THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

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SC Court of Appeals

Thomas A. Russo, Circuit Court Judge

Case No.: 2014-CP-21-01973

Melvin T. Roberts, ... Appellant,

v.

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

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. **The trial court did not err in granting judgment on the pleadings to respondents because no genuine issue of material fact exists and the only relief sought in this action is not available as a matter of law.**

II. **The trial court did not err in finding that the South Carolina Sex Offender Registry Act (SORA), S.C. Code §§ 23-3-400 *et seq.*, provides adequate relief to all sex offenders, including appellant.**

STATEMENT OF THE CASE

The appellant was convicted of Rape in 1975 and was sentenced to forty (40) years. (Tr. pp. 3-4, 14)(R. pp.). Upon the inception of the South Carolina Sex Offender Registry Act ("SORA"), which is S.C. Code §§ 23-3-400 *et seq.*, the appellant was required to register as a sex offender and did in fact so register. (Tr. pp. 3-4)(R. pp.). On or about July 14, 2014, the appellant filed a summons and complaint initiating this action seeking only equitable relief because the appellant acknowledges that he does not meet the statutory criteria for removal set forth in the plain language of SORA. *See* S.C. Code Ann. § 23-3-430(E), (F), (G). (Tr. pp. 19-20)(R. pp.). The respondents filed an answer and a motion for judgment on the pleadings. The Honorable Thomas A. Russo heard the motion on March 19, 2015 and granted respondents judgment on the pleadings. This appeal follows.

STANDARD OF REVIEW

"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); Rule 12, SCRCP.

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. at 422, 297 S.E.2d at 640 (1982) (citing Wooten v. Std. Life and Casualty Ins. Co., 239 S.C. 243, 122 S.E.2d 637 (1961)).[1]

A motion for summary judgment shall be granted "if the pleadings ... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) *citing* Rule 56(c), SCRCP (emphasis in original). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976).

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[1] Prior to this appeal, the arguments in this action focused solely on judgment on the pleadings. However, in his brief, the appellant asserts for the first time that a summary judgment standard is appropriate because the appellant presented matters outside the pleadings at the hearing, to wit: the affidavit of Dr. Thomas Martin. Respondent hereby acknowledges the presentation of materials outside the pleadings at the hearing. However, respondent believes that the trial court's decision should be affirmed under either standard of review and that the trial judge properly exercised his discretion in this matter.

When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. WDW Properties v. City of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000) (citing J.K. Constr., Inc. v. Western Carolina Regional Sewer Authority, 336 S.C. 162, 519 S.E.2d 561 (1999).

ARGUMENT

I. The trial court did not err in granting judgment on the pleadings to respondents because no genuine issue of material fact exists and the only relief sought in this action is not available as a matter of law.

Based on the following, respondents assert that the appellant's pleadings were fatally deficient in that the pleadings failed to state a good cause of action in favor of the appellant against the respondents. Accordingly, the trial judge properly exercised his discretion in granting judgment on the pleadings to respondents in this matter. *See* Rosenthal v. Unarco Indus., Inc., 278 S.C. at 422, 297 S.E.2d at 640; Rule 12, SCRCP. Further, there is no genuine issue of material fact in dispute in this action and there is certainly no factual dispute requiring the services of a fact finder. Accordingly, the trial judge properly exercised his discretion in granting respondents judgment as a matter of law, regardless of whether it is styled judgment on the pleadings or summary judgment. *See* George v. Fabri, 345 S.C. at 452, 548 S.E.2d at 874; Rule 56(c), SCRCP; Rule 12, SCRCP.

As a threshold matter, it is noteworthy that appellant is **not** challenging the constitutionality of his SORA registration requirement. (Tr. p. 23)(R. p.). Nevertheless, the appellant's non-punitive SORA registration requirement is in fact constitutional. *See* 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."); Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) (holding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."). In addition, SORA is

intended for investigative, statistical, and public safety purposes for the citizens of South Carolina and is not meant to punish or violate one's constitutional rights. Specifically, § 23-3-400 provides:

> The intent of this article is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens. Notwithstanding this legitimate state purpose, these provisions are not intended to violate the guaranteed constitutional rights of those who have violated our nation's laws.
>
> The sex offender registry will provide law enforcement with the tools needed in investigating criminal offenses. Statistics show that sex offenders often pose a high risk of re-offending. Additionally, law enforcement's efforts to protect communities, conduct investigations, and apprehend offenders who commit sex offenses are impaired by the lack of information about these convicted offenders who live within the law enforcement agency's jurisdiction.

S.C. Code Ann. § 23-3-400.

