

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The 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.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The Court of Appeals correctly held that no justiciable controversy existed because the question of whether Petitioner should be required to register as a sex offender is not ripe for adjudication.
- II. The Court of Appeals correctly held that any issues related to Petitioner's classification as a sex offender by the Department of Corrections must first be addressed through administrative proceedings.

STATEMENT OF THE CASE

The Petitioner pled guilty on May 2, 2001 to four counts of kidnapping and six counts of armed robbery. The Petitioner filed a petition for declaratory judgment in 2009 requesting the Court make a finding on the record that the Petitioner's kidnapping offenses should not place him on the sex offender registry upon his release in August of 2020. App. 10-12. On October 23, 2009, the State of South Carolina filed a motion to dismiss on the basis that the matter is not ripe for judicial consideration. App. 14-18. A hearing on the matter was convened at the Berkley County Courthouse on November 18, 2009. App. 31. By order dated December 15, 2009, the Circuit Court granted the State's Motion to Dismiss, finding that the Petitioner's request is not ripe for judicial consideration because he will not have to register, if at all, until year 2020. App. 4-6. The Petitioner's action was dismissed without prejudice so that he could file the same Complaint near the time of his release, or immediately file a properly captioned and supported Motion for Declaratory Judgment requesting adjudication that his kidnapping charges were not sexual in nature. App. 6

Petitioner timely filed a Notice of Appeal in the Court of Appeals. App. 54. On June 30, 2014, the Court of Appeals held that the Circuit Court properly dismissed Petitioner's declaratory judgment action. *Thompson v. State*, 409 S.C. 386, 762 S.E.2d 51 (Ct. App. 2014). Petitioner timely filed a Petition for Writ of Certiorari, and on January 16, 2015, this Court granted certiorari.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY HELD THAT PETITIONER'S REQUEST TO BE REMOVED FROM THE SEX OFFENDER REGISTRY IS NOT RIPE FOR ADJUDICATION.

The Court of Appeals correctly held that no justiciable controversy existed and the Circuit Court properly dismissed Petitioner's declaratory judgment action because the question of whether Petitioner should be required to register as a sex offender is not ripe for adjudication. In order to maintain a declaratory judgment 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 Declaratory Judgments Act does not require the court to give a purely advisory opinion as to the issues sought to be raised. *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970). "An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004), rehearing denied. "The Uniform Declaratory Judgment Act, Title 10, Chapter 24 of the 1952 Code 'does not require the court to give a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when occasion might arise', or 'license litigants to

fish in judicial ponds for legal advice.”” *City of Columbia v. Sanders*, 231 S.C. 61, 68, 97 S.E.2d 210 (1957) (internal citations omitted).

This matter is not ripe for adjudication because Petitioner is not currently on the sex offender registry and the possibility that he may be required to register upon his release from prison is uncertain. The Petitioner is currently incarcerated and will not be released from prison until August of 2020. As such, he is not currently registered or listed on the sex offender registry, nor will he be required to register, if at all, until his release from incarceration. S.C. Code Ann. § 23-3-430. Therefore, Petitioner’s claim will become ripe for adjudication when he is released from prison, if he is then required by law to register.

Whether Petitioner is required to register as a sex offender upon his release from incarceration will depend upon the law in effect at the time of his release. *Hazel v. State*, 377 S.C. 60, 65, 659 S.E.2d 137, 140 (2008). The sex offender registry statutes have been amended many times since their enactment, especially in regard to the status of kidnapping as a registration-triggering offense. *Id.* In light of the fluctuating nature of this area of law, a legal action over registration that will not materialize until 2020 and involves a contingent, abstract dispute grounded in uncertain future events that may or may not occur as anticipated does not present a real and substantial controversy that is ripe for adjudication.

