

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM FLORENCE COUNTY

Court of Common Pleas

Honorable Thomas A. Russo, Circuit Court Judge

Case No: 2015-001138

RECEIVED

JAN 04 2016

SC Court of Appeals

Melvin Roberts.....Appellant

v.

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

RECORD ON APPEAL

**Charles T. Brooks, III
Post Office Box 3512
Sumter, South Carolina 29151
Telephone: (803) 418-5708
Facsimile: (803) 934-9618
Attorney for Appellant**

**SLED
Adam L. Whitsett, Esq.
Post Office Box 21398
Columbia, South Carolina 29221
Attorney for Respondent**

**Office of SC Attorney General
ATTN: Courtney E. Lowell
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent**

**Marcie Eubanks Greene
PO Box 11549
Columbia, SC 29211-1549
803-734-3759 Attorney for Respondent Mark Keel**

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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Melvin T. Roberts,

Plaintiff/Petitioner,

vs.

Mark Keel, Director, South Carolina Law
Enforcement Division (SLED) and the State of
South Carolina,

Defendants/Respondents.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
) Civil Action No. 2014-CP-21-01973

**ORDER GRANTING
JUDGMENT ON THE
PLEADINGS**

FILED
2015 MAY 20 PM 1:55
CONNIE RUEL-SHELDON
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter came before me on March 19, 2015, for a motion hearing on the Defendants' Motion for Judgment on the Pleadings. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division.¹ The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Judgment on the Pleadings in this matter.

BACKGROUND

By way of background, the Plaintiff was convicted of Rape on or about the year 1975 and was sentenced to forty (40) years of incarceration for this conviction. The Plaintiff was released from incarceration on or about February 8, 1989. Upon the inception of the South Carolina Sex Offender Registry,² the Plaintiff was required to register as a sex offender. See 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 Plaintiff has registered since that time.

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Christie Red. Sheals
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

¹ The Defendants are additionally represented by Assistant Attorneys General Courtney Lowell and Marcie Greene.

² S.C. Code § 23-3-400 *et seq.*

The Plaintiff filed this action seeking a declaratory judgment and requesting that this Court remove the Plaintiff from the South Carolina Sex Offender Registry based solely on equitable grounds. *See* Complaint. However, the Plaintiff concedes that he does not meet any of the statutory criteria for removal set forth in S.C. Code § 23-3-430, and that he has not sought to avail himself to any of these statutory avenues for removal. *Id.* Accordingly, the Defendants filed this Motion for Judgment on the Pleadings asserting that South Carolina law prohibits such equitable relief in this matter.

STANDARD OF REVIEW

“After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” Rule 12, SCRCp.

“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). The grant of a judgment on the pleadings is within the discretion of the trial court. *Id.*

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. 420, 422, 297 S.E.2d 638, 640 (1982) *citing* Wooten v. Std. Life and Casualty Ins. Co., 239 S.C. 243, 122 S.E.2d 637 (1961).

LAW / ANALYSIS

I find and conclude that the Defendants are entitled to a Judgment on the Pleadings because the pleadings demonstrate that there is no cause of action in favor of the plaintiff in this matter. South Carolina's Sex Offender Registry statutes, S.C. Code Ann. § 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.³ 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(G). I find and conclude that these are the only lawful avenues by which an individual who is properly placed on the Registry can be removed. However, as noted above, the pleadings demonstrate that the Plaintiff does not meet any of these statutory criteria such that the Plaintiff is lawfully entitled to removal from the Registry. Accordingly, I find that there is no legal or constitutional basis on which this Court could grant the relief requested by the Plaintiff and judgment on the pleadings is proper. *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); Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638 (1982).

³ In fact, I note that 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.

As a threshold matter, it is noteworthy that South Carolina's Sex Offender Registry is constitutional and the constitutionality of the Registry was not challenged in this action. *See* Complaint; 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). Moreover, I find and conclude that South Carolina's statutory lifetime registration requirement is set forth in an 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**." (emphasis added)).⁴ 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").

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

⁴ However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

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). Accordingly, I find 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 mandates lifetime registration.

South Carolina jurisprudence also 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.* I find and conclude that this does not however 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. 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). Accordingly, I find and conclude that South 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, judgment on the pleadings is proper.

This situation is analogous to legislatively mandated minimum sentences for criminal offenses. 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). Following convictions of these offenses, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals below the statutorily set amounts.⁵ However, these statutory minimums are, and have been consistently upheld as being, lawful. 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 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)).

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).⁶ 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 conviction. Further, we found the matter of sentencing if convicted of a triggering offense to be a matter within the province of the legislature. *Id.*

⁵ In the same way, legislatively enacted maximum sentences also apply.

⁶ 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. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

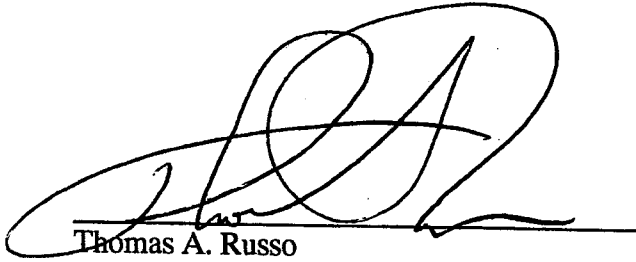
State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001). Similarly, I find and conclude that the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated by the South Carolina Constitution. 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."). Furthermore, 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, I find and conclude there is simply no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. Furthermore, I find and conclude that for this court to act as a "superlegislature" and to unilaterally add language to an unchallenged, 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.

Therefore, it is hereby ORDERED, DECREED, and ADJUDGED that the Defendants' Motion for Judgment on the Pleadings is GRANTED.

AND IT IS SO ORDERED.



Thomas A. Russo
Presiding Judge
Court of Common Pleas
12th Judicial Circuit

Lexington, South Carolina
4-16, 2015

2015 MAY 20 PM 1:58
CONNIE REEL-SHELDON
COP & GS
FLORENCE COUNTY, SC

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Connie Reel-Sheeldon
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA,)
)
COUNTY OF FLORENCE)
)
MELVIN T. ROBERTS)
)
Plaintiff,)
)
vs.)
)
MARK KEEL, DIRECTOR, SLED, ET AL)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2014-CP-24

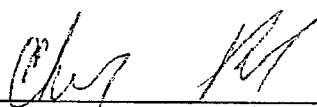
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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

TO THE DEFENDANT ABOVE-NAMED:

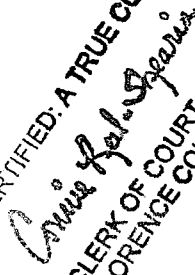
YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

SUMTER, South Carolina

Dated: June 30, 2014


Plaintiff/Attorney for Plaintiff

Address: 309 Broad Street, Sumter, SC 29150

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
MELVIN T. ROBERTS,)
PETITIONER,)
VS.)
MARK KEEL,)
DIRECTOR, SOUTH CAROLINA)
LAW ENFORCEMENT)
DIVISION (SLED), AND THE)
STATE OF SOUTH CAROLINA,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
C/A NO.: 2014-CP-21- 1973

PETITION FOR
DECLARATORY JUDGMENT
(Non-Jury)

FILED
2014 JUL 16 PM 4:08
CONNIE REEL-SHEARN
CCJP & GS
FLORENCE COUNTY, SC

THE PETITIONER IN THIS MATTER, BY AND THROUGH HIS
COUNSEL, ALLEGES AS FOLLOWS:

1. That the Petitioner is a citizen and resident of the County of Florence,
State of South Carolina.
2. That the Respondent, Mark Keel, is the Chief of the South Carolina Law
Enforcement Division (hereinafter referred to as "SLED"), maintaining
the Sex Offender Registry for the State of South Carolina. The present
action is an action in part for a Declaratory Judgment regarding certain
provisions of the South Carolina Sexual Registry (hereinafter referred to
as "Registry"), and pursuant to §23-3-410, Code of Laws for South
Carolina, 1976, as amended, the Registry is under the direction of the
Respondent Keel.

