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October 22, 2014

The Honorable Scott S. Harris
Clerk
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

RECEIVED

OCT 24 2014

S.C. SUPREME COURT

Re: Anthony Nations v. State of South Carolina

Dear Mr. Harris:

Enclosed please find for filing, along with certificate of filing by mail and proof of service, the original and two (2) copies of Ms. Nation's Motion for Extension of Time to File the Petition for Writ of *Certiorari* in this case.

Thank you for your attention to this matter.

With kindest regards, I am

Yours very truly,


E. Charles Grose, Jr.

Enclosures

cc: Matthew C. Buchanan, Esquire
S.C. Department of Probation, Parole & Pardon Services

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina

RECEIVED

IN THE SUPREME COURT OF THE UNITED STATES

OCT 24 2014

October Term, 2014

S.C. SUPREME COURT

No. A –

ANTHONY NATION

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT.

APPLICATION FOR EXTENSION OF TIME IN WHICH
TO FILE PETITION FOR WRIT OF CERTIORARI

To the Honorable John G. Roberts, Chief Justice of the United States and Circuit
Justice for the Fourth Circuit:

The petitioner, Anthony Nation, prays that an order be entered extending the time
for filing a petition for writ of *certiorari* for a period of sixty (60) days to and including
January 3, 2015. This application is submitted more than ten days prior to the scheduled
filing date for the petition. The pertinent dates are:

July 2, 2014: The South Carolina Supreme Court affirmed the mandatory
imposition of satellite monitoring did not violate the ex post facto clause, double
jeopardy, and due process. *State v. Nation*, 408 S.C. 474, 759 S.E.2d 428 (2014), reh'g
denied (Aug. 6, 2014). A copy of the opinion is attached.

August 6, 2014: The South Carolina Supreme Court denied Mr. Nation's timely petition for rehearing. A copy of the South Carolina Supreme Court's order is attached.

November 4, 2014: Expiration of time for filing of a petition for writ of *certiorari*, unless extended.

January 3, 2015: Expiration of requested sixty-day extension of time for filing of a petition for writ of *certiorari*.

The petition for writ of *certiorari* will present for review the following three federal questions:

After sentencing Anthony Nation to a term of imprisonment followed by five years probation, South Carolina amended its sex offender registry to require mandatory imposition of satellite monitoring, for at least ten years, for any violation of probation. The minimum term of satellite monitoring exceeds Mr. Nation's term of probation. Compliance with satellite monitoring restrains Mr. Nation's liberty for several hours per day in order to charge the device. Under these circumstances:

(1) Does imposition of satellite monitoring violate the *ex post facto* clause?

(2) Does imposition of satellite monitoring after the expiration for Mr. Nation's sentence violate the double jeopardy?

(3) Does due process require an individualized determination before the State can impose satellite monitoring?

The petitioner will invoke this Court's jurisdiction under 28 U.S.C. §1257(a).

This extension of time is requested because:

(a) This case, involving mandatory imposition of satellite monitoring, requires careful research of the laws and procedures of other states regarding whether other states consider similar registration requirements as punitive. This case also requires careful drafting so as to properly present the petitioner's federal constitutional claims to this Court.

(b) Petitioner's counsel, Charles Grose, began representing Mr. Nation when he was the Circuit Public Defender for the Eighth Judicial Circuit. After entering private practice in August 2012, counsel continued representing petitioner *pro bono* during petitioner's appeal to the South Carolina Supreme Court.

(c) Counsel is a sole practitioner with a caseload including five capital cases. *State v. Bennie Ray Brown, Jr.*, Laurens County Case No. 2011-GS-32-1523 to 1529; *John Kennedy Hughey v. State*, Abbeville County Case Number 2000-CP-01-212; *William O. Dickerson, Jr. v. State*, Charleston County Cases Number: 2012-CP-10-3216; *Jerry Inman v. State*, Pickens County Case Number 2012-CP-39-00918; and *Donald Allen Jones v. State*, Lancaster County Case Number 2001-CP-29-1030. Counsel's practice also involves representing clients charged with major felonies including murder and criminal sexual conduct with a minor. Counsel also represents a number of clients convicted of non-capital murder in their post-conviction relief applications.

