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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2014-001984
Court of Appeals Case No. 2010-161446

CLIFFORD THOMPSON*Petitioner,*

v.

STATE OF SOUTH CAROLINA*Respondent.*

APPENDIX

ALAN WILSON

DAVID A. SPENCER

South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803)734-3727

LINDSEY S. VANN

SC Bar No. 101408
Death Penalty Resource & Defense Center
900 Elmwood Ave., Suite 101
Columbia, SC 29201
(803) 765-1044
lindsey@deathpenaltyresource.org

Counsel for Respondent

Counsel for Petitioner

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20113

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal to Berkeley County

R. Markley Dennis, Circuit Court Judge

CLIFFORD THOMPSON,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RECORD ON APPEAL

NO RESPONDENTS BRIEF FILED

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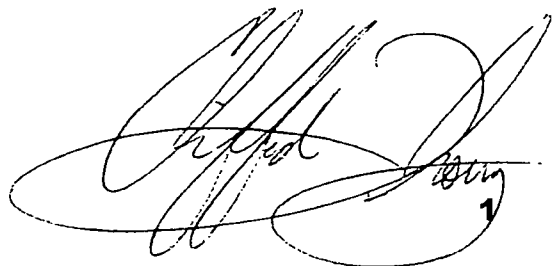
JUL 19 2011

SC Court of Appeals

Clifford Thompson
BRC1 / 274805 / CON
4460 Broad River Road
Columbia, S.C. 29210

Pro Se

Case Tracking # 2010161446



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ORDERS

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Clifford Thompson,)

Case No.: 09-CP-08-3107

Petitioner,)

ORDER

- vs-)

State of South Carolina,)

Respondent.)

This matter concerns a petition for the Court to make a finding on the record that Mr.

Thompson's kidnapping offenses should not place him on the sex offender registry upon his release in August of 2020. A hearing on the matter was convened at the Berkley County Courthouse on November 18, 2009. Mr. Thompson appeared *pro se*. Assistant Attorney General David Spencer and Assistant Attorney General Geoffrey Chambers of the South Carolina Office of the Attorney General represented the State of South Carolina.

Under S.C. Code § 23-3-430 (C)(15), updated 2008, an individual with a conviction for kidnapping is required to register on the Sex Offender Registry unless there is an adjudication that there was no sex offense. Petitioner Thompson pled guilty in Berkeley County in 2001 to kidnapping charges related to armed robberies and received a twenty-five year sentence on the charges. When Mr. Thompson entered a guilty plea, no adjudication was made that this kidnapping conviction did not involve a sex offense listed in § 23-3-430.

The sex offender registry law in effect at the time of an incarcerated inmate's release from prison determines registration requirements. *Hazel v. State*, 377 S.C. 60, 659 S.E.2d 137 (2008). Mr. Thompson is currently incarcerated and will not be released from prison until

FILE
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CLERK OF COURT
BERKELEY COUNTY
SOUTH CAROLINA

August of 2020. Mr. Thompson is not currently registered or listed on the sex offender registry because registration as a sex offender does not occur until an inmate is released from prison. The sex offender registry law in place at the time of his year 2020 release from prison will determine Mr. Thompson's sex offender registry status.

The sex offender registry statutes, South Carolina Code Annotated Sections 23-3-400 *et seq.* have undergone numerous changes regarding the treatment of kidnapping convictions. The continuous change in requirements triggering sex offender registration is best illustrated by amendments to § 23-3-430. Four amendments since 1994 have changed the status of kidnapping as a registration triggering offense. The first version of South Carolina's sex offender registry included kidnapping as an offense requiring sex offender registration. § 23-3-430(8) (Supp.1995). In 1996 an amendment dropped kidnapping from the list of offenses triggering sex offender registration. § 23-3-430(C) (Supp.1996). A 1998 amendment reinstated kidnapping as an offense triggering sex offender registration. § 23-3-430(C)(15) (Supp.1998). Kidnapping was again the subject of a 1999 amendment stating that a person convicted of kidnapping a person eighteen years of age or older would be required to register as a sex offender. An exception was included that does not require registration if the court made a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense. § 23-3-430(C)(15) (Supp.1999).

Because of the numerous changes to the sex offender registry statutes with regard to kidnapping, the status of kidnapping with regards to the sex offender registry statutes in the far distant future are unknown.

In order to maintain a legal action there must be "a real and substantial controversy which is appropriate for judicial determination, as distinguished from a contingent,

hypothetical, or abstract dispute." *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983); *Thrifty Rent-A-Car Sys., Inc. v. Thrifty Auto Sales of Charleston, Inc.*, 849 F.Supp. 1083, 1085-86 (D.S.C.1991) (stating a "court should not decide a controversy grounded in uncertain and contingent events that may not occur as anticipated or may not occur at all"). Because Mr. Thompson does not have to currently register as a sex offender and the requirement of Mr. Thompson's registration upon his release in year 2020 is uncertain, there is no real and substantial controversy at the present time. (Any internal classification with the South Carolina Department of Corrections resulting from Mr. Thompson's conviction is subject matter for administrative law proceedings within the South Carolina Department of Corrections.)

IT IS ORDERED that Mr. Thompson's current petition for removal from the sex offender registry is dismissed and Mr. Thompson should be free to file this motion again upon his release if at that time the Laws of South Carolina require his registration.

AND IT IS SO ORDERED this 11th day of December, 2009.

151 R Markley Dennis Jr.
The Honorable Markley Dennis, Jr.
Presiding Judge
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-08-3107

CLIFFORD THOMPSON,
Petitioner,

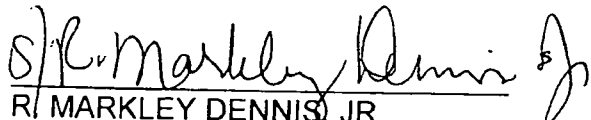
ORDER

STATE OF SOUTH CAROLINA,
Respondent.

FILED
2010 APR 13 PM 2:24
MARY P. DRUMH
CLERK OF COURT
BERKELEY COUNTY, SC

This matter comes before me upon Motion to Alter and/or Amend Judgment filed by Clifford Thompson, Petitioner. After fully considering submission of the Applicant, this Court finds no need for oral argument in this matter and therefore the Motion to Alter and/or Amend Judgment is denied;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

Moncks Corner, South Carolina

April 12, 2010

DECISIONS

PLEADINGS

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Clifford Thompson #274805,
Plaintiff,

v.

State of South Carolina,
Defendant.

IN THE COURT OF COMMON PLEAS
9TH JUDICIAL CIRCUIT

CASE NO. _____

PETITION FOR
DECLARATORY JUDGMENT

2009 CP-08-3107

2009 SEP 11 PM 4:16
CLERK OF COURT
BERKELEY COUNTY, SC

Comes now the Plaintiff, Clifford Thompson # 274805, motioning this honorable Court for a declaratory judgment making a finding on record that Plaintiff's four (4) criminal convictions of kidnapping are not sexual in nature and are not of the nature that requires Sex Offender Registry pursuant to S.C. Code Ann. § 23 - 3 - 430 (2007), specifically § 23 - 3 - 430 (c) (15) (2007) therefore an order should be issued relieving Plaintiff of any requirements to register as a sexual offender.

CASE HISTORY

The Plaintiff, Clifford Thompson # 274805, was convicted on May 2, 2001 by Circuit Judge James E. Lockemy in Berkeley County on four (4) counts of kidnapping (indictment numbers: 00 - GS - 08 - 1100, 01 - GS - 10 - 3099, 99 - GS - 32 - 696, 00 - GS - 40 - 52302) that stem from a multi-county-negotiated plea bargain to armed robbery charges arising from Charleston County, Lexington County, Richland County and Berkeley County. The disposition of the criminal case State v. Clifford Thompson, Case No.: 2004 - CP - 08 - 1041.

The entire nature of the offenses that the state solicitor's office advanced and the entire evidence the state solicitor's office proffered at the guilty plea on May 2, 2001 were that the alleged actions of Plaintiff's use of force that constitutes the four (4)

counts of kidnapping were the force necessary to complete the offense counts of armed robbery in these criminal cases. There is no allegations of nor evidence proffered that the Plaintiff's four (4) kidnapping convictions are sexual in nature nor that the four (4) kidnapping convictions have any sexual elements. Therefore Plaintiff is entitled to be exempt from Sex Offender Registry requirements.

The Plaintiff presently has recorded and posted on his criminal record that he is mandatory required to register as a sex offender pursuant to S.C.Code Ann. § 23 - 3 - 430 (2007), specifically § 23 - 3 - 430 (c) (15) (2007).

LEGAL ISSUES

First, the Court of Common Pleas has the jurisdiction to make a factual finding regarding Plaintiff's four (4) kidnapping convictions. The Court of Common Pleas has the power to make this finding pursuant to the Declaratory Judgment Act. See S.C. Code Ann. § 15 - 53 - 20 (2005) (courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed). See also James Kizer Hazel, Jr. v. State of South Carolina, Opinion No. 26449, Filed March 10, 2009, S.C. Supreme Court, Shearouse Advance Sheet.

The transcript of the plea in the criminal case State v. Clifford Thompson, Case No.: 2004 - CP - 08 - 1041 does not reflect any sexual elements to the four (4) kidnapping counts that Plaintiff is convicted. The plain language of S.C.Code Ann. § 23 - 3 - 430 (2007), specifically § 23 - 3 - 430 (c) (15) (2007) clearly states that there must be a sexual element to the kidnapping conviction before Sex Offender Registry requirements are triggered. There are no sexual elements to Plaintiff's four (4)

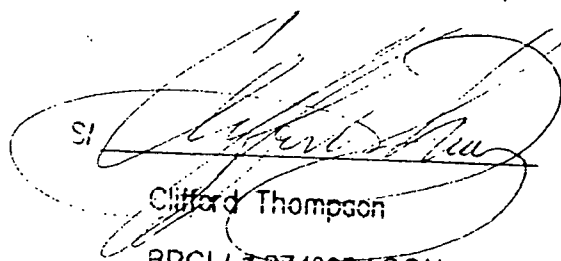
kidnapping convictions. Therefore Plaintiff petitions this honorable Court for declaratory judgment issued on record ordering that Plaintiff's four (4) kidnapping convictions have no sexual elements and Plaintiff is not to be required to register as a sex offender on the Sex Offender Registry.

CONCLUSION

WHEREFORE the Plaintiff prays this Court issue an order on the record finding that the transcript of the plea in the criminal case State v. Clifford Thompson, Case No.: 2004 - CP - 08 - 1041 makes it clear there is no sexual element involved in the four (4) kidnapping convictions that Plaintiff is convicted. Plaintiff also prays this Court issue an order on the record finding that Plaintiff does not qualify for the Sex Offender Registry and is exempt from the Sex Offender Registry and its mandated requirements.

Respectfully Submitted,

Date: 5/9/09

SI 

Clifford Thompson

BPCI / # 274805 / CON

4460 Broad River Road

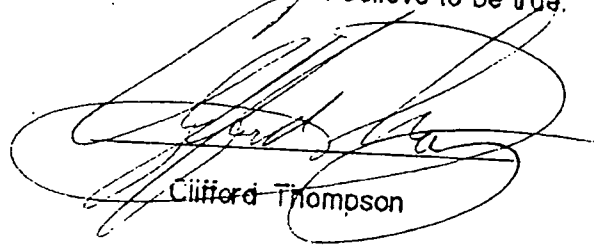
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2009-CP-08-310

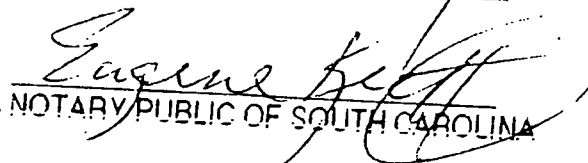
VERIFICATION

I, Clifford Thompson, being duly sworn, am the Plaintiff herein, say and depose that I have read the foregoing Petition for Declaratory Judgment, that I know the contents thereof; that the same is true of my own knowledge, except matters stated to be alleged on information and belief, and those matters I believe to be true.

Date: 5/8/09


Clifford Thompson

SWORN and SUBSCRIBED before me
this 8 day of May 2009.


NOTARY PUBLIC OF SOUTH CAROLINA

My commission expires April 4, 2010

STATE OF SOUTH CAROLINA	)	
COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
Clifford Thompson,	)	Case No.: 09-CP-08-3107
	)	
Petitioner,	)	Motion to Dismiss
	)	
- vs-	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

TO: CLIFFORD THOMPSON, PRO SE PETITIONER:

Please take notice that the South Carolina Attorney General Henry McMaster (hereinafter Attorney General), through his undersigned counsel, pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure (SCRCP), within ten (10) days or as soon thereafter as may be heard, will move the Court for an Order of dismissal of the State of South Carolina as a Respondent to this petition. Mr. Thompson (hereinafter the Petitioner) has failed to state facts sufficient to constitute a cause of action for which the Court can grant relief against the State of South Carolina because the issue is not ripe for adjudication. The Petitioner also fails to plead facts sufficient to establish subject matter jurisdiction because there is no real and substantial controversy in the present time or near future.

Ripeness:

The court does not have subject matter jurisdiction because the issue is not ripe for judicial review. The Petitioner's sex offender registration lacks ripeness for judicial review because registration will not occur until his release from prison in year 2020 and

offenses triggering sex offender registration have undergone continuous modification since the sex offender registry became law in 1994.