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Cristie R. Speer
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

3. That the State of South Carolina, a sovereign State and body politic, enacts its legislation through its State Legislature (the South Carolina General Assembly and Senate) and the Governor. The present action is an action in part for a Declaratory Judgment regarding the constitutionality of provisions of the South Carolina Code of Laws, as amended, specifically §23-3-430, Sex Offender Registry legislation, as it applies differently to §16-3-655(b) (Criminal Sexual Conduct, 2nd Degree) and §16-15-140 (Lewd Act on a Minor).
4. This Honorable Court has jurisdiction over the parties to, and subject matter of, the present action.
5. The Petitioner in this matter was convicted in the State of South Carolina of Rape in 1975 in Richland County.
6. The Petitioner was sentenced to a term of incarceration of forty (40) years for the charge of Rape, sentenced to be served concurrently with the South Carolina Department of Corrections. The Petitioner was released from incarceration on February 8, 1989.
7. That the Petitioner, after his release, was required to begin to Register as a Sex Offender in accordance with "Megan's Law" which was enacted subsequent to the release of the Petitioner from the Department of Corrections.
8. That, under §23-3-430(F), even if Petitioner was pardoned by the Governor, Petitioner "may not be removed" from the Registry unless the Attorney General notified a Defendant that the conviction "was reversed,

overturned, or vacated on appeal". §23-3-430(E), South Carolina Code of Laws, as amended.

9. That the Petitioner did not file a timely appeal of his conviction, nor did he timely file an application for Post-conviction Relief.
10. That, upon information and belief, Petitioner has suffered and continues to suffer grievous consequences as a result of being a registered sex offender, including:
 - a. Permanent ban from volunteering with most youth events, including any involving his own minor relatives (nieces, nephews, etc.) or any children he may father in the future.
 - b. Limited employment opportunities; and
 - c. Embarrassment and humiliation for himself and his relatives.

FOR A FIRST CAUSE OF ACTION
Equity

11. The above set forth facts are made part of this cause of action through incorporation by reference.
12. That the Petitioner is entitled to equitable personal relief in this matter.
13. That the Petitioner is informed and believed that equity is reserved for situations where there is no adequate remedy of law.
14. That 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.

15. That the Petitioner is informed and believes the facts before this Court do not support a finding that he Petitioner is or ever was a predator or child molester.
16. That the Petitioner is informed and believes that the requirement of lifelong Sex Offender Registry is wildly disproportionate to the underlying conduct.
17. That the Petitioner is informed and believes that justice compels a remedy for this particular situation and that justice is served by granting the Petitioner personal relief.
18. That Petitioner is entitled to an Order of this Court directing Defendant Keel to remove his name from the South Carolina Sex Offender Registry immediately.

WHEREFORE, Petitioner prays this Court for an Order:

1. Declares the Petitioner has established his claim for relief by evidence satisfactory to this Court; and
2. Ordering the Defendants to remove the Petitioner from the Sex Offender Registry; and
3. For any such other and further relief as may be deemed appropriate by this Court.



CHARLES T. BROOKS, III

Attorney for the Petitioner
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708
cbrooks@ctbrooks.com

Dated: 7/14/2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

VERIFICATION

Melvin T. Roberts and , being duly sworn, say that they are the Petitioners herein, and have read the foregoing Petition and know the contents thereof, that the same is true of their own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters they believe them to be true.

SWORN to and Subscribed before me)

this 11 day of July, 2014)

Michael J. Graham)
Notary Public for South Carolina)

My Commission expires: 5-22-22)

Melvin T. Roberts
Signature of Petitioner

Signature of Petitioner

FILED
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CONNIE REEL-SHEARIN
COP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2014 AUG 28) PM 1:10 TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE) Case No.: 2014-CP-21-1973

Melvin T. Roberts,

CONNIE REEL-SHER
CCCP & GS
FLORENCE COUNTY, SC

Plaintiff/Petitioner,

v.

ANSWER

Mark Keel, Director, South Carolina Law
Enforcement Division (SLED) and the
State of South Carolina,

Defendants/Respondents.

Defendant Mark Keel, properly identified as the Chief of the South Carolina Law Enforcement Division (SLED) and Defendant State of South Carolina, hereby answer the Plaintiffs' Complaint as follows:

FOR A FIRST DEFENSE

Failure to State a Claim

The Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

Insufficient Service of Process

The Complaint in this matter was not served on Defendant Keel in accordance with the South Carolina Rules of Civil Procedure. As such, pursuant to Rule 12(b)(5), SCRPC this action should be dismissed due to insufficiency of service of process.

FOR A THIRD DEFENSE

Response to Allegations

1. The Defendants deny each and every allegation of the Plaintiffs' Complaint not herein specifically admitted, qualified, or explained.

2. Paragraph one (1) is admitted upon information and belief.

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Connie Reel-Sher
CLERK OF COURT C.P. & C.S.
FLORENCE COUNTY, S.C.

3. Paragraphs two (2) and three (3), to the extent they are characterizations as to the type of action this is require no response. The remaining allegations of paragraphs two (2) and three (3) are admitted upon information and belief.
4. Paragraphs four (4), five (5), and six (6) are admitted upon information and belief.
5. The Defendants are without information or knowledge to admit or deny the allegations of paragraph seven (7) and would therefor deny the same. However, the Defendants would aver that the Plaintiff's inclusion on the South Carolina Sex Offender Registry was proper, was in accordance with South Carolina law, and was constitutional.
6. The Defendants deny the allegations of paragraph eight (8) in that the allegations mischaracterize South Carolina law. The Defendants would crave reference to the actual text of §§ 23-3-430(E) and 23-3-430(F) of the South Carolina Code of Laws for a proper recitation of these statutes.
7. The Defendants are without information and belief to admit the allegations of paragraph nine (9); however, the Defendants would admit these allegations.
8. The Defendants deny the allegations of paragraph ten (10).
9. As to paragraph eleven (11), the Defendants incorporate the responses to each of preceding paragraphs by reference.
10. Paragraph twelve (12) is denied.
11. Paragraph thirteen (13) is denied and the Defendants would aver that § 23-3-430 is an unambiguously worded statute and that equity follows the law. *See Key Corporate Capital, Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) (holding that a "court's equitable powers must yield in the face of an unambiguously worded statute").

12. As to paragraph fourteen (14), the Defendants would aver that the purpose of South Carolina's Sex Offender Registry Statute is set forth in § 23-3-400 and, to the extent inconsistent with this statute, paragraph fourteen (14) is denied.

13. Paragraphs fifteen (15), sixteen (16), seventeen (17), and eighteen (18) are denied.

14. To the extent inconsistent with the foregoing, Defendant denies the requests for relief set forth in the "WHEREFORE" section of the complaint.

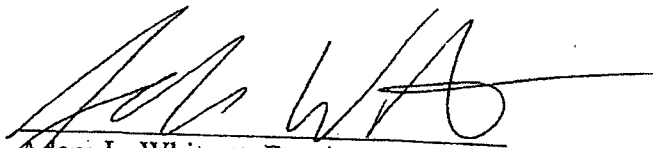
FOR A FOURTH DEFENSE
Proper Inclusion on the Registry

15. The Defendants would aver that the Plaintiff's inclusion on the South Carolina Sex Offender Registry is proper, constitutional, and in accordance with South Carolina law. Accordingly, the Defendants are informed and believe that this action should be dismissed.

WHEREFORE, having fully answered the Plaintiff's complaint, Defendants pray that this Honorable Court:

- A. dismisses the Plaintiff's Complaint entirely;
- B. denies any and all relief sought by the Plaintiff; and
- C. grants such other and further relief as the Court may deem just and proper.

Respectfully Submitted,



Adam L. Whitsett, Esquire
General Counsel
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221-1398
Phone: (803) 896-0647
Fax: (803) 896-7588
Email: awhitsett@sled.sc.gov
S.C. Bar Number: 74888

Courtney E. Lowell, Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549
Phone: (803) 734-3177
Fax: (803) 734-33677
Email: clowell@scag.gov
S.C. Bar No.: 77175

COLUMBIA, SOUTH CAROLINA
AUGUST 26, 2014

ATTORNEYS FOR THE DEFENDANTS

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
)

Melvin T. Roberts,

) Civil Action No. 2014-CP-21-01973
)

Plaintiff/Petitioner,

)

vs.