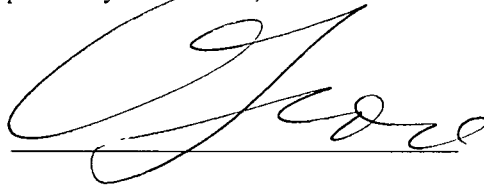
(d) Shane Goranson, who also represented Mr. Nation in the trial court and on appeal to the South Carolina Supreme Court, is still a fulltime public defender in a rural judicial circuit handling a substantial caseload. Mr. Goranson has applied for admission

to this Court in hopes that he can continue representing Mr. Nation on his petition for writ of *certiorari*.

Counsel for the respondent State of South Carolina has advised the undersigned that the State does not have any opposition to this request.

WHEREFORE, petitioner requests an order extending the time for filing his petition of writ of certiorari to and including January 3, 2015.

Respectfully submitted,

By 

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Attorney for Petitioner

October 22, 2014
Greenwood, South Carolina

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2013

No. A –

ANTHONY NATION

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for Extension in Which to File Petition for Writ of Certiorari has been served upon opposing counsel by mailing one (1) copy in an envelope properly addressed with postage prepaid this 22nd day of October, 2014, to:

Matthew C. Buchanan, Esquire
S. C. Department of Probation, Parole & Pardon Services
PO Box 50666
Columbia, SC 29250

Respectfully submitted,

By 

E. Charles Grose, Jr.

Attorney for Petitioner

408 S.C. 474
Supreme Court of South Carolina.

The STATE, Respondent,
v.
Anthony NATION, Appellant.
Appellate Case No. 2011-199726.

No. 27408. | Heard Feb. 5, 2014. | Decided
July 2, 2014. | Rehearing Denied Aug. 6, 2014.

Synopsis

Background: Probation revocation proceeding was initiated against defendant. The Circuit Court, Greenwood County, Frank R. Addy, Jr., J., found defendant violated his probation and imposed mandatory lifetime global positioning satellite (GPS) monitoring on defendant. Defendant appealed.

Holdings: The Supreme Court, Toal, C.J., held that:

[1] the mandatory imposition of GPS monitoring on defendant, a sex offender convicted prior to a statute's effective date, did not violate the ex post facto, equal protection, due process, or double jeopardy clauses of the United State Constitution, and

[2] the mandatory imposition of GPS monitoring on defendant, a sex offender convicted prior to the GPS statute's effective date, did not constitute cruel or unusual punishment.

Affirmed.

Hearn, J., filed a dissenting opinion.

West Headnotes (5)

- [1] **Constitutional Law**
⇒ Presumptions and Construction as to Constitutionality
All statutes are presumed constitutional, and when possible, courts must construe statutes so as to render them valid.

Cases that cite this headnote

- [2] **Constitutional Law**
⇒ Clearly, positively, or unmistakably unconstitutional

Constitutional Law
⇒ Proof beyond a reasonable doubt

A statute will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt.

Cases that cite this headnote

- [3] **Constitutional Law**
⇒ Burden of Proof
The party challenging the statute's constitutionality bears the burden of proof.

Cases that cite this headnote

- [4] **Constitutional Law**
⇒ Sex Offenders
Double Jeopardy
⇒ Particular proceedings
Mental Health
⇒ Sex offenders

The mandatory imposition of global positioning satellite (GPS) monitoring on defendant, a sex offender convicted prior to the GPS statute's effective date, did not violate the ex post facto, equal protection, due process, or double jeopardy clauses of the United State Constitution: an initial, mandatory imposition of GPS monitoring for certain sex crimes involving children was rationally related to the law's stated purpose of protecting the public from sex offenders. U.S.C.A. Const. Art. 1, § 10, cl. 1; U.S.C.A. Const. Amends. 6, 14.

