

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Honorable D. Craig Brown, Circuit Court Judge

Case No: 2015-002449

Mansy McNeil.....Appellant

v.

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

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
Case No.: 2014-CP-21-2220

Mansy McNeil,

Plaintiff/Petitioner,

v.

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

Defendants/Respondents.

**ORDER GRANTING SUMMARY
JUDGMENT**

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

This matter came before me on November 4, 2015 on the Defendants' Motion for Summary Judgment. 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 Summary Judgment.

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Connie Red Strain

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

BACKGROUND

The Plaintiff was convicted of lewd act on a minor violation of § 16-15-140 of the South Carolina Code of Laws (as amended) on or about November 6, 2012. The Plaintiff was sentenced to a term of incarceration of three (3) years. Upon being released from incarceration, the Plaintiff was required to register as a sex offender pursuant to the South Carolina Sex Offender Registry Act, § 23-3-400 *et seq.* ("SORA") and did in fact so register. The Plaintiff filed this present action in August of 2014 seeking for this Court to fashion equitable personal

¹ The Defendants are additionally represented in this action by Assistant Attorney General Courtney Lowell and Assistant Attorney General Marcie Greene.

relief for the Plaintiff. The Defendants Answered the Complaint and filed the present Motion for Summary Judgment.

STANDARD OF REVIEW

A motion for summary judgment shall be granted “if the pleadings... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) *citing* Rule 56(c), SCRCP (emphasis in original).

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976).

LAW/ANALYSIS

Based on the following, I find that there is no genuine issue of material fact in dispute in this matter and that there is no factual dispute requiring the services of a fact finder. Accordingly, the Defendants are entitled to a judgment as a matter of law. *See* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRCP.

The Plaintiff was properly registered as a sex offender upon being released from incarceration in accordance with SORA. S.C. Code Ann. § 23-3-430; *see also* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina’s sex offender registry constitutional). SORA is clear and unambiguous and mandates lifetime registration for all sex offenders in South Carolina. S.C. Code Ann. § 23-3-460 (“A person required to register pursuant to this article is required to register biannually for life”).² SORA also provides the only

² I note that South Carolina law requires registration every ninety days for persons “classified as a Tier III offender by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006”; however, this registration is also “for life”.

lawful avenues by which individuals can be removed from the registry.³ See S.C. Code Ann. § 23-3-430(E), (F), (G). There is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria for removal from SORA. Accordingly, there is no legal basis for the Plaintiff to be removed from the registry and the Defendants are entitled to judgment as a matter of law. See S.C. Code Ann. § 23-3-460; S.C. Code Ann. § 23-3-430; Lozada v. South Carolina Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011)(acknowledging that “[w]hether an individual must be placed on the sex offender registry is a question of law.”)

The Plaintiff’s argument in this matter is that his constitutional SORA registration requirement constitutes a “wrong” that would justify this Court fashioning the Plaintiff an equitable personal remedy. This argument is without merit. The constitutional application of the clear and unambiguous provisions of SORA is not a “wrong” cognizable in South Carolina law. The South Carolina Supreme Court has held unequivocally that “the court’s equitable powers must yield in the face of an unambiguously worded statute.” Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). In addition, the South Carolina Supreme Court has also 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).

³ In fact, the mechanisms for both placement on and removal from the registry are provided by this same code section, S.C. Code § 23-3-430.

Moreover, "[i]f a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." State v. Smith, 330 S.C. 237, 240, 498 S.E.2d 648, 650 (Ct.App. 1998). Accordingly, for this Court to fashion an equitable remedy outside of the clear and unambiguous provisions of SORA would exceed this Court's authority and this Court's equitable powers must yield to the clear and unambiguous language of SORA.

In addition, fashioning an equitable remedy in the face of the clear and unambiguous provisions of SORA would constitute a violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The length of an individual's sex offender registration pursuant to SORA is solely a matter of legislative prerogative and there is no judicial discretion over such without violating the South Carolina Constitution. *Id.* Accordingly, there is no legal or constitutional basis for the Plaintiff to be removed from the registry and the Defendants are entitled to judgment as a matter of law.