Petitioner argues that his petition for declaratory judgment presented the Circuit Court with a justiciable controversy because he has been classified as a sex offender by the South Carolina Department of Corrections. However, the underlying petition does not name the Department of Corrections as a Defendant, does not make a single factual

allegation concerning his classification by the Department of Corrections, and does not cite any rules, regulations or policies concerning his classification by the Department of Corrections in regards to the sex offender registry. App. 10-12. Furthermore, the petition for declaratory judgment does not request adjudication of Petitioner's legal rights as they relate to his classification by the Department of Corrections, nor does it set forth any legal basis for such adjudication. App. 10-12. In fact, there is no mention of either the Department of Corrections or any classification made by the Department of Corrections in the underlying petition. Instead, the relief sought by the Petitioner is a finding that he does not qualify for the sex offender registry and is exempt from the sex offender registry and its mandated requirements. App. 12. Quite simply, there is no merit to Petitioner's argument that this unmentioned classification that was never presented to the Circuit Court could create a justiciable controversy for that court to adjudicate.

Because the question of whether or not Petitioner will be required to register upon his release from prison hinges on the status of the law at the time he is released, and in light of the fluctuating nature of this area of law, an adjudication at present regarding the nature of Petitioner's convictions as they relate to his sex offender status would not settle the legal rights of the parties. Thus, any such adjudication would be advisory in nature and outside the scope of the Declaratory Judgment Act. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. at 423, 593 S.E.2d at 466. Furthermore, because Petitioner is not currently on the sex offender registry and will not be required to register, if at all, until his release from prison, Petitioner's claim is not ripe for adjudication. As such, the Court of Appeals properly affirmed the Circuit Court's dismissal of Petitioner's declaratory judgment action for failure to present a justiciable controversy.

II. THE COURT OF APPEALS CORRECTLY HELD THAT ANY ISSUES RELATING TO PETITIONER'S PRISONER CLASSIFICATION BY THE DEPARTMENT OF CORRECTIONS MUST FIRST BE ADDRESSED THROUGH ADMINISTRATIVE PROCEEDINGS.

The Court of Appeals correctly held that any issues relating to Petitioner's classification as a sex offender by the Department of Corrections must first be addressed through administrative proceedings. An inmate seeking to challenge a decision by the Department of Corrections regarding a non-collateral or administrative matter, i.e. one in which an inmate does not challenge the validity of a conviction or sentence, must avail himself of the available administrative remedies prior to seeking judicial review of the Department's decision. *Al-Shabazz v. State*, 338 S.C. 354, 375-78, 527 S.E.2d 742, 735-55 (1999).

An inmate's classification is a "non-collateral or administrative" matter as contemplated by *Al-Shabazz*. Pursuant to S.C. Code Ann. § 24-1-140, the director of the Department of Corrections "shall have power to prescribe reasonable rules and regulations governing the humane treatment, training, and discipline of prisoners, and to make provision for the separation and *classification* of prisoners according to sex, color, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured. S.C. Code § 24-1-140 (emphasis added). In fact, in holding that an inmate is entitled to judicial review of the final decision by the Department of Corrections in a non-collateral or administrative matter, this Court specifically mentioned the "79,300 custody and classification decisions" that the Department of Corrections made in the year prior to its ruling. *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 756. Thus, the classification by the Department of Corrections that Petitioner is now complaining of is precisely the type of agency determination addressed by *Al-Shabazz* - a

determination that is made pursuant to the Department of Correction's own rules and regulations, which must be addressed via administrative proceedings prior to judicial review.

Petitioner's argument that his classification by the Department of Corrections as a sex offender is controlled by the current sex offender registration statute is conclusory and wholly unsupported by any citations to legal authority. To the contrary, S.C. Code Ann. § 24-1-140 clearly establishes that the director of the Department of Corrections is empowered to promulgate the rules and regulations regarding inmate classifications. S.C. Code Ann. § 24-1-140. Because inmate classification is an administrative decision made by the Department of Corrections, the Court of Appeals properly held that any issues relating to Petitioner's classification by the Department of Corrections must first be addressed through administrative proceedings.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Court of Appeals.

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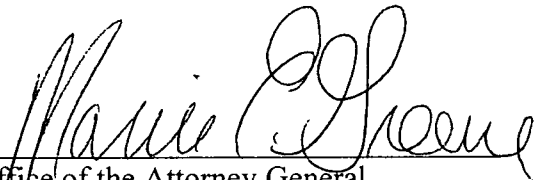
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PROOF OF SERVICE

I certify that I have served Brief of Respondent on Clifford Thompson by depositing a copy of it in the United States Mail, postage prepaid, on April 28, 2015, addressed to his attorney of record as follows:

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