)

Mark Keel, Director, South Carolina Law
Enforcement Division (SLED) and the State of
South Carolina,

)

**DEFENDANTS' MOTION
FOR JUDGMENT
ON THE PLEADINGS**

)

)

Defendants/Respondents.

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PLEASE TAKE NOTICE THAT the Defendants Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division ("SLED"),¹ and the State of South Carolina, by and through the undersigned counsel, will move before this Honorable Court within ten (10) days hereof (or at such time and place as the Court determines) for an Order of Judgment on the Pleadings against the Plaintiff pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure.

BACKGROUND

The Plaintiff was convicted of rape in 1975 and sentenced to forty (40) years. Plf's. Compl. ¶¶5-6. Upon being released from incarceration on February 8, 1989, Plaintiff was required to register as a sex offender² on the South Carolina Sex Offender Registry ("Registry"). *Id.* at ¶¶6-7.

¹ The South Carolina Sex Offender Registry "is under the direction of the Chief of the State Law Enforcement Division (SLED)" in his official capacity. S.C. Code Ann. § 23-3-410(A).

² Plaintiff is classified as Tier III offender pursuant to the Sex Offender Registration and Notification Act based on his 1975 conviction.

On or about July 16, 2014, Plaintiff Melvin T. Roberts filed this “Petition for Declaratory Judgment” against Defendants Chief Keel and the State of South Carolina, regarding certain provisions governing the Registry. The Plaintiff contends that he “...is entitled to equitable personal relief in this matter;” “the facts before this Court do not support a finding that he is or ever was a predator or child molester;” the lifelong Registry requirement is wildly disproportionate to the underlying conduct;” “justice compels a remedy...and that justice is served by granting the Plaintiff personal relief;” and “...Plaintiff is entitled to an Order...remov[ing] his name from the South Carolina Sex Offender Registry immediately.” Plf’s. Compl. ¶¶12-18.

ARGUMENT

“A declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue.” *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009).

South Carolina law is clear that “[e]quitable relief is generally available only where there is no adequate remedy at law.” *Santee Cooper Resort, Inc. v. South Carolina Public Service Comm’n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). “Whether 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) (“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.”)). “[T]he court’s equitable powers *must yield* in the face of an unambiguously worded statute.” *Id.* (emphasis added).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998) (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995) ("if a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.")). In addition, the South Carolina Supreme Court has indicated that "[w]e do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly. As we must, we follow the law and decisions heretofore set forth in this state." *Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996).

Plaintiff is not entitled to the equitable relief sought because the statute governing removal from the Registry provides an adequate remedy at law. The mechanism for both placement on and removal from the Registry is provided by the same code section. *See* S.C. Code Ann. § 23-3-430 (Supp. 2013). Under section 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) (Supp. 2013). Other subsections provide for removal if the person receives a pardon "based on a finding of not guilty specifically stated in the pardon," or if he or she receives a new trial following the discovery of new evidence and a verdict of acquittal is returned at that new trial. S.C. Code Ann. § 23-3-430(F), (G) (Supp. 2013).

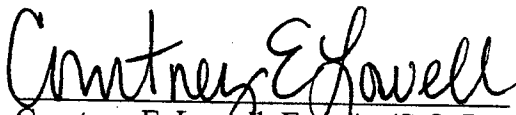
Plaintiff is not entitled to equitable relief merely because he does not qualify for removal under the current law. The unambiguously worded statute sets forth how an individual can be removed from the Registry, and equitable relief is not included within S.C. Code Ann. § 23-3-430. Moreover, the Plaintiff's conviction has not been reversed, overturned, or vacated on appeal nor has he received a pardon or been acquitted after receiving a new trial. S.C. Code Ann. § 23-3-430(E), (F), (G) (Supp. 2013).

CONCLUSION

For the reasons stated above, judgment should be granted to the Defendants Chief Keel and the State of South Carolina.

[Signature Page Follows]

Respectfully submitted,



Courtney E. Lowell, Esquire (S.C. Bar No.: 77175)

Marcie E. Greene, Esquire (S.C. Bar No.: 101041)

Assistant Attorney Generals

Office of the Attorney General

State of South Carolina

Post Office Box 11549

Columbia, South Carolina 29211-1549

Phone: 803.734.3177

803.734.3177

Fax: 803.734.3677

Email: clowell@scag.gov

mgreene@scag.gov

Adam L. Whitsett, Esquire (S.C. Bar No.: 74888)

General Counsel

South Carolina Law Enforcement Division

Post Office Box 21398

Columbia, South Carolina 29221-1398

Phone: 803.896.0647

Fax: 803.896.7588

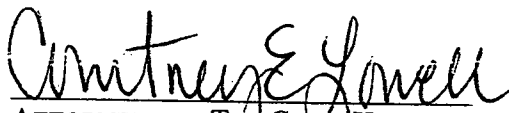
Email: awhitsett@sled.sc.gov

ATTORNEYS FOR THE CHIEF KEEL AND THE STATE OF
SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA
OCTOBER 28, 2014

Rule 11, SCRPC, Statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion for Judgment on the Pleadings would serve no useful purpose.



ATTORNEY FOR THE CHIEF KEEL AND THE STATE OF
SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA
OCTOBER 28, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
MELVIN T. ROBERTS)

VS.)

MARK KEEL, CHIEF OF THE)
SOUTH CAROLINA LAW)
ENFORCEMENT DIVISON)
AND THE STATE OF SOUTH)
CAROLINA)
_____)

IN THE COURT OF COMMON PLEAS
2014-CP-21-01973
PLAINTIFF'S RESPONSE
TO DEFENDANT'S MOTION
FOR JUDGMENT

The Defendant's Motion for Judgment on the Pleadings should be denied for the following grounds. Equitable personal relief is an appropriate request here because there is not a complete remedy available at law. "Equity abhors a wrong without a remedy." *Key Corp. Capital, Inc. v. County of Beaufort*, 360 S.C. 513, 602 S.E.2d 104 (S.C. App. 2004) citing *State ex. rel. Daniel v. Strong*, 185 S.C. 27, 43, 192 S.E. 671, 678 (1937). "Equity is reserved for situations where there is no adequate remedy at law." *Id.* at 107 (citing *Santee Cooper Resort, Inc. v. South Carolina Public Serv. Comm'n.*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).

The issue here is not whether the Plaintiff should be placed on the sex offender registry, which is a question of law, but rather and most importantly here, whether the Plaintiff should be removed from the sex offender registry based on the principles of equity, for which there is no complete remedy provided at law for such removal.

The Defendant argues there is an adequate remedy at law that governs the facts herein because South Carolina Code Ann. Section 23-3-430 (Supp. 2013) provides the procedure for placement on and removal from the sex offender registry. The question here is certainly not placement on the sex offender registry, but rather, removal therefrom. Section 23-3-430(E) provides "SLED shall remove a person's name and any information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's

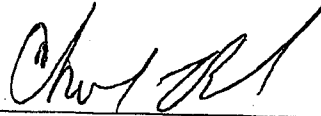
adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered.” S.C. Code Ann. Sec. 23-3-430(E) (Supp. 2013).

Section 23-3-430(E) provides for the “resulting action” of “when” a person’s name may be removed from the sex offender registry and it is strictly limited to an appeal. S.C. Code Ann. Sec. 23-3-430(E) (Supp. 2013). Further, the code section does not provide for a complete remedy at law for removal from the sex offender registry, and the code section does not restrict the ability to pursue an equitable relief action for removal since it only provides a remedy relating to an appeal. S.C. Code Ann. Sec. 23-3-430(E) (Supp. 2013). Therefore, there is not an adequate and complete remedy available at law for the removal from the sex offender registry, especially as in the case herein, when the qualifying offense occurred decades ago from any appealable time frame.

The other subsections of Section 23-3-430, do not provide other remedies at law for the removal from the sex offender registry that would and could afford the Plaintiff herein complete relief at law such as the pardon procedure or the new trial procedure. S.C. Code Ann. Sec. 23-3-430(E) (Supp. 2013). Therefore, there is no complete remedy at law and equitable relief is appropriate.

For all of the foregoing reasons, the Defendant's Motion for Judgment on the Pleadings should be denied.