In order to maintain a legal action there must be "a real and substantial controversy which is appropriate for judicial determination, as distinguished from a contingent, hypothetical, or abstract dispute." *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983); *Thrifty Rent-A-Car Sys., Inc. v. Thrifty Auto Sales of Charleston, Inc.*, 849 F.Supp. 1083, 1085-86 (D.S.C.1991) (stating a "court should not decide a controversy grounded in uncertain and contingent events that may not occur as anticipated or may not occur at all").

The Petitioner pled guilty on May 2, 2001 to four counts of kidnapping and six counts of armed robbery. S.C.Code Ann. § 23-3-430 (2007) provides that persons convicted of certain offenses must register as sex offenders upon their release. Currently, § 23-3-430(C)(15) (2007) requires that any person convicted of kidnapping a person eighteen years of age or older must register as a sex offender unless a finding is made on the record that the kidnapping did not include a criminal sexual offense or attempted criminal sexual offense. However, statutory requirements of offenses triggering sex offender registration have been in a continuous state of flux.

The continuous change in requirements triggering sex offender registration is best illustrated by amendments to § 23-3-430. Four amendments since 1994 have changed the status of kidnapping as a registration triggering offense. The first version of South Carolina's sex offender registry included kidnapping as an offense requiring sex offender registration. § 23-3-430(8) (Supp.1995). In 1996 an amendment dropped kidnapping from the list of offenses triggering sex offender registration. § 23-3-430(C) (Supp.1996).

A 1998 amendment reinstated kidnapping as an offense triggering sex offender registration. § 23-3-430(C)(15) (Supp.1998). Kidnapping was again the subject of a 1999 amendment stating that a person convicted of kidnapping a person eighteen years of age or older would be required to register as a sex offender. An exception was included that does not require registration if the court made a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense. § 23-3-430(C)(15) (Supp.1999).

Mr. Thompson will not be required to register as a sex offender until his scheduled release from prison in August 2020. The history of change in sex offender registry legislation indicates great potential for change in sex offender registration requirements over the next eleven years. Therefore a legal action over registration that will not materialize within the next decade involves a contingent, abstract dispute where the petitioner's duties concerning sex offender registration in the distant future are purely speculative and contingent on many factors. Mr. Thompson should litigate the issue of sex offender registration at the time of his release and required registration. In the present time The Petitioner does not present subject matter that is ripe for adjudication because distant future requirements for sex offender registration are unknown and The Petitioner will not, if at all, incur a duty to register as a sex offender until his release from prison in the distant future.

In the uncertain event that a duty to register as a sex offender does manifest, it will not do so for eleven years. Currently there is no clear and substantial controversy and the petition should be dismissed because the court lacks subject matter jurisdiction. Furthermore, the Petitioner fails to state a claim for which the court may grant relief

because there is no current duty from which the petitioner can be released and any future duty is purely speculative and subject to contingencies.

Counsel for the State of South Carolina asks the court to dismiss this petition for lack of subject matter jurisdiction under SCRCP Rule 12(b)(1) and to dismiss this petition under Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action.

Counsel for the State of South Carolina certifies pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that consultation is not required for a Motion to Dismiss and is further not required with a pro se litigant.

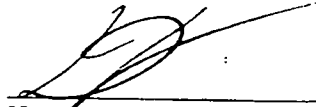
Conclusion

For the reasons outlined above, Respondent State of South Carolina prays that this Honorable Court order as follows:

- (1) That the Motion to Dismiss this petition is granted; and
- (2) For such other relief as this Court deems necessary and proper.

[signatures on next page]

Respectfully Submitted,



Henry D. McMaster
Attorney General of the State of South Carolina

John W. McIntosh
Deputy Attorney General

David Spencer
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680

October 23, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	NINTH JUDICAL CIRCUIT
	)	
Clifford Thompson,	)	Case No: <u>09-CP-08-3107</u>
Petitioner,	)	
V.	)	
State of South Carolina,	)	ANSWER TO RESPONDENT'S
Respondent.	)	MOTION TO DISMISS
	)	

The Petitioner, Clifford Thompson, respectfully makes this Answer TO RESPONDENT'S MOTION TO DISMISS.

The Respondent, in its Motion to Dismiss, asserts two defenses (1) lack of subject matter jurisdiction under SCRCF Rule 12 (b)(1) and (2) failure to state facts sufficient to constitute a cause of action under SCRCF Rule 12 (b)(6). The Petitioner makes the following showing that Respondent's defenses are meritless with regard to the issues outlined in Petitioner's Petition for Declaratory Judgement, and that dismissal of this case under Rule 12 is inappropriate and not warranted; the case should be allowed to proceed and Respondent required to file a responsive pleading to Petitioner's Petition for Declaratory Judgement.

First and foremost, this Court has complete subject matter jurisdiction to adjudicate the matters brought by the Petitioner. The Petitioner instituted a Petition for Declaratory Judgement in the Berkeley County Court of Common Pleas pursuant to S.C. Code of Law §15-53-10 and §15-53-20, commonly cited as the Uniform Declaratory Judgement Act. The plain language of the statute §15-53-20 empowers

this Court to address the issues and execute judicial determination on the claims outlined in Mr. Thompson's Petition for Declaratory Judgement which is to declare Mr. Thompson's rights, status, and legal relations under S.C. Code of Law §23-3-430(c)(15).

LEGAL ARGUMENT

The Petitioner Thompson is an incarcerated pro se litigant and is entitled to have his pleadings and motions construed liberally to ensure substantial justice to the parties. (Pleadings in a case should be construed liberally, and the trial court and appellate court must presume all well pled facts to be true so that substantial justice is done between the parties, - Overcash v. South Carolina Elec. and Gas Co., 614 S.E.2d 619; also Keiger v. Citgo, Coastal Petroleum, Inc., 482 S.E.2d 792).

To clarify Petitioner's legal position, the Petitioner Thompson makes the following expounder on the substance of his Petition for Declaratory Judgement.

The Petitioner is of the legal position that S.C. Code of Law §23-3-430 creates statutory rights which entitles him to have judicially determined whether or not a finding has been made on record that the kidnapping charges for which he has been convicted does or does not include underlying acts of criminal sexual offense or attempted criminal sexual offense. The Petitioner is of the legal and factual position that the transcript of the Petitioner's criminal convictions proceedings does not plainly state that Petitioner's kidnapping convictions does include underlying acts of criminal sexual offense or attempted criminal

sexual offense nor does the transcript of the Petitioner's criminal convictions plainly state that Petitioner's kidnapping convictions does not include underlying acts of criminal acts of criminal sexual offense or attempted criminal sexual offense or attempted criminal sexual offense. This judicial determination has not been made by a court of competent jurisdiction. The Petitioner is entitled pursuant to the Uniform Declaratory Judgement Act and to statutory rights created by §23-3-430, to have declared by a court of competent jurisdiction whether are not the alledged underlying actions of the Petitioner's kidnapping convictions are such that the underlying actions constitute a criminal sexual offense or attempted criminal sexual offense as a matter of law and fact. It is this right to the judicial determination of the nature of the underlying actions of the kidnapping convictions that Petitioner Thompson seeks and is the heart of Petitioner Thompson's Petition for Declaratory Judgement. Once the judicial determination of whether Petitioner's alledged underlying actions that gave rise to the kidnapping convictions are non-sexual or sexual in nature have been made, then it will be self-evident whether Petitioner is required to register as a sex offender.

The real and substantial dispute of whether Petitioner's alledged underlying actions of his kidnapping convictions are sexual or non-sexual in nature is ripe and ready for judicial determination by a court of competent jurisdiction. The Petitioner Thompson is of the position that the alledged underlying actions of his kidnapping convictions are only actions that constitute the force to complete the armed robbery convictions- these actions are non-sexual in nature. The

Respondent is of the kidnapping convictions are sexual in nature. The Court transcripts of the solicitor's office allegations of the kidnappings are available, the dates are certain, the events are plainly identifiable. There are no uncertainties that would deprive this Court of the ability to issue an appropriate judicial determination of whether Petitioner Thompson's kidnapping convictions include underlying actions of a sexual nature.

CONCLUSION

The Petitioner has demonstrated and outlined in this motion and in his Petition for Declaratory Judgement that there is a real and substantial controversy between the two parties as to whether the alledged underlying actions of Petitioner Thompson's kidnapping convictions are non-sexual or sexual in nature, and this controversy is appropriate for judicial determination pursuant to §15-53-10, §15-53-20 and §23-3-430 and all other applicable laws and rules of South Carolina and the United States of America. Summary Dismissal is wholly inappropriate and Respondent is precluded from summary dismissal relief on the grounds asserted in its motion to dismiss, SCRPC Rule 12 (b)(1) and SCRPC Rule 12 (b)(6).

WHEREFORE, Petitioner prays this Honorable Court for the following relief:

- 1) Deny Respondent's Motion to Dismiss with prejudice.
- 2) Order Respondent to file a responsive brief to Petition for Declaratory Judgement.
- 3) Grant Petitioner's Petition for Declaratory Judgement.
- 4) Any other relief deemed just.

Date: November 10, 2009

Respectfully Submitted,

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
	)	
Clifford Thompson,	)	
Petitioner,	)	Case No.: <u>09-CP-08-3107</u>
V.	)	
State of South Carolina,	)	
Respondent.	)	
	)	

CERTIFICATE OF SERVICE

I, Clifford Thompson, do certify that I have served two (2) copies of this motion "Answer To Respondent's Motion To Dismiss," one on the Berkeley County Clerk of Court and one on Respondent's attorney of record Henry McMaster by depositing to the Broad River Prison mailroom personnel, postage pre-paid for U.S. mail, this 10 day of November 2009.

Mailed and addressed to the following:

1) Berkeley County Clerk of Court
P.O. BOX 219
Moncks Corner, S.C. 29461-0219

2) Henry McMaster
Attorney General of S.C.
P.O. BOX 11549
Columbia, S.C. 29211

SWORN and Subscribed before me,
this 10th day of November 2009.

Susan D. Johnson

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires

My Commission Expires: March 5, 2018

Clifford Thompson
Clifford Thompson

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Clifford Thompson,)
Petitioner,)

Case No.: 09-CP-08-3107

v.)
State of South Carolina,)
Respondent.)

MOTION TO ALTER AND/OR
AMEND JUDGEMENT
PURSUANT TO RULE 59(e)

COMES NOW Petitioner Clifford Thompson respectfully motioning this Court to Alter and/or Amend the 12/11/09 written judgement in the case, Clifford Thompson v. State of South Carolina, Case No. 09-CP-08-3107, pursuant to Rule 59(e) to specifically address the following issues that were ruled upon by this Court at the November 18, 2009 judicial proceedings but were not included in this Court's December 11, 2009 written order. Petitioner received actual notice of the judgement from Respondent on March 15, 2010 via certified U.S. Postal Mail. The ten (10) day to file 59(e) triggers from the March 15, 2010 date of actual notice.

- 1) Petitioner stylized and presented his issues at the November 18, 2009 court proceedings as an action for declaratory judgement, specifically to declare / determine whether or not the evidence represented by the trial transcript of the prosecution's case theory attributing actions to Petitioner in Petitioner's

kidnapping convictions are sexual in nature pursuant to S.C. Code § 23-3-430, specifically § 23-3-430(c)(15). Petitioner did not stylize nor presented his issues at the November 18, 2009 court proceedings as an action for writ of mandamus. A mandamus is issued to compel a public official to perform a ministerial duty, and only when there is a specific right to be enforced, a positive duty to be performed, and no other available legal remedy. (See Miller v. State, 659 SE2d 492, Wilson v. Preston, 662 SE2d 580, City of Rock Hill v. Thompson, 563 SE2d 101). The principles of mandamus are not at issue in this case, nor has Petitioner advance any principles of mandamus to argue his position. Petitioner motions this Court to amend this determination in its written order.

2) This Court ruled as a matter of law at the November 18, 2009 court proceeding that this Court is not empowered to judicially determine / declare whether or not the evidence represented by the trial transcript of the prosecution's case theory attributing actions to Petitioner in Petitioner's kidnapping convictions are sexual in nature pursuant to S.C. Code § 23-3-430, specifically § 23-3-430(c)(15). This Court specifically ruled as a matter of law that the power to declare / determine whether or not Petitioner's attributed actions in Petitioner's kidnapping convictions are sexual in nature pursuant to S.C. Code § 23-3-430 and § 23-3-430(c)(15) rest solely with Petitioner's original sentencing judge, Judge James Lockemy. This Court did note that Judge James Lockemy now sits on S.C. Court of Appeals.

24

3) This Court ruled as a matter of law at the November 18, 2009 court proceeding that this Court lacks subject matter jurisdiction to judicially determine the issue of the nature of the kidnapping offenses because such judicial determination is exclusively controlled by Al-Shabazz v. State, 527 S.E.2d 742.

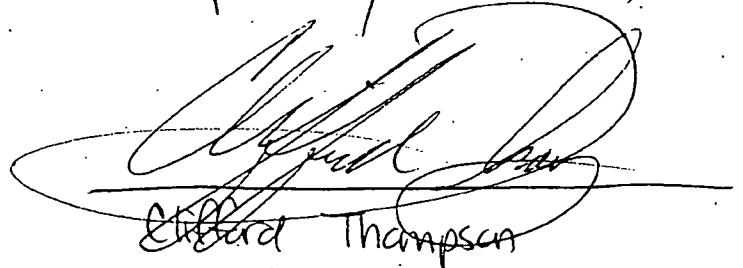
4) This Court ruled as a matter of law at the November 18, 2009 court proceeding that this Court is not empowered to determine whether or not the nature of Petitioner's kidnapping convictions are sexual in nature because only the original sentencing judge, Judge James Lockemy, can make this judicial finding, and this judicial findings by Judge Lockemy must have been made at the time of Petitioner's conviction and sentencing.