Cases that cite this headnote

- [5] **Mental Health**
⇒ Disposition: Commitment
Sentencing and Punishment
⇒ Sex offenders

The mandatory imposition of global positioning satellite (GPS) monitoring on defendant, a sex offender convicted prior to the GPS statute's effective date, did not constitute cruel or unusual punishment; electronic monitoring was not a punishment but a civil requirement. U.S.C.A. Const.Amend. 8.

Cases that cite this headnote

West Codenotes

Recognized as Unconstitutional

Code 1976, § 23-3-540(H).

Attorneys and Law Firms

****429** Ernest Charles Grose, Jr., of Grose Law Firm, and Shane Edwin Goranson, both of Greenwood, and Chief Appellate Defender Robert Michael Dudek, of the South Carolina Commission on Indigent Defense, of Columbia, for Appellant.

Matthew C. Buchanan, of the South Carolina Department of Probation, Parole & Pardon Services, of Columbia, for Respondent.

Opinion

Chief Justice TOAL.

***476** Anthony Nation (Appellant) appeals the circuit court's decision to statutorily impose lifetime global positioning satellite (GPS) monitoring on him due to his prior guilty plea for a sex offense with a minor and subsequent probation violations. See S.C.Code Ann. § 23-3-540 (Supp. 2010) (enumerating the circumstances in which a court may impose GPS monitoring on a person convicted of a sex offense with a minor). On appeal, Appellant asserts various constitutional challenges to section 23-3-540 and contests the validity of five of our previous decisions involving the South Carolina Sex Offender Registry and statutory authorization of GPS monitoring of sex offenders.¹ We affirm.

¹ These cases are: In re Justin B., 405 S.C. 391, 747 S.E.2d 774 (2013), cert. denied, — U.S. —, 134 S.Ct. 1496, 188 L.Ed.2d 380 (2014); State v. Dykes, 403 S.C. 499, 744 S.E.2d 505 (2013), cert. denied, — U.S. —, 134 S.Ct. 1937, 188 L.Ed.2d 964 (2014); In re Ronnie A.,

355 S.C. 407, 585 S.E.2d 311 (2003); Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003); and State v. Wally, 348 S.C. 26, 558 S.E.2d 524 (2002). Together, these cases affirm that South Carolina's Sex Offender Registry—including the GPS monitoring requirement—is a civil remedy and is not penal in nature.

*477 FACTS/PROCEDURAL BACKGROUND

In 2000, when Appellant was twenty-nine years old, he engaged in a sexual relationship with a fifteen-year-old female (Victim). Victim reported the relationship to the police. ****430** and a grand jury subsequently indicted Appellant for both second-degree criminal sexual conduct with a minor (CSCM-Second) and committing a lewd act on a child under the age of sixteen (CSCM-Third).² In 2003, Appellant pled guilty to CSCM-Third in exchange for the State dismissing the CSCM-Second charge. The circuit court sentenced Appellant to fifteen years' imprisonment, suspended on the service of twelve years, followed by five years' probation with the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS).

² At the time of Appellant's indictment, section 16-15-140 codified the crime of "lewd act upon a child under sixteen." S.C.Code Ann. § 16-15-140 (1996). However, the General Assembly later renamed this crime CSCM-Third and re-codified it in S.C.Code Ann. § 16-3-655(C) (Supp.2010). For ease of reference, we refer to "lewd act upon a child under sixteen" as CSCM-Third.

In 2005—after Appellant's guilty plea, but prior to Appellant's release from the Department of Corrections—the General Assembly amended South Carolina's sex offender registration requirements by enacting the Sex Offender Accountability and Protection of Minors Act of 2006, commonly referred to as "Jessie's Law." See S.C.Code Ann. § 23-3-540 (2005). In its original form, Jessie's Law read, in relevant part:

(C) A person who is required to register [as a sex offender] pursuant to this article for committing criminal sexual conduct with a minor in the first degree, pursuant to Section 16-3-655(A)(1), or committing or attempting a lewd act upon a child under sixteen, pursuant to Section 16-15-140, and who violates a term of probation, parole, community supervision, or a community supervision program must be ordered by the court or agency with jurisdiction to be monitored by the Department ***478** of Probation, Parole and Pardon Services with an active electronic monitoring device.