Respectfully submitted,



Charles T. Brooks, III, Esquire
Brooks Law Offices, LLC
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708
ATTORNEY FOR PLAINTIFF

Sumter, South Carolina
8/3, 2015

State of South Carolina)
County of Florence)

In The Court of Common Pleas
Twelfth Judicial Circuit
2014-CP-21-1973

Marvin Roberts,

Plaintiff,

vs.

Mark Keel, Chief of South
Carolina Law Enforcement
Division, and the State of
South Carolina,

Defendants.

Transcript of Record

March 19, 2015
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

A P P E A R A N C E S:

Charles T. Brooks, Esquire
Attorney for the Plaintiff

Adam L. Whitsett, Esquire
Attorney for Defendant SLED

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Certificate Page	28

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
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No exhibits introduced.

1 THE COURT: All right, this is in the matter of *Melvin*
2 *Roberts vs. Law Enforcement Division of South Carolina*, and
3 it's a motion for a judgment on the pleadings. Is that
4 correct?

5 MR. WHITSETT: That's correct, Your Honor.

6 THE COURT: All right.

7 MR. WHITSETT: Thank you, and may it please the court?

8 THE COURT: Yes, sir.

9 MR. WHITSETT: My name is Adam Whitsett. I'm general
10 counsel at SLED, and I filed this motion on behalf of both
11 defendants. The Attorney General's office and I are
12 sharing, co-counsel on this, but they were unable to be
13 here today.

14 THE COURT: Okay.

15 MR. WHITSETT: And I agreed to cover on behalf of all
16 the defendants. And we filed this motion for judgment on
17 the pleadings because we feel that the complaint that was
18 filed in this matter does not set forth any -- does not
19 request any valid -- or relief that this court could grant,
20 and we feel that for this court to grant the relief
21 actually asked would actually be an unconstitutional
22 invasion into the separation of powers.

23 What we've got here is a situation where we've got an
24 individual that was statutorily required to register as a
25 sex offender based on a -- I believe it was a 1975 rape

1 conviction. And you know, the South Carolina registry
2 obviously mandates registration and has been held not to be
3 ex post facto, has been held to be constitutional in this
4 regard. The registry itself sets forth the only mechanisms
5 by which an individual can be removed from the registry.
6 And so this action is solely asking for this court to go
7 beyond what the statute sets forth and to create a remedy
8 that does not exist in law, and to remove this individual
9 who's been properly registered, and this is all based on a
10 theory of equity.

11 And, quite frankly, we don't believe that equity is
12 available in this situation and believe that the courts and
13 the jurisprudence of this state and, and -- just simply
14 prohibit this type of relief. I mean, what they're
15 essentially asking is for this court to rewrite a
16 constitutional statute, a constitutional statute that's
17 being applied constitutionally, and that's not even being
18 challenged in this action. They're just asking for this
19 court to create a new remedy based on this theory that
20 somehow the constitutional application of a constitutional
21 statute is a wrong for which equity must step in.

22 We believe that the constitutional application of a
23 constitutional statute is not a wrong and don't believe
24 that there is equitable jurisdiction, and the Supreme Court
25 has offered pretty substantial guidance with regards to

1 these types of situations. I will concede this specific
2 issue has only been ruled on by one appellate court, and
3 that was the South Carolina Court of Appeals, and they, in
4 fact, did rule that courts were without power to fashion an
5 equitable remedy in the face of a constitutional,
6 unambiguously worded statute.

7 Now, I will concede, and I've got copies of that
8 statute, and I did want to hand -- that case, and I do want
9 to hand that up. That case was subsequently reversed by
10 the Supreme Court, but on the sole issue of issue
11 preservation. And so they said the Court of Appeals erred
12 in looking at the merits of that case and said we're going
13 to kick it on issue preservation.

14 Now, opposing counsel and I obviously dispute the
15 effect of that Supreme Court order because I believe that
16 it should be interpreted exactly for what it says. It's
17 not a passive ruling on the underlying action or on the
18 action by the trial court in that matter. I believe
19 opposing counsel takes the opposing view that that is
20 somehow a tacit authorization and rebuke to the Court of
21 Appeals's analysis. But I believe the Court of Appeals's
22 analysis was spot on in the case legally, and the Supreme
23 Court said, well, that issue wasn't properly preserved.
24 So, we're not going to touch it. And I've got both those
25 cases to hand up for Your Honor's review at the appropriate

1 time.

2 THE COURT: All right.

3 MR. WHITSETT: And so with regard to the statute that
4 we're -- I mean, South Carolina's legislature has created
5 the registry, and they have enacted it, and it is for life.
6 Those are the specific words in the statute. It's a person
7 is required to register pursuant to this article for life.

8 We feel that's clear and unambiguous language in the
9 statute, and that comes from 23-3-460. And so we feel that
10 -- and the courts have said if you have an unambiguously
11 worded statute, for life, the courts simply -- it's beyond
12 the power of courts to effect a change in that statute, to
13 rewrite that statute in equity. It comes -- there's some
14 great quotes from our Supreme Court in the *Key Corporate*
15 *Capital* case that's cited in my materials, and I've cited
16 all of these cases and all these statutes in the materials,
17 in the, in the memo that was handed up. And in the *Key*
18 *Capital* case, they said:

19 Beyond this court's power to effect the change in
20 the statutes enacted by the legislature, and that
21 courts do not sit as a superlegislature to
22 second-guess the wisdom or the folly of the
23 legislature.

24 Obviously, if there were a constitutional challenge,
25 that would present a very different standard, but the

1 statute's not being challenged. It's just being asked to
2 be rewritten based in equity, and, and it's well known that
3 equity follows the law, and that there just simply is no
4 equitable jurisdiction beyond that.

5 The Supreme Court in the *Santee Cooper* case went even
6 farther and said courts in this state, that:

7 The court's equitable powers must yield to an
8 unambiguously worded statute.

9 Must yield. That comes straight from the Supreme
10 Court.

11 So, I mean, I understand that the -- it's never great
12 to be in the position where I'm sitting here telling the
13 court what the court can or cannot do, but I think the
14 Supreme Court's been very clear on that. That if you have
15 a constitutional statute, if it's being applied
16 constitutionally, that is not a wrong for which equity need
17 apply. And that's not a wrong for which equity can apply.
18 That the court's equitable powers must yield in the face of
19 an unambiguously worded statute, which is bolstered in this
20 case when we've got an unambiguously constitutional statute
21 that's being applied constitutionally.

22 The analysis and the anthology that I sort of came up
23 with was -- it's essentially if the legislature set a
24 mandatory minimum, courts simply can't go below that. They
25 just don't have the -- and so this is sort of the same type

1 scenario. If you don't fit into one of these statutory
2 categories, these statutory mechanisms to come off the
3 registry, you simply can't create one and rewrite the
4 statute at all, which is the only relief that's being
5 sought in this action, which ---

6 THE COURT: For example, if someone's before me in an
7 armed robbery, for an armed robbery and they are convicted,
8 the statute says not less than ten years, not more than
9 thirty. I, I can no -- I can no more sentence a person
10 like that to fifty years, which is a violation of the
11 statute, as I could to five years, which would be a
12 violation of the statute.

13 MR. WHITSETT: That's correct, Your Honor, and we feel
14 that this is the same type scenario where the legislature
15 said and set forth in 23-3-432 three separate criteria,
16 three separate times which people can be lawfully and
17 legally removed from the registry. And those are when a
18 person's charge has been overturned on appeal, when a
19 person gets a pardon based specifically on a finding of not
20 guilty, or if there's a new trial and it's all overturned.
21 Those are the three mechanisms that the legislature has
22 provided, and we submit that that's the legislature's
23 prerogative to set both the terms to go on and the
24 mechanisms by which one can go off.

25 If there is an argument, if there's the feeling that

1 those aren't broad enough, the only place to fight that and
2 to assert that is at the legislature. They're the ones
3 that could craft that statute. They're the ones that could
4 rewrite it and give courts either discretion to pull
5 individuals off, or to craft any sort of mechanism, but
6 they simply have not done that. What they've done is said
7 here are the mechanisms and the crimes for which an
8 individual goes on, of which this rape conviction certainly
9 applies, and here are the mechanisms by which one can come
10 off.

