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STATE OF SOUTH CAROLINA )  
 COUNTY OF SUMTER )  
 Kenneth W. Signor, )  
 Plaintiff, )  
 vs. )  
 Mark Keel, Chief of the South Carolina )  
 Law Enforcement Division, and the State of )  
 South Carolina, )  
 Defendants. )

RECORDED

2015 MAY -1 PM 2:38

JAMES C. CAMPBELL  
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 SUMTER COUNTY, S.C.

COURT OF COMMON PLEAS  
 THIRD JUDICIAL CIRCUIT  
 Civil Action No. 2014-CP-43-00968

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 SUMTER COUNTY  
 SOUTH CAROLINA

ORDER GRANTING JUDGMENT  
 ON THE PLEADINGS **RECEIVED**

MAY 18 2015

SC Court of Appeals

This matter came before me on February 9, 2015 for a motion hearing on the Defendants' Motion for Judgment on the Pleadings. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division and Assistant Attorney General Courtney Lowell.<sup>1</sup> The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Judgment on the Pleadings in this matter.

**BACKGROUND**

In or about 1987, Plaintiff was convicted of Criminal Sexual Conduct with a Minor 2<sup>nd</sup> Degree and Lewd Act with a Minor on or about the year 1987 and was sentenced to fifteen (15) years of incarceration for to the Criminal Sexual Conduct conviction and a term of five (5) years for the Lewd Act conviction. The Plaintiff was released from incarceration on or about April 1, 1994.

<sup>1</sup> The Defendants are additionally represented by Assistant Attorney General Marcie Greene.

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During Plaintiff's incarceration, the South Carolina Sex Offender Registry Act<sup>2</sup> was passed requiring Plaintiff to register as a sex offender. The Plaintiff has registered since that time. See State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's sex offender registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions").

The Plaintiff filed this action based solely on equitable grounds, seeking a declaratory judgment and requesting that this Court remove the Plaintiff from the South Carolina Sex Offender Registry. See Complaint. The Plaintiff concedes that he does not meet any of the statutory criteria for removal as set forth in S.C. Code § 23-3-430, and that he has not sought to avail himself to any of these statutory avenues for removal. *Id.* The Defendants filed this Motion for Judgment on the Pleadings asserting that South Carolina law prohibits the relief sought by the Plaintiff.

### STANDARD OF REVIEW

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12, SCRPC.

"Where the pleadings are fatally deficient in substance or fail to state a good cause of action in favor of the plaintiff and against the defendant, judgment on the pleadings is proper. Whereas here the pleadings disclose all facts necessary or where the pleadings present no issue of fact the Court may exercise its discretion." Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982). The grant of a judgment on the pleadings is within the discretion of the trial court. *Id.*

A "motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or

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<sup>2</sup> S.C. Code § 23-3-400 *et seq.*

present merely an immaterial issue.” Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982).

### DISCUSSION

South Carolina’s Sex Offender Registry statutes, S.C. Code Ann. § 23-3-400 *et seq.*, provide the only lawful mechanisms and avenues by which an individual who is properly placed on the registry can be removed.<sup>3</sup> Pursuant to § 23-3-430(E), “SLED shall remove a person’s name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person’s adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered.” S.C. Code Ann. § 23-3-430(E). Pursuant to § 23-3-430(F), an offender who receives a pardon “based on a finding of not guilty specifically stated in the pardon” shall be removed. S.C. Code Ann. § 23-3-430(F). Pursuant to § 23-3-430(G) individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial are removed. S.C. Code Ann. § 23-3-430(F).

The pleadings demonstrate that the Plaintiff does not contend that he meets any of the statutory criteria that entitle him to removal from the registry and he did not argue any statutory entitlement to relief. However, Plaintiff contends that he is entitled to relief based upon equity.

The statute providing for lifetime registration is unambiguously worded. *See* S.C. Code Ann. § 23-3-460 (“A person required to register pursuant to this article is required to register biannually **for life**.” (emphasis added))<sup>4</sup>. The South Carolina Supreme Court has specifically held that

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<sup>3</sup> In fact, I note that the mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by the same code section, to wit: S.C. Code Ann. § 23-3-430.

