris and the other
4 girls and Victim #1 that night in January 2003?

5 A: Yes, ma'am.

6 Q: Okay and are you the Victim #2 that was referred to earlier
7 that talked to your mom about what happened that night?

8 A: Yes, ma'am.

9 Q: And did you see any hickey on Victim #1 after that night?

10 A: I seen one on the back of her neck.

11 Q: Okay and is that the only one?

12 A: Yes, ma'am.

13 MS. CROSBY: Nothing further.

14 THE COURT: Mr. Chambers?

15 CROSS EXAMINATION OF Victim #2 BY MR. CHAMBERS:

16 Q: Victim #2, do you also go by the name of Victim #3?

17 A: No, sir.

18 Q: Where -- Who is Victim #3?

19 A: Victim #3 is Victim #1's cousin?

20 Q: Victim #1's cousin?

21 A: Yes, sir.

22 Q: Okay.

23 MR. CHAMBERS: No further questions?

24 THE COURT: Thank you. Anything further?

25 MS. CROSBY: No, sir, Your Honor. That's all.

1 (The witness left the witness stand.)

2 THE COURT: I'll take it under advisement and I'll have
3 you a ruling by the end of the week. I have your e-mail
4 address and I just got yours.

5 MR. CHAMBERS: Thank you, Your Honor.

6 MS. CROSBY: Thank you, Your Honor.

7 THE COURT: Thank you.

8 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE) CERTIFICATE

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 2nd day of February, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Krystal J. Smith

Court Reporter

Florence, South Carolina

June 27, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William Henry Seals, Jr., Circuit Court Judge

Case No. 2011193227

John Christopher Johnson, ... Respondent,

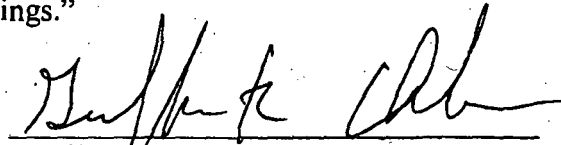
v.

Reginald C. Lloyd, Chief, State Law Enforcement Division, and The State of South
Carolina, ... Appellants.

CERTIFICATE OF COUNSEL FOR APPELLANTS

Counsel for Appellants certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material, and that this Record on Appeal complies with the August 13, 2007 order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 17, 2011



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William Henry Seals, Jr., Circuit Court Judge

Case No. 2011193227

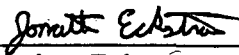
John Christopher Johnson, ... Respondent,
v.
Reginald C. Lloyd, Chief, State Law Enforcement Division, and The State of South
Carolina, ... Appellants..

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellants and the Record On Appeal on John Christopher Johnson by depositing a copy of them in the United States Mail, postage prepaid, on November 17, 2011, addressed to his attorney of record as follows:

Elise Freeman Crosby
405 Dozier Street
Georgetown, South Carolina 29440

November 17, 2011



Jonathan Eckstrom
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ALAN WILSON
ATTORNEY GENERAL

December 29, 2011

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: John Christopher Johnson v. Reginald C. Lloyd, Chief, State Law Enforcement
Division, and The State of South Carolina
Case No. 2011193227

Dear Ms. Gee:

Pursuant to Rule 208(b)(7), SCACR, Appellants respectfully wish to bring to this Court's attention the supplemental authority of Lozada v. South Carolina Law Enforcement Division, Op. No. 27076 (S.C. Sup. Ct. filed Dec. 12, 2011) (Shearouse Adv. Sh. No. 44 at 44). Appellants assert this supplemental authority is relevant to the issues of whether a declaratory judgment action pertaining to the sex offender registry is a question of law or of equity and whether equitable relief is available as a means to remove an individual from the sex offender registry.

By copy of this letter to Elise Freeman Crosby, Esquire, I am notifying the Respondent of this submission of supplemental authority.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Jared Q. Libet
Assistant Attorney General

JQL/

Cc: Elise Freeman Crosby (via facsimile and first class mail)

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DEC 29 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William Henry Seals, Jr., Circuit Court Judge

Case No.

2009-CP-21-02264

John Christopher Johnson, ... Respondent,

v.

Reginald C. Lloyd, Chief, State Law Enforcement Division, and The State of South
Carolina, ... Appellants.