11 The complaint in this matter does not indicate that
12 the plaintiff meets any of these three criteria, or that
13 he's even attempted to avail himself of these three
14 criteria. So, we believe that also sort of would, would
15 lean against this court exercising purely equitable
16 jurisdiction on this case. Again, these are matters of
17 purely legislative prerogative.

18 Courts said equitable relief is just -- is generally
19 only available when there's no adequate remedy at law, and
20 an adequate remedy can be provided by statute. What I
21 think the Court of Appeals in the *Johnson vs. Lloyd* case,
22 which I will hand up to Your Honor which was overturned on
23 issue preclusion, said was an adequate remedy doesn't have
24 to afford everyone relief. It just has to be a remedy
25 that's provided in the statute. And so there are going to

1 be people that may not be entitled to be removed from the
2 registry, but that's a manager of legislative prerogative,
3 and that's for the legislature to decide. And so the Court
4 of Appeals said -- there are, just to quote from that
5 *Johnson* case, with obviously the caveat that that was
6 overturned on issue preclusion or issue preservation, says:

7 There are several statutory methods by which
8 *Johnson* can be removed from the registry. He
9 simply does not qualify for them.

10 But they went on to say:

11 The general assembly has enacted an unambiguously
12 worded statute that sets forth the legal remedies
13 available to an individual on the registry.

14 Because it provides an adequate remedy, it was
15 error for the circuit court to fashion a remedy
16 outside it.

17 Again, we think that is in conformance with the law.

18 The issue with the *Johnson* case is that specific
19 issue, the court's jurisdiction, wasn't raised at the trial
20 court, and it wasn't raised properly at the trial court,
21 and that was the sole basis for the Court of Appeals's
22 decision. So, the Supreme Court said it was error for the
23 Court of Appeals even look at that issue, so they reversed
24 it.

25 And I do want to go ahead and hand both of those up;

1 I've got copies for opposing counsel. We've had several of
2 these arguments. I'm sure he's got both of these cases,
3 but we've...

4 THE COURT: All right.

5 MR. WHITSETT: And, Judge, I've highlighted the
6 relevant portions of both of those cases just, just for
7 convenience, but I think if you look at the legal analysis
8 by the Court of Appeals, that's the same analysis. I think
9 the analysis itself is based on the law, and I think
10 they're correctly interpreting the law. It's just that
11 that issue wasn't properly preserved. So, the Supreme
12 Court reversed it but said specifically on an issue
13 preservation.

14 So, courts have also acknowledged that whether an
15 individual -- placement on a registry and removal from the
16 registry are questions of law for the court to decide.
17 That came straight from the *Lozada* case, and so we just
18 feel that there's no equitable jurisdiction, that there's
19 not an equitable remedy that this court can fashion. So,
20 we feel that the judgment on the pleadings is appropriate
21 because the complaint sets forth only a request for this
22 court to rewrite a constitutional statute to add a
23 mechanism for a removal that's simply not there, that
24 simply doesn't exist in South Carolina law at the moment.
25 And we believe the judgment on the pleadings is appropriate

1 in this regard.

2 It's well known. It's well established that equity
3 follows the law, and that in fashioning an equitable
4 remedy, the court can't disregard statutes and can't
5 rewrite statutes. And, in fact, courts equitable powers
6 must yield in the face of unambiguously worded statutes:
7 i.e. South Carolina's registry statute says sex offenders
8 must register for life. Thank you.

9 THE COURT: Thank you, sir.

10 Mr. Brooks.

11 MR. BROOKS: May it please the court?

12 THE COURT: Yes, sir.

13 MR. BROOKS: First off, court does have the power to
14 right this. They did it in the *Johnson* case.

15 THE COURT: How is that?

16 MR. BROOKS: Judge Seals determined there was no legal
17 remedy for Mr. Johnson and equity should be applicable and
18 did it. It went up to the Court of Appeals. Despite
19 whatever analysis they did, when the Supreme Court reversed
20 them -- for whatever reason the Supreme Court did it --
21 that made the Court of Appeals's decision no longer the law
22 in the case, and that the only law in that case was Judge
23 Seals's order in the *Johnson* matter, which meant that Mr.
24 Johnson in that matter, who was on the registry because of
25 the equitable reasons cited by the court in that case, he

1 was taken off the registry.

2 Judge Seals cited that for a gentleman in his
3 situation, it was wildly disproportionate for him to have a
4 lifelong obligation of registry. That was an individual
5 who had pled guilty to lewd act on a minor after the
6 registry had been enacted. Did his probation. Was a good
7 citizen. Never got in any other trouble. Took his case.
8 Tried his case. Had his case heard. Judge Seals ruled
9 that he should be taken off the registry because he felt
10 that, and he ruled that the statute -- and there was no
11 legal remedy.

12 THE COURT: But -- well, now, let me ask you this.
13 Are you trying to tell me that I'm bound by something Judge
14 Seals did in another case?

15 MR. BROOKS: I'm not saying that, Judge.

16 THE COURT: That's not precedent.

17 MR. BROOKS: However, I would ask, I would ask the
18 court to let me go through my analysis like the defendant
19 went through his analysis.

20 THE COURT: Well, I quickly interrupted him, too.

21 MR. BROOKS: Okay.

22 THE COURT: And I'll interrupt you again if I feel the
23 need to.

24 MR. BROOKS: I understand, Judge. I understand, but
25 what I'm saying is that there is no law on this issue

1 except for Judge Seals's.

2 THE COURT: That's not law; that's not law applicable
3 to this case.

4 MR. BROOKS: But my point is that there is no law on
5 this case.

6 THE COURT: Okay.

7 MR. BROOKS: That's my point. That's my point that
8 I'm asking the court to look at is when you look at the
9 statute, the statute gives basically three remedies. One,
10 have your case overturned: PCR, appeal, et cetera, et
11 cetera. Two, newly discovered evidence, et cetera, et
12 cetera. And three, a pardon but a pardon and in such a
13 situation that there was a determination as a part of that
14 pardon that the person didn't do it.

15 The statute gives in this case -- and I don't know if
16 you've read through the file in the pleadings. In this
17 case, Melvin Roberts, my client, went to prison in 1975 for
18 this conviction. He got out in '89. The registry was
19 never in existence at that time. He got in no trouble.
20 Has not been in any other trouble. Then in the '90s the
21 registry comes about. In this situation, Mr. Roberts would
22 -- did not and would not have had a chance to even conform
23 his behavior to new law and new things put in place by the
24 legislature, whereas in the *Johnson* case, at least the
25 registry was in existence at that time when Mr. Johnson got

1 his conviction.

2 THE COURT: Well, shouldn't, shouldn't you be
3 challenging the statute?

4 MR. BROOKS: Well, Judge, what I'm saying is is that
5 it's not equitable. There is no legal remedy. There is no
6 statutory application to Mr. Roberts and, therefore, the
7 court should allow him to have his hearing to determine if
8 it's equitable, an equitable remedy for him to be allowed
9 to be taken off of the registry.

10 And, Judge, we do have several of these cases, one of
11 which we had this argument last month. Very similar
12 factual scenario, and that, that matter is being delivered
13 -- deliberated by the trial judge that heard that motion.

14 This is a very similar situation, and obviously these
15 are novel issues because you're talking about, in this
16 particular case, a guy who -- he had long since done his
17 crime and had long since done his time before the registry
18 was even in existence. And when you compare that to the
19 *Johnson* case, where you have an individual where a court in
20 South Carolina determined that it was not equitable because
21 there was not a legal remedy for that particular gentleman
22 -- it went up through the appellate courts. Despite the
23 Court of Appeals going through this detailed legal analysis
24 about the case, the higher court, the Supreme Court,
25 overturned them, which means that their issues and things

1 that they raised are no longer the law in the case, and
2 that the only law that was left in the case was Judge
3 Seals's order that took this man off the registry.

4 THE COURT: It, it is relevant on why it was
5 overturned, though.

6 MR. BROOKS: I, I ---

7 THE COURT: In other words -- and I think you agree
8 with this. It's, it's different when the Supreme Court
9 says we're going to overturn the Court of Appeals's
10 decision because it shouldn't have been heard in the first
11 place because it was not preserved for appellate review.
12 That's very different from saying we think the analysis
13 from the Court of Appeals was in error and we, therefore,
14 overturn it.