5) This Court ruled as a matter of law at the November 18, 2009 court proceeding that Petitioner's issues are not ripe for judicial determination because the controversy will only arise at the time of Petitioner's release from custody.

WHEREFORE Petitioner respectfully motions this Court to alter and/or amend its written order to specifically address the presented issues pursuant to Rule 59 (e).

Date: 3/23/10

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Clifford Thompson", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Clifford Thompson

BRCI/274805/CON 121
4460 Broad River Rd.
Columbia, SC 29210

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Cliffard Thompson,
Petitioner,

v.
State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 09-CP-08-3107

CERTIFICATE OF SERVICE

I, Clifford Thompson, do certify that I have served two (2) copies of this motion "Alter and/or Amend Judgement Pursuant to Rule 59 (e)," one on the Berkeley County Clerk of Court and one on Judge R. Markley Dennis, Jr by depositing both copies to the Broad River Prison mailroom personnel, postage pre-paid for U.S. mail, this 23 day of March 2010. Mailed and addressed to the following:

1) Berkeley Canty Clerk of Court
P.O. Box 219
Moncks Corner, SC 29461-0219

2) Judge R. Markley Dennis, Jr
P.O. Box 1800
Moncks Corner, SC 29461

SWORN and Subscribed before me
this 23 day of March 2010.

Eugene Keitt
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires April 4, 2018

My Commission Expires: _____ 27

Signed: Cliffard Thompson
Cliffard Thompson

Clifford Thompson,
Petitioner

Case No.: 09-CP-08-3107

v.
State of South Carolina,
Respondent.

CERTIFICATE OF SERVICE

I, Clifford Thompson, do certify that I have served one (1) copies of this motion "Alter and/or Amend Judgement Pursuant to Rule 59(e)", on Respondent State of South Carolina by depositing a copy to the Broad River Prison mailroom personnel, postage pre-paid for U.S. mail, this 25 day of March 2010. Mailed and addressed to Respondent's attorney of record:

Attorney General of South Carolina
Dennis Bldg., Box 11549
Columbia, SC 29211

SWORN and Subscribed before me
this 25th day of March 2010

Susan D. Johnson

NOTARY PUBLIC FOR SOUTH CAROLINA My Commission Expires
March 5, 2018

My Commission Expires: _____

Signed,

Clifford Thompson

BRI/274805/CON 121
4460 Broad River Rd.
Columbia, SC 29210

TRANSCRIPT

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF BERKELEY	)	COURT OF COMMON PLEAS
Clifford Thompson,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 09-CP-08-3107
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was heard on November 18, 2009, in Courtroom E of the Berkeley County Courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended by counsel, as follows:

APPEARANCES:

Clifford Thompson
Appearing *Pro Se*

Dave Spencer, Assistant Attorney General
Jeffrey Chambers, Assistant Attorney General
OFFICE OF ATTORNEY GENERAL
P O Box 11549
Columbia, SC 29211
Appearing for State of South Carolina

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org

1 THE COURT: I think the parties are
2 all here in re: Clifford Thompson. There is a
3 Motion to dismiss by the State?

4 MR. SPENCER: That's right.

5 THE COURT: Okay.

6 MR. SPENCER: Your Honor, next to
7 me is Mr. Jeffrey Chambers. He actually was
8 sworn in on Monday.

9 THE COURT: With my clerk.

10 MR. CHAMBERS: We were classmates.

11 MR. SPENCER: He will be making
12 the argument today.

13 COURT REPORTER: Your name, sir?

14 MR. SPENCER: David Spencer.

15 COURT REPORTER: Who do you
16 represent, Mr. Spencer?

17 MR. SPENCER: State of South
18 Carolina.

19 (MR. THOMPSON ENTERS COURTROOM)

20 THE COURT: Good morning.

21 CLIFFORD THOMPSON, *Pro Se*: Good
22 morning, sir. How are you doing?

23 THE COURT: I'm doing great, sir.

24 You all can be seated. You are Clifford
25 Thompson?

1 CLIFFORD THOMPSON, *Pro Se*: Yes,
2 sir.

3 THE COURT: Mr. Thompson, we are here
4 today, this is an action that has been filed by
5 you in the Court of Common Pleas, Case Number
6 09-CP-08-3107.

7 CLIFFORD THOMPSON, *Pro Se*: Yes,
8 sir.

9 THE COURT: There is a petition
10 styled as a Petition for Declaratory Judgment.
11 We are here today on the State's Motion to
12 dismiss. The procedure will be that I am going
13 to hear first from the State and then I will
14 allow you a full opportunity to respond to his
15 argument.

16 CLIFFORD THOMPSON, *Pro Se*: Thank
17 you.

18 THE COURT: Then of course I will
19 allow the State an opportunity to reply to any
20 argument that you make. Okay. I'll be happy to
21 hear from you.

22 JEFFREY CHAMBERS: Yes, Your Honor,
23 may it please the Court, Mr. Thompson is asking
24 for a -- is petitioning the Court to find that
25 -- or to make a finding that, uh, his actions

1 leading to his incarceration does not involve a
2 sex offense for the purpose of his registration
3 status with the sex offender registry.

4 THE COURT: Right.

5 JEFFREY CHAMBERS: Our current
6 issue with that is that in order to maintain an
7 action in the State of South Carolina, we need a
8 substantial -- a real substantial controversy
9 and not something that is hypothetical, abstract
10 and in the future.

11 With regard to the Sex Offender
12 Registry statute, Section 23-3-430, there have
13 been multiple changes in regards to kidnaping
14 over the past ten years. At one time kidnaping
15 was on the statute and then it was taken off of
16 the list of offenses and then put back on. Then
17 several different, uh, -- several different
18 variations of the requirements of kidnaping to
19 trigger registry on the Sex Offender Registry
20 have occurred over the past ten years.

21 We don't -- Mr. Thompson will not be
22 released from prison until the year 2020. The
23 record of his sentencing sheets, as well as the
24 South Carolina Department of Corrections
25 incarcerated inmate, uh, data, states his

1 release date as August of 2020.

2 If we -- if we make a finding as to his
3 status n the registry today, that will -- that
4 may cause an issue if the Sex Offender Registry
5 statutes are significantly different at the time
6 of his release. This finding may be moot. Or
7 that reason, we ask that the Court dismiss this
8 at this time due to ripeness of the issue and
9 take it up at a time closer to his release, at
10 which time we would have a clear and concrete
11 view of the nature of the statute at that time
12 and what Mr. Thompson will have to comply with.

13 THE COURT: What was the status the
14 day he was convicted, did the statute require
15 registration?

16 JEFFREY CHAMBERS: The statute --
17 he pled guilty in 2001. I believe at that time
18 it required an adjudication to avoid
19 registration for kidnaping. That did not occur
20 at his guilty plea.

21 THE COURT: So without the
22 adjudication then he was required -- at that tie
23 he was required to register?

24 JEFFREY CHAMBERS: Yes, sir.

25 THE COURT: All right. Thank you

1 very much.

2 THE COURT: Be happy to hear from
3 you, Mr. Thompson.

4 CLIFFORD THOMPSON, *Pro Se*: Thank
5 you, Your Honor. How are you?

6 THE COURT: I am well, sir. Thank
7 you.

8 CLIFFORD THOMPSON, *Pro Se*: I
9 timely responded to the Motion to dismiss. I
10 don't know if you received it or not.

11 THE COURT: Well, that -- it's
12 incorporated -- obviously any response that you
13 have -- I have the entire file here with me, so
14 whatever has been filed is a part of a record
15 and you're entitled to rely on your request, if
16 that is what you want to do.

17 CLIFFORD THOMPSON, *Pro Se*: Yes,
18 because -- I just want to make sure that it is
19 in the file?

20 THE COURT: It is incorporated fully
21 for purposes of review should that become
22 necessary.

23 CLIFFORD THOMPSON, *Pro Se*: Okay.
24 The respondent moved for a dismissal of this
25 action on two grounds. Specifically they cite

1 Rule 12(b)(1) and Rule 12(b)(6).

2 12(b)(1), they have asserted that this
3 court lacks subject matter jurisdiction over
4 this matter. Secondly they argue a failure to
5 state a claim sufficient to constitute a cause
6 of action.

7 THE COURT: Right.

8 CLIFFORD THOMPSON, *Pro Se*: In my
9 petition, I asked for two things. I asked for a
10 judicial determination of whether or not the
11 alleged actions of my conviction were sexual in
12 nature.

13 THE COURT: Well, but that's --

14 CLIFFORD THOMPSON, *Pro Se*: I
15 asked for ---

16 THE COURT: The problem that you have
17 -- first of all, that's not a -- it really is
18 not an issue because the statute, without an
19 adjudication requires -- it doesn't matter
20 whether it was sexual in nature, the statute
21 prescribed that that would have to be done for a
22 conviction for kidnaping. So it's not an issue
23 for me to determine. The law was the law.

24 CLIFFORD THOMPSON, *Pro Se*: There
25 is ---

1 THE COURT: The question is, Mr.
2 Thompson, -- obviously there is an argument that
3 I think could be made, -- it's a little bit
4 premature -- that the State may be able to make
5 that 'well, at the time of your conviction it
6 would require you to register.' I can make
7 that finding today. I can state as a matter of
8 law that you were required to register and
9 dismiss this action, or make that finding.

10 The problem that I have is that if the
11 statutes change between now and your release
12 date and it's beneficial to you, there's an
13 argument that notwithstanding that you were
14 required to register on the day of your
15 conviction that you are entitled to the benefits
16 of the law. That's why I asked whether you were
17 required to register at the time of your
18 conviction. You were. The statute clearly
19 required that, because of the conviction for
20 kidnaping.

21 It doesn't have to be -- you're
22 confusing this with -- unfortunately -- with the
23 one that -- assault and battery of a high and
24 aggravated nature where it requires a finding
25 that it's sexual in nature. This doesn't

1 require that. It requires the opposite. It
2 requires that you're not -- it requires -- at
3 the time of your conviction it required Judge
4 Lockamee to make a finding and place that on the
5 record that you were not required to register.
6 He didn't do that.

7 CLIFFORD THOMPSON, *Pro Se*: I
8 understand, Your Honor. When I read the ---

9 THE COURT: Sir, you don't have a
10 declaratory judgment action because there is no
11 justiciable controversy today.

12 CLIFFORD THOMPSON, *Pro Se*: Can I
13 tell you my ---

14 THE COURT: No, because there is no
15 need to.

16 CLIFFORD THOMPSON, *Pro Se*: I
17 understand that. I just want to tell you my
18 legal position.

19 THE COURT: Sir, you don't need --
20 your legal position is that you brought an
21 action for declaratory judgment. Okay?

22 CLIFFORD THOMPSON, *Pro Se*: Yes.

23 THE COURT: And that framed what we
24 are to do.

25 CLIFFORD THOMPSON, *Pro Se*:

1 Exactly.

2 THE COURT: And you have some
3 interesting points. Okay?

4 CLIFFORD THOMPSON, *Pro Se*: Yes,
5 sir.

6 THE COURT: In fact, I will tell you
7 that I sat here in this box -- not your case but
8 another case -- where I heard from lawyers
9 arguing for about two hours on an issue
10 concerning governmental interactions, Charleston
11 County and Berkeley County. Interesting case,
12 really was. Thought about it, ruled on it.

13 You know what the Court of Appeals did?

14 CLIFFORD THOMPSON, *Pro Se*: No,
15 sir.

16 THE COURT: They reversed it and
17 said, 'Nope, you were wrong, Judge.'

18 You know why? They said that there is
19 no justiciable controversy, there is no
20 controversy. It doesn't matter how interesting
21 the legal arguments were.

22 To avail yourself of a declaratory
23 judgment, there has to be some controversy.
24 At this point we don't know what it is.

25 CLIFFORD THOMPSON, *Pro Se*: I can ---

1 THE COURT: Sir, you don't have a
2 position.

3 CLIFFORD THOMPSON, Pro Se: I
4 would like ---

5 THE COURT: You're premature. You're
6 early.

7 CLIFFORD THOMPSON, Pro Se: No,
8 what it says -- can I just?

9 THE COURT: What is it that you want
10 to say?

11 CLIFFORD THOMPSON, Pro Se: I want
12 to say this, that they have made a stance right
13 now. Do you understand me?

14 THE COURT: No, I don't.

15 CLIFFORD THOMPSON, Pro Se: They
16 are making a stance that my action constituted a
17 criminal offense.

18 THE COURT: Sir, you ---

19 CLIFFORD THOMPSON, Pro Se: So ---

20 THE COURT: --- pled guilty. Let me
21 ask you a question.

22 CLIFFORD THOMPSON, Pro Se: Okay.

23 THE COURT: Maybe I have got it
24 wrong. Didn't you plead guilty to kidnaping?

25 CLIFFORD THOMPSON, Pro Se: Yes, I

1 did.

2 THE COURT: Do you understand that
3 the statute, the law, at that time said that
4 because of that conviction that you are required
5 to register unless the Court says otherwise.