FINAL BRIEF OF APPELLANTS

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<i>Santee Cooper Resort, Inc. v. South Carolina Public Service Comm'n</i> , 298 S.C. 179, 379 S.E.2d 119 (1989)	10
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Statutes:

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN FINDING THAT THE RESPONDENT PROPERLY RAISED A CLAIM FOR EQUITABLE RELIEF?
- II. DID THE TRIAL COURT ERR IN FINDING THAT THE RESPONDENT COULD BE REMOVED FROM THE SEX OFFENDER REGISTRY BY GRANTING EQUITABLE RELIEF?
- III. DID THE TRIAL COURT ERR IN FINDING THAT THE APPELLANTS WAIVED THEIR RIGHT TO ASSERT EQUITABLE DEFENSES AND THAT APPELLANTS FAILED TO PROVE AN EQUITABLE DEFENSE?

STATEMENT OF THE CASE

In 2003, the Respondent John Christopher Johnson pled guilty and was convicted of committing a lewd act upon a child under sixteen in violation of S.C. Code Ann. § 16-15-140. Pursuant to the requirements of S.C. Code Ann. § 23-3-430, the Respondent was required to register, and did register, as a sex offender. On September 28, 2009, the Respondent filed a complaint in the Court of Common Pleas in Florence County seeking to be removed from the sex offender registry. The trial of the matter was heard before the Honorable William Henry Seals, Jr., on February 2, 2011. On February 11, 2011, Judge Seals issued an Order granting the Respondent's request and directing that the Respondent be removed from the sex offender registry. The Appellants filed a motion to alter, amend, or set aside the judgment under Rule 59(e), SCRCP, which was denied by Judge Seals on May 12, 2011. The Appellants filed a notice of appeal from these orders on June 7, 2011. This appeal follows.

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING THAT THE RESPONDENT PROPERLY RAISED A CLAIM FOR EQUITABLE RELIEF.

The complaint filed by the Respondent is captioned as a petition for declaratory judgment and sets forth two causes of action. The first cause of action is a constitutional challenge to the application of the laws of South Carolina relating to the sex offender registry as violating the Respondent's right to be free from cruel and unusual punishments under the Eighth Amendment to the Constitution of the United States. (Compl. p. 3-4, ROA p. 23-24). The second cause of action is likewise a constitutional challenge to the application of the laws of South Carolina relating to the sex offender registry as violating the Respondent's equal protection rights under the Fourteenth Amendment to the Constitution of the United States. (Compl. p. 4-5, ROA p. 24-25). These are the only two causes of action raised in the Respondent's complaint. The Respondent did not assert any cause of action for equitable relief.

The prayer for relief in the complaint states as follows: "WHEREFORE, Plaintiff/Petitioner prays this Court for an Order: 1) declaring Plaintiff/Petitioner's lifelong sex offender registry requirement impermissibly cruel and unusual punishment under the Eighth Amendment; 2) declaring the distinctions between sections 16-3-655(B)(2), 16-15-140, and 23-3-430(C)(5) of the S.C. Code of Laws (1976, as amended), unconstitutionally violative of Plaintiff/Petitioner's constitutional rights;¹ 3) ordering

¹ It should be noted that the Respondent sought to declare these provisions unconstitutional even though the exception to the registration requirement found in section 23-3-430(C)(5) was inapplicable to the Respondent. That section provides that registration is not required if "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." S.C. Code Ann. § 23-3-430(C)(5) (Supp. 2010). Section 16-3-655 has since been amended and renumbered but the former subsection (3) is substantively identical to the current subsection (B)(2) and states that a person is guilty of

Defendants to remove Plaintiff/Petitioner's name from the Sex Offender Registry; and 4) and for such other and further relief as may be deemed appropriate." (Compl. p. 5, ROA p. 25). Thus, the prayer for relief likewise did not reference any equitable claims.

At the commencement of this case, this was a straightforward constitutional challenge to the Respondent's inclusion on the sex offender registry that listed two claims for relief. Indeed, the parties proceeded for several months with no reference to any equitable claims for relief. In January 2010, the Appellant State of South Carolina filed a motion to dismiss the complaint for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCF. In his memorandum in opposition to this motion to dismiss submitted on January 14, 2010, the Respondent stated that: "Christopher Johnson is asking for an Order of this Court concluding the provisions of the State's Sex Offender Registry law, §23-3-410, S.C. Code of Laws, as applied to consensual teenage kissing conduct under the Lewd Act on a Minor statute, §16-15-140, S.C. Code of Laws, are: (1) excessive in violation of the Eight [sic] Amendment to the U.S. Constitution, and, (2) in violation of his rights to equal protection of the laws under the Fourteenth Amendment because of the state's disparate treatment in both the substantive law and the sex offender law of Criminal Sexual Conduct with a Minor and Lewd Act on a Minor." (Pl. Memo. in Opp. to Mot. to Dismiss p. 1, ROA p. 30). The Respondent further stated that he "seeks both legislative and administrative relief." (*Id.* p. 2 (emphasis in original), ROA p. 31).