15 MR. BROOKS: And our position is that would not be
16 binding on any trial court because it isn't the law.
17 Now ---

18 THE COURT: Court? You mean the Court of Appeals's
19 decision?

20 MR. BROOKS: Correct.

21 THE COURT: Oh, I agree with you.

22 MR. BROOKS: Okay.

23 THE COURT: I agree with you.

24 MR. BROOKS: Now, could you consider that? That's up
25 to Your Honor.

1 THE COURT: Yeah.

2 MR. BROOKS: Or whoever is sitting there wearing the
3 black robe. Obviously from my position, it would be, Judge
4 -- and if Your Honor is going to consider that, then Your
5 Honor should consider what Judge Seals ordered in that case
6 which was appealed and then overturned and then went up to
7 the Supreme Court and the Court of Appeals's decision
8 overturned. So, what I'm saying is you couldn't
9 necessarily just look at that one thing in a vacuum.

10 THE COURT: No.

11 MR. BROOKS: Our position is look at the entire
12 situation.

13 THE COURT: Sure.

14 MR. BROOKS: And I, I think, knowing you, Judge, I'm
15 sure that's what you would do.

16 THE COURT: Sure.

17 MR. BROOKS: And the reason that we're talking about
18 it from an equitable standpoint is that's what happened in
19 the *Johnson* case because if you look back at it, Johnson's
20 lawyer never even raised the issue of equity. Judge Seals
21 decided that pretty much on his own. Then it went to the
22 Court of Appeals that overturns the decision. Then it went
23 to the Supreme Court, which overturned them. The bottom
24 line is in that manner, Mr. Johnson's no longer on the
25 registry. The person who was convicted of a lewd act on a

1 minor pled guilty, and the key thing is the registry was
2 clearly in existence because this was, like, the early
3 2000s.

4 Now, when you take those same set of facts and you
5 look at Melvin Roberts, who went to prison in 1975, got out
6 in '89, has never been in any other trouble since then. He
7 went to jail, got out of jail long before the registry was
8 even in existence. His situation goes even beyond that.

9 And as we've been bringing this cases, and I think
10 there may be a copy in the file. I've given Adam this
11 before. We even had a forensic psychiatrist take a look
12 and assess him, which is different than in the *Johnson*
13 case, and what I mean by that is I had Thomas Martin do an
14 assessment of the individual to determine whether or not he
15 should be -- is a danger.

16 THE COURT: Likely to reoffend or whatever?

17 MR. BROOKS: Exactly, and I'm sure Your Honor has seen
18 me do these sexually violent predator cases, and a lot of
19 those things are very similar because the issue is is he
20 likely to reoffend. And that's what we feel is really the
21 root reason why you have the registry is to -- there's a,
22 there's a notion that somebody who's done this type of
23 crime has a likelihood of reoffending, so we need to let
24 law enforcement know. That has actually ballooned into not
25 only just law enforcement. Now it's, you know, on the

1 Internet. It's on milk cartons to let the public know, let
2 law enforcement know because the whole general premise is
3 that if you did this crime, you are likely to reoffend.
4 That's the reason why we had the evaluation done, an
5 assessment, and I think there's an affidavit. I think I
6 sent Adam a copy.

7 MR. WHITSETT: I seem to recall getting several,
8 several cases. I think there's one of this case, if memory
9 serves.

10 MR. BROOKS: And as, and as he's indicated, we've got
11 several of these cases as I've been presenting them. We
12 had our argument last month on a similarly situated case,
13 and, and that's what we were talking about. What we feel
14 is that the statute is just -- doesn't address a person in
15 Melvin Roberts's situation, a person who can't have his
16 case overturned because if he goes and files a PCR now --
17 and, Judge, you well know this. The first thing the
18 Attorney General's office is going to say, hey, you're
19 outside the statute of limitations. You got one year. You
20 can't go back and overturn. You can't. So, he can't do
21 that.

22 He can't go get a pardon and say, well, you know, he
23 didn't do the crime because he can't just get any old
24 pardon. He has to get a specific pardon.

25 THE COURT: Right.

1 MR. BROOKS: And there isn't newly discovered
2 evidence. Here's a guy whose conviction is forty years
3 ago. So, he is now prejudiced.

4 He can't -- the purpose of putting these statutes in
5 place is so that people can conform their behavior ---

6 THE COURT: Well, can I ask you this?

7 MR. BROOKS: Yes, sir.

8 THE COURT: Mr. Brooks, if -- and you're apparently on
9 many of these cases to assist folks in -- similarly
10 situated.

11 MR. BROOKS: Yes, sir.

12 THE COURT: Is, is not -- and I, you know, I got to
13 confess. I have not read the statute with regards to -- I
14 mean, I'm, I'm -- read it in the past, but I'm not in
15 detail familiar with the statute requiring registry. And
16 apparently they, they made it retroactive to anybody who's
17 ever been convicted of this type of crime.

18 MR. WHITSETT: That's correct, Your Honor, and that's
19 been litigated ad nauseam. The Supreme Court's held on
20 multiple occasion that there is no ex post facto because it
21 is not punishable. Because it is a regulatory, you know,
22 administration function. So, they've, they've held time
23 and time again this is not punishment. This is not wrong,
24 and that's how I ---

25 MR. BROOKS: Well, we ---

1 MR. WHITSETT: --- if I've cited ---

2 THE COURT: Well, if ---

3 MR. WHITSETT: --- stated laws, there's a couple of
4 those cases where it says ---

5 MR. BROOKS: And, Judge, what I'm not -- I'm not
6 saying whether or not the individual should be put on the
7 registry, but then you don't give an individual any remedy
8 to potentially ---

9 THE COURT: But ---

10 MR. BROOKS: --- get off.

11 THE COURT: Again, and where I was going with this is
12 rather than litigating these cases one by one individually,
13 are you not better served to file some action to declare
14 the statute improper or, or is that what you're telling me,
15 that that's been done? I don't know.

16 MR. WHITSETT: Your Honor, I know there have been
17 multiple challenges to the constitutionality of the
18 statute.

19 MR. BROOKS: I'm not arguing -- I'm just arguing
20 equity, and when there's a, there's a ---

21 THE COURT: I understand.

22 MR. BROOKS: The law does -- I mean, what we have is
23 what the court can do is when there is no legal remedy, the
24 court can create an equitable one where there is not a
25 legal remedy. That's, that's our position in the Melvin

1 Roberts case.

2 THE COURT: Okay. Okay.

3 MR. BROOKS: And, Judge, just to follow up, there's
4 nothing he can do. It's not like he can go back and get in
5 a time machine and go back and change the clock, and it's
6 not -- there needs to be a process. For instance, there
7 are people who the DMV may determine that you can't drive
8 because you've got a terrible driving record, and the DMV
9 will say you're forever barred. But as you know, Judge, if
10 they keep their record clean, pay all their fines in, like,
11 two years ---

12 THE COURT: They can revisit that.

13 MR. BROOKS: --- they can re-petition the court.

14 THE COURT: Yeah.

15 MR. BROOKS: And the court can say well, you know
16 what? Everything looks in place. Now you should be able
17 to go back and drive, and here's an order. Go down to the
18 DMV, pay your stuff, and get a license. Well, in this
19 situation, there should be some equitable process to allow
20 a person like Mr. Roberts, who was convicted many, many
21 years ago.

22 THE COURT: Is there some -- that's a good point. Is
23 there something in that, that DMV statute that says a court
24 can review it after so many years or something?

25 MR. WHITSETT: That's absolutely correct, Your Honor.

1 I mean, the courts are -- the law specifically provides ---

2 THE COURT: For that.

3 MR. WHITSETT: --- those as remedies.

4 THE COURT: Okay.

5 MR. BROOKS: And in this situation, obviously what
6 we're saying is the statute doesn't talk about a Melvin
7 Roberts.

8 THE COURT: Right.

9 MR. BROOKS: And doesn't -- only -- it, it's -- what
10 is says as far as the process to get off is not complete,
11 and the law doesn't go to include Melvin Roberts. So,
12 therefore, his only remedy is to ask the court to fashion
13 an equitable remedy where there is an insufficient legal
14 remedy for him. So, we're not talking about the
15 constitutionality of the statute. We're just saying the
16 statute doesn't cover Mr. Roberts in terms of a process to
17 get off.