<sup>4</sup> However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

[i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly").

Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007). It is also well-known that "equity follows the law." *See* Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 319-20, 659 S.E.2d 263, 267 (Ct. App. 2008). Moreover, the South Carolina Supreme Court has held that a "court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (emphasis added)).

South Carolina law provides that "[w]hen providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). Furthermore, the South Carolina Supreme Court has held that "[e]quitable relief is generally available only where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) *citing* 27 *Am.Jur.* 2d, *Equity*, § 94 (1966). The Supreme Court has noted that an "adequate remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its

administration as the remedy in equity.” *Id.* South Carolina’s Sex Offender Registry provides an adequate remedy to the Plaintiff in that there are several statutory methods through which the Plaintiff could be legally removed from the registry. It appears that he simply does not qualify for them.

The issues presented in this case are analogous to legislatively mandated minimum sentences for criminal offenses. *See* S.C. Code Ann. § 16-11-330 (10 years); S.C. Code Ann. § 44-53-370 (various mandatory minimums for distribution or trafficking illegal drugs); S.C. Code Ann. § 16-3-30 (30 years). Following convictions of these offenses, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals below the statutorily set amounts.<sup>5</sup> However, these statutory minimums are, and have been consistently upheld as being, lawful. *See State v. De La Cruz*, 302 S.C. 13, 393 S.E.2d 184 (1990); *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001); *State v. Johnson*, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). In fact, the South Carolina Supreme Court conclusively resolved this issue in *State v. De La Cruz* indicating

[w]e have held in the past that “[t]he penalty assessed for a particular offense is, except in the rarest of cases, ‘**purely a matter of legislative prerogative**,’ and the legislature’s judgment will not be disturbed.” *State v. Smith*, 275 S.C. 164, 167, 268 S.E.2d 276, 277 (1980) (quoting *Rummel v. Estelle*, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980)). Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restriction. *See Mistretta v. United States*, 488 U.S. 361, ----, 109 S.Ct. 647, 650, 102 L.Ed.2d 714, 725-726 (1989), wherein the United States Supreme Court noted, “Congress, of course, has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control.” (Citing *United States v. Wiltberger*, 18 U.S. (5 Wheat) 76, 5 L.Ed. 37 (1820); *Ex Parte United States*, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916)).

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<sup>5</sup> In the same way, legislatively enacted maximum sentences also apply.

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).<sup>6</sup> In addition, the Supreme Court has also noted that

[u]nder the mandatory sentencing guidelines, the prosecutor can still choose not to pursue the triggering offenses or to plea the charges down to non-triggering offenses. Choosing which crime to charge a defendant with is the essence of prosecutorial discretion, not choosing which sentence the court shall impose upon conviction. Further, we found the matter of sentencing if convicted of a triggering offense to be a matter within the province of the legislature. *Id.*

State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001). The duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated by the South Carolina Constitution. *See* S.C. Const. art. I, § 8 ("In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."). Furthermore, South Carolina law is clear, "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. S.C. Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) *citing* Noisette v. Ismail, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App. 1989) ("Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law.").

### CONCLUSION

Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. For this Court to act as a "superlegislature" and to unilaterally

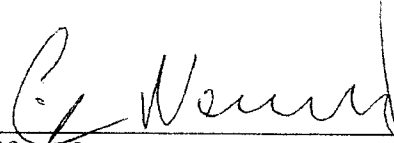
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<sup>6</sup> It is noteworthy that sex offender registration has been consistently held not to be "punitive in purpose or effect as to constitute a criminal penalty." State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

deviate from an unchallenged and unambiguously worded statute would be contrary to South Carolina law and the South Carolina Constitution.

It is therefore ORDERED that the Defendants' Motion for Judgment on the Pleadings is hereby GRANTED.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "Clifton Newman", written over a horizontal line.

Clifton Newman  
Presiding Judge

Columbia, South Carolina  
April \_\_, 2015