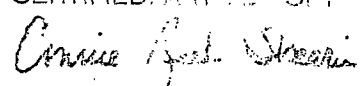
CONCLUSION

Therefore, the Defendants' Motion for Summary Judgment is GRANTED.

AND IT IS SO ORDERED.


The Honorable D. Craig Brown
Presiding Judge
Court of Common Pleas
12th Judicial Circuit


_____, South Carolina
11-13, 2015

CERTIFIED: A TRUE COPY

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

STATE OF SOUTH CAROLINA,)
)
COUNTY OF FLORENCE)
)
MANSY MCNEIL)
)
Plaintiff,)
)
vs.)
)
MARK KEEL, DIRECTOR, SLED, ET AL)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2014-CP-21

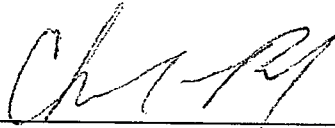
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CORRIGEE REPLY SHEET
COCOP & GS
FLORENCE COUNTY, SC

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: July 3, 2014


Plaintiff/Attorney for Plaintiff

Address: 309 Broad Street, Sumter, SC 29150

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CORRIGEE REPLY SHEET
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
MANSY MCNEIL,)
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- 2220

PETITION FOR
DECLARATORY JUDGMENT
(Non-Jury)

FILED
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CONNIE REEL-SHEP
C.C.P. & G.S.
FLORENCE COUNTY

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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Connie Reel-Shep
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 Lewd Act on a Minor in 2012 in Florence County.
6. The Petitioner was sentenced to a term of incarceration of three (3) years for the charge of Lewd Act on a Minor, sentenced to be served concurrently with the South Carolina Department of Corrections. The Petitioner was released from incarceration.
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.

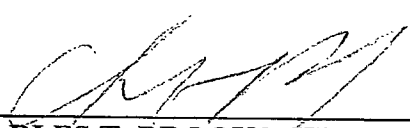
FOR A FIRST CAUSE OF ACTION
Equity

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
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cbrooks@ctbrooks.com

Dated: 8/1/2014

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

VERIFICATION

MANSY MCNEIL 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 14 day of July, 2014)

Patricia Black)
Notary Public for South Carolina)

My Commission expires: June 26, 2022)

[Signature]
Signature of Petitioner

Signature of Petitioner

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CLERK OF COURT
FLORENCE COUNTY, S.C.

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

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

FILED

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IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
Case No.: 2014-CP-21-2220

Mansy McNeil,

CONNIE REEL-SPEARS
CCCP & GS
FLORENCE COUNTY

Plaintiff/Petitioner,

v.

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

Defendants/Respondents.

ANSWER

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.

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

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

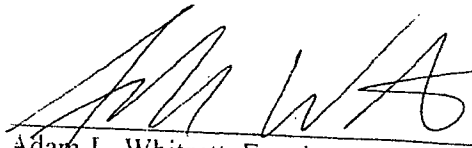
Proper Inclusion on the Registry

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,



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COLUMBIA, SOUTH CAROLINA
SEPTEMBER 25, 2014

ATTORNEYS FOR THE DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
Mansy McNeil,	)	Civil Action No. 2014-CP-21-02220
	)	
Plaintiff/Petitioner,	)	
	)	
vs.	)	
	)	NOTICE OF MOTION AND
Mark Keel, Director, South Carolina Law	)	MOTION FOR SUMMARY JUDGMENT
Enforcement Division (SLED) and the	)	
State of South Carolina,	)	
	)	
Defendants/Respondents.	)	
	)	

TO: CHARLES T. BROOKS, III, ESQUIRE, ATTORNEY FOR PLAINTIFF

PLEASE TAKE NOTICE THAT the Defendants Chief Keel, South Carolina Law Enforcement Division ("SLED"), and the State of South Carolina, through the undersigned attorneys, will move before this Court within ten (10) days of the date hereof (or at such other time and place as the Court determines) for summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure.