18 Now, if a person got convicted in 2012, did some time,
19 got out, they could reasonably use a legal remedy to try to
20 get off. Hey, there's some newly discovered evidence.

21 Hey, I may be able to get a pardon. Some newly discovered
22 evidence that I didn't do this, or PCR. My PCR is pending.
23 I got it overturned. I got a new trial. All those things.

24 But for somebody who got convicted forty years ago,
25 you know, that's not afforded to him because the second he

1 does that, the state will have another lawyer saying we're
2 prejudiced. We can't find all this stuff. It's forty
3 years ago. The statute of limitations says you got to do
4 it within a certain amount of time. So, he has no legal
5 remedy.

6 THE COURT: All right, anything further, gentlemen?
7

8 MR. WHITSETT: Let me very briefly, Your Honor.

9 I mean, I believe that the remedies and the mechanisms
10 are a matter of legislative prerogative. That it is up to
11 the legislature to address any additional situations if the
12 legislature decides that they should. These are just
13 purely legislative matters and, you know, in the face of an
14 unambiguously worded statute, there simply is no wrong for
15 this court to step in and right because the constitutional
16 application of a constitutional statute, an unambiguously
17 worded statute is simply not a wrong for which there is a
18 remedy that the court can provide based on the
19 jurisprudence.

20 And I don't want to go too far into the weeds on, on
21 the factual dissimilarities between this case and *Johnson*
22 but, but suffice it to say that was not a rape case. And
23 any talk of conforming behavior was conforming behavior to
24 the law, which wouldn't matter when the registry was or
25 wasn't -- the issue here is that there's a 1975 conviction
for rape. If there were appellate grounds, if there were

1 some ground, that could have and would have been raised at
2 that time, but there were not, and so the legislature,
3 legislature has said these are the ways to get off. You
4 either meet them or you don't, and we believe that the
5 jurisprudence of the state dictates that if you don't meet
6 them, then you must comply with this constitutional
7 statute, which is register for life. Thank you.

8 MR. BROOKS: The court did it in the *Johnson* case.
9 That's clear; they did it. The court did it, and it was
10 hashed out as it went up. Supreme Court got all the
11 arguments.

12 THE COURT: No.

13 MR. BROOKS: No, no. I said ---

14 THE COURT: No, they didn't.

15 MR. BROOKS: No, no. I, I said they got all -- they
16 got all the arguments. Now, what, what did they rule and
17 how they ruled, that's different, but it's not like they
18 didn't know the factual situation with the *Johnson* case.

19 THE COURT: But it doesn't matter what those facts
20 were. It doesn't matter what those facts were if they
21 weren't preserved for appellate review. That's all the
22 court did. They didn't do an analysis of those facts.
23 They didn't do an in depth look in application to those
24 facts. They just said you know what? This wasn't
25 preserved. It shouldn't have been considered.

1 MR. BROOKS: It shouldn't have been considered by the
2 Court of Appeals.

3 THE COURT: Correct.

4 MR. BROOKS: Okay, which means ---

5 THE COURT: Correct.

6 MR. BROOKS: --- the only law that was in existence in
7 the *Johnson* case -- that a court did step in.

8 THE COURT: That's not the law ---

9 MR. BROOKS: It's not ---

10 THE COURT: --- of South Carolina. That's the law of
11 the *Johnson* case.

12 MR. BROOKS: That's right. It's not necessarily
13 binding, but it is very, very, very persuasive in the sense
14 that *Johnson*, through a trial judge in this circuit, I
15 might add ---

16 THE COURT: Who's a very close friend of mine.

17 MR. BROOKS: Decided that this was not -- this was a
18 situation, given these facts, that the law was not
19 appropriate. That there needed to be an equitable remedy.
20 Our point is if the court didn't feel, which they did --
21 and, and here's the thing, Judge. We haven't even actually
22 been heard. Obviously when, when they talk about some
23 factual dissimilarities, the court doesn't -- because we
24 haven't even had a hearing. We haven't had a hearing to
25 have Mr. Roberts testify to have the sexual registry off,

1 and that's what we're asking for, and to have Dr. Martin.

2 And I'll say this, Judge. We have gone above and
3 beyond the things that were brought to the court in the
4 *Johnson* case by having an expert available, such as Thomas
5 Martin, which the court is familiar with who he is.

6 So, our position is that -- what we're asking is
7 obviously the court to deny the defendants' motion and
8 allow Mr. Roberts to be heard as a court in this circuit --
9 who, as Your Honor says, is a close friend of his --
10 allowed him to be heard on. And we have more to present to
11 the court than the person in the *Johnson* case. So -- and
12 that's been the only law in this. So, it's a very novel
13 issue, Judge.

14 THE COURT: Okay, and because it is -- it's not one
15 that I'm going decide right now. So, I'm going to review
16 the matters that y'all have submitted to me, and, and I'll
17 give y'all a decision, okay?

18 MR. WHITSETT: Thank you, Your Honor.

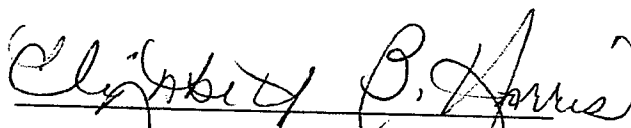
19 THE COURT: Thank you.

20 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR FLORENCE COUNTY, SOUTH CAROLINA, ON
THE 19TH DAY OF MARCH, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JUNE 8TH, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

MELVIN THOMAS ROBERTS)

PETITIONER)

VS)

MARK KEEL)

DIRECTOR, SOUTH CAROLINA)

LAW ENFORCEMENT)

DIVISION (SLED), AND THE)

STATE OF SOUTH CAROLINA)

RESPONDENT)

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

C/A NO.:2014-cp-21-1973

AFFIDAVIT OF THOMAS V. MARTIN, M.D.

2015 APR 15 PM 2:35
CONNIE REEL STARR
CCJP & GS
FLORENCE COUNTY, SC

FILED

I, Thomas V. Martin, M.D., am a licensed physician (psychiatrist) in the state of South Carolina. I am Board Certified in General and Forensic Psychiatry by the American Board of Psychiatry and Neurology and the American Board of Forensic Psychiatry. My practice is located at 1330 Richland Street, Columbia, SC. My practice includes the care and treatment of patients from childhood to geriatrics. I have been qualified to testify in numerous counties in South Carolina as well as the United States Federal Courts. My practice of twenty five years includes the assessment and treatment of many sexual offenders from all counties in South Carolina.

Being duly sworn I do swear and affirm the following:

- 1) Mr. Melvin Thomas Roberts is a 67 year old retired married male from Florence South Carolina, with 16 years of Service at a local university in the Custodial and Maintenance Services. Mr. Roberts has been married to Laura Bell Roberts since 1966 and is the father of four grown children. Mr. Roberts was arrested on January 19, 1975, convicted of Rape, and sentenced to forty years in the South Carolina Department of Corrections. Mr. Roberts served fourteen years of that sentence and was paroled on February 8, 1989. Mr. Roberts has continued to deny any guilt in this incident, but served this time without any infractions, has had no parole violations and has been a model citizen since being paroled in 1989. Mr. Roberts has been required by the State to register with the SC Sex Offender Registry. He is now petitioning to have this requirement removed and be taken off the lifetime Registry.
- 2) This Examiner's assessment of this forensic case and petition included a two and a half hour interview with Mr. Roberts and his wife, consultation with his attorney, a review of his criminal record, Indictment January 19, 1975, Transcript of Proceedings, September 2, 1975, his Certificate of Parole February 8, 1989, Certificate of Service from State of South Carolina for 10 years of service dated July 30, 2002, and Certificate of Appreciation from State of South Carolina, Office of the Governor for faithful service dated November 1, 2008.

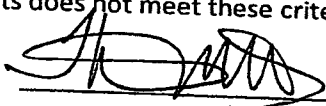
CERTIFIED: A TRUE COPY

Connie Reel Starr

CLERK OF COURT C.B. & G.S.
FLORENCE COUNTY, S.C.