The Respondent raised two "legislative claims"—the aforementioned constitutional

criminal sexual conduct with a minor in the second degree if "the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim." S.C. Code Ann. § 16-3-655(B)(2) (Supp. 2010). At the time of the offense, the victim was 13 years of age. (Tr. p. 20, lines 1-9). Because the victim was not at least fourteen years of age, even had the Respondent been convicted of criminal sexual conduct in the second degree, the exception in section 23-3-430(C)(5) would not have applied and the Respondent would still have been required to register as a sex offender.

challenges. The administrative claim for relief seeks an Order directing Reggie Lloyd, then Chief of SLED, to remove the Respondent's name from the sex offender registry. (Pl. Memo. in Opp. to Mot. to Dismiss p. 4, ROA p. 33). The Respondent clearly stated that these were the Respondent's "three claims for declaratory judgment." (*Id.* p. 2, ROA p. 31). Instead of the two claims made in the complaint, the Respondent now asserted three claims. However, not only did the Respondent still not mention any equitable claims, the Respondent *specifically emphasized* that he was seeking *legislative and administrative relief*.

The trial court's Order denying the Appellant State of South Carolina's Motion to Dismiss, filed on February 12, 2010, echoes this by listing the Respondent's three claims for declaratory judgment: two pertaining to the constitutionality of legislation and the third for administrative relief. (Order of Jan. 19, 2010 p. 1-2, ROA p. 1-2). The trial court does not mention any claim for equitable relief in this Order. The lack of any mention of a claim for equitable relief persisted in the Respondent's Motion for Summary Judgment filed on April 2, 2010, which again referenced only the Respondent's two constitutional claims and the third claim for administrative relief. (Pl. Mot. for Summary Judgment, ROA p. 35-38). The trial court denied this motion for summary judgment by written order dated June 1, 2010. Again, no mention of any claim for equitable relief asserted by the Respondent appeared in this Order. (Order of June 1, 2010, ROA p. 5-11).

The first time the Respondent stated that he was seeking equitable relief came at the trial of the case before Judge Seals. Instead of the two claims for relief listed in the Complaint, or even the three claims for relief asserted by the Respondent in his memorandum in opposition to the State's motion to dismiss and his motion for summary

judgment, the Respondent now stated that he was asserting *four* claims: two constitutional challenges and two claims for equitable relief. (Tr. pp. 8, lines 7-13; 9, lines 14-19, ROA p. 66-67). The first claim for equitable relief, according to the Respondent, was for an order directing Chief Lloyd to remove his name from the sex offender registry. (Tr. p. 9, lines 14-17, ROA p. 67). This is the same claim for relief previously captioned as an administrative claim in the Respondent's earlier filings. The second claim for equitable relief, according to the Respondent, was the Respondent's statement in the Complaint seeking "such other and further relief as may be deemed appropriate." (Tr. p. 9, lines 18-19, ROA p. 67). These six lines in the transcript provide the only explanation of this "equitable relief" the Respondent now apparently sought.

Following trial, the trial court rejected the Respondent's constitutional claims, but granted this newly-fashioned request for equitable relief and ordered that the Respondent be removed from the registry (Order of Mar. 1, 2011, ROA p. 12-17). The Appellants filed a motion to alter, amend, or set aside the judgment pursuant to Rule 59(e), SCRCP, asserting, *inter alia*, that the Respondent did not plead a claim for equitable relief. The trial court denied this motion and ruled that the Respondent had raised an equitable claim. (Order of May 13, 2011, ROA p. 18-20). The grounds on which the trial court relied in reaching this decision are unclear. First, the trial court noted the Complaint was a petition for declaratory judgment, which was neither legal nor equitable but rather determined by the nature of the underlying issue. (*Id.* p. 1, ROA p. 18). The trial court did not explain the underlying issue or why this was an action in equity. Second, the trial court noted the Respondent's four claims for relief: two constitutional claims, a claim for "injunctive relief," and a claim for such other and further relief as may be deemed

appropriate. The trial court did not explain why the previously articulated administrative claim really sought injunctive relief or how the "other and further relief" asserted an equitable claim. The trial court concluded that the Respondent properly asserted equitable claims because the petition for declaratory judgment was an action in equity, and the third and fourth items in the prayer for relief set forth equitable claims.