BACKGROUND

The Plaintiff was convicted of Lewd Act on a Minor (Section 16-15-140) on or about November 6, 2012. He was sentenced to a term of incarceration of three (3) years. Compl. ¶¶6. Upon being released from incarceration, Plaintiff was required to register as a sex offender¹ pursuant to the South Carolina Sex Offender Registry Act ("SORA").

On or about August 6, 2014, Plaintiff Mansy McNeil filed this "Petition for Declaratory Judgment" against Defendants Chief Keel, SLED, and the State of South Carolina, regarding

¹ Plaintiff is classified as Tier III offender pursuant to the Sex Offender Registration and Notification Act (SORNA) based on his 2012 conviction and must register every ninety (90) days. S.C. Code Ann. 23-3-460(B).

certain provisions governing the Registry. The Plaintiff contends that “equity is reserved for situations where there is no adequate remedy at law;” “the facts before this Court do not support a finding that he is or ever was a predator or child molester;” the lifelong Registry requirement is wildly disproportionate to the underlying conduct;” “justice compels a remedy...and that justice is served by granting the Petitioner personal relief;” and “Petitioner is entitled to an Order ... remov[ing] his name from the South Carolina Sex Offender Registry immediately.” Compl. ¶¶13, 15-18.

STANDARD OF REVIEW

“Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Rules Civ. Proc., Rule 56. *Knight v. Austin*, 396 S.C. 518, 521-22, 722 S.E.2d 802, 804 (2012). “The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.” *Englert, Inc. v. Leafguard USA, Inc.*, 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008). In determining whether summary judgment is appropriate, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

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). “Whether 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).

The South Carolina Sex Offender Registry Act ("SORA") lists the only mechanisms and avenues by which an individual can be removed from the Sex Offender Registry.² Pursuant to § 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). Pursuant to § 23-3-430(F), an offender who receives a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed from sex offender registry. S.C. Code Ann. § 23-3-430(F). And finally, § 23-3-430(G) mandates removal for individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial. S.C. Code Ann. § 23-3-430(F). These are the only lawful avenues by which an individual who is properly placed on the Registry can be removed.

Equitable relief sought by the Plaintiff in this matter is not simply 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) (emphasis added). The 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* at 621. 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 Corp. Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 644 S.E.2d 675 (2007); *Santee Cooper Resort, Inc.*, 298 S.C. at 185, 379 S.E.2d at 123.

² 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.

Ultimately, the Supreme Court in *Santee Cooper* noted that “the court’s equitable powers must yield in the face of an unambiguously worded statute.” 298 S.C. at 185, 379 S.E.2d at 123 (emphasis added).

Moreover, it is well-known and undisputed that “equity follows the law.” This maxim alone is a basis for denying equitable relief in this case. See *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011); *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 319–20, 659 S.E.2d 263, 267 (Ct. App. 2008). 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*, 395 S.C. at 512, 719 S.E.2d at 259.

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 Defendants respectfully assert that this Court’s powers must yield in the face of South Carolina’s unambiguously worded SORA, which sets forth lifetime registration. Removal of an individual, by another means other than one of the enumerated avenues, is a violation of the South Carolina Constitution’s mandate for the separation of powers. See S.C. Const. art. I, § 8; *Key Corp. Capital, Inc.*, 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.*, 298 S.C. at 185, 379 S.E.2d at 123.

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

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

mandatory minimums for distribution or trafficking illegal drugs); S.C. Code Ann. § 16-3-30 (30 years). Following convictions of these offenses, the General Assembly has prohibited judges from sentencing individuals below the statutorily set amount, and these statutory minimums 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). There is no equitable allowance for a lighter sentence. The South Carolina 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.**

Jones, 344 S.C. at 56, 543 S.E.2d at 545 (internal citations omitted) (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. *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.").

