

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS  
) TWELFTH JUDICIAL CIRCUIT  
) Civil Action No. 2014-CP-21-01973

Melvin T. Roberts,  
Plaintiff/Petitioner,

vs.

Mark Keel, Director, South Carolina Law  
Enforcement Division (SLED) and the State of  
South Carolina,  
Defendants/Respondents.

**RECEIVED**

ORDER GRANTING MAY 26 2015  
JUDGMENT ON THE  
PLEADINGS

SC Court of Appeals

This matter came before me on March 19, 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.<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

By way of background, the Plaintiff was convicted of Rape on or about the year 1975 and was sentenced to forty (40) years of incarceration for this conviction. The Plaintiff was released from incarceration on or about February 8, 1989. Upon the inception of the South Carolina Sex Offender Registry,<sup>2</sup> the Plaintiff was required to register as a sex offender. *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 has registered since that time.

<sup>1</sup> The Defendants are additionally represented by Assistant Attorneys General Courtney Lowell and Marcie Greene.

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

The Plaintiff filed this action seeking a declaratory judgment and requesting that this Court remove the Plaintiff from the South Carolina Sex Offender Registry based solely on equitable grounds. *See* Complaint. However, the Plaintiff concedes that he does not meet any of the statutory criteria for removal 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.* Accordingly, the Defendants filed this Motion for Judgment on the Pleadings asserting that South Carolina law prohibits such equitable relief in this matter.

#### 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, SCRCP.

“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 present merely an immaterial issue.” Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982) *citing* Wooten v. Std. Life and Casualty Ins. Co., 239 S.C. 243, 122 S.E.2d 637 (1961).

## LAW / ANALYSIS

I find and conclude that the Defendants are entitled to a Judgment on the Pleadings because the pleadings demonstrate that there is no cause of action in favor of the plaintiff in this matter. 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). And finally, 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(G). I find and conclude that these are the only lawful avenues by which an individual who is properly placed on the Registry can be removed. However, as noted above, the pleadings demonstrate that the Plaintiff does not meet any of these statutory criteria such that the Plaintiff is lawfully entitled to removal from the Registry. Accordingly, I find that there is no legal or constitutional basis on which this Court could grant the relief requested by the Plaintiff and judgment on the pleadings is proper. *See* S.C. Code Ann. § 23-3-460 (mandating lifetime registration in South Carolina); S.C. Code Ann. § 23-3-430 (setting forth the only avenues for removal); Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638 (1982).

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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.

As a threshold matter, it is noteworthy that South Carolina's Sex Offender Registry is constitutional and the constitutionality of the Registry was not challenged in this action. See Complaint; State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"); see also In re Justin B., 405 S.C. 391, 747 S.E.2d 774 (2013) *cert. denied sub nom. Justin B. v. S. Carolina*, 134 S. Ct. 1496 (2014) (finding South Carolina's lifetime electronic monitoring program constitutional). Moreover, I find and conclude that South Carolina's statutory lifetime registration requirement is set forth in an unambiguously worded statute. 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> As such, South Carolina law mandates that there is no equitable jurisdiction in this matter. The South Carolina Supreme Court has specifically held that

[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

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

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). Accordingly, I find that equity must follow the law in this matter and that this Court’s equitable powers must yield in the face of South Carolina’s unambiguously worded Sex Offender Registry law, which mandates lifetime registration.

South Carolina jurisprudence also 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 also 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.* I find and conclude that this does not however mean that the person seeking relief must be eligible for the relief set forth in the statute; rather, “adequate relief” means only that some certain definitive statutory relief exists. Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n, 298 S.C. 179, 379 S.E.2d 119 (1989). Accordingly, I find and conclude that South Carolina’s Sex Offender Registry provides an adequate remedy to the Plaintiff in this matter because there are several statutory methods in which the Plaintiff can be legally removed from the registry, he simply does not qualify for them. Therefore, judgment on the pleadings is proper.

This situation is 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)).

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.*

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

<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.

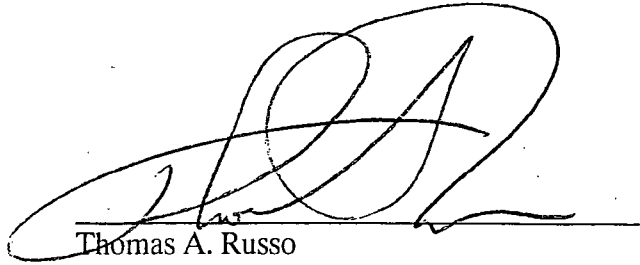
State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001). Similarly, I find and conclude that the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated 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, I find and conclude there is simply no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. Furthermore, I find and conclude that for this court to act as a "superlegislature" and to unilaterally add language to an unchallenged, unambiguously worded statute would violate South Carolina law and the South Carolina Constitution. See Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989); S.C. Const. art. I, § 8.

Therefore, it is hereby ORDERED, DECREED, and ADJUDGED that the Defendants' Motion for Judgment on the Pleadings is GRANTED.

AND IT IS SO ORDERED.



Thomas A. Russo  
Presiding Judge  
Court of Common Pleas  
12<sup>th</sup> Judicial Circuit

Lexington, South Carolina  
4-16, 2015

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY  
Governor



MARK A. KEEL  
Chief

May 15, 2015

The Honorable Connie Reel-Shearin  
Clerk of Court  
180 N. Irby Street, MSC-E  
Florence, South Carolina 29501-3456

Re: Roberts v. Keel and State of South Carolina  
Civil Actio No.: 2014-CP-21-1973

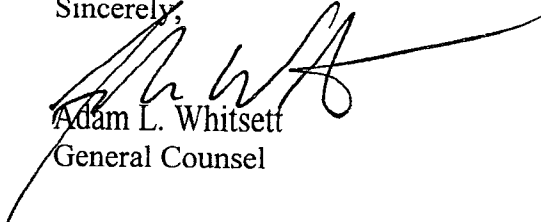
Dear Clerk of Court:

I hope this correspondence finds you well. Enclosed please find original and one (1) copy of the **Order Granting Judgment on the Pleadings** which Judge Russo has signed in the above matter. Although I do not believe that a FORM 4C was required as this order does not include any judgment enrollment information for the judgment index, I have included one at your request.

I would appreciate your filing the original order and returning the executed copy in the enclosed envelope. As you can see, I have copied this correspondence, including the enclosure, to opposing counsel.

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

With kind regards, I am  
Sincerely,

  
Adam L. Whitsett  
General Counsel

Enclosures – listed in text

Cc: Charlest T. Brooks, III, Esquire (w/ enclosure)  
Assistant Attorney General Courtney Lowell (w/ enclosure)



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

Melvin T. Roberts

Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Adam L. Whitsett, Esquire

Attorney for :  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

