

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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MAY 12 2015

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

**SC SUPREME COURT**

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

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

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CLIFFORD THOMPSON .....*Petitioner,*

v.

STATE OF SOUTH CAROLINA .....*Respondent.*

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**REPLY BRIEF OF PETITIONER**

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## ARGUMENT

### I. THOMPSON'S DECLARATORY JUDGMENT ACTION PRESENTED THE CIRCUIT COURT WITH A JUSTICIABLE CONTROVERSY

Respondent's argument that Thompson did not present the circuit court with the justiciable controversy because he is not currently on the sex offender registry, Brief of Respondent 4, ignores the fact that Thompson explicitly asked the circuit court "for a declaratory judgment making a finding on the record that Plaintiff's four (4) criminal convictions of kidnapping are not sexual in nature." App. 10; *see also* App. 12 ("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 [*sic*]."). Thus, Respondent's assertion that the controversy presented is not ripe relies on a misinterpretation of Thompson's Petition for Declaratory Judgment as asking solely for a finding that he is not required to register as a sexual offender.

Thompson's request for a record finding that his kidnapping offenses did not involve a criminal sexual offense does not seek an advisory opinion or a determination of what his registration requirements will be in the future. He asks for a finding, based on review of the trial court record, which can be made by the court without any speculation and will not be subject to change because the finding would be based on the facts presented by the State in support of Thompson's plea fourteen years ago. *See Pee Dee Elec. Co-op., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983) ("A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute."). The finding Thompson seeks is exactly the type of finding the Uniform Declaratory Judgment Act contemplates. *See* S.C. Code 15-53-20

“Courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”); *see also Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 6, 56 S.E.2d 576, 578 (1949) (“The statute providing for declaratory judgments meets a real need and should be liberally construed to accomplish the purpose intended, i. e., to afford a speedy and inexpensive method of adjudicating legal disputes without invoking the coercive remedies of the old procedure, and to settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights or a disturbance of the relationships.”).

Additionally, this Court has previously indicated a declaratory judgment action is the proper method for seeking a determination that a kidnapping offense did not involve a criminal sexual offense prior to an inmate’s release and required registration as a sex offender. *See Bennett v. State*, Appellate Case No. 2009-145366 (S.C. Nov. 7, 2013) (denying certiorari in the case of a death-sentenced inmate “without prejudice to petitioner’s right to file an action under the Declaratory Judgment act to determine whether his kidnapping offense requires him to register as a sex offender”). Thompson, therefore, appropriately asked the circuit court to “remove uncertainty” from his kidnapping convictions under the Declaratory Judgment Act. *See Williams Furniture Corp.*, 216 S.C. at 6, 56 S.E.2d at 578.

Respondent’s assertion that Thompson fails to present a justiciable controversy because he did not name the Department of Corrections as a defendant again misstates the relief sought by Thompson. *See* Brief of Respondent 4. Thompson is not challenging the Department of Correction’s classification policy that has labeled him as a sex offender. Instead, he presents his sex offender classification by the Department of Corrections as the harm he suffers because the circuit court did not make a record finding regarding the non-sexual nature of his kidnapping

offenses. This harm can be remedied by the circuit court issuing an order, as requested by Thompson, and Thompson presenting the order to the Department of Corrections, which would then remove Thompson's sex offender label because the current sex offender registration statute would no longer require him to register as a sex offender. This can all be accomplished without naming the Department of Corrections as a defendant. None of Respondent's arguments, therefore, demonstrate that Thompson has failed to present this Court or the circuit court with a justiciable controversy.

**II. AL-SHABAZZ DOES NOT CONTROL THOMPSON'S DECLARATORY JUDGMENT ACTION SEEKING A RECORD FINDING THAT HIS KIDNAPPING OFFENSES DID NOT INVOLVE A CRIMINAL SEXUAL OFFENSE**

Respondent's argument that *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999), requires Thompson to challenge his sex offender classification through administrative proceedings, Brief of Respondent 6, once again ignores the fact that what Thompson is actually seeking is a record finding that his kidnapping offenses did not involve a criminal sexual offense. As this Court indicated in its order denying certiorari in *Bennett v. State*, an inmate seeking a record finding regarding a kidnapping charge should do so in a declaratory judgment action. Order, *Bennett v. State*, Appellate Case No. 2009-145366 (S.C. Nov. 7, 2013). By directing the petitioner to file a declaratory judgment action, despite the fact the petitioner was incarcerated, implies a declaratory judgment is the proper avenue to seek relief, not administrative proceedings. Additionally, administrative proceedings through the Department of Corrections simply cannot provide relief.