(D) A person who is required to register [as a sex offender] pursuant to this article for *any other [sex] offense [with a minor] listed in subsection (G), [including CSCM–Second.] and who violates a term of probation, parole, community supervision, or a community supervision program, may be ordered by the court or agency with jurisdiction to be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device.*

Id. (emphasis added): *see also State v. Dykes*, 403 S.C. 499, 502–04, 744 S.E.2d 505, 507–08 (2013) (explaining the requirements of section 23–3–540).

In 2009, upon his release from the Department of Corrections, Appellant began his probation; however, within two years, Appellant accrued several unexplained probation violations. At Appellant's probation revocation hearing, the State recommended imposing mandatory lifetime GPS monitoring on Appellant in accordance with the requirements of Jessie's Law. *See S.C.Code Ann. § 23–3–540(C)*. In response, Appellant challenged the constitutionality of Jessie's Law and offered testimony in mitigation,³ but did not deny he had violated his probation.

³ Specifically, Appellant introduced evidence that he qualified for one of the lowest levels of supervision that SCDPPPS provided.

The circuit court rejected Appellant's constitutional challenges and found Appellant in willful violation of his probation. Therefore, the court found that Jessie's Law mandated that it impose lifetime GPS monitoring on Appellant.

This appeal followed. *See Rule 203(d)(1)(A)(ii), SCACR*.

ISSUE

Whether the mandatory imposition of GPS monitoring on a sex offender convicted prior to a statute's effective date violates:

- a. the Ex Post Facto, Equal Protection, Due Process, or Double Jeopardy Clauses of the United States or South Carolina Constitutions?

*479 b. the Fourth Amendment's prohibition on unreasonable searches and seizures?

- c. the Eighth Amendment's prohibition on cruel and unusual punishment?

**431 STANDARD OF REVIEW

[1] [2] [3] All statutes are presumed constitutional, and when possible, courts must construe statutes so as to render them valid. *In re Justin B.*, 405 S.C. 391, 395, 747 S.E.2d 774, 776 (2013) (citing *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001)). "A statute will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt." *Id.* (citing *In re Lasure*, 379 S.C. 144, 147, 666 S.E.2d 228, 229 (2008)). "The party challenging the statute's constitutionality bears the burden of proof." *Id.* (citing *In re Treatment of Luckabaugh*, 351 S.C. 122, 135, 568 S.E.2d 338, 344 (2002)).

ANALYSIS

Although Appellant raises numerous challenges to the constitutionality of Jessie's Law, we have explicitly rejected each of these challenges in two of our recent opinions. *See Justin B.*, 405 S.C. at 391, 747 S.E.2d at 774, *cert. denied*, — U.S. —, 134 S.Ct. 1496, 188 L.Ed.2d 380 (2014); *Dykes*, 403 S.C. at 499, 744 S.E.2d at 505, *cert. denied*, — U.S. —, 134 S.Ct. 1937, 188 L.Ed.2d 964 (2014).

[4] In *State v. Dykes*, Dykes—similar to Appellant—committed CSCM—Third prior to the enactment of Jessie's Law, but violated her probation after its enactment. 403 S.C. at 503–05, 744 S.E.2d at 507–08. The circuit court imposed GPS monitoring pursuant to Jessie's Law. *Id.* at 505, 744 S.E.2d at 508. Dykes appealed, contending that the statute violated the Ex Post Facto, Equal Protection, and Due Process Clauses of the United States and South Carolina Constitutions, as well as her Fourth Amendment right to be free of unreasonable governmental searches and seizures. *Id.* at 505, 510 n. 9, 744 S.E.2d at 508, 511 n. 9.