6 CLIFFORD THOMPSON, *Pro Se*: A
7 court. Exactly.

8 THE COURT: Well, they didn't say
9 otherwise.

10 CLIFFORD THOMPSON, *Pro Se*: The
11 statute says unless "a court" ---

12 THE COURT: That's right.

13 CLIFFORD THOMPSON, *Pro Se*: So
14 that is why ---

15 THE COURT: "A court" is a presiding
16 judge.

17 CLIFFORD THOMPSON, *Pro Se*: It
18 doesn't say that, Your Honor.

19 THE COURT: Well, sir, that's what it
20 means.

21 CLIFFORD THOMPSON, *Pro Se*: If ---

22 THE COURT: So the problem that you
23 have is that you don't want to appeal this now
24 -- because you know what is going to happen?
25 They are going to agree that there is no issue

1 yet. The reason for it is quite simple, sir.
2 The law may change. What we do today is not
3 going to affect the law.

4 CLIFFORD THOMPSON, *Pro Se*: I
5 understand ----

6 THE COURT: And I can't determine
7 whether you should be required to register or
8 not, because I don't know what the law is going
9 to be.

10 CLIFFORD THOMPSON, *Pro Se*:
11 Exactly. Your Honor, I am asking a different
12 legal question.

13 THE COURT: I appreciate it but you
14 can't ask a question. There is no controversy.

15 CLIFFORD THOMPSON, *Pro Se*: I ---

16 THE COURT: You want an advisory
17 opinion.

18 CLIFFORD THOMPSON, *Pro Se*: No.

19 THE COURT: Well, then, what is it
20 that you want?

21 CLIFFORD THOMPSON, *Pro Se*: Let me
22 explain to you, if I may.

23 THE COURT: All right, I will give
24 you one more chance.

25 CLIFFORD THOMPSON, *Pro Se*: All

Clifford Thompson v. State of South Carolina
Case No. 09-CP-08-3107
Hearing of November 18, 2009
Before The Honorable R. Markley Dennis, Jr.

14

1 right. You are employed to determine my
2 status.

3 THE COURT: No, I'm not.

4 CLIFFORD THOMPSON, *Pro Se*: Yes,
5 you are.

6 THE COURT: No, I am not, sir.

7 CLIFFORD THOMPSON, *Pro Se*: Okay.

8 THE COURT: So what is your next
9 point?

10 CLIFFORD THOMPSON, *Pro Se*: Okay.
11 The nature of my offense can be determined from
12 my transcript.

13 THE COURT: No, sir.

14 CLIFFORD THOMPSON, *Pro Se*: It
15 doesn't have anything to do with ---

16 THE COURT: It doesn't matter, sir,
17 because Judge ---

18 CLIFFORD THOMPSON, *Pro Se*: But it
19 ---

20 THE COURT: You're wrong. Thank you.
21 The record is there. The transcript says Judge
22 Lockamee did not find that you should not
23 register. Do you agree with me?

24 CLIFFORD THOMPSON, *Pro Se*: It
25 doesn't say that he does find ---

1 THE COURT: Do you agree with me?

2 CLIFFORD THOMPSON, *Pro Se*: It

3 says ---

4 THE COURT: Do you agree with me that
5 Lockamee did not find that you did not have to
6 register?

7 CLIFFORD THOMPSON, *Pro Se*: He
8 didn't make any finding whether ---

9 THE COURT: That's correct.
10 Therefore, the statute controls.

11 CLIFFORD THOMPSON, *Pro Se*: And
12 the statute says that a court may make ---

13 THE COURT: Thank you.

14 CLIFFORD THOMPSON, *Pro Se*: ---
15 that determination.

16 THE COURT: It didn't.

17 CLIFFORD THOMPSON, *Pro Se*: That's
18 what I am asking of you, sir.

19 THE COURT: It didn't. So you don't'
20 have to. It doesn't say "it shall", it says it
21 "may". It chose not to. The statute controls.
22 Thank you, sir.

23 CLIFFORD THOMPSON, *Pro Se*: But I
24 am asking ---

25 THE COURT: Your action is dismissed.

1 CLIFFORD THOMPSON, *Pro Se*: ---

2 the Court to make a determination ---

3 THE COURT: Your action is dismissed.
4 There is no justiciable controversy.

5 If you will, prepare the appropriate
6 Order, please.

7 JEFFREY CHAMBERS: Thank you.

8 THE COURT: Good luck, sir. You will
9 have an opportunity to argue that to the next
10 level.

11 CLIFFORD THOMPSON, *Pro Se*: I
12 would ask that ---

13 THE COURT: Maybe they will say that
14 you are entitled to you.

15 CLIFFORD THOMPSON, *Pro Se*: I
16 would like to ask you a question, I had two
17 questions. I understand that you ---

18 THE COURT: And the two legal
19 questions, you don't have a basis for it, sir.

20 CLIFFORD THOMPSON, *Pro Se*: You
21 aren't giving me ---

22 THE COURT: No, you don't. You
23 don't, sir, -- because there is no controversy.
24 You have styled it as a declaratory judgment.
25 There has to be a justiciable controversy.

1 There is none. Thank you.

2 CLIFFORD THOMPSON, *Pro Se*: How do

3 I get a determination of ---

4 THE COURT: Thank you, sir.

5 CLIFFORD THOMPSON, *Pro Se*: --- of

6 my ---

7 THE COURT: Thank you, sir. Have a
8 good day.

9 CLIFFORD THOMPSON, *Pro Se*: Your
10 Honor, ---

11 THE COURT: Have a good day.

12 CLIFFORD THOMPSON, *Pro Se*: May I
13 say something, Your Honor.

14 THE COURT: Yes, sir.

15 CLIFFORD THOMPSON, *Pro Se*: Thank
16 you for your time.

17 THE COURT: I appreciate it and I
18 wish you luck in your endeavors.

19 CLIFFORD THOMPSON, *Pro Se*: When
20 can we make that determination, Your Honor?

21 THE COURT: The day that you get
22 ready to be released and there is an issue, then
23 you can maybe bring that case. Possibly.

24 CLIFFORD THOMPSON, *Pro Se*: Sir,
25 if you look at the transcript, there ---

1 THE COURT: Sir, they will look to
2 the transcript the day that you have a
3 controversy. You don't have one today.

4 Because the law can change and I don't
5 know what the law is going to be in -- what was
6 the date, 2020.

7 JEFFREY CHAMBERS: That's right,
8 Your Honor.

9 THE COURT: In 2020 the statute may
10 say that kidnaping does not have to register.

11 CLIFFORD THOMPSON, *Pro Se*: Right
12 now I am suffering. I am suffering ---

13 THE COURT: No, you are not suffering
14 a thing.

15 CLIFFORD THOMPSON, *Pro Se*: Yes, I
16 did.

17 THE COURT: No, sir, you are not.
18 Thank you sir.

19 CLIFFORD THOMPSON, *Pro Se*: If you
20 look on ---

21 THE COURT: Let me ask you a
22 question, sir? Are you registered?

23 CLIFFORD THOMPSON, *Pro Se*: I am
24 ---

25 THE COURT: Answer my ---

1 CLIFFORD THOMPSON, *Pro Se*: Yes.

2 THE COURT: --- my question, are you
3 registered as a sex offender?

4 CLIFFORD THOMPSON, *Pro Se*: Yes.

5 THE COURT: You are registered as sex
6 offender?

7 CLIFFORD THOMPSON, *Pro Se*: Yes.

8 Look at my SCDC internet screen. You've got it
9 right there. It says that I am registered sex
10 offender.

11 THE COURT: You are registered?

12 CLIFFORD THOMPSON, *Pro Se*:

13 (Affirmative nod), look at the screen. It is
14 right there.

15 MR. SPENCER: Your Honor, he is
16 not registered on the sex offender registry.

17 THE COURT: Thank you.

18 MR. SPENCER: He is listed on the
19 South ---

20 THE COURT: They classified you.

21 MR. SPENCER: --- Carolina ---

22 THE COURT: They classified you.

23 That, sir, is a -- that is another issue
24 altogether. That's an administrative issue that
25 you can take up through the administrative

1 courts.

2 CLIFFORD THOMPSON, *Pro Se*: The ---

3 THE COURT: You can file whatever you
4 want for the classification.

5 CLIFFORD THOMPSON, *Pro Se*: I ---

6 THE COURT: You are not on the sex
7 offender registry today. Thank you, sir.

8 CLIFFORD THOMPSON, *Pro Se*: I ---

9 THE COURT: The day that you are,
10 maybe there will be justiciable controversy.
11 You are not today.

12 CLIFFORD THOMPSON, *Pro Se*: Your
13 Honor, the sheet that I am ---

14 THE COURT: Thank you, sir.

15 CLIFFORD THOMPSON, *Pro Se*: They
16 tell me that ---

17 THE COURT: Thank you, sir. Thank
18 you, sir. It's an *Al-Shabazz* issue, sir. You
19 know what that means. You file it with the
20 administrative court. Thank you, sir.

21 JEFFREY CHAMBERS: Thank you, Your
22 Honor.

23 THE COURT: Thank you, sir. You all
24 have a good day. Good luck, Mr. Chambers. I
25 look forward to working with you, sir. I look

1 forward to working with you, sir.

2 Congratulations.

3 (HEARING CONCLUDED)

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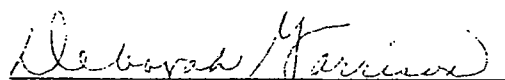
24

25

1 CERTIFICATE OF REPORTER

2
3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9th Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the hearing
8 held before The Honorable R. Markley Dennis,
9 Jr., on November 18, 2009;

10 I further certify that I am neither kin nor
11 counsel to any of the parties and have no
12 interest in the outcome of this action.

13
14 

15 Deborah Garrison

16 Circuit Court Reporter

17 9th Judicial Circuit

18
19
20
21
22 Charleston, South Carolina

23 September 22, 2010

EXHIBITS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Judge

Case No. 09 - CP - 08 - 3107

Clifford Thompson,

Appellant,

V.

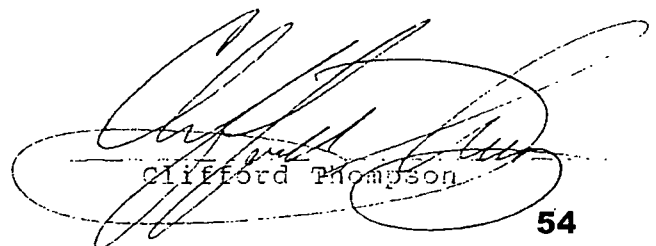
State of South Carolina

Respondent.

NOTICE OF APPEAL

Clifford Thompson appeals the order of the Honorable Judge R. Markley Dennis Jr. dated December 11, 2009 and April 12, 2010. The December 11, 2009 order is a judgment of Dismissal on a Petition for Declaratory Judgment. The April 12, 2010 order is a judgment of Denied on a motion to Alter and/or Amend Pursuant to Rule 59 (e). Appellant received actual written notice of entry of the December 11, 2009 order on March 15, 2010 via certified U.S. Postal Mail from Respondent. Appellant received actual written notice of entry of the April 12, 2010 order on April 19, 2010 via regular U.S. Postal Mail from Berkeley County Clerk of Court Mary P. Brown. The thirty (30) days to file notice of appeal triggers from the April 19, 2010 date of actual notice of the denial of the Rule 59 (e) motion. This Notice of Appeal is timely and complies with SC Rules of Court and other applicable rules and laws.

Date: May 11, 2010


Clifford Thompson

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Mackley Dennis, Jr., Circuit Judge

Case No. 09 - CP - 08 - 3107

Clifford Thompson, Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Clifford Thompson, do certify that I have served two (2) copies of this Notice of Appeal, one on the S.C. Courts of Appeal and one on Respondent State of South Carolina by depositing both copies to the Broad River Prison mail room personal, postage pre-paid for U.S. mail, this 11th day of May 2010. Mailed and addressed to the following:

1) S.C. Courts of Appeals
1015 Market St., Box 11529
Columbia, SC 29211

2) Attorney General of SC
Dennis Bldg., Box 11549
Columbia, SC 29211

SIGNED and SUBSCRIBED before me:

this 11 day of May 2010.

Eugene Keith Jr
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: My Commission Expires April 4, 2016

Clifford Thompson
Clifford Thompson
4450 Broad River Rd.
Columbia, SC 29210

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

COURT OF GENERAL SESSIONS

00-GS-08-1099

00-GS-08-1100

00-GS-40-52300

00-GS-40-42215

00-GS-40-42176

00-GS-40-52302

The State of)
South Carolina)

vs.)

Clifford P. Thompson,)
Defendant.)

01-GS-10-2407

01-GS-10-3099

99-GS-32-892

99-GS-32-886

TRANSCRIPT OF RECORD

May 2, 2001

Moncks Corner, South Carolina

B E F O R E:

THE HONORABLE JAMES E. LOCKEMY; Judge.

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

Mr. Blair Jennings, Deputy Solicitor
Attorney for the State

Mr. Steve Davis, Esq.
Attorney for the Defendant

Bonnie M. Britt
Official Court Reporter

1 THE COURT: All right. At this time, Mr. Jennings,
2 tell me about these incidents.

3 MR. JENNINGS: Thank you, Your Honor. May it please
4 the Court. I guess, I can go in chronological order. That
5 would be the easiest. That begins in Lexington County.
6 That first armed robbery and kidnapping was on November
7 11th of 1998. I believe, it was at a Sleep Inn. Mr.
8 Thompson and a co-defendant went into the Sleep Inn,
9 presented a gun to the clerk, and stole approximately \$300.