As Judge Thomas correctly noted in her dissenting opinion in the Court of Appeals, "any attempt 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 decision." *Thompson v. State*, 409 S.C. 386, 392, 762 S.E.2d 51, 54 (Ct. App. 2014). Respondent faults

Thompson for presenting no legal authority to prove that the Department of Corrections' sex offender classification of Thompson is controlled by the current sex offender registration statute, but Respondent presents nothing that provides an alternative explanation. Nothing in the record indicates that Thompson's kidnapping offenses involved a criminal sexual offense, *see* App. 56-61, and the State has never made any allegations to the contrary. That is because Thompson has committed no sexual offense. Thus, the only explanation for Thompson's classification as a sex offender is that the current sex offender registration statute mandates registration for those convicted of kidnapping when the circuit court fails to make a finding that the kidnapping was not sexual in nature.<sup>1</sup> *See* S.C. Code § 23-3-430(C)(15) (requiring registration when an individual is convicted of "kidnapping of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense").

Accordingly, any decision by this Court that Thompson cannot seek a declaratory judgment finding his kidnapping offenses did not include a criminal sexual offense leaves Thompson wholly without remedy. Thompson, as a result, will be unfairly classified as a sex offender by the Department of Corrections until his release despite the fact that he did not commit any sexual offense.<sup>2</sup>

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<sup>1</sup> Additionally, undersigned counsel previously represented another inmate, Johnny Bennett, in the same situation as Thompson. Bennett attempted to challenge his classification as a sex offender through the Department of Corrections inmate grievance policy and received a response from the Department of Corrections stating: "It has been determined that this issue is outside of SCDC control and therefore, non-grievable. This issue would be addressed with the 'clerk of court' in the county where you were convicted in as they would be responsible for removing you from the 'sexual registry' by order of the judge." *See* Exhibit A (providing copies of Bennett's grievance and the warden's decision in response).

<sup>2</sup> Such a ruling would be particularly unfair in light of the fact that other inmates have been able to obtain from other circuit court judges the exact relief sought by Thompson. The sentencing

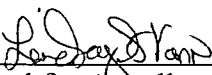
## CONCLUSION

Thompson is not a sex offender. He pled guilty to committing armed robbery and kidnapping and the State has never made any allegations that Thompson committed any kind of sexual offense. Nevertheless, due to a failure by the trial court to make a finding required by the then-recently amended sex offender registration statute, Thompson has been labeled as a sex offender. The decisions of the circuit court and the Court of Appeals denies Thompson any avenue for pursuing relief and requires that he be classified as a sex offender despite the fact that he committed *absolutely no* sexual offense. This Court should reverse the Court of Appeals' decision to allow Thompson to obtain the simple remedy of a record finding that his kidnapping offenses were not sexual in nature, thus allowing him to be rid of the undeserved label of sex offender.

Respectfully submitted,

**LINDSEY S. VANN**  
SC Bar No. 101408  
Death Penalty Resource & Defense Center  
900 Elmwood Avenue, Suite 101  
Columbia, SC 29201  
(803) 765-1044

May 8, 2015

BY:   
Counsel for Appellant

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judge in Bennett's case did not make a record finding regarding the nature of the kidnapping offense. In order to obtain a record finding for Bennett, counsel was told by the clerk of court to informally contact the chief administrative judge for the circuit in which Bennett was sentenced and request an order making the record finding. Undersigned counsel did so and the judge communicated with the solicitor's office that prosecuted Bennett, which agreed there was no allegation of a criminal sexual offense involved in the kidnapping offense. Upon this communication, the circuit judge issued an order making a record finding that the Bennett's kidnapping conviction did not involve any allegations of a sexual offense and that the Bennett is not required to register as a sex offender. See Exhibit B (providing a copy of the order issued in Bennett's case).

# **Exhibit A**

## SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE COPY

## INMATE GRIEVANCE FORM

STEP 1

OCT 22 2014

INMATE NAME: Johanna Bennett  
 SCDC NUMBER: 5023  
 INSTITUTION: Lichen Conn Inst  
 HOUSING UNIT: RR #111  
 WORK ASSIGNMENT: None

Grievance No. CC-1-1345-14  
 Code: General CLCL  
 Policy \_\_\_\_\_  
 Disc. Hear. \_\_\_\_\_  
 Class. \_\_\_\_\_  
 PRA \_\_\_\_\_  
 Date Received 10-22-14  
 IGC Initials MD

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I am writing this grievance, to have my name removed from the Department of Corrections Sexual Registry. Back in 2006 I was told I would have to register as a Sex Offender because of my kidnapping conviction. I ask that the Department of Corrections review my case to verify that there is no type of criminal sexual offense involved in my case, that would warrant my being placed on the SCDC Sex Registry. I have attached an order from the Supreme Court of South Carolina under the Declaratory Judgment Act to determine whether I should register as a Sex Offender.