A majority of this Court rejected Dykes's arguments, holding that mandatory GPS monitoring did not violate Dykes's right to substantive due process. *480 *Id.* at 503, 744 S.E.2d at 507; *see also id.* at 510 n. 9, 744 S.E.2d at 511 n. 9

(rejecting Dykes's remaining arguments). Specifically, we disagreed with Dykes's assertion that, as a convicted sex offender, she had a *fundamental* right to be "let alone." *Id.* at 505–06, 744 S.E.2d at 508–09 ("The United States Supreme Court has cautioned restraint in the recognition of rights deemed to be fundamental in a constitutional sense." (citing *Washington v. Glucksberg*, 521 U.S. 702, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997))).⁴ However, notwithstanding the absence of a fundamental right, we found that lifetime GPS monitoring "implicates a protected liberty interest to be free from permanent, unwarranted governmental interference." *Id.* at 506, 744 S.E.2d at 509. In light of the General Assembly's intent to protect the public from sex offenders and aid law enforcement,⁵ we held that an initial, mandatory imposition of GPS monitoring for certain sex crimes involving children was rationally related to the law's stated purpose. *Id.* at 507–08, 744 S.E.2d at 509–10.

⁴ "Our rejection of Dykes[']s fundamental right argument flow[ed] in part from the premise that [GPS] monitoring is predominantly civil." *Dykes*, 403 S.C. at 506, 744 S.E.2d at 509 (citing *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003)); see also *Justin B.*, 405 S.C. at 405–09, 747 S.E.2d at 781–83 (applying the factors from *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963), and finding that GPS monitoring of sex offenders is a civil remedy).

⁵ See S.C.Code Ann. § 23–3–400 (2003).

Despite generally upholding the constitutionality of Jessie's Law, we found the final sentence of subsection (H) unconstitutional as arbitrary and not rationally related to the statute's purpose. *Id.* at 508, 744 S.E.2d at 510 (citing S.C.Code Ann. § 23–3–540(H)). Prior to our decision, subsection (H) permanently foreclosed persons convicted of CSCM–First or –Third, such as Dykes, from seeking judicial review of the necessity of continued GPS monitoring. See S.C.Code Ann. § 23–3–540(H). However, we determined that all sex offenders monitored pursuant to Jessie's Law were entitled to periodic judicial review and thus could "avail themselves of the ... judicial review process as outlined for the balance of the offenses enumerated in section 23–3–540(G)." *Dykes*, 403 S.C. at 508–10, 744 S.E.2d at 510–11; see also S.C.Code Ann. § 23–3–540(H) *481 (outlining **432 the judicial review process and relevant lengths of time for review). Accordingly, we found that Dykes and others convicted of CSCM–First or –Third could petition the courts ten years after the initial imposition of the monitoring,

and every five years thereafter. *Dykes*, 403 S.C. at 510, 744 S.E.2d at 511.

[5] To address Appellant's remaining arguments, we next look to *In re Justin B.*, in which Justin B.'s adoptive mother witnessed him sexually molest his adoptive sister and notified the police. 405 S.C. at 394, 747 S.E.2d at 775.⁶ Justin B. subsequently pled guilty to CSCM–First, and the family court ordered him to comply with the lifetime GPS monitoring requirement set forth in Jessie's Law. *Id.* at 394, 747 S.E.2d at 775–76. Justin B. appealed, arguing that GPS monitoring constituted cruel and unusual punishment in violation of the Eighth Amendment. *Id.* at 394–95, 747 S.E.2d at 776.

⁶ Like Justin B., the adoptive sister was also a minor at the time of the molestation. See *Justin B.*, 405 S.C. at 394, 747 S.E.2d at 775 (stating that the minor was indicted for CSCM–First); see also S.C.Code Ann. § 16–3–653(A) (1) ("A person is guilty of [CSCM–First] if ... the actor engages in sexual battery with a victim who is less than eleven years of age....").

We unanimously disagreed. After examining the legislative intent behind Jessie's Law and applying the *Mendoza-Martinez* factors,⁷ we held that "electronic monitoring is not a punishment," but a civil requirement. *Id.* at 394, 404–08, 747 S.E.2d at 775, 781–83 (emphasis added). We also reaffirmed that all sex offenders subject to GPS monitoring in accordance with Jessie's Law may periodically petition for judicial review of the necessity of continued monitoring. *Id.* at 408, 747 S.E.2d at 783.