10 At this one, and at each of the armed robberies, the
11 clerk was bound either with duct tape or rope, which was
12 sort of an interlinking theme through all of the armed
13 robberies. But the clerk was tied up, which is the basis
14 for the kidnapping. Mr. Thompson and the co-defendant,
15 it's my understanding, were apprehended shortly after the
16 armed robbery took place, and had the gun with him that was
17 used in the robbery as well as the money that was taken.
18 At that time, he was arrested on the armed robbery and
19 kidnapping charges, and later bonded out of jail, and
20 that's when the cases in Richland County took place.

21 The first of which, took place on August the 27, 1998,
22 that was at the Days Inn in Columbia, which was the same
23 type of incident. ~~They are and the co-defendant, who was~~

24 ~~Mr. Chadwick, went into the Days Inn, bound the clerk,~~
25 ~~and stole money out of the safe and the clerk.~~ I think

1 approximately, \$265 was taken. What was important in that
2 case was that a purple Crown Royal bag was handed to the
3 clerk for the money to be placed in. Subsequently, when a
4 search warrant was served on Mr. Thompson's home, that type
5 of bag was found in his room, under his bed along with
6 other evidence that connected him with other armed
7 robberies.

8 The second armed robbery ---

9 THE COURT: Okay. But did they use a weapon?

10 MR. JENNINGS: Yes, sir. They had a gun.

11 THE COURT: A gun?

12 MR. JENNINGS: It was a hand gun in each of these.

13 THE COURT: All right.

14 MR. JENNINGS: A black hand gun. The second armed
15 robbery in Columbia that he's pleading guilty to ~~security~~
16 ~~on September 21st of 2006 that was also at the Days Inn on~~
17 ~~Paradise Road~~ Also, he and Mr. Chadwick Cooper entered
18 the Days Inn, and presented a gun to the clerk, Ms. Brenda
19 Tucker, and stole \$860 from that Days Inn.

20 The third armed robbery occurred in the City of
21 Columbia. It was at a Sleep Inn, and that was on October
22 12th of 1998. And it was the same type of incident. Mr.
23 Thompson and the co-defendant entered into the Sleep Inn
24 and presented a gun to the clerk, who was a Ms. Blich;
25 threw her down to the ground, tied her up, and stole about

1 \$5,000; took \$200 cash out of the till, as well as stole
2 the safe. The key that, actually, broke all of these cases
3 was the search warrant when Mr. Thompson was developed as a
4 suspect in these cases.

5 He was a former employee of this Sleep Inn, the one in
6 the City of Columbia, and had, actually, stopped working
7 there just weeks prior to the armed robbery occurring. And
8 they had a check that was owed to him for the last time
9 that he worked that was in the safe that was stolen. When
10 Investigator Walt Bales, who was present, was ready to
11 testify on the Berkeley County case -- ~~when they served the~~

12 ~~search warrant, they found the check in Mr. Thompson's room~~
13 ~~that had been in the safe when it was stolen.~~ And then, he

14 was arrested on those Columbia armed robberies. And stayed
15 in the Richland County detention center for some period of
16 time and was, eventually, I think, he had his bond reduced,
17 and he was able to make bond.

18 And then on February 28 of 2000, the armed robbery in
19 Summerville took place. Ms. Melony Richardson was present.
20 She was the night clerk at the Sleep Inn that night. Mr.
21 Thompson, as she would testify, had come in, asked to see a
22 room. She gave him a one shot key to go look at a room,
23 then he took a -- or our theory was that he took a towel
24 from the room and went down to the back door of the motel
25 tell and propped the door open. And then came back around

1 to the front, gave Ms. Richardson the key back, and said he
2 was going to go check some other motels, to see the prices.
3 Approximately, ten minutes later, he came back into the
4 motel from down the side hallway from that back door,
5 pulled a gun on her, forced her into the back laundry room,
6 where he duct taped her wrists together, duct taped her
7 ankles, put duct tape around her mouth. While he was armed
8 with a hand gun, he stole the safe which contained
9 approximately \$1500 and stole \$200 out of the till.

10 Then on March the 27th at the Sleep Inn in Mt.
11 Pleasant, Mr. Thompson used his mother's check-card to rent
12 a room at that Sleep Inn. When the clerk gave him the key,
13 he went to the room for a short period of time, as with the
14 Sleep Inn in Summerville, immediately came back out and
15 said he didn't want the room; and left. About two hours
16 later, he came back into the Sleep Inn from down the back
17 hallway, the same as he had done in Summerville, presented
18 a gun to the clerk; tied her with tape -- I mean, tied her
19 with rope. The tied her hands and feet together, and
20 gagged her mouth with a rag. He stole the safe as well as
21 cash out of the till.

22 At the time the Mt. Pleasant and Summerville Robberies
23 took place, there was absolutely no leads. Mr. Thompson is
24 not from this area. My theory was that he was coming down
25 and doing these and immediately going right back to

1 Columbia. It was by happenstance that the investigators
2 from Mt. Pleasant and Summerville talked, because they were
3 such similar MO's. And those investigators happened to
4 talk to Investigator Bales in Columbia, seeing if there had
5 been any similar robberies there. Investigator Bales,
6 based on the address of the credit card, in Mt. Pleasant,
7 that was used to rent the room, coupled with the
8 description of the suspect, as well as the MO, said, We had
9 arrested Clifford Thompson on similar cases here. I know
10 he's out of jail. I'm going to put a photo line-up
11 together for you. You can show it to your witnesses and
12 see if this is your guy. And he prepared the photo
13 line-up, and Mt. Pleasant Police Department picked it up
14 from Columbia, showed it to their witness, they identified
15 him as the person who was in the hotel that night. And
16 then they provided that to Lieutenant Mott with the
17 Summerville Police Department. And he showed the line-up
18 to Ms. Richardson, and she, also, identified Mr. Thompson
19 as the person who robbed her in February of 2000. And Mr.
20 Thompson has no prior convictions, Your Honor; and not
21 juvenile record. I checked in Richland County and
22 Lexington.

23 THE COURT: Now. Mr. Thompson, after hearing what the
24 prosecutor has told me, sir, is that true, sir?

25 DEFENDANT: ~~Yes, Your Honor, I did have some~~

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INCARCERATED INMATE SEARCH

SCDC ID: SID:
First Name: clifford Last Name: thompson ☐ Phonetic Match

SCDC ID	Name	Sex	Race	Height	Weight	Age
00274805	THOMPSON, CLIFFORD	MALE	BLACK	6' 01"	178	35

1 Inmate Found



Picture Date 07/16/2007

Inmate Description

<u>Name</u>	Thompson, Clifford
<u>SCDC ID</u>	00274805
<u>SID</u>	SC01108535
<u>DOB</u>	07/10/1975
<u>Citizenship</u>	Citizen - Native Born
<u>Build</u>	Medium
<u>Complexion</u>	Dark
<u>Hair Color</u>	Black
<u>Eye Color</u>	Brown

Inmate Sentence and Location

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Kidnapping
<u>Sentence Start Date</u>	05/13/1999
<u>Sentence Length</u>	25 YRS, 0 MOS, 0 DYS
<u>Admission Date</u>	05/04/2001
<u>Committing County</u>	Richland
<u>Location</u>	Broad River
<u>Projected Release Date</u>	08/05/2020
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough</u>	Not Eligible
<u>Eligibility</u>	
<u>Sex Offender Registry</u>	Yes

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[Version: 3.0.0 Built: 03/31/2011 02:08:59 PM Time: 02:42:18 PM]

CERTIFICATE

STATE OF SOUTH CAROLINA
In The Court of Appeals

Clifford Thompson,

Appellant,

Case No. 2010.16.1446

v.
State of South Carolina,

Respondent.

Certificate of Compliance
for Record on Appeal

I, Clifford Thompson, do certify, that the Record on Appeal does contain all material proposed to be included by any of the parties and not any other material. I do certify that the submitted Record on Appeal complies with South Carolina Rules of Court.

RECEIVED

SEP 16 2011

SWORN and Subscribed before me

this 15th day of Sept 2011.

SC Court of Appeals

Signed,

Eugene Becht
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 2016

My Commission Expires April 4, 2016

Clifford Thompson

#274805

4460 Broad River Rd.
Columbia, SC 29210

STATE OF SOUTH CAROLINA
In The Court of Appeals

Clifford Thompson,
Appellant

Case Tracking # 2010161446

v.
State of South Carolina,
Respondent.

CERTIFICATE OF SERVICE

I, Clifford Thompson, do certify that I have served (1) copy of the Record of Appeal on Respondent State of South Carolina by hand delivering a true copy to the Broad River Prison mailroom personnel, postage pre-paid for U.S. mail, this 8 day of July 2011. Mailed after addressed to the following:

Attorney General of S.C.
Dennis Bldg., Box 11549
Columbia, SC 29211

SWORN and Subscribed before me
this 8 day of July 2011

Dorcas J. Johnson
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: March 5, 2018

63

Signed,
Clifford Thompson
BRCI/274803/CW12
4460 Broad River Rd.
Columbia, SC 29211

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal to Berkeley County
R. Markley Dennis, Circuit Court Judge

ORIGINAL

CLIFFORD THOMPSON,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

APPEAL

FINAL BRIEF

RECEIVED
JUL 27 2011
Court of Appeals

CLIFFORD THOMPSON
BRC1/274805/ CON
4460 BROAD RIVER ROAD
COLUMBIA, SC 29210

Pro Se

Case Tracking # 2010161446

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ISSUES PRESENTED

1. Did the lower court commit an error of law in its interpretation of statute in ruling that it is not empowered by S.C. Code § 23-3-430, specifically § 23-3-430(c)(15) to judicially determine/declare whether or not the evidence represented by the trial transcript of the prosecution's case theory attributing actions to Appellant in Appellant's kidnapping convictions are sexual in nature?
2. Did the lower court commit an error of law in its interpretation of statute in ruling that it is only, at the time of the original conviction and sentencing proceedings and it is only the original sentencing judge who is empowered by S.C. Code § 23-3-430, specifically § 23-3-430(c)(15) to judicially determine/declare whether or not the evidence represented by the trial transcript of the prosecution's case theory attributing actions to Appellant in Appellant's kidnapping convictions are sexual in nature?
3. Did the lower court commit an error of law in ruling that it lacks subject matter jurisdiction to judicially determine the issue of whether or not the trial transcript reflects Appellant's kidnapping offenses are sexual in nature because such judicial determination is exclusively controlled by Al-Shabazz v. State, 527 SE2d 742?

ISSUES PRESENTED (CONT'D)

4. Did the lower court commit an error of law and fact in ruling that Appellant's claims are moot and Appellant's declaratory judgment action is an action for writ of mandamus?

STATEMENT

This appeal involves issues of statutory interpretation, subject matter jurisdiction, mootness doctrine, legislative intent, the scope of Al-Shghazz principles, judicial powers and ripeness to name a few. Some issues involve settled South Carolina case law and legal precedents.

Some issues are novel and have yet to have principles established by the South Carolina high court as to how to proceed on these issues. This is a very important appeal that needs to have its issues resolve expeditiously.

STATEMENT OF FACTS

The Appellant, Clifford Thompson, was convicted on May 2, 2001 by Circuit Judge James E. Lockemy in Berkeley County on four (4) counts of kidnapping (indictment numbers 00-GS-08-1100, 01-GS-10-3099, 99-GS-32-896 and 00-GS-40-52302) that stem from a multi-county and multi-jurisdictional negotiated plea agreement to armed robbery charges arising from Charleston County, Lexington County, Richland County and Berkeley County. The disposition of the criminal case is outlined in the case State v. Clifford Thompson, Case No.: 2004-CP-08-1041.

The entire nature of the offenses that the state solicitor's office advanced and the entire evidence the state solicitor's office proffered at the guilty plea proceedings on May 2, 2001 were that the alleged actions of Appellant's use of force that constitutes the four (4) counts of kidnapping were the force necessary to complete the offense counts of armed robbery in these criminal cases. There are no allegation nor evidence proffered that the Appellant's four (4) kidnapping convictions are sexual in nature nor that the four (4) kidnapping convictions have any sexual elements.

The presiding Judge James E. Lockemy did not make a finding on the record whether or not Appellant's four (4) kidnapping convictions are sexual in nature or have sexual elements. The Judge James E. Lockemy is no longer a circuit judge but is now a sitting Court of Appeals judge, the lower court R. Markley Dennis, Jr. took note and acknowledged this fact.

The Appellant filed a Petition for Declaratory Judgement on September 11, 2009. The Respondent State of South Carolina filed Answer and Motion to Dismiss in reply to Appellant's petition. Appellant filed Reply to Respondent's Answer and Motion to Dismiss. A hearing was held in the Berkeley County Court of Common Pleas on November 18, 2009 before Judge R. Markley Dennis, Jr. Appellant Thompson engaged Judge Dennis and respectfully put the Judge Dennis on notice that Thompson timely submitted an Answer to Respondent's Motion to Dismiss prior to the convening of the November 18, 2009 hearing. The Judge Dennis did acknowledge actual receipt of the Answer to Respondent's Motion to Dismiss and Judge Dennis did incorporate the Answer to Respondent's Motion to Dismiss into the record of this case under his order. Judge Dennis, Jr. dismissed the Petition for Declaratory Judgement.

