THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENWOOD COUNTY

Donald B. Hocker, Circuit Court Judge

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S.C. Supreme Court

Appellate Case Number: 2014-002721

Edward Dean and Nolan Brown — Appellants

v.

Mark Keel in his official capacity as Chief of the South Carolina Law Enforcement Division — Respondent

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Petition for Rehearing

Pursuant to Rule 221(a), SCACR, the appellants, Edward Dean and Nolan Brown, petition this Court for rehearing because the Court overlooked or misapprehended the following:

1. **Doctrine of *parens patriae.***

The Court's opinion did not address the doctrine of *parens patriae*. Our state's adherence to this doctrine is the only reason why the State was allowed to treat Edward Dean and Nolan Brown differently from adults based on juvenile adjudicaitons. This case, therefore, presents the perfect opportunity for this Court to address the problem it recognized in *In re Kevin R.*, 2012-212655, 2014 WL 3844076 (fn. 10) (S.C. Aug. 6, 2014), which is:

> Although the issue is not before the Court, we note the inconsistent positions of the General Assembly to limit the negative civil parameters of adjudication proceedings but permit the consequences of an adjudication to continue for the lifetime of one who is adjudicated delinquent for sex offenses. If this state retains the doctrine of *parens patriae* in juvenile proceedings, then the consequences of these proceedings should expire when the individual reaches the age of twenty-one years old. *See* S.C.Code Ann. § 63–19–1410(A)(5) (2010) (providing that commitment "must be for an indeterminate period but in no event beyond the child's twenty-first birthday").

Deciding this matter under the doctrine of *parens patriae* allows this Court to address this issue without having to decide that the sex offender registry is punitive. South Carolina, having guaranteed the confidentiality of Dean and Brown's juvenile records, thereby creating a liberty interest, cannot take away the protections without due process of law.

2. Our states sex offender registry is punitive.

This Court steadfastly holds every sex offender registry condition is civil and not punitive. *State v. Nation*, 408 S.C. 474, 759 S.E.2d 428 (2014); *In re Justin B.*, 405 S.C. 391, 747 S.E.2d 774 (2013); *State v. Dykes*, 403 S.C. 499, 744 S.E.2d 505 (2013); *Hendrix v. Taylor*, 353 S.C. 542, 579 S.E.2d 320 (2003); *In re Ronnie A.*, 355 S.C. 407, 585 S.E.2d 311 (2003); and *State v. Walls*, 348 S.C. 26, 558 S.E.2d 524 (2002). This Court adheres to this position even though our state's sex offender registry has evolved over time and become punitive. *See* Final Brief of Appellants, Argument I, Section A, pp. 7-9 and Argument III, pp. 15-21. *And see Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*, Record on Appeal, pp. 85-199. Even though Dean and Brown had every right to believe that the consequences of their juvenile adjudications ended at their twenty-first birthday, South Carolina passed

the sex offender registry and placed them on lifetime probation, requiring them to report monthly, provide information, and pay fees to the state.

Once this Court recognizes the sex offender registry is punitive, the need to reverse the trial court, based on the constitutional issues presented in this case, becomes apparent. *See* Section 3, *infra.*

3. State and Federal Constitutional issues.

In Argument III, pp. 15-21, appellants asked this Court hold retroactive application of the sex offender registry to juveniles violates the *ex post facto* prohibition. As part of that argument, appellants asked this Court to

> determine an issue left unresolved by the Supreme Court of the United States, to wit: whether the mandatory, in person, reporting requirement, combined with the annual fee, renders the sex offender registration requirement punitive, thereby implicating *ex post facto* clauses and the Eighth Amendment. As Tier III offenders, South Carolina requires Dean and Brown to register, in person, at the Sheriff's Department "every ninety days." S.C. Code Ann. §23-3-460(B). They also must pay an annual registration fee of $150.00. Sex offender registration in South Carolina is for life, and the statute does not allow any opportunity to apply to be removed from the registry. South Carolina's sex offender registry, therefore, is equivalent to lifetime probation.

Appellants pointed to the Supreme Court of the Unites States' opinion in *Smith v. Doe,* 538 U.S. 84 (2003), reserving this issue, and to how other states have addressed situations similar to the case before the Court in the aftermath of *Smith v. Doe.* This Court's opinion did not address *Smith v. Doe* or these other cases. Once these authorities are considered, the need to reverse the trial court becomes apparent.

Retroactively requiring Dean and Brown to register as sex offenders based on juvenile adjudications takes on added significance because our state treated them

differently than it would have treated them if they had been adults. Only because of the rehabilitation objectives of the Family Court—including the promise that their juvenile records would remain confidential—was South Carolina allowed to deny them jury trials and other constitutional safeguards. This different treatment, combined with the retroactive registration requirement, raises due process, *see* Final Brief of Appellant, Argument I, pp. 5-12, and equal protection, *see* Final Brief of Appellant, Argument II, pp. 13-14, concerns that, once recognized, require this Court to reverse the trial court.

That South Carolina applied the sex offender registry retroactively to Dean and Brown without providing them a hearing and opportunity to be heard raises additional due process considerations. *See* Final Brief of Appellant, Argument IV, pp. 22-15. This Court, accordingly, should reconsider and reverse the trial court.

The Supreme Court of the United States has recognized the children are different for purposes of the cruel and unusual punishment provisions of the Eighth Amendment. This recognition results form the extraordinary capacity of children to change and rehabilitate themselves. As a result other jurisdictions oppose requiring juveniles to register as sex offenders. *See* Final Brief of Appellant, Argument V, pp. 26-33. This Court, accordingly, should reconsider and reverse the trial court.

4. Right to Privacy.

In their Final Brief of Appellant, Argument VI, p. 34, Dean and Brown argued that their rights to privacy in the South Carolina Constitution requires our state to keep their juvenile adjudications confidential, especially in light of the State's promise to do so at the time of the adjudications. This Court, accordingly, should reconsider and reverse the trial court.

5. Equitable Relief.

In Argument VII of their Final Brief of Appellant, p. 35, Dean and Brown ask this Court for equitable relief. The Court's opinion implies that appellants are not entitled to equitable relief because they have and adequate remedy at law, but the opinion does not identify that remedy. There is not an adequate remedy at law for Dean and Brown. Once the Court recognizes no adequate remedy at law exists for Dean and Brown, the need to reverse the trial court becomes apparent.

Conclusion

For the foregoing reasons, this Court should reconsider its opinion, grant rehearing, and reverse the trial court.

IT IS SO MOVED.

Respectfully Submitted,

By 

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November 19, 2015
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Certificate of Service

I certify that I have served the Petition for Rehearing on the Respondent, by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

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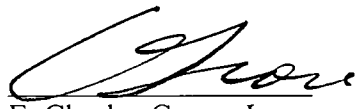

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