

EXHIBIT "B"

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STATE OF SOUTH CAROLINA
SC COURT OF APPEALS
COUNTY OF SUMTER

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TWELFTH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-43-00535

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Marty Lee Barnes,

Petitioner,

vs.

The State of South Carolina,

Respondent.

**ORDER GRANTING MOTION
TO SET ASIDE JUDGMENT**

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Sherry H. How
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter came before me on a Motion to Set Aside Judgment filed on behalf of the State of South Carolina. The Defendants were represented at the hearing by Adam L. Whitsett, General Counsel to the South Carolina Law Enforcement Division and Assistant Attorney General Courtney Lowell.¹ The Petitioner was represented by Jack D. Howle, Jr., Esquire, of the Third Circuit Chief Public Defender. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion to Set Aside Judgment in this matter.

BACKGROUND

In or about 1986, the Petitioner was tried in absentia in the General Sessions Court of Sumter County and was convicted of two counts of kidnapping.² As a result of the Petitioner's kidnapping convictions, the Petitioner was sentenced to imprisonment for the balance of his natural life. One of these convictions was for the kidnapping of a person under the age of eighteen who was not the Petitioner's child. The other involved the kidnapping of an adult.

¹ The Defendant is additionally represented in this action by Assistant Attorney General Marcie Greene.

² The Petitioner was also convicted of Assault and Battery with Intent to Kill, Assault and Battery with Intent to Kill 2nd, and Carrying a Concealed Weapon at that time, but those convictions do not bear on this action.

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During the Petitioner's incarceration, the South Carolina Sex Offender Registry Act³ was passed. In or about 2002, the Petitioner was paroled and released from incarceration and was required to register as a sex offender at that time. See S.C. Code Ann. § 23-3-430(C)(16) (Supp. 2000). The Petitioner's parole was revoked in 2008 and the Petitioner was returned to incarceration where he currently remains.

In or about February of 2011, the Petitioner filed a Motion of Sentence Clarification seeking removal from the registry. The matter was heard on April 2, 2012, subsequently this Court issued an order dated April 16, 2012 removing the Petitioner from the South Carolina Sex Offender Registry based on equitable grounds. The State of South Carolina filed a Motion to Set Aside Judgment pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.

DISCUSSION

The Petitioner was properly registered as a sex offender upon being released from incarceration in 2002. S.C. Code Ann. § 23-3-430(C)(16) (Supp. 2000); see also 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 Petitioner's conviction involved the kidnapping of a person under the age of 18 who was not the Petitioner's child. As such, the plain language of § 23-3-430(C)(16), requires the Petitioner to register as a sex offender regardless of whether his kidnapping involved any criminal sexual offense or attempted criminal sexual offense. *Id.*⁴

³ S.C. Code § 23-3-400 *et seq.*,

⁴ There is a different code section with different criteria that applies to individuals convicted of kidnapping adults. See S.C. Code Ann. § 23-3-430(C)(15) (registration is required unless a "court makes a finding on the record that the offense did not involve criminal sexual offense or attempted criminal sexual offense").

South Carolina's Sex Offender Registry statutes, S.C. Code § 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.⁵ 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).

In this case the Petitioner does not contend that he meets any of the statutory criteria that entitle the Petitioner to removal from the registry.

The statute providing for lifetime registration in South Carolina 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**").⁶ The South Carolina Supreme Court has 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").

⁵ In fact, I note that the mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by this same code section. *See* S.C. Code § 23-3-430.

⁶ However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

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 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.*

South Carolina’s Sex Offender Registry provides an adequate remedy to the Petitioner in that there are several statutory methods through which the Petitioner could be legally removed from the registry, if he so qualifies.

The duration of an individual’s sex offender registration is purely a matter of legislative prerogative and there exists no judicial discretion without violating the separation of powers

mandated by the South Carolina Constitution. 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.”).

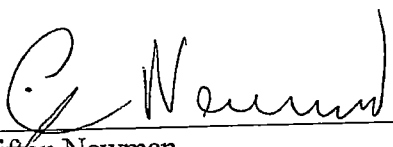
CONCLUSION

Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and this Court’s previous order should be set aside and vacated pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.

For this court to act as a “superlegislature” and to unilaterally add language to an 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.

It is therefore ordered that the Defendants’ Motion to Set Aside Judgment is GRANTED and the Order of this Court entered on April 16, 2014 is hereby vacated.

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

Columbia, South Carolina
June 8, 2015

Jack D. Howle Jr.
PO Box 98
Sumter, SC 29151

SCANNED 6/17/15
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BY: *[Handwritten signature]*