Appellant Thompson timely filed a Rule 59 (e) Motion to Judge Dennis, Jr. on March 23, 2010. Judge Dennis, Jr. denied the Rule 59 (e) Motion. Appellant timely filed Notice of Appeal in this case. This appeal follows.

ARGUMENTS

I.

The Issue #1 and Issue #2 are interwoven and for this Court to resolve one it necessitates analysis of the other, therefore Appellant presents these two issues comprehensively.

The issue of interpretation of a statute is a question of law for the court. Univ. of S. California v. Moran, 365 S.C. 270, 275, 617 SE2d 135, 137 (Ct. App. 2005); see also Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 524, 642 SE2d 751, 753 (2007), cert. denied, Oct. 1, 2007; Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 SE2d 841, 843 (1995).

Section 14-3-330 of the South Carolina Code (Supp. 2006) vests the South Carolina Supreme Court with "appellate jurisdiction for correction of errors of law in law cases..." Section 14-8-200 (a) of the South Carolina Code (Supp. 2007) provides the Court of Appeals "shall apply the same scope of review that the Supreme Court would apply in a similar case." Citing both section 14-3-330 and South Carolina Constitution, article V, section 5, the supreme court has held an appellate court may decide novel questions of law with "no particular deference to the lower court."

Madison ex. rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 SE2d 650, 656 (2006); Clark v. Cantrell, 339 S.C. 369, 378, 529 SE2d 528, 533 (2000); Thompson ex. rel. Harvey v. Cisson Const. Co., 659 SE2d 171, 179 (Ct. App. 2008).

"When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. In such cases, the appellate court is not required to defer to the trial court's legal conclusions." Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 242, 597 SE2d 165, 167 (Ct. App. 2004) (quotation and citation omitted). When addressing novel question of law, the appellate court is free to decide the question based on its assessment of which answer and reasoning would best comport with the law and public policies of this state and the court's sense of law, justice and right. Croft v. Old Republic Ins. Co., 365 S.C. 402, 408, 618 SE2d 909, 912 (2005). In a case raising a novel question of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 411, 526 SE2d 716, 718-19 (2000).

The cardinal rule of statutory interpretation is to determine the intent of the legislature. Bass v. Isochem, 365 S.C. 454, 459, 617 SE2d 369, 377 (Ct. App. 2005);

All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 438, 567 SE2d 240, 242 (2002); Ray Bell Constr. Co. v. Sch. Dist. of Greenville County, 331 S.C. 19, 26, 501 SE2d 725, 729 (1998).

"Once the legislature has made [a] choice, there is no room for the courts to impose a different judgement based upon thier own notions of public policy." S.C. Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 SE2d 11, 14 (Ct. App. 1989).

The legislature's intent should be ascertained primarily from the plain language of the statute. State v. Landis, 362 S.C. 97, 102, 606 SE2d 503, 505 (Ct. App. 2004); Stephen v. Arins Constr. Co., 324 S.C. 334, 339, 478 SE2d 74, 77 (Ct. App. 1996). The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Mun. Ass'n of S.C. v. AT&T Commc'ns of S. States, Inc., 361 S.C. 576, 580, 606 SE2d 468, 470 (2004); Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 SE2d 843, 846 (1992).

If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of

the act itself. State v. Morgan, 574 SE2d at 207; see also Wade v. Berkeley County, 348 S.C. 224, 229, 559 SE2d 586, 588 (2002). An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of law. State v. Hudson, 519 SE2d at 582; City of Camden v. Brassell, 486 SE2d at 495; City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck, 498 SE2d 894, 896 (Ct. App. 1998). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. State v. Dawkins, 573 SE2d 783, 785 (2002); Adams v. Texfi Indus., 464 SE2d 109, 112 (1995).

A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. See Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 611 SE2d 297, 301 (Ct. App. 2005); see also Georgia - Carolina Bail Bonds, 579 SE2d at 336 ("A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute"). The real purpose and intent of the lawmakers will prevail over the literal import of the words. Browning v. Hartuigsen, 414 SE2d 115, 117 (1992).

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would

defeat the plain legislative intention. Unison Ins. Co. v. Schmidt, 529 SE2d 280, 283 (2000); Kiriakides v. United Artists Commc'ns, Inc., 440 SE2d 364, 366 (1994). A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute, and the policy of the law. See Liberty Mut. Ins. Co., 611 SE2d at 302; see also Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 SE2d 690, 692 (1996) (stating that in ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole).

When interpreting a statute, courts must presume the legislature did not intend to do a futile act. Proctor v. Dep't. of Health and Envtl. Control, 368 S.C. 279, 311, 628 SE2d 496, 513 (Ct. App. 2006). The legislature is presumed to intend that its statutes accomplish something. State v. Long, 363 S.C. 360, 364, 610 SE2d 809, 812 (2005). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous..." Matter of Decker, 322 S.C. 215, 219, 471 SE2d 462, 463 (1995) (citing 82 C.J.S. Statutes § 346). See also Pike v. S.C. Dep't of Transp., 332 S.C. 605, 618, 506 SE2d 516, 523 (Ct. App. 1998), aff'd as modified, 540 SE2d 87 (2000).

What is at issue is the proper interpretation of S.C. Code § 23-3-430, specifically § 23-3-430(c)(15). The Appellant, in his initial filing for Declaratory Judgement, petitioned Judge R. Markley Dennis, Jr. for (1) an order on the record finding that the transcript of the plea in the criminal case State v. Clifford Thompson, Case No: 2004-CP-08-1041 makes it clear there is no sexual element involved in the four (4) kidnapping convictions that Appellant is convicted and

(2) an order on the record finding that Appellant does not qualify for the Sex Offender Registry and is exempt from the Sex Offender Registry and its mandated requirements.

Then Appellant clarified his position in his Answer to Respondent's Motion to Dismiss to put the Judge Dennis, Jr. on notice that Appellant specifically seeks the judicial determination by the court of the nature of his kidnapping convictions pursuant to § 23-3-430(c)(15). Judge Dennis ruled that only the original trial Judge James Lockemy has the power to utilize this statute and the only time Judge James Lockemy is empowered to utilize this statute is at the original conviction and sentencing proceedings. (See Transcript of Nov. 18, 2009 hearing pg. 12 line 2 thru line 20, and pg. 14 line 1 thru pg. 15 line 25).

This issue before this Honorable Court is a novel one because the applicability and application, and interpretation of S.C. Code § 23-3-430, specifically § 23-3-430 (c)(15), in a post convict and sentence context has not been considered by this Court as of date. The creation of the statute by the legislature is not and was not an exercise in futility, the legislature fully intended its citizenry to exercise the provisional statutory rights of this code. The scope and breadth of the provisional statutory rights of this code is what this appeal asks this Court to outline clearly without any ambiguity. The Judge Dennis, Jr.'s ruling is erroneous as a matter of law.

II.

The Issue #3 concerns the error of law the lower court committed in ruling that it lacks subject matter jurisdiction to judicially determine, pursuant to S.C. Code § 23-3-430(c)(15), the issue of whether or not the trial transcript reflects Appellant's kidnapping offenses are sexual in nature because such judicial determination is exclusively controlled by Al-Shabazz v. State, 527 SE2d 742.

Al-Shabazz has meticulously outlined the procedure an inmate must use when seeking review of Department's decision in a non-collateral or administrative matter. The Appellant is not seeking review of any of S.C. Dept. of Corrections decisions, this point is clear in Appellant's pleadings, therefore Al-Shabazz is inapplicable in the present case before the lower court and before this Court.

Futhermore, the original petitioner in Al-Shabazz, Malik Abdul Al-Shabazz, raise claims that his constitutional rights to procedural due process and equal protection were being violated by S.C. Dep't of Corrections and the disciplinary

Adjustment Committee. He also raised claims of the conditions of his imprisonment. The Appellant makes no such claims. The Appellant seeks a judicial determination strictly based upon statutory provisions of § 23-3-430 (c)(15), Al-Shabazz is inapplicable. The Judge Dennis, Jr.'s ruling is erroneous as a matter of law. (See Transcript of Nov. 18, 2009 hearing pg. 20 line 17 thru 20).

III.

The Issue #4 concerns the error of law the lower court committed in ruling that Appellant's claims are moot and Appellant's declaratory judgement action is an action for writ of mandamus.

A case becomes moot when a judgement, if rendered, would have no practical legal effect upon the existing controversy, thus making it impossible for the reviewing court to grant effectual relief. Byrd v. Irmo High School, 321 S.C. 426, 431, 468 SE2d 861, 864 (1996); Cheap - O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 603, 567 SE2d 514, 517 (Ct. App. 2002). In Sloan v. Greenville County, 356 S.C. 531, 590 SE2d 338 (Ct. App. 2003), the South Carolina Court of Appeals stated the law of mootness with exactitude. (See Id. at 552, 590 SE2d at 349).

The mootness doctrine is subject to several exceptions, however. In Curtis v. State, 345 S.C. 557, 549 SE2d 591 (2001), our S.C. Supreme Court enunciated the three (3) primary exceptions to the doctrine:

"First, an appellate court can take jurisdiction, despite mootness, if the issue

raised is capable of repetition but evading review. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. Finally, if a decision by the trial court may affect future events, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case."

This honorable Court should find the first and third exceptions applicable, and, thus, refuse to dismiss Appellant's appeal issues as moot.

First, Appellant's infelicitous experience is capable of repetition, yet evades review. In Byrd v. Irmo High School, 321 S.C. 426, 468 SE2d 861 (1996), the South Carolina Supreme Court clarified the capable of repetition but evading review principle, noting an inconsistency in our court's decisions on the subject:

"Some cases have held that under the exception, a court can take jurisdiction only if (1) the challenged action in its duration was too short to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subjected to the action again."

"Other cases have taken a less restrictive approach in defining the exception, holding that a court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. In effect, this latter approach differs from the former in that it does not require a reasonable expectation that the same complaining party be subjected to the action again." *Id.* at 431, 468 SE2d at 864.

The Court clarified the inconsistency with the pronouncement: "this less restrictive approach is the appropriate standard in determining the applicability of the evading review exception of the mootness doctrine." *Id.* at 432, 468 SE2d at 864. Applying this articulated standard, it is clear Appellant's appeal qualifies to be heard thoroughly by the S.C. Court of Appeals, under the exceptions to the mootness doctrine.

Since May 2, 2001, the date Appellant was convicted and sentenced for four (4) counts of kidnapping by Judge James Lockemy, there has been at least two hundred (200) convictions for kidnapping in South Carolina where there has been no adjudication / determination on the record whether or not the kidnapping offense are sexual in nature.

This appeal involves issues clearly capable of repetition by at least two hundred (200) South Carolinian litigants. The scope of the issues are such that it is necessary to establish a clear rule of interpretation of S.C. Code § 23-3-430, specifically § 23-3-430 (c)(15) for future conduct in application of this statute because it is important to public interest. The Judge Dennis, Jr.'s ruling is erroneous as a matter of law.

CONCLUSION

WHEREFORE this Appellant prays this Court REVERSE and REMAND the ruling of the lower court as to each claim raised in this appeal and allow Appellant to move forward on the entire merits of his Petition for Declaratory Judgement and to recieve all other relief due Appellant.

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JUL 27 2011

SC Court of Appeals

Respectfully Submitted,

Date: July 21, 2011



Clifford Thompson

BREI/274805/CON121

4460 Broad River Rd.

Columbia, SC 29210

STATE OF SOUTH CAROLINA
In The Court of Appeals

Clifford Thompson,

Appellant,

Case No. 2010161446

v.
State of South Carolina,

Respondent.

Certificate of Compliance
for Final Brief

I, Clifford Thompson, do certify that
Final Brief submitted in this appeal does comply
with Rule 211 (b). I do certify that the
submitted Final Brief complies with South
Carolina Rules of Court.

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SEP 16 2011

SC Court of Appeals

SWORN and Subscribed before me

this 15 day of Sept 2011.

Eugene Keith

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires

My Commission Expires April 4, 2018

Signed,

Clifford Thompson

#274805

4460 Broad River Rd.
Columbia, SC 29210

STATE OF SOUTH CAROLINA

In The Court of Appeals

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JUL 27 2011

Clifford Thompson,

Appellant,

SC Court of Appeals
Case No.: 2010161446

v.
State of South Carolina,

Respondent.

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JUL 27 2011

SC Court of Appeals

CERTIFICATE OF SERVICE

I, Clifford Thompson, do certify that I have served two (2) copies of the Appeal Final Brief, one on the Clerk of Court of Appeals and one on Respondent State of South Carolina by hand delivering both copies to the Broad River Prison mailroom personnel, postage pre paid for U.S. Mail, this 21 day of July 2011. Mailed after addressed to following:

1) S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

2) Attorney General of SC
Dennis Bldg, Box 11549
Columbia, SC 29211

SWORN and Subscribed before me
this 21st day of July 2011.

Eugene Keeth
NOTARY PUBLIC FOR SOUTH CAROLINA

Signed,
Clifford Thompson
#274805

My Commission Expires: My Commission Expires April 4, 2016

ORIGINAL

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY COURT OF COMMON PLEAS
THE HONORABLE R. MARKLEY DENNIS, JR., CIRCUIT COURT JUDGE

Case Tracking Number: 2010-161446

Clifford Thompson Appellant,

v.