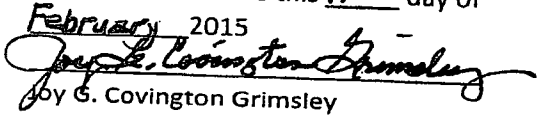
- 3) Mr. Roberts has been a viable and productive citizen within his community. He has no subsequent criminal record, has remained married to the same wife for forty years, and maintains close relationships with his children and grandchildren.
- 4) Throughout the consultation, Mr. Roberts remained candid and genuine surrounding his charge of rape and continues to deny guilt, but does not bear animosity toward the victim who charged him with the crime. While incarcerated; he was the Chairman of Inmate Advisory Counsel, worked as a teacher's aide and attended USC on the CCI grounds, worked as a canteen cashier and on local construction projects. Mr. Roberts became a Full Trustee and worked all over South Carolina. After his release to a halfway house in Florence, he was later reunited with his spouse and family and has led a pattern of model behavior in his lifestyle and work ethic.
- 5) Diagnostically, Mr. Roberts does not suffer from a major mental illness. He has no history of addictive substance abuse or dependence. Furthermore, Mr. Roberts does not suffer from a sexual perversion disorder, Paraphilia. He has healthy and long-term interpersonal relationships and has had a successful career at the local university. Mr. Roberts has a supportive family unit and has had no aberrant behaviors or relationships. Mr. Roberts does not require psychotherapeutic intervention or treatment.
- 6) In conclusion, Mr. Roberts poses a very low risk to sexually offend. He has consistently demonstrated admirable and laudable behavior in his community and with his family. His annual re-registry as a sexual offender has only proven to be detrimental to Mr. Robert's sense of integrity, is preventing him from attending his grand-children's activities with his family and is creating stress precluding his desire to buy a home and move within South Carolina. Mr. Roberts feels haunted by the fact that his name remains on the registry and when friends have incidentally seen his name, they are deterred. Mr. Roberts does not need any further deterrent to prevent him from sexual acting out behavior. The SC Sex Offender Registry serves to assist law enforcement and the community in monitoring those dangerous individuals who do not manage their aberrant sexual behaviors and fail to follow our social and community mores. Mr. Roberts does not meet these criteria.

Further affiant sayeth not.


Thomas V. Martin, M.D.

Sworn to before me this 11th day of

February, 2015


Joy G. Covington Grimsley

A Notary Public for South Carolina

My Commission Expires: 12-15-2017

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Melvin T. Roberts,

Plaintiff/Petitioner,

vs.

Mark Keel, Director, South Carolina Law
Enforcement Division (SLED) and the State of
South Carolina,

Defendants/Respondents.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
) Civil Action No. 2014-CP-21-01973

**DEFENDANTS' BRIEF IN
SUPPORT OF JUDGMENT
ON THE PLEADINGS**

In support of the Motion for Judgment on the Pleadings previously filed in this matter, the Defendants would submit the following:

South Carolina's Sex Offender Registry statutes, S.C. Code § 23-3-400 *et seq.*, list the only mechanisms and avenues by which an individual can be removed from the Sex Offender Registry.¹ 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.

¹ 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.

However, the Complaint in this action does not indicate that the Plaintiff meets any of these statutory criteria such that the Plaintiff is entitled to removal.² In fact, the Complaint does not indicate that the Plaintiff has even attempted to avail himself of any of the statutory avenues for removal. Accordingly, there is no legal or constitutional basis for the Plaintiff to be removed from South Carolina's Sex Offender Registry. *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). As such, the Complaint sets forth no lawful ground on which the Plaintiff is entitled to relief and the Defendants are entitled to a judgment on the pleadings in this matter. *See Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991).

Furthermore, there is no equitable jurisdiction for a court to remove an individual from South Carolina's Sex Offender Registry without violating the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8; *see generally 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); *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). 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 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 into the Legislature's exclusive province is unconstitutional. *Id.*

² There is no argument that the Plaintiff's conviction for Rape mandates registration in South Carolina. *See* S.C. Code Ann. §23-3-430.

As a threshold matter, it is noteworthy that South Carolina's Sex Offender Registry is 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.") 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, 188 L. Ed. 2d 380 (U.S.S.C. 2014) (finding South Carolina's lifetime electronic monitoring program constitutional). Moreover, South Carolina's statutory lifetime registration requirement is set forth in an 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 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"**).

Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675 (2007) (emphasis added). The Complaint in this matter seeks for this Court to fashion a remedy that does not exist in South Carolina law. This request requires this Court to impermissibly act as a "superlegislature" and to add language to an unchallenged, constitutional, and unambiguously worded statute. Such an action violates the South Carolina Constitution. S.C. Const. art. I, § 8. As such, this action must fail and the Defendants are entitled to judgment on the pleadings.

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

This situation is analogous to legislatively mandated minimum sentences for criminal offenses. 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). Following convictions of these offenses, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals below the statutorily set amounts. However, these statutory minimums are, and have been consistently upheld as being, lawful. 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 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, *16 “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. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).⁴ 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 conviction. **Further, we found the matter of sentencing if convicted of a triggering offense to be a matter within the province of the legislature.** *Id.*

⁴ 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. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001) (emphasis added). Similarly, 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 South Carolina Constitution. S.C. Const. art. I, § 8.

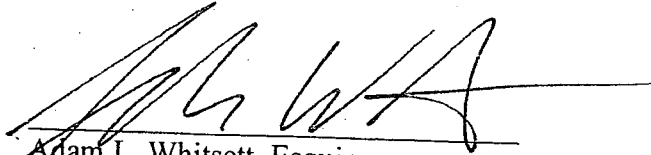
Furthermore, the purely equitable relief sought by the Plaintiff in this matter is simply not available. The South Carolina Supreme Court has noted that "[e]quitable relief is generally available **only** where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper 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) (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.* 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, Inc. v. County 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). Ultimately, the Court in *Santee Cooper* noted 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). Similarly, the Defendants respectfully assert that this Court's equitable powers must yield in the face of South Carolina's unambiguously worded Sex Offender Registry laws, which set forth lifetime registration. As such, the Defendants are entitled to a judgment on the pleadings in this matter.

Moreover, it is well-known that “equity follows the law”. This maxim alone is a basis for denying equitable relief in this case as it has been in other cases. 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). The South Carolina Court of Appeals has also ruled 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). The law in South Carolina is clear, the Plaintiff is simply not entitled to the requested relief in this matter because there is no equitable jurisdiction. Accordingly, the Defendants are entitled to a judgment on the pleadings in this matter.

Furthermore, South Carolina law is also clear that “[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) (“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.”)). As such, there is simply no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. Furthermore, for this court to act as a “superlegislature” and to unilaterally add language to an unchallenged, unambiguously worded statute violates the South Carolina Constitution. S.C. Const. art. I, § 8.

Accordingly, for the reasons stated above and all those to be advanced at the hearing of this matter, judgment on the pleadings should be granted to the Defendants.

Respectfully Submitted,



Adam L. Whitsett, Esquire

General Counsel

South Carolina Law Enforcement Division

Post Office Box 21398

Columbia, South Carolina 29221-1398

Phone: (803) 896-0647

Fax: (803) 896-7588

Email: awhitsett@sled.sc.gov

S.C. Bar Number: 74888

Courtney E. Lowell, Esquire

Assistant Attorney General

Office of the Attorney General

State of South Carolina

Post Office Box 11549

Columbia, SC 29211-1549

Phone: (803) 734-3177

Fax: (803) 734-3677

Email: clowell@scag.gov

S.C. Bar No.: 77175

Marcie Green, Esquire

Assistant Attorney General

Office of the Attorney General

State of South Carolina

Post Office Box 11549

Columbia, SC 29211-1549

Phone: (803) 734-3759

Fax: (803) 734-3677

Email: mgreen@scag.gov

S.C. Bar No.: 101041

ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
FEBRUARY 2, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM FLORENCE COUNTY

Court of Common Pleas

Honorable Thomas A. Russo, Circuit Court Judge

Case No: 2015-001138

Melvin Roberts.....Appellant

v.

Mark Keel, Chief of the South Carolina Law Enforcement Division and the State of South
CarolinaRespondent

RECORD ON APPEAL

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any
of the parties and not any other material.



Charles T. Brooks, III
The Brooks Law Offices, LLC
Post Office Box 3512
Sumter, South Carolina 29150
803-418-5708
Attorney for Appellant

Sumter, South Carolina

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