⁷ *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963) (listing seven factors that aid in distinguishing between civil and penal remedies).

In light of our previous holdings in *Dykes* and *Justin B.*, we find that we have fully addressed and rejected each of Appellant's constitutional challenges to Jessie's Law.⁸ Further, we *482 decline to overrule either *Dykes* or *Justin B.*, especially given that Appellant does not raise any new questions of law; indeed, Appellant's case so closely parallels *Dykes* as to be factually and legally indistinguishable. Thus, we find that Appellant has not carried his burden to show that Jessie's Law is unconstitutional beyond a reasonable doubt. *Justin B.*, 405 S.C. at 395, 747 S.E.2d at 776 (citing *Luckabaugh*, 351 S.C. at 135, 568 S.E.2d at 344).

8

We acknowledge that *Dykes* and *Justin B.* did not explicitly reject Appellant's Double Jeopardy challenge: however, the prohibition on double jeopardy protects against, *inter alia*, "multiple punishments for the same offense." *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969) (emphasis added), *overruled on other grounds* by *Alabama v. Smith*, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989). As *Dykes* and *Justin B.* both hold that the GPS monitoring requirement is a civil penalty and not a punishment. Appellant's argument that Jessie's Law "increas[es] and expand[s] his punishment as a violation of double jeopardy" is without merit. See *Justin B.*, 405 S.C. at 394, 747 S.E.2d at 775; *Dykes*, 403 S.C. at 506, 744 S.E.2d at 509.

Accordingly, we affirm the circuit court's imposition of GPS monitoring on Appellant for his probation violations. We likewise note that, although Appellant must comply with the GPS monitoring, he is entitled to avail himself of the judicial review process required by *Dykes* and *Justin B.* See S.C.Code Ann. § 23-3-540(H) (providing for judicial review at periodic intervals).

CONCLUSION

For the foregoing reasons, the judgment of the circuit court is

AFFIRMED.

PLEICONES and KITTREDGE, JJ., concur.

HEARN, J., dissenting in a separate opinion in which BEATTY, J., concurs.

Justice HEARN.

Respectfully, I dissent. For the reasons discussed in my dissent in *State v. Dykes*, 403 S.C. 499, 744 S.E.2d 505 (2013), I believe the initial imposition of satellite monitoring without an individualized determination of Nation's likelihood of reoffending violates his right to substantive due process. I would ****433** therefore find Section 23-3-540(C) of the South Carolina Code *483 (Supp.2013) unconstitutional, and would reverse and remand for a hearing to determine whether satellite monitoring should be imposed.

BEATTY, J., concurs.

Parallel Citations

759 S.E.2d 428

The Supreme Court of South Carolina

The State, Respondent,


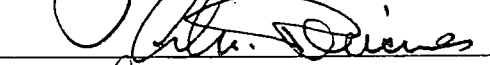
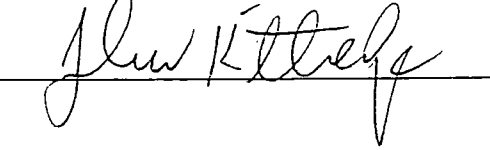
v.

Anthony Nation, Appellant.


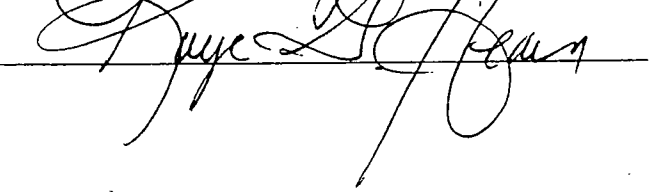
Appellate Case No. 2011-199726

ORDER

The Petition for Rehearing filed in the above entitled matter is denied.

 C.J.
 J.
 J.

I would grant the Petition for Rehearing.

 J.
 J.

Columbia, South Carolina

August 6, 2014

cc:

Shane Edwin Goranson, Esquire
Ernest Charles Grose, Jr., Esquire
Robert Michael Dudek, Esquire
Matthew C. Buchanan, Esquire