

On or about 2015, Plaintiff Demetrius Palmer filed this “Petition for Declaratory Judgment” against Defendants Chief Keel and the State of South Carolina, regarding certain provision governing the Registry. *See Complaint.* The Plaintiff contends that “equity is reserved for situations where there is no adequate remedy at law;” “the facts before this Court do not support a finding that he is or ever was a predator or child molestor;” “the lifelong Registry requirement is wildly disproportionate to the underlying conduct;” “justice compels a remedy. . .and that justice is served by granting the Petitioner personal relief;” and “Petitioner is entitled to an Order remov[ing] his name from the South Carolina Sex Offender Registry immediately.”

STANDARD OF REVIEW

“Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law.”³

“In determining whether any triable issue of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.”⁴ “Summary judgement is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.”⁵

In a motion for summary judgment, one party must lose as a matter of law.⁶

LAW/ ANALYSIS

The Defendants are entitled to Summary Judgment because the there is no genuine issue of material fact in this matter. South Carolina’s Sex Offender Registry statutes, S.C. Code Ann.

³ Rule 56(c), SCRPC.

⁴ *Evening Post Pub. Co. v. Berkeley County School Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011).

⁵ *Id.*

⁶ *Main v. Corley* 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

§ 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.⁷ 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(F). These are the only lawful avenues by which an individual who is properly placed on the Registry can be removed. Because the Plaintiff does not meet any of these statutory criteria, the equitable relief sought of removal from the sex offender registry is not available.

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.”⁸ 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.⁹ This does not 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.¹⁰ Accordingly, this Court concludes that South

⁷ 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.

⁸ *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).

⁹ *Id.*

¹⁰ *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).

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, summary judgment as a matter of law is proper.

Additionally, it is noteworthy that South Carolina Carolina's Sex Offender Registry is constitutional.¹¹ This Court finds that South Carolina's statutory lifetime registration requirement is set forth in an unambiguously worded statute.¹² S.C. Code Ann. § 23-3-460 states "A person required to register pursuant to this article is required to register biannually for life." (emphasis added).¹³ 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").¹⁴

Also, the equity maxim "equity follows the law" is well known in South Carolina.¹⁵ The South Carolina Supreme Court has held that a "court's equitable powers must yield in the face of an

¹¹ *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).

¹² See S.C. Code Ann. § 23-3-460

¹³ However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

¹⁴ *Key Corporate Capital, Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007).

¹⁵ 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).

unambiguously worded statute.”¹⁶ Accordingly, this Court finds 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 mandate lifetime registration.

This situation is akin to legislatively mandated minimum sentences for criminal offenses.¹⁷ Following convictions of these offenses, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals below the statutorily set amounts.¹⁸ These statutory minimums are, and have been consistently upheld as being, lawful.¹⁹ 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)).²⁰

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

¹⁶ *Santee Cooper Resort, Inc.*, 298 S.C. at 185, 379 S.E.2d at 123 (1989) (emphasis added)

¹⁷ 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).

¹⁸ In the same way, legislatively enacted maximum sentences also apply.

¹⁹ 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).

²⁰ 302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).

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conviction. Further, we found the matter of sentencing if convicted of a triggering offense to be a matter within the province of the legislature.²¹

Similarly, this Court finds 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.²² Furthermore, South Carolina law is clear, "[w]hether an individual must be placed on the sex offender registry is a question of law."²³

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 summary judgment. Therefore, it is hereby ORDERED, DECREED, and ADJUDGED that the Defendants' Motion for Summary Judgment is GRANTED.

AND IT IS SO ORDERED.



The Honorable DeAndrea G. Benjamin
Presiding Judge
Court of Common Pleas
5th Judicial Circuit

1-6, 2016

²¹ *Id.*; *State v. Jones*, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001).

²² 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.").

²³ *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.").

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