ACTION REQUESTED: I'm requesting that the Department of Corrections remove my name from its Sexual Offender Registry because there is nothing sexual about my crime.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

In 2006 I filed a grievance to have my name removed from the Registry and I'm doing so once again.

Johanna Bennett 10-21-14  
 Grievant Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Inmate Bennett, Johnny 5023

It has been determined that this issue is outside of SCDC control and therefore, non-grievable. This issue would be addressed with the "clerk of court" in the county you were convicted in as they would be responsible for removing you from the "sexual registry" by order of the judge.

*[Handwritten signature]*  
10/28/14

*n/a*

Warden Signature

Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

*n/a*

Grievant Signature

Date

*n/a*

IGC Signature

Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing in the Grievance Box within five (5) days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via placement in the Grievance Box.

# **Exhibit B**

ORIGINAL

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
STATE OF SOUTH CAROLINA, )  
-vs- )  
JOHNNY BENNETT, )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS

ORDER TO CLARIFY SENTENCE

Case Number 1993-GS-32-02354A

CLERK OF COURSE  
LEXINGTON, SC  
2015 MAR 10 AM 10:06

The defendant moves for a clarification of his sentence to reflect that he is not required to register as a sex offender. The State does not object to the relief sought, and the motion is granted. Nothing contained herein modifies the sentence imposed in any other way.

*WPK #1*

On July 16, 2000, the defendant was sentenced for several offenses, including capital murder and this kidnaping charge. The sentencing judge was the Honorable Marc H. Westbrook. Because of the murder conviction, South Carolina law provided that no additional active term of imprisonment was to be imposed. At the time, South Carolina Code Section 23-3-430 provided that any person convicted of kidnaping was required to register as a sex offender, with no exceptions or qualifications. Since that time, the statute has been amended to provide that a person convicted of kidnaping a person over eighteen years old is not required to register as a sex offender "when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense." S.C. Code 23-3-430 (1999).

A TRUE COPY

*[Signature]*  
Lex. Co. C.C.P., G.S. & F.C.

The South Carolina Department of Corrections (SCDC) is treating the defendant as a sex offender.

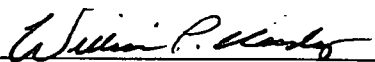
The Solicitor's office's response is attached.

THEREFORE, IT IS ORDERED that the sentence in this case is clarified to reflect that there was no allegation of sexual impropriety related to the kidnaping charge, and Mr. Johnny Bennett is not required to register as a sex offender on this charge. SCDC shall modify its records to reflect this change. In all other respects, the sentence remains as originally imposed. The Clerk of Court shall forward a copy of this order to the defendant, inmate records of the South Carolina Department of Corrections, defense counsel, and the Solicitor's office.

AND IT IS SO ORDERED.

#2

January 22, 2015

  
\_\_\_\_\_  
William P. Keesley  
Judge

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

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

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Appellate Case No. 2010-161446  
Court of Appeals Opinion No. 5524

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CLIFFORD THOMPSON .....*Petitioner,*

v.

STATE OF SOUTH CAROLINA .....*Respondent.*

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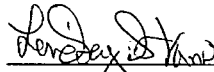
**CERTIFICATE OF SERVICE**

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I, Lindsey S. Vann, hereby certify that I have served upon the attorney for the Respondent one (1) copy of the Reply Brief of Petitioner in the above-captioned case by depositing a copy of same in the United States Mail, first class, postage pre-paid, addressed as follows:

Marcie E. Greene  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211-1549

This the 8th day of May, 2015, in Columbia, South Carolina



---

Lindsey S. Vann

DEATH PENALTY  
RESOURCE & DEFENSE CENTER

May 8, 2015

RECEIVED

MAY 12 2015

SC SUPREME COURT

The Honorable Daniel E. Shearouse  
Clerk  
South Carolina Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

RE: *Clifford Thompson v. State of SC*  
Appellate Case No. 2014-001984  
Court of Appeals Case No. 2010-161446

Dear Mr. Shearouse:

Please find enclosed for filing, with certificate of service, fifteen copies (including one unbound original) of Petitioner's Reply Brief in the above referenced case.

If you should have any questions, please do not hesitate to contact me.

Sincerely,



Lindsey S. Vann

Enclosure

cc: Marcie E. Greene, Esq.  
Clifford Thompson