The trial court erred in finding that the Respondent raised any equitable claims for relief. When the complaint was filed, the Respondent raised two constitutional challenges to the sex offender registry statutes and sought a declaratory judgment that these statutes were unconstitutional. The trial court cited *Felts v. Richland County*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991), for the proposition that "[a] suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." The very next sentence in *Felts* states that "[a]n issue essentially one at law will not be transformed into one in equity simply because declaratory relief is sought." *Id.* Furthermore, "[u]nless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law." *Noisette v. Ismail*, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App. 1989), *rev'd in part on other grounds*, 304 S.C. 56, 403 S.E.2d 122 (1991). The Court should first look at the body of complaint to determine whether the action is legal or equitable. *Sloan v. Greenville County*, 356 S.C. 531, 544-45, 590 S.E.2d 338, 345 (Ct. App. 2003). If the Court cannot answer this question from the body of the complaint, "resort may be had to the prayer for relief and any other fact and circumstances which throw light upon the main purpose of the action." *Sloan*, 356 S.C. at 545, 590 S.E.2d at 345. However, even if the Court determines that the Respondent is seeking equitable relief (which in this case

he is not), the Court is still not required to treat the action as one in equity. *Sloan*, 356 S.C. at 544, 590 S.E.2d at 345.

In this case, the Respondent asked the trial court to declare the sex offender registry's lifetime registration requirement unconstitutional. *See* S.C. Code Ann. § 23-3-460 (Supp. 2010). The Respondent also asked the trial court to compare the registration requirements for the crimes of criminal sexual conduct in the second degree, which includes an exception for consensual sexual conduct if the offender is eighteen years of age or less, or between persons under sixteen years of age, and lewd act on a minor, which contains no such exception, and likewise find these statutes unconstitutional. *See* S.C. Code Ann. § 23-3-430(C) (Supp. 2010). Declaratory judgment actions involving the interpretations of statutes are actions at law. *Normandy Corp. v. South Carolina Dep't of Transp.*, 386 S.C. 393, 402, 688 S.E.2d 136, 141 (Ct. App. 2009); *see also Harkins v. Greenville County*, 340 S.C. 606, 621, 533 S.E.2d 886, 893 (2000) (an action for a declaratory judgment that a zoning ordinance is unconstitutional is an action at law).

The language found in the prayer for relief does not convert this from an action at law to an action in equity. The Respondent's third item in the prayer for relief, a request for an Order "ordering Defendants to remove Plaintiff/Petitioner's name from the Sex Offender Registry," is merely a request that, in the event the constitutional challenges are successful, the Respondent's name be removed from the registry. This is, as the Respondent himself articulated, a request for administrative relief. Nor does the Respondent's request for "such other and further relief as may be deemed appropriate" set forth an equitable claim. "The relief to be granted depends not upon that asked for in the prayer but it must be such as is warranted by some allegation contained in the

pleadings.” *Mortgage Loan Co. v. Townsend*, 156 S.C. 203, 152 S.E. 878, 886 (1930).

Here, the Complaint/Petition for Declaratory Judgment presents a strictly constitutional inquiry. “The object of pleading has been declared to be to advise the parties of the issues involved in the cause. *Id.* (citing *Shelton v. Southern Ry. Co.*, 86 S.C. 98, 67 S.E. 899 (1910)). There is no language in the complaint that would put the Appellants on notice that the Respondent is asserting one or more equitable claims for relief. The Respondent asserts two clear causes of action, both of which are constitutional challenges to the sex offender registry laws.

Therefore, this declaratory judgment is an action at law, no equitable claims were pled by the Respondent, and the trial court erred in determining that the Respondent properly asserted a claim for equitable relief.

II. THE TRIAL COURT ERRED IN FINDING THAT THE RESPONDENT COULD BE REMOVED FROM THE SOUTH CAROLINA SEX OFFENDER REGISTRY BY GRANTING EQUITABLE RELIEF.

As previously noted, the trial court rejected the Respondent’s constitutional arguments, but ruled that equitable relief was appropriate and removed the Respondent from the sex offender registry. The Appellants argued in their motion to alter, amend, or set aside judgment under Rule 59(e), SCRCP, that the Respondent did not qualify for the measures provided by the legislature for removal from the sex offender registry. Under section 23-3-430(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 subsection (C) was reversed, overturned, or

vacated on appeal and a final judgment has been rendered.” S.C. Code Ann. § 23-3-430(E) (Supp. 2010). Other subsections provide for removal if the person receives a pardon based on a finding of not guilty specifically stated in the pardon, or if he or she receives a new trial following the discovery of new evidence and a verdict of acquittal is returned at that new trial. S.C. Code Ann. §§ 23-3-430(F); (G) (Supp. 2010). In short, the General Assembly has set forth, by statute, the ways in which an individual can be removed from the registry.