State of South Carolina Respondent,

FINAL BRIEF OF RESPONDENT

HENRY DARGAN MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DAVID SPENCER
Assistant Attorney General

GEOFFREY K. CHAMBERS
Assistant Attorney General

KRISTIN SIMONS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3970

ATTORNEYS FOR APPELLANT

CLIFFORD THOMPSON
SCDC# 274805
Broad River Correctional Institute
4460 Broad River Road
Columbia, SC 29210

PRO SE APPELLANT

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FEB 11 2013

SC COURT OF APPEALS

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STATEMENT OF ISSUES ON APPEAL

I.

The Appellant's action was dismissed because it was not ripe for adjudication. It was not dismissed because of any other jurisdictional issue.

II.

The Appellant's request to be removed from the sex offender registry is not ripe for adjudication because future registry requirements are not known for year 2020 when Appellant will be released from prison.

STATEMENT OF THE CASE

The Appellant pled guilty on May 2, 2001 to four counts of kidnapping and six counts of armed robbery. The Appellant filed a petition in 2009 requesting the Court make a finding on the record that the Appellant's kidnapping offenses should not place him on the sex offender registry upon his release in August of 2020. Conditions requiring registration for a kidnapping conviction have changed multiple times since the inception of the sex offender registry, and it is not known whether the Appellant will be required to register nearly a decade in the future. The State of South Carolina filed a motion to dismiss because this matter is not ripe for judicial consideration. A hearing on the matter was convened at the Berkley County Courthouse on November 18, 2009. At the hearing the Appellant attempted to amend his Complaint to request adjudication that his kidnapping charges were not sexual in nature. Permission to amend the Complaint was denied. The Court found that the Appellant's request is not ripe for judicial consideration because he will not have to register, if at all, until year 2020. The Appellant's action was dismissed without prejudice so that he could file the same Complaint near the time of his release, or immediately file a Motion for Declaratory Judgment to request adjudication that his kidnapping charges were not sexual in nature.

Appellant filed a notice of appeal from Judge Dennis' order. This appeal follows.

STATEMENT OF FACTS

The Appellant pled guilty to four counts of kidnapping and six counts of armed robbery, and will not be released from prison until year 2020.

ARGUMENT

I.

The Appellant's action was dismissed because it was not ripe for adjudication. It was not dismissed because of any other jurisdictional issue.

The Appellant listed several Issues on Appeal relating to jurisdiction of the Court of Common Pleas to make a declaratory judgment of whether a person has to register as a sex offender. The Court of Common Pleas has jurisdiction to make a declaratory judgment on a person's requirement to register because the Sex Offender Registry is a civil statute. *Hazel v. State*, 377 S.C. 60, 659 S.E.2d 137 (2008). This action was not dismissed based on the issue of whether the Circuit Court has such jurisdiction, but rather because the Circuit Court cannot predict whether the Appellant will be required to register pursuant to distant future versions of statutory law.

II.

The Appellant's request to be removed from the sex offender registry is not ripe for adjudication because future registry requirements are not known for Appellant's year 2020 release from prison.

The sex offender registry law in effect at the time of an incarcerated inmate's release from prison determines registration requirements. *Hazel v. State*, 377 S.C. 60, 659 S.E.2d 137 (2008). The Appellant is currently incarcerated and will not be released from prison until August of 2020. The Appellant is not currently registered or listed on the sex offender registry because registration as a sex offender does not occur until an inmate is released from prison. The sex offender registry law in place at the time of his year 2020 release from prison will determine the Appellant's sex offender registry status.

The sex offender registry statutes, South Carolina Code Annotated Sections 23-3-400 *et seq.* have undergone numerous changes regarding the treatment of kidnapping convictions. The continuous change in requirements triggering sex offender registration is best illustrated by amendments to § 23-3-430. Four amendments since 1994 have changed the status of kidnapping as a registration triggering offense. The first version of South Carolina's sex offender registry included kidnapping as an offense requiring sex offender registration. § 23-3-430(8) (Supp.1995). In 1996 an amendment dropped kidnapping from the list of offenses triggering sex offender registration. § 23-3-430(C) (Supp.1996). A 1998 amendment reinstated kidnapping as an offense triggering sex offender registration. § 23-3-430(C)(15) (Supp.1998). Kidnapping was again the subject of a 1999 amendment stating that a person convicted of kidnapping a person eighteen years of age or older would be required to register as a sex offender. An exception was included that does not require registration if the court made a finding on the record that the

offense did not include a criminal sexual offense or an attempted criminal sexual offense. § 23-3-430(C)(15) (Supp.1999). Because of the numerous changes to the sex offender registry statutes with regard to kidnapping, the status of kidnapping with regards to the sex offender registry statutes in the far distant future are unknown.

In order to maintain a legal action there must be “a real and substantial controversy which is appropriate for judicial determination, as distinguished from a contingent, hypothetical, or abstract dispute.” *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983); *Thrifty Rent-A-Car Sys., Inc. v. Thrifty Auto Sales of Charleston, Inc.*, 849 F.Supp. 1083, 1085-86 (D.S.C.1991) (stating a “court should not decide a controversy grounded in uncertain and contingent events that may not occur as anticipated or may not occur at all”). Because The Appellant does not have to currently register as a sex offender and the requirement of the Appellant’s registration upon his release in year 2020 is uncertain, there is no real and substantial controversy at the present time.

CONCLUSION

For all of the foregoing reasons, the Common Pleas Court's Order should be upheld.

Respectfully submitted,

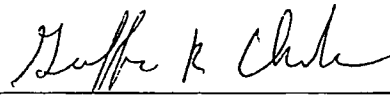
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DAVID SPENCER
Assistant Attorney General

GEOFFREY K. CHAMBERS
Assistant Attorney General

KRISTIN SIMONS
Assistant Attorney General

By: 
GEOFFREY K. CHAMBERS

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

ATTORNEYS FOR THE APPELLANT

February 11, 2013

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY COURT OF COMMON PLEAS
THE HONORABLE R. MARKLEY DENNIS, JR., CIRCUIT COURT JUDGE

Case Tracking Number: 2010-161446

Clifford Thompson Appellant,

v.

State of South Carolina Respondent,

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and 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."

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DAVID SPENCER
Assistant Attorney General

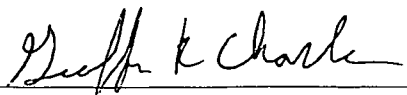
GEOFFREY K. CHAMBERS
Assistant Attorney General

KRISTIN SIMONS
Assistant Attorney General

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SC COURT OF APPEALS

By: 
GEOFFREY K. CHAMBERS

P. O. Box 11549
Columbia, SC 29211
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February 11, 2013

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY COURT OF COMMON PLEAS
THE HONORABLE R. MARKLEY DENNIS, JR., CIRCUIT COURT JUDGE

Case Tracking Number: 2010-161446

Clifford Thompson Appellant,

v.

State of South Carolina Respondent,

CERTIFICATE OF SERVICE

I hereby certify that this 11th day of February 2013, I served a copy of the
within **Final Brief of Respondent** on the Appellant by depositing a copy of same in the
U. S. Mail and addressed as follows:

Clifford Thompson
Broad River Correctional Institute
4460 Broad River Road
Columbia, SC 29210

RECEIVED

FEB 11 2013

SC COURT OF APPEALS

Ellen DuBois

Ellen DuBois
Legal Assistant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Clifford Thompson, Appellant,

v.

State of South Carolina, Respondent.

Appellate Case No. 2010-161446

Appeal From Berkeley County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5244
Submitted September 1, 2013 – Filed June 30, 2014

AFFIRMED

Clifford Thompson, pro se.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General David A. Spencer, Assistant Attorney
General Geoffrey Kelly Chambers, and Assistant
Attorney General Kristin M. Simons, all of Columbia, for
Respondent.

FEW, C.J.: Clifford Thompson appeals the circuit court's order dismissing his declaratory judgment action. In that action, he sought a declaration that his kidnapping convictions did not include a criminal sexual offense and would not require him to register as a sex offender. Thompson argues the circuit court erred

in ruling (1) no justiciable controversy existed;¹ (2) it did not have subject matter jurisdiction to change Thompson's prison classification based on *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999); and (3) Thompson's claims were moot. We affirm.²

Thompson pled guilty to four kidnapping and six armed robbery offenses in 2001, and the court sentenced him to twenty-five years in prison. At that time, a person convicted of kidnapping was required to register as a sex offender when released from prison "except when the court makes a finding . . . the offense did not include a criminal sexual offense." S.C. Code Ann. § 23-3-430(C)(15) (Supp. 2000); *see also* S.C. Code Ann. §§ 23-3-430(A), -440(1) (Supp. 2000). The sentencing court did not determine whether any of the kidnappings included a criminal sexual offense. Thompson appealed, and this court affirmed all of his convictions except one kidnapping and one armed robbery. *State v. Thompson*, Op. No. 2003-UP-252 (S.C.Ct.App. filed Apr. 3, 2003).

In 2009, Thompson filed this action. We find the circuit court properly determined no justiciable controversy existed and dismissed the action because the question of whether Thompson should be required to register as a sex offender is not ripe for adjudication. *See Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983) ("Before a court may render a declaratory judgment, an actual, justiciable controversy must exist. A justiciable controversy is a real and substantial controversy [that] is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute."). This case does not present a justiciable controversy because the current statutes requiring registration do not contemplate that Thompson will register until he is released from prison.³ *See* S.C. Code Ann. § 23-3-430(A) (2007) ("Any

¹ Thompson presented this issue as two separate issues, but we believe combining them into one enables us to more accurately address the point he raises.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

³ Thompson's projected release date is August 5, 2020, and he is not currently registered on the sex offender registry. Offender Search, S.C. Law Enforcement Div., <http://www.icrimewatch.net/index.php?AgencyID=54575&disc=> (agree to terms and conditions; then follow "Continue" hyperlink; then follow "Name" hyperlink; then search Clifford Thompson's name) (last visited Jun. 30, 2014). Although the record contains a printout from the Department of Corrections' website indicating Thompson is to be included in the sex offender registry, the

person . . . who . . . has been convicted of . . . an offense described below . . . shall be required to register pursuant to the provisions of this article."); S.C. Code Ann. § 23-3-430(C)(15) (Supp. 2013) (listing "kidnapping" as an offense requiring registration "except when the court makes a finding . . . the offense did not include a criminal sexual offense"); S.C. Code Ann. § 23-3-440 (1) (2007) ("The Department of Corrections . . . shall provide verbal and written notification to the offender that he must register with the sheriff of the county in which he intends to reside within one business day of his release."). Moreover, "the applicable statute [for determining whether a person must register] is the statute that exist[s] at the time of [that person's] release from prison," and thus it is unknown whether Thompson will be required to register. *Hazel v. State*, 377 S.C. 60, 64, 659 S.E.2d 137, 139 (2008).⁴ Because the law does not require Thompson to register as a sex offender until he is released from prison, and because the sex offender registry statute may be amended between now and Thompson's release, we find the circuit court properly dismissed Thompson's action. Therefore, we do not reach the merits of Thompson's claim.

Thompson's claim will become ripe for adjudication when he is released from prison, if he is then required by law to register. The plaintiff in *Hazel* was convicted of kidnapping in 1979 and released from prison on parole in 2002. 377 S.C. at 62, 659 S.E.2d at 138. "Upon release, he was informed that he would be required to register on the Sex Offender Registry." *Id.* He later filed an action in circuit court claiming he should not be required to register. *Id.* "The court granted

Department of Corrections recently updated its website, and the website no longer indicates Thompson will be required to register. Inmate Search Detail Report, S.C. Dep't of Corr. Incarcerated Inmate Search, <http://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=00274805> (last visited Jun. 30, 2014).

⁴ The sex offender registry statutes have been amended many times since their enactment. See § 23-3-430(C) (enacted by Act No. 497, § 112A, 1994 S.C. Acts 5794-98; amended by Act No. 444, § 16, 1996 S.C. Acts 2684-90; Act No. 384, § 1, 1998 S.C. Acts 2302-2311; Act No. 74, § 1, 1999 S.C. Acts 244-45; Act No. 363, § 2, 2000 S.C. Acts 2444; Act No. 208, § 14, 2004 S.C. Acts 1930-31; Act No. 141, § 2, 2005 S.C. Acts 1608-11; Act No. 212, § 3, 2010 S.C. Acts 1517-19; Act No. 289, § 8, 2010 S.C. Acts 2112-13; and Act No. 255, § 5, 2012 S.C. Acts 2043-45). Many of the amendments have related to the status of kidnapping as a registration-triggering offense. See *Hazel*, 377 S.C. at 63-64, 659 S.E.2d at 139 (analyzing amendments to the sex offender registry statutes and noting kidnapping has been deleted from and added to the list of offenses that require registration).

[Hazel]'s motion for declaratory judgment and found that [he] is not required to register as a sex offender." 377 S.C. at 63, 659 S.E.2d at 138. The supreme court held the circuit court had jurisdiction to hear the dispute and affirmed. 377 S.C. at 65, 659 S.E.2d at 140. Under *Hazel*, therefore, if Thompson is required upon release from prison to register as a sex offender, he may file a declaratory judgment action at that time to litigate the propriety of the requirement.⁵

As to Thompson's other issues on appeal, the circuit court properly determined any issue relating to Thompson's classification as a sex offender by the Department of Corrections must first be addressed through administrative proceedings. *See Al-Shabazz*, 338 S.C. at 375-78, 527 S.E.2d at 753-55 (noting an inmate must initiate a grievance within the Department of Corrections to challenge his custody status, and holding an inmate can seek judicial review only after the administrative law court has issued a final decision). Thompson also argues the circuit court erred in finding his claims were moot. We do not address this issue because the circuit court did not make such a finding in its order.