Appellant was convicted of Rape in 1975 and this conviction mandates lifetime registration in South Carolina pursuant to SORA.[2] *See* S.C. Code Ann. § 23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute - "for life"); (Tr. pp. 3-4, 14)(R. pp.). Moreover, SORA's statutory lifetime registration requirement exists for all sex offenders, including the appellant, and is set forth in a clear and 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.").[3]

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[2] The crime of Rape in South Carolina is now Criminal Sexual Conduct in the First Degree, which is S.C. Code Ann. § 16-3-652.

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

As the trial court correctly held, SORA lists the only mechanisms and avenues by which an individual who is properly registered pursuant to SORA can be removed from the registry.[4] *See* S.C. Code Ann. § 23-3-430(E), (F), (G). 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 from sex offender registry. S.C. Code Ann. § 23-3-430(F). And finally, § 23-3-430(G) mandates removal for individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial. S.C. Code Ann. § 23-3-430(F). These are the **only lawful avenues** by which an individual who is properly placed on the SORA registry can be removed.

However, there is no genuine issue of material fact to suggest that appellant meets any of these statutory criteria. Rather, as the appellant concedes, appellant has not even sought to avail himself of any of the statutory avenues for removal set forth in SORA. (Tr. pp. 19-20)(R. pp.). Accordingly, the trial court correctly held that there is no legal or constitutional basis for the appellant to be removed from the SORA registry. Therefore, the trial court correctly granted judgment as a matter of law to the respondents. *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).

[4] In fact, 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.

The appellant's entire argument in this action is that his non-punitive and constitutional SORA registration requirement is somehow a "wrong" in need of an equitable remedy. This argument is without merit and was correctly rejected by the trial court. The constitutional application of a clear, unambiguous, and non-punitive statute is not a "wrong" cognizable in the law. *See* State v. Walls, 348 S.C. at 31, 558 S.E.2d at 526 (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."); Hendrix, 353 S.C. at 552, 579 S.E.2d at 325 (holding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."). Further, it is 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). Moreover, "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. South Carolina 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)).

The South Carolina Supreme Court has also held unequivocally that "the court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)(emphasis added); *see also* Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007) (finding error in fashioning an equitable remedy in the face of an unambiguously worded statute setting forth certain remedies). As such, the trial court's rejection of the appellant's equitable claim was correct and its findings should not be disturbed on appeal.

Furthermore, as the trial court correctly noted, for any court to fashion an equitable remedy in the face of an unambiguously worded statue would be a clear violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The South Carolina Constitution specifically provides that "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." S.C. Const. art. I, § 8. The trial court correctly held that the duration of sex offender registration is a matter of public policy that is solely in the province of the South Carolina Legislature. As such, any attempt by any court to invade the Legislature's exclusive province is a violation of the separation of powers and is unconstitutional. *Id.*

In addition, the South Carolina Supreme Court has specifically held that

> If 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, 373 S.C. at 59, 644 S.E.2d at 675 (emphasis added). As noted by the trial court, this entire action sought for the trial court to impermissibly and unconstitutionally act as a "superlegislature" and to add language to an unambiguously

worded constitutional statute. As such, the trial court correctly exercised his discretion and rejected this claim as a matter of law.

As the trial court also correctly noted, this situation is comparable to legislatively mandated sentences for criminal offenses, whether minimums or maximums. (Tr. p. 8)(R. p.). With regard to sentencing for an offense that has a mandatory sentence range, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals outside the statutorily set amounts. However, these statutory ranges, and more specifically the statutorily mandated minimum sentences are lawful, and have been consistently upheld as being such. *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 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. at 15-16, 393 S.E.2d at 186 (emphasis added).[5] Similarly, the trial court correctly held that the duration of an individual's sex offender registration is **purely a matter of legislative prerogative** and that there is no judicial discretion over this duration without violating the South Carolina Constitution and South Carolina law. *See* S.C. Const. art. I, § 8; S.C. Code Ann. § 23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute); Hendrix, 353 S.C. at 552, 579 S.E.2d at 325 (holding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."). As such, the trial court properly exercised his discretion in granting respondents a judgment as a matter of law in this matter.

The appellant also attempts to assert that there is a material fact in dispute as to the existence or non-existence of the equitable relief sought in this matter. (Initial Br. p. 5). This argument is without merit because any argument regarding the availability of an equitable remedy, or any remedy for that matter, is purely a matter of law. There is no factual dispute at issue whatsoever as to whether South Carolina courts can simply disregard the South Carolina law and remove an individual from the SORA registry in equity. As such, there is no material fact in dispute and trial court correctly granted judgment as a matter of law to the respondents in this matter. Therefore, the trial court's decision should be upheld and affirmed in its entirety.

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[5] 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. at 31, 558 S.E.2d at 526. However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

II. The trial court did not err in finding that the South Carolina Sex Offender Registry Act (SORA), S.C. Code §§ 23-3-400 *et seq.*, provides adequate relief to all sex offenders, including appellant.