One of the more important equitable maxims is that “[e]quitable relief is generally available only where there is no adequate remedy at law.” *Santee Cooper Resort, Inc. v. South Carolina Public Service Comm’n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Indeed, “the court’s equitable powers must yield in the face of an unambiguously worded statute.” *Id.* Here, an unambiguously worded statute sets forth the legal remedies available to an individual on the sex offender registry. These remedies are more than adequate considering that inclusion on the sex offender registry does not constitute a criminal penalty and therefore does not “punish” sex offenders. *See State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). The purpose of the sex offender registry is to “promote the state’s fundamental right to provide for the public health, welfare, and safety of its citizens.” S.C. Code Ann. § 23-3-400 (Supp. 2010). The Court is therefore without the power to remove someone from the sex offender registry by means other than those listed in the statute, and the trial court erred in removing the Respondent from the registry based on an equitable claim for relief.

III. THE TRIAL COURT ERRED IN FINDING THAT THE APPELLANTS WAIVED THEIR RIGHT TO ASSERT EQUITABLE DEFENSES AND THAT APPELLANTS FAILED TO PROVE AN EQUITABLE DEFENSE.

In denying the Appellants' motion to alter, amend, or set aside judgment under Rule 59(e), SCRCF, the trial court first held that the Appellants had waived their right to assert any equitable defenses since the Appellants did not raise these as affirmative defenses in their answer. As detailed above, the Appellants were not aware of any need to raise equitable defenses for two reasons. First, the Respondent did not assert any equitable claims for relief in the Complaint, and second, equitable relief is not appropriate to remove an individual from the sex offender registry because there is an adequate remedy at law set forth in the statute. Thus, the trial court erred in determining that the Appellants waived their right to assert equitable defenses by not raising them in the answer.

The trial court then inexplicably went on to find that, even if the Appellants had properly raised equitable defenses, they failed to meet their burden of proving these equitable defenses. By the time the Appellants became aware that the trial court was even considering granting an equitable claim for relief, the Appellants had lost the opportunity to offer evidence to prove any equitable defenses. The Appellants could not, for example, cross-examine the Respondent to determine why the Respondent had been on the sex offender registry for six years before filing an action. The trial court erred in ruling that the Appellants failed to prove any equitable defenses without providing the Appellants an opportunity to so prove.

CONCLUSION

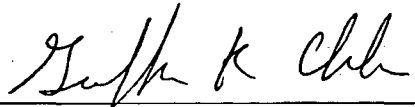
For the reasons stated, this Court should reverse the judgment of the circuit court.

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In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William Henry Seals, Jr., Circuit Court Judge

Case No. 2011193227

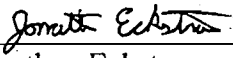
John Christopher Johnson, ... Respondent,
v.
Reginald C. Lloyd, Chief, State Law Enforcement Division, and The State of South
Carolina, ... Appellants.

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellants and the Record On
Appeal on John Christopher Johnson by depositing a copy of them in the United States
Mail, postage prepaid, on November 17, 2011, addressed to his attorney of record as
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2011-CP-21-2264

John Christopher Johnson,.....Respondent,

vs.

Reginald C. Lloyd, Chief, State Law Enforcement Division, and the State of
South Carolina,.....Appellants.

INITIAL BRIEF OF RESPONDENT

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THE STATE OF SOUTH CAROLINA
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STATEMENT OF ISSUES ON APPEAL

Respondent defers to Appellants' right to frame their issues on appeal. Rule 208(b)(2), SCACR.

STATEMENT OF THE CASE

Respondent defers to the procedural history contained in Appellants' Statement of the Case, 208(b)(2), SCACR.

STATEMENT OF FACTS

Respondent defers to the trial court's Findings of Fact. (R. pp. 12-17).

STANDARD OF REVIEW

"A declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue." *Auto Owners Insurance Co. v. Newman*, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009). In this case, the circuit court grounded its relief in equity.

This court reviews factual findings and legal conclusions in an equitable action de novo. *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (2011). "However, this de novo review does not require an appellate court to disregard the findings of the trial court or to ignore the fact that the trial court is in the better position to assess the credibility of the witnesses." *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). *Appellants bear the burden of convincing the appellate court that the trial court committed error in its findings. Id.* at 387-88, 544 S.E.2d at 623 (emphasis added). Thus, the appellate court "affirm[s] the findings of the trial court in an equity case unless the appellant satisfies this court that the

preponderance of the evidence is against the findings of the trial court." *Lewis* at 47.

