

# EXHIBIT "A"

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

IN THE COURT OF COMMON PLEAS )  
THIRD JUDICIAL CIRCUIT )

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Case No. 2012-CP-43-535

Marty Lee Barnes

Petitioner

vs.

The State of South Carolina,

Defendant

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GENERAL CIRCUIT, SUMTER

ORDER

This matter came before the court on April 2, 2012 upon a Motion of Sentence Clarification filed on February 15, 2011, seeking declaratory relief.

Present at the call of the case was the Petitioner, and the Petitioner's attorney, Jack D. Howle, Jr., Chief Public Defender for the Third Judicial Circuit and Tyler Brown, Assistant Solicitor for Sumter County, representing the State. After hearing the arguments presented before the court, this court makes the following findings of facts and conclusions of law:

FINDING OF FACTS:

This court has the power to make finding of facts pursuant to the Declaratory Judgment Act, Section 15-53-20, SC Code of Laws (Hazel v. State 659 S.E. 2nd, 137 (2008)).

This court finds that the Petitioner, Marty Lee Barnes, was tried in absentia in the court of General Sessions in Sumter County and was found guilty of kidnapping (2 counts), for which he received a sentence of a term of the balance of his natural life; ABWIK, for which he received a sentence of ten years; ABWIK 2nd, for which he received a sentence of ten years; and Carrying a Concealed Weapon, for which he received a sentence of 90 days, all counts to run concurrent. The charges as enumerated above were listed under indictment number 1986-GS-43-384 and sentence was imposed on October 15, 1986 by the Honorable Dan F. Laney, Jr.

Subsequently in 1994 the Legislature passed the Sex Offender Registry, 23-3-4 et. seq. Under the provisions of Section 23-3-430 (c) (16), Kidnapping (under section 16-3-910) of a

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person under 18 years of age, except when the offense is committed by a parent, is one of the enumerated offenses for which one can be placed on the Sex Offender Registry.

Mr. Barnes was paroled in 2002 and was placed on the Sex Offender Registry. In 2008 Mr. Barnes' parole was violated when he tested positive for marijuana. Mr. Barnes has remained in prison from the time of this revocation in 2008 until the present.

The relief now sought by the Petitioner, Marty Lee Barnes, under his Motion of Sentence Clarification concerns a matter of equitable relief in seeking to not require registration under the Sex Offender Registry when he is eligible for Parole under his present incarceration. The offense of kidnapping, for which Mr. Barnes was convicted, consisted of two acts: the abduction of Laura Hassler and Christopher Hassler. Mr. Barnes approached Ms. Hassler, and under threat of bodily harm with a knife, required her to drive off and Christopher Hassler was an infant in the back set of the car. It was the kidnapping of this infant that brought Provision 16 as the reason for placing Mr. Barnes on the Sex Offender Registry.

The Solicitor indicated that he had looked into this case very carefully to see if there was any verification of sexual conduct on the part of Mr. Barnes. He told the court that he found no such conduct in the actions or comments of Mr. Barnes towards either Ms. Hassler or Christopher Hassler.

The court is aware that in order for a defendant not to be required to register under the Sexual Offender Registry, should his offense come under one of the enumerated offenses under the provisions, the court is to make a specific finding that a sexual threat or act did not occur. Obviously, since this act was not passed until eight years after the Defendant was sentenced, no such finding was made by the court at the time of the trial.

The Defendant testified that over his many years of incarceration he has considered what his opportunities will be when he is released. When he was paroled in 2002 and placed under the Sexual Registry he did everything that was required and did not violate any of those provisions as

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required except for testing positive for marijuana, which caused him to be re-incarcerated. The Defendant clearly stated to the court that upon his release, when he shall make parole again, his future will be greatly affected should he be required to be on the Sex Offender Registry and that there was nothing that he did in committing the offenses, as heinous as they may be, that would require him to be placed on this registry.

The court finds that ample reasons have been presented before this court to support a finding that the Petitioner is entitled to personal relief in these circumstances.

CONCLUSIONS OF LAW :

Petitioner's action is properly one for declaratory judgment and this court has the jurisdiction to grant him relief. The petition did not come before the court seeking relief on a constitutional claim; however, equitable personal relief certainly is appropriate in this case.

The purpose of the Sex Offender Registry is " to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes." State v. Walls 348, S.C, 26, 558 SE 2d 524 (2002). Although convicted of a count of kidnapping of a person under 18 years of age, the facts before this court do not support a finding that the Petitioner is or ever was a child molester. Under the facts of the Petitioner's case, the requirement of lifelong sex offender Registry is wildly disproportionate to the underlining conduct. Although the South Carolina Supreme Court has determined " registering as a sex offender is a non-punitive imposition," justice compels a remedy for this particular situation. Walls, Supra.

South Carolina courts have long observed that equity "looks beneath rigid rules of law to seek substantial justice." Dreary Development Corporation v. Foundation Insurance Company, et.al. 380 S.C. 97, 668, SE 2d 798 (2008). Substantial justice is served in this case by granting Plaintiff personal relief. Principles of justice and right compel this court to grant Petitioner's request for removal from the South Carolina Sexual Offender Registry.

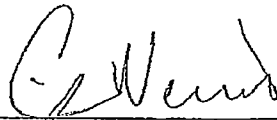
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THEREFORE, IT IS THE JUDGMENT OF THIS COURT THAT :

1. The Petitioner has established his claim for relief by evidence satisfactory to the court;
2. The South Carolina Law Enforcement Division is hereby ordered to move the Petitioner's name from the South Carolina Sex Offender Registry within ten days of the date of service of this order.
3. Upon such time as the Petitioner may be paroled from his present incarceration, he shall not be subject to being placed on the South Carolina Sex Offender Registry.

AND IT IS SO ORDERED

Sumter, South Carolina  
April 1, 2012

  
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Clifton Newman  
Presiding Judge  
Third Judicial Circuit