The trial court also correctly held that SORA provides adequate relief to all sex offenders, including the appellant. It is noteworthy yet again that there is no challenge whatsoever as to the constitutionality of SORA in this action. (Tr. p. 23)(R. p.); *see also* State v. Walls, 348 S.C. at 31, 558 S.E.2d at 526 (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"); Hendrix, 353 S.C. at 552, 579 S.E.2d at 325 (holding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."). Rather, the only argument set forth in this action is that the South Carolina Legislature enacted an incomplete statute and "should have" afforded individuals like the appellant a "more" meaningful opportunity to seek removal from the SORA registry. As discussed in Section I, *supra*, the duration of an individual's SORA registration requirement is purely a matter of legislative prerogative and whether or not the South Carolina Legislature "should" add additional language to the clear and unambiguous provisions of SORA is a matter for the Legislature that is not constitutionally subject to judicial review. *See Id.*

The South Carolina Supreme Court has specifically held that "the court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123 (emphasis added). In addition, the Court has specifically held that

> If 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, 373 S.C. at 59, 644 S.E.2d at 675 (emphasis added).

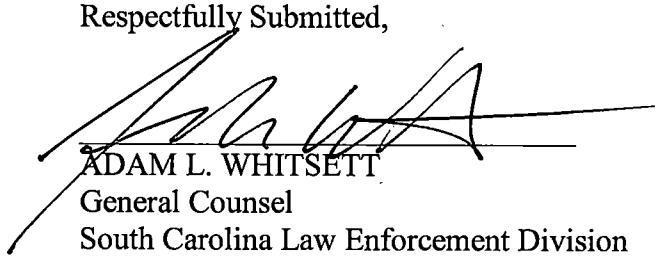
Moreover, the South Carolina Supreme Court has noted that "[e]quitable relief is generally available **only** where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123 (1989) (citing 27 Am.Jur. 2d, Equity, § 94 (1966) (emphasis added). The Santee Cooper Court further 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.* As the trial court correctly noted, this does not however mean that the person seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that some certain definitive statutory relief exists. Key Corporate Capital, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123. Furthermore, it is noteworthy that "[w]hen providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank, 394 S.C. at 254-55, 715 S.E.2d at 355 (citing Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)).

Here, there is no dispute that some certain definitive statutory relief exists in SORA because § 23-3-430(E), (F), (G) clearly set forth definitive means by which an individual can seek removal from the SORA registry. However, despite the existence of definitive statutory relief, the appellant, who has not even sought to avail himself of such relief, argues that because the South Carolina Legislature "should have" added more avenues for relief and the courts should step in and add language to an unambiguously worded constitutional statute. As discussed in Section I, *supra*, for any court to fashion an equitable remedy in the face of an unambiguously worded statue such as SORA would be a clear violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. As such, the trial court correctly held that "equity follows the law" and that "the court's equitable powers **must yield** in the face of an unambiguously worded statute." Regions Bank, 394 S.C. at 254-55, 715 S.E.2d at 355; Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123 (emphasis added). Because SORA sets forth an adequate remedy for the appellant, and all sex offenders in South Carolina, the trial court properly held that equitable relief is not available and properly exercised his discretion in granting respondents judgment as a matter of law. Therefore, the trial court's decision should be upheld and affirmed in its entirety.

CONCLUSION

In conclusion, based on the foregoing and the applicable laws of the State of South Carolina, this Court should uphold and affirm the trial court's decision in its entirety.

Respectfully Submitted,



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Melvin T. Roberts, ... Appellant,

v.

Mark Keel, Chief of the South Carolina
Law Enforcement Division (SLED) and
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PROOF OF SERVICE

I hereby certify that I served the **Initial Brief of Respondents** and **Respondents' Designation of Matter to Be Included in the Record on Appeal** on appellant by depositing a copy of the same in the United States mail, postage prepaid, and addressed to his attorney as follows:

Charles T. Brooks, III, Esquire
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on November 12, 2015 from Columbia, South Carolina.

By: _____
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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor

MARK A. KEEL
Chief

November 12, 2015

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VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
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Re: Melvin T. Roberts v. Mark Keel et al.
Case No.: 2014-CP-21-01973
Appellate Case No.: 2015-001138

Dear Madam Clerk:

In accordance with Rules 208 and 209, SCACR, enclosed for filing are the original and one copy of the **Initial Brief of Respondents** and the **Respondents' Designation of Matter to Be Included in the Record on Appeal.** I would appreciate your filing the originals and returning the clocked copies at your convenience. I have also enclosed the original **Proof of Service** for the same.

If you should 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: Charles T. Brooks, III, Esquire (consel for Appellant)