ARGUMENT

I. The trial court correctly determined Respondent raised claims for equitable relief, and made no error in granting it.

Respondent made four claims for relief in his Complaint:

- 1) declaring Plaintiff/Petitioner's lifelong sex offender registry requirement impermissibly cruel and unusual punishment under the Eighth Amendment;
- 2) declaring the distinctions between §§ 16-3-655(B)(2)¹, 16-15-140², and 23-3-430(C)(5)³ of the S. C. Code of Laws (1976, as amended), unconstitutionally violative of Plaintiff/Petitioner's constitutional rights;
- 3) ordering Defendants to remove Plaintiff/Petitioner's name from the Sex Offender Registry; and
- 4) for other or further relief as may be deemed appropriate. (R. p. 25).

The first two claims are constitutional, but the last two are equitable. The trial court found the petition was "properly-pled." (R. p. 20).

No. 3, ordering the removal of Mr. Johnson's name from the Registry

"Ordering the removal" means exactly what it says. Declaratory relief ordering somebody to do something is injunctive, and equitable by nature. Injunction is defined as: "A court order prohibiting someone from doing some specified act, or commanding someone to undo some wrong or injury. A prohibitive, equitable remedy..." Black's Law Dictionary, 6th ed. West Publishing Co. (1990).

¹Criminal Sexual Conduct with a Minor, second degree

²Committing or Attempting Lewd Act Upon Child Under Sixteen

³Sex Offender Registry

An action seeking an injunction sounds in equity. *Matsell v. Crowfield Plantation Community Services Ass'n, Inc.*, 393 S.C. 65, 710 S.E.2d 90 (S.C.App. 2011), citing *Santoro v. Schulthess*, 384 S.C. 250, 681 S.E.2d 897 (S.C.App. 2009)

Appellants argue that because respondent used the term “administrative” in pre-trial memoranda a year earlier⁴, Appellants were confused, and surprised at trial. (Brief of Appellants 4-6.) Respondent submits neither he, Appellants, nor two different circuit court judges⁵ were under any mistaken impression about the plain meaning of the term “administrative.” Are Appellants arguing they were so confused they thought this action was an administrative law matter? It cannot be fairly argued the state or court was under such a delusion, and, notably, Appellants did not object to Respondent’s statement at trial that the third request for relief, “for the court to direct Chief Floyd [sic] to remove his name from the Sex Offender Registry” ...is a “claim brought in equity...” (R. p. 67, lines 14-17).

As defined by Black’s, *supra.*, “administrative” “pertains to administration,...as by... directing... the execution... or conduct of persons or things. Particularly, having the character of executive or ministerial action.” *Id.* Precisely. The use of the term “administrative” was given its plain meaning: ministerial.

This was an action filed in the court of Common Pleas, for an order directing somebody to do something—a clear claim for equitable relief. The lower court did

⁴Memorandum in Opposition to Motion to Dismiss (R. pp. 30-34); Motion for Summary Judgment (R. pp. 35-38)

⁵ In denying the State’s Motion to Dismiss, the circuit court also used the term “administrative”: “the third claim is for administrative relief, or removal from the Sex Offender Registry.” (R. p. 2)

not err in so finding.

No. 4, for other or further relief as may be deemed appropriate

Respondent's prayer for relief includes any such relief the court might deem appropriate. The court ultimately deemed "equitable personal relief" to be appropriate in this case, and that "justice compels a remedy for this particular situation." (R. pp. 16-17).

Respondent's case was tried at some length before the lower court, with seven witnesses and twelve exhibits admitted into evidence. At the conclusion of trial, the court took the matter under advisement. (R. pp. 60-126). In its order, the court found "the conduct for which Plaintiff is required to register as a Sex Offender was to kiss a consenting thirteen year old girl when he was barely seventeen" and that "the record is *full* of reasons to support that Plaintiff is entitled to personal relief in his unique circumstances." (R. pp. 15-16).

Appellants cite a 1930 case for the proposition that it was error to grant "other and further" relief asked for in the prayer. Respondent submits that case, *Mortgage Loan Co. v. Townsend*, 156 S.C. 203, 152 S.E. 878, 886 (1930), stands for the opposite. While finding the factual allegations must support the relief, the court cited 21 C.J. 679-682 for the proposition "A prayer for general relief is as broad as the equitable powers of the court. Under it the court will shape its decree according to the equities of the case, and broadly speaking *will grant any relief warranted by the allegations of the bill.*" "If the facts alleged are broad enough to warrant relief, it matters not how narrow the specific prayer may be *if the bill contains a prayer for*

general relief." *Townsend* at 886 (emphasis added); cited in *McMaster v. Strickland*, 322 S.C. 451, 472 S.E.2d 623 (1996) and *Smith v. Smith*, 386 S.C. 251, 687 S.E.2d 720 (Ct. App. 2009). Thus, if relief is "warranted by some allegation contained in the pleadings," it is not error to grant it.