The Plaintiff asserts that he "is entitled to equitable relief in this matter" and that "equity is reserved for situations where there is no adequate remedy at law." Compl. ¶¶12-13. However, the law in South Carolina is clear; the Plaintiff does not meet any of these statutory criteria in § 23-3-430 such that he is entitled to removal. In fact, there is no indication that he have even attempted to avail himself of any of the statutory avenues for removal. Since the Plaintiff does

not qualify for removal, he is simply asking this Court to legislate and create a remedy for him that does not exist in the statute. Therefore, this requested relief requires this Court to impermissibly act as a superlegislature and to add language to an unchallenged constitutional and unambiguously worded statute, which would violate the South Carolina Constitution. Essentially the Plaintiff argues that if a statute does not include him, he is entitled to equitable relief to obtain indirectly what he cannot obtain directly.

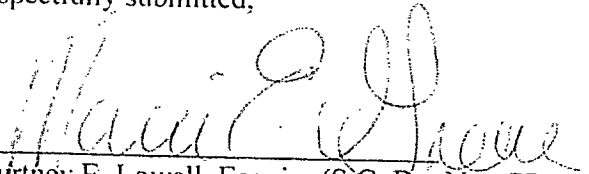
Since there is no legal basis for the Plaintiff to be removed from the Registry, the Plaintiff is not entitled to removal through equitable relief.

CONCLUSION

For the reasons stated above and all those to be advanced at the hearing of this matter, judgment should be granted to the Defendants Chief Keel and the State of South Carolina.

[Signature Page Follows]

Respectfully submitted,



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ATTORNEYS FOR CHIEF KEEL, SLED, AND THE STATE OF
SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA
SEPTEMBER 29, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE) 2014-CP-21-02220

Mansy McNeil,)
)
Plaintiff,) Transcript of Record
)
vs.) November 4, 2015
)
South Carolina Law Enforcement)
Division and the State of South)
Carolina,)
)
Defendants.)

B E F O R E:

Honorable D. Craig Brown
Florence County Courthouse
Florence, South Carolina

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

Charles Thomas Brooks, III, Esquire
Attorney for Plaintiff

Adam L. Whitsett, Esquire
Attorney for Defendants

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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E X H I B I T S

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(There were no exhibits marked during the hearing.)

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1 (On the record, November 4, 2015.)

2 THE COURT: Whenever you're ready, sir.

3 MR. WHITSETT: Thank you, sir. May it please the Court?

4 Adam Whitsett, I'm general counsel at SLED here on behalf of
5 all the Defendants in this matter, which is both Chief Keel
6 and the State of South Carolina, requesting summary judgment
7 on this action because there's really no genuine issue of
8 material fact, and there's no factual dispute that, that would
9 or could require the services of a fact finder. This is
10 purely a legal issue and purely sort of a, a -- our claim in
11 this matter is that the only relief sought, which is for this
12 Court to go outside of a constitutional statute that's being
13 constitutionally applied and to, essentially, rewrite the Sex
14 Offender Registry laws is not a legal remedy that's available
15 within the statutory scheme, is in violation of the
16 constitutional mandate of separation of powers and is just
17 simply not available as a matter of law. So there's really no
18 factual dispute, and it's -- the only claim in this matter is
19 for this Court to grant some sort of equitable personal relief
20 to Mr. McNeil. He is currently a registered sex offender.
21 His registration is, is clearly in accordance with the law
22 since he pled guilty or was convicted of a mandatory registry
23 offense, lewd act on a minor back before the statutes were
24 changed. His registration is proper. It is constitutional.
25 The registry is constitutional, and there's simply no