AFFIRMED.

KONDUROS, J., concurs.

THOMAS, J., dissenting: The majority maintains the circuit court correctly dismissed this action because no justiciable controversy existed and any issue relating to Thompson's classification as a sex offender by the Department of Corrections must be addressed through administrative proceedings. I respectfully dissent.

Initially, I disagree with the majority's position that Thompson failed to present a ripe issue because no justiciable controversy existed at the circuit court. "Before any action can be maintained, there must exist a justiciable controversy." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "A justiciable

⁵ We recognize the sex offender registry, specifically section 23-3-430(C)(15), did not exist when Hazel pled guilty in 1979. Therefore, the sentencing court in *Hazel*, unlike here, did not have the opportunity to determine whether the kidnapping included a criminal sexual offense. The difference is not significant, however, because in both cases the only version of the statute applicable to the requirement for registration is the one in effect on the date of release. *See Hazel*, 377 S.C. at 64, 659 S.E.2d at 139 (holding "[s]ection 23-3-430[(C)(15)] had no effect . . . until [the person] was released from prison").

controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Id.* at 430-31, 468 S.E.2d at 864. Specifically, the majority maintains this case does not present a justiciable controversy because the substance of the statute requiring registration is unknown until an inmate is released from incarceration. In my view, the controversy in this case does not arise from whether or not Thompson must register as a sex offender, but rather whether he should be classified as a sex offender.⁶ Undoubtedly, Thompson will not be affected by having to register as a sex offender until he is released from prison, since an inmate is not required to register until their release. *See Hazel*, 377 S.C. at 64, 659 S.E.2d at 139 (noting a defendant is not required to register as a sex offender pursuant to section 23-3-430 until the defendant is released from prison). However, an inmate's classification as a sex offender, which in the case of kidnapping under the current statute is the default when the circuit court fails to make a finding regarding the sexual nature of the kidnapping, could have immediate and harmful ramifications.⁷ *See* S.C. Code Ann. § 23-3-430 (Supp. 2013). Accordingly, I respectfully disagree with the majority and would hold the circuit court erred in finding Thompson failed to present a justiciable controversy.

I would also hold the circuit court erred in finding any issue relating to Thompson's classification must be addressed through administrative proceedings. Generally, issues regarding custodial status within the Department of Corrections are administrative in nature and therefore are properly determined before the administrative body. *See Al-Shabazz v. State*, 338 S.C. 354, 368-69, 527 S.E.2d 742, 749-50 (2000). However, in my view, classification as a sex offender is not a custodial status; therefore, the current challenge was properly brought before the

⁶ I distinguish *Hazel v. State*, 377 S.C. 60, 659 S.E.2d 137 (2008), from the current case because unlike *Hazel*, where the supreme court faced the question of the applicable statute as to sex offender registration, the instant case deals with the immediate ramifications of being labeled a sex offender. *Hazel* did not face such ramifications because, as the majority notes, the sex offender registry did not exist when *Hazel* pled guilty in 1979.

⁷ While not in the record on appeal, a simple review of the South Carolina Department of Corrections's website reveals an individual with a "current or past sex crime[] conviction" is ineligible for substance abuse services and the "90 Day Pre-Release Program." *See Division of Behavioral Health & Substance Abuse Services*, S.C. Dep't of Corr., <http://www.doc.sc.gov/pubweb/programs/substance.jsp> (last visited June 20, 2014).

circuit court. Moreover, even if such a classification is considered a "custodial status," at least in the case of kidnapping, that status is a direct result of the circuit court's finding or failure to make any finding, that the offense was a criminal sexual offense. *See* S.C. Code Ann. § 23-3-430 (Supp. 2013). Thus, any attempt by Thompson to challenge his status as a sex offender through the inmate grievance process would be futile in that the Department of Corrections is bound by the effect of the circuit court's decision⁸ regarding whether his kidnapping conviction was sexual in nature. Based on the foregoing, I would reverse and remand because the circuit court erred in finding the instant case does not present a justiciable controversy and Thompson must institute administrative proceedings to challenge his status as a sex offender. Accordingly, I respectfully dissent.⁹

⁸ I use the term "decision" loosely because, as previously noted, pursuant to section 23-3-430(C)(15), the circuit court's failure to make a sex offender determination in the kidnapping context results in the defendant's designation as a sex offender.

⁹ While the majority does not reach the mootness issue, based on the record, I would hold this case is not moot. The majority cites a recent update to the Department of Corrections's website; however, this update is not evidence in the record on appeal. Rather, there is no evidence in the record indicating Thompson is no longer considered a sex offender, and therefore that "a judgment rendered by the court [would] have no practical legal effect upon an existing controversy." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Clifford Thompson,

Appellant

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JUL 14 2014
SC Court of Appeals

v.

State of South Carolina,

Respondent.

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JUL 15 2014
SC Court of Appeals

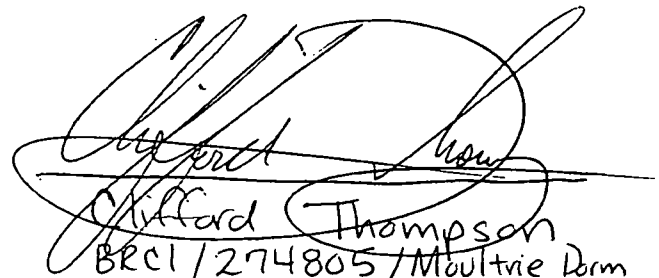
Appellate Case No.: 2010-161446

PETITION FOR REHEARING

Date:

14 July 2014

Pro Se Litigant


Clifford Thompson
BRC1/274805/Moultrie Dorn
4460 Broad River Road
Columbia, SC 29210

The Appellant, Clifford Thompson, respectfully moves this honorable Court to rehear the Appellate Case No. 2010-161446 pursuant to S.C.A.C.R. Rule 221 (a), and, upon rehearing this case, issue a new opinion granting relief to the Appellant to each issue outlined in the appeal.

ISSUE I

The honorable Court of Appeals reviewed, considered and made determinations based upon evidence and facts which do not appear in the Record on Appeal and thereafter rendered an opinion of law based on said facts although the South Carolina Appellate Court Rules and South Carolina Case laws prohibits such manners of resolution of issues on appeal.

The honorable Court of Appeals noted in footnote number 3 of its Opinion No. 5244 submitted September 1, 2013 and filed June 30, 2014 that:

- (1) it determined as a matter of fact that Appellant Thompson is not currently registered on the sex offender registry as of June 30, 2014;

- (2) it determined as a matter of fact that the S.C. Department of Corrections has recently updated its website as of June 30, 2014; and
- (3) it determined as a matter of fact that the S.C. Department of Corrections' update no longer indicates Appellant Thompson will be required to register as of June 30, 2014.

Each and every one of the three (3) enumerated factual determinations made by the honorable Court of Appeals is based on facts which do not appear in the Record of Appeal in this appellate case. Each and every one of the three (3) enumerated factual determinations made by the honorable Court of Appeals is based on facts that are external to the official submitted Record on Appeal. These three enumerated facts impacted this appeal.

The Court of Appeals is prohibited from considering any fact which does not appear in the Record on Appeal. The S.C.A.C.R. Rule 210 (h) explicitly prohibits this manner of resolving an appeal by expressly stating, "Except as provided by Rule 212 and Rule 208 (b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal."

The South Carolina jurisprudence establishes that it is equivalent to court error for an appellate court to consider facts that do not appear in the Record on Appeal. (See: Spreeuw v. Barker, 682 SE2d 843 (S.C. App. 2009) (appellate court considering father's challenge to child support award could not consider a fact that did not appear in record); Beverly S. v. Kayla R., 718 SE2d 224, 395 S.C. 399 (S.C. App. 2011) (same); Tobias v. Rice,

665 SE2d 216 (same); Griffin v. Rice, 57 SE2d 69 (same); and Columbia & Greenville R. Co. v. Gibbs, 24 S.C. 60 (same).

Furthermore, if the Respondent intended to include these purported facts, the Respondent has an affirmative obligation and burden to provide a sufficient record for the Record on Appeal or otherwise bear the consequence of waiver of appellate review. The S.C.A.C.R. Rule 212 provides a mechanism through which the Respondent could have supplemented the Record on Appeal with facts the Respondent deems necessary to allow the appellate court to make a decision. The Respondent opted to not supplement the Record on Appeal with any records from the Sex Offender Registry nor from the S.C. Department of Corrections but instead chose to move forward on the appeal with the Record on Appeal as it stands. The Respondent has this right, the Respondent exercised its rights. The waiver of appellate review on this point is a natural consequence of Respondent's choice to not supplement the Record on Appeal and this honorable Court of Appeals is prohibited from interfering the natural consequences of this appellate proceedings.

Even more importantly, Appellant Thompson, as a party to this litigation, is under the same obligation as the Respondent to present a sufficient record to allow the appellate court to make a decision ... Appellant Thompson met his burden by properly submitting a Record on Appeal which factually reflects that Appellant Thompson is to be included in the sex offender registry. The Court of Appeals acknowledges the Record on Appeal contains

a record which indicates Thompson is to be included in the sex offender registry in footnote number 3 of its Opinion No. 5244 submitted September 1, 2013 - filed June 30, 2014.

The case law in this state is crystal clear, the appellant has the burden of presenting a record sufficient to allow the appellate court to make a decision or suffer appellate review waiver. (See: Medlock v. One 1985 Jeep Cherokee, 470 SE2d 373; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 339, 611 SE2d 485, 487-88 (2005) (same); Germain v. Nichol, 298 S.C. 508, 509, 299 SE2d 335, 335 (1983) (same); State v. Knighton, 334 S.C. 125, 136, 512 SE2d 117, 123 (Ct. App. 1999) (refusing to review a jury charge not in the record); Hobgood v. Pennington, 300 S.C. 309, 314, 387 SE2d 690, 693 (Ct. App. 1989) (same); Dennis v. S.C. Nat'l Bank, 299 S.C. 34, 41, 382 SE2d 237, 240 (Ct. App. 1988) (same); and Scruggs v. Quality Elec. Servs., Inc., 282 S.C. 542, 545, 320 SE2d 49, 51 (Ct. App. 1984) (same).

The facts regarding the June 30, 2014 purported "updates" to the Sex Offender Registry and S.C. Department of Corrections' websites noted in the Court of Appeals' Opinion No. 5244 footnote number 3 is prohibited from being considered, reviewed and determined by this honorable Court of Appeals. The Court of Appeals' issued analysis and opinion run contrary to this prohibition and requires a rehearing where this honorable Court of Appeals will determine this appeal with total disregard to any and all facts which do not appear in the Record on Appeal. The Court of Appeals should conduct a rehearing to evaluate this appeal strictly in the posture in which the facts on the Record of Appeals presents itself.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Clifford Thompson,
Appellant

v.

State of South Carolina,
Respondent.

Appellate Case No.: 2010-161446

CERTIFICATE OF SERVICE

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JUL 15 2014

SC Court of Appeals

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~~JUL 14 2014~~

~~SC Court of Appeals~~

I, Clifford Thompson, do hereby certify that I have served ^{two} true copy of the "Petition for Rehearing" to the Respondent and the S.C. Court on July 14, 2014 by depositing said documents in the U.S. Mail, postage pre-paid, via hand delivery to the Broad River Prison mailroom personnel addressed to the following:

1) S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

2) S.C. Attorney General Office
P.O. Box 11549
Columbia, SC 29211

SWORN and Subscribed before me
this 14th day of July 2014.

Susan H. Frye
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

My Commission Expires
March 5, 2018

Clifford Thompson
BECT/274805/Multrie Dam
4460 Broad River Rd.
Columbia, SC 29210

The South Carolina Court of Appeals

Clifford Thompson, Appellant,

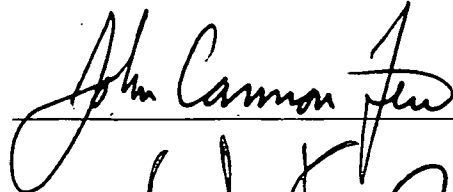
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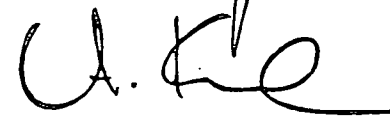
State of South Carolina, Respondent.

Appellate Case No. 2010-161446

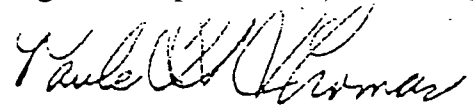
ORDER

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.


C.J.

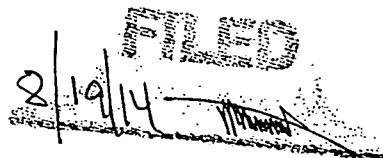

J.

Because I adhere to my dissent, I would grant the petition for rehearing.


J.

Columbia, South Carolina

cc: Clifford Thompson, 274805
Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire



Geoffrey Kelly Chambers, Esquire
David A. Spencer, Esquire
Kristin M. Simons, Esquire
The Honorable R. Markley Dennis, Jr.