Respondent submits his detailed Complaint sets out myriad factual allegations to support equitable relief, including that the conduct for which he was compelled to register as a sex offender was "kissing a thirteen year old girl." (R. p. 21). Further, his four-part prayer for relief included a general prayer for relief as one of the four, providing ample basis for the court's granting equitable relief. In granting relief, the lower court cited long-held principles of equity: "Equity is reserved for situations where there is no adequate remedy at law." (R. p. 16); *Key Corp. Capital, Inc. v. County of Beaufort*, 360 S.C. 513, 602 S.E.2d 104, 107 (S.C. App. 2004). The court in *Key* goes on to say "[f]or a court to justify refusing to exercise equity, the remedy at law must be adequate." *Id.* Thus, Respondent could make a case that denial of equitable relief in the face of no other adequate remedy would have been error.

II. The trial court properly ordered Respondent's removal from the Sex Offender Registry to give effect to the relief granted.

Appellants argue the courts of this state cannot grant injunctive relief and issue a court order regarding the Sex Offender Registry. Put differently, the state appears to be arguing SLED can ignore related court orders. This is not the case.

Under the Declaratory Judgment Act, §15-53-20, S.C. Code, “courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Rejecting the state’s argument to the contrary, the state Supreme Court has expressly authorized the Court of Commons Pleas to make findings of fact with regard to a person’s status on the Sex Offender Registry, §23-3-430, S.C. Code. *Hazel v. State*, 377 S.C.60, 659 S.E. 2d 137, 140 (2008). Similarly, the Family Court is also so authorized. *In re Shaquille O’Neal B.*, 385 S.C. 243, 684 S.E.2d 549 (2009.) Notably, the court in *Shaquille O’Neal* reversed the family court’s determination SLED correctly placed a then-juvenile on the Registry for a North Carolina adjudication for *sexual conduct with a four year old child*,⁶ citing the “detrimental effects of the lifelong stigma of being placed on the sex offender registry as a result of an isolated childhood indiscretion”, and referencing the family court’s use of the term “draconian.” *Id.* at 555.

On multiple occasions known to Respondent—some with precedential value and some without— circuit judges have made findings and orders with regard to removing individuals from the Registry, or not. *Hendrix v. Taylor*, 579 S.C. 320, 353 S.E.2d 320 (2003) (injunctive relief denied, but no finding that court was without authority to decide the question); *In the Interest of Ronnie A.*, 355 S.C. 407, 585 S.E.2d 311 (2003); (relief denied, but no finding the court was

⁶Distinguishable from the instant case, which involved non-sexual conduct (kissing) with a consenting thirteen-year old. (R. p. 13)(R. pp. 80-84; 100).

without authority to decide the question); *Wiesart v. Stewart*, 379 S.C. 300, 665 S.E.2d 187 (Ct.App. 2008)(lower court reversed for *not* making a finding with regard to the Registry).⁷ Florence County Sex Offender Investigator Scott Dangerfield testified:

Q: If this court ordered that his name be removed, would you comply?

A: I would have no choice to but to comply if—if a court order comes down. That— *that's where we get our rulings from and that's what we comply to.*" (R. p. 75, lines 18-22)(emphasis added)

South Carolina jurisprudence clearly realizes declaratory or injunctive relief is grounded not in law, but in equity: "...an injunction, like all equitable remedies, is granted as a matter of sound judicial discretion, and not as a matter of legal right." *Siau v. Kassel*, 369 S.C. 631, 638, 632 S.E.2d 388 (Ct.App. 2006). In fact, as the trial court pointed out, "[e]quity is reserved for situations where there is no adequate remedy at law." (R. p. 16), citing *Santee Cooper Resort, Inc. v. South Carolina Public Service Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119 (1989). The circuit courts of this state have authority to make findings regarding a civil statute, ground those findings in equity, and issue a valid court order. Otherwise, this would be a classic case of the equitably-abhorrent "wrong without a remedy." See, e.g., *Key Corp.*, *supra.*, cited by the trial court (R. p. 16).

⁷Respondent's copies of circuit court removal orders are all redacted. Most appear to be from sentencing judges; some are consent orders. None were presented at trial.

Lastly, Respondent is barred from “undoing” his conviction under the four traditional methods (see R. p. 64, line 19 - p. 65, line 25). The Court of Common Pleas was his only means for relief, he was within his rights to seek it, and the court was within its rights to grant it.