1 statutory avenue available to Mr. McNeil to come off the
2 registry. That's how the legislature drew it up. That's how
3 the legislature enacted the statute. It's clear. It's
4 unambiguous, and registration in South Carolina is for life.
5 There's no real dispute there, and so, you know, the
6 Defendants' position is that asking this Court to go outside
7 of this clear and unambiguous statute, this clear unambiguous
8 and constitutional statutory scheme it's just not -- it's just
9 a remedy that's not available in the law, and that Courts
10 should not disregard the, you know, the legislature and the
11 statutes and, and in fact, the jurisprudence of the state is
12 very clear a Court's equitable powers must yield in the face
13 of a clear and unambiguous statute, and that's what we've got
14 here, registration in South Carolina is for life. There's no
15 ambiguity, there's no, you know, there's no gray area here.
16 You know, the South Carolina Supreme Court has said, you know,
17 on several different occasions throughout the history of this
18 state that it's just beyond a Court's power to rewrite a clear
19 and unambiguous statute, and when you're looking at the, you
20 know, the rules of statutory interpretation, if a statute's
21 clear and unambiguous, you can't go outside it. You can't go
22 beyond it. You sort of can't strain the reading of it. It is
23 what it is. There are certain things in this State are just
24 simply in the province of the legislature, and it's our
25 position that the duration of a person's sex offender

1 registration is absolutely one of those things that's just
2 solely in the province of the legislature. I know Mr. Brooks
3 and his Plaintiff believe that that's not -- the statute's not
4 complete and --

5 THE COURT: All right.

6 MR. WHITSETT: -- that there should be an avenue.

7 THE COURT: Mr. Brooks, he says you, you want me to
8 rewrite the law.

9 MR. BROOKS: And Judge, just by way, you know, I, I
10 started laughing, but Adam and I have argued probably four or
11 five of these cases, and --

12 THE COURT: And he's --

13 MR. BROOKS: -- I know his arguments, he knows my
14 arguments.

15 THE COURT: And he's always been granted summary
16 judgment?

17 MR. BROOKS: Well, not always, not always. There's one
18 of them that's outstanding.

19 MR. WHITSETT: Well, there's two, Judge. There's -- it's
20 four of six and there's two that are under advisement.

21 MR. BROOKS: And, and, and, and --

22 THE COURT: Let, let me ask this question, and I -- and
23 don't --

24 MR. BROOKS: And I don't mean to cut you off, Judge, but
25 one thing I apologize, I didn't file a return and I usually

1 file in these cases that Adam has seen. I'm looking through
2 my file. I don't think I filed the standard return I've filed
3 in, in response to his standard motion, but I'm prepared to
4 argue.

5 THE COURT: How many of these you -- how many of these do
6 you have up on appeal, Mr. Brooks?

7 MR. WHITSETT: Three.

8 THE COURT: Three.

9 MR. WHITSETT: And all four of the ones that we have won
10 summary judgment, three of which were Mr. Brooks', all four of
11 them are currently on appeal at the Court of Appeals. We've
12 discussed trying --

13 THE COURT: Have they been consolidated?

14 MR. WHITSETT: Not yet. That's what we've -- we've
15 discussed that, and we're trying to get them adjudicated.

16 THE COURT: Didn't Judge Seals have one of these cases?

17 MR. WHITSETT: This is --

18 THE COURT: Judge Seals had one and he, he removed the
19 guy.

20 MR. BROOKS: I'm getting ready to get to it, Judge.

21 MR. WHITSETT: And Judge, I'll, I'll be happy --

22 THE COURT: That was a different situation though, wasn't
23 it?

24 MR. WHITSETT: Your Honor, there was a little different
25 situation, and, and I have handed up both opinions from Judge

1 Seals because obviously that's a point of contention between
2 us. You know, Judge Seals, that case was a very interesting
3 case. It was brought as a constitutional challenge. There
4 was no equitable relief sought.