III. The trial court did not err in denying Appellants’ Rule 59 motion.

Appellants argue the court erred in its denial of their Motion to Alter or Amend Judgment in that the court found Appellants waived their right to assert or prove equitable defenses. It appears Appellants are not claiming error in the substantive denial of their Motion, but only as to the language regarding equitable defenses. On the substantive issue, the court found “Plaintiff did raise equitable claims for relief to this court, both in his Petition and at trial...” (R. p. 18-19). “Where a decision is based on more than one ground...the unappealed ground will become the law of the case.” *Floyd v. C.B. Askins & Co.*, 675 S.E.2d 450 (Ct. App. 2009.)

In the entirety of argument on appeal on this issue, Appellants never once cite their actual Rule 59(e) Motion.⁸ (R. pp. 54-57). It was in the Motion to Alter or Amend that the State for the first time attempted to raise defenses of estoppel by acquiescence and laches, asserting some month-and-a-half after trial that Mr. Johnson “slept on [his] rights”, waiting “over six years before filing.” (R. pp. 55-56). In fact, Respondent submits this acquiescence/laches argument was the

⁸and did not propose to include it in the Record on Appeal

entire crux of Appellants' Motion. (*Id.*)(R. pp. 55-56). On appeal, they say "the trial court *inexplicably* went on to find that, even if Appellants had properly raised equitable defenses, they failed to meet their burden of proving [them.]" (emphasis added) (Initial Brief of Appellants at 11). Quite explicably, the court likely addressed the merits (or lack thereof) of Appellants' untimely defenses *because they raised them in the motion*. If the court had not addressed the merits of claims it found were improperly raised, this court on appeal might be facing a situation of issues raised to the trial court, but not ruled upon.

Respondent's delay was a fact, acknowledged by the parties and the court; surprise cannot be fairly argued.⁹ The Complaint was filed September 28, 2009 and served October 21, 2009. It indicates the date of conviction was May 12, 2003. (R. p. 22). The trial was February 2, 2011. Appellants did not raise any issue of Respondent delaying or sleeping on his rights in any of the multiple filings and opportunities to do so well in advance of trial: Answer¹⁰ (R. pp. 26 - 29; pp. 49 -53), Motion to Dismiss, Motion to Set Aside Default, or opposition to Motion for Summary Judgment. (*these not in Record on Appeal*). Furthermore, Respondent made it clear in opening, prior to testimony, that he was making legal *and* equitable claims. (R. p. 67, lines 14-19). After this, Counsel for Appellants repeatedly made the point Respondent's conviction was from 2003. ("Mr. Johnson pled guilty in 2003" (R. p. 68, line 21); "Mr. Johnson pled guilty...in

⁹He acknowledged delay time-barred him from appeal or PCR. (R. p. 64, lines 22-25)

¹⁰The State did not answer until April 2010, along with its Motion to Set Aside Default, after default was raised by Respondent in his Motion for Summary Judgment.

the spring of 2003." (R. p. 69, lines 2-3). With ample sufficient notice of equitable claims and arguments, both prior to trial and at trial prior to Respondent's testimony and Appellants' case, it is not Respondent's fault Appellants failed to elicit any delay-related testimony. But, even if they had, Respondent had already established his delay and *it wouldn't have mattered*.

In its Order denying Appellants' Rule 59(e) Motion, the court found even if the equitable defenses had been properly raised, "a six-year delay for a young man to recognize the collateral consequences of a plea and registration is not unreasonable under the circumstances." (R. p. 20) The court cited facts including that Respondent was an unrepresented indigent minor who testified he was unaware of a Sex Offender Registry requirement when he pled guilty as a teenager to kissing another teenager who testified in support of his request for relief, and that he was unaware the registry was lifelong when he finally did register. (R. p. 19).

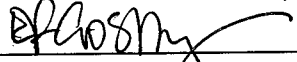
As to substantive grounds, the court "granted equitable relief on Plaintiff's properly-pled petition, noted the case presented unique circumstances, and found substantial justice served in this case by granting personal equitable relief." (R. p. 20). For whatever reason, Appellants chose not to appeal this actual denial of their Motion, only ascribing error to the court's finding they waived defenses that were meritless even if they had been raised. Thus, the court grounded its denial of Appellants' Motion to Alter or Amend Judgment in facts and law, and any error that could be ascribed to its analysis of unraised,

untimely defenses is harmless.

CONCLUSION

For the reasons stated above, the judgment of the trial court should be affirmed.

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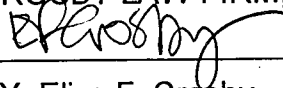
Attorney for Respondent

November 8, 2011
Georgetown, S.C.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that she has complied with the Supreme Court's Order of August 13, 2007 and that personal identifiers and sensitive information have not been included.

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