5 THE COURT: Okay.

6 MR. WHITSETT: But he upheld the constitutionality, but
7 said, "Well, I'm just going to grant equitable personal
8 relief." The Attorney General's Office filed a motion for
9 reconsideration of that, basically asserting equitable
10 defenses, but not specifically challenging the authority or
11 the ability of the Judge to do that.

12 THE COURT: Right.

13 MR. WHITSETT: That's exactly what was argued at the
14 Court of Appeals on the Johnson case and they said that there
15 was, you know, equity follows the law, you know, no adequate
16 remedy but they can be provided by a statute and that
17 equitable powers must yield in the face of a clear and
18 unambiguous statute. They analyzed that very specifically.
19 Unfortunately the Supreme Court said, "Well, that issue wasn't
20 properly before the Court," and said because, you know, the
21 800 pound gorilla that was the basis of the ruling wasn't
22 properly preserved it was error for the Court of Appeals to
23 rule on the merits of it. So that wasn't a merits decision
24 sanctioning what was done, it was simply, you know, and they
25 said, and I quote, "We, therefore, reverse the Court of

1 Appeals on preservation grounds," and so, you know, I submit
2 that the rationale and the law that the Court of Appeals
3 applied is still the law in the state. Now, that's not --
4 Johnson is not the law. The Court of Appeals' decision is
5 not, but the Santee Cooper case that they relied on, you know,
6 and the case law that they relied on and, and the basis for
7 their decision is the same basis that we're arguing today, and
8 --

9 THE COURT: And if I recall correctly on the facts of
10 that case with Judge Seals I think the victim was there, the
11 victim's mother --

12 MR. WHITSETT: Absolutely.

13 THE COURT: -- or something was there.

14 MR. WHITSETT: That's correct. It was --

15 THE COURT: And asked Judge Seals to remove him from the
16 list.

17 MR. WHITSETT: Absolutely. That, that is absolutely the
18 case in that.

19 THE COURT: We got that -- well, do we have that here?

20 MR. BROOKS: Now, in fairness --

21 THE COURT: Mr. Brooks.

22 MR. BROOKS: -- in, in fairness, in Mr. McNeil's case we
23 don't necessarily have those facts, but I've been arguing
24 these cases on a broader scheme because some of the cases
25 we've had kind of fit more of that Johnson scheme or, or

1 facts. Some of them are a little bit different and actually a
2 little bit better for the client than some of them, not as
3 good of the client if you use the Johnson case as a standard,
4 but in fairness on this case, and pertaining, pertaining to
5 Mr. McNeil and that's, but Judge, that's my point in saying
6 the guy's entitled to a hearing --

7 THE COURT: Let me ask --

8 MR. BROOKS: -- in order for the Judge to hear this and
9 then determine, "Well, okay, I don't see this in the same
10 standard as the Johnson situation."

11 THE COURT: Well, let me, let me ask this question, what
12 was the purpose, what was the purpose in the enactment of
13 these registration statutes?

14 MR. BROOKS: It's good you should say that, ask me that,
15 Judge. The purpose in that was that there was a fundamental
16 belief that these people who were engaged in these particular
17 crimes were likely to do them again.

18 THE COURT: Protect public, protect the public.

19 MR. BROOKS: And in essence, protect the public and let
20 law enforcement know, "We've got X guy who committed such and
21 such offense, he's now living in your county at such and such
22 address." Okay. But the basic premise is that he was likely
23 to do it again, and what I have done, not in this case though,
24 but in basically all the other cases and Adam knows this, is
25 I've had my clients evaluated by Dr. Thomas Martin, and I'm

1 sure, Judge Brown, you're familiar with Dr. Martin. I used
2 him a lot in the sexual violent predator cases, but using the
3 same premise about likelihood to do them again, and I had Dr.
4 Martin do affidavits that we've put in the record on other
5 cases, fair enough not in this case, but he says, "Hey, I
6 evaluated this guy under the same parameters as I would a
7 sexual violent predator in terms of likelihood to do them
8 again, and I don't see this guy, you know, likely to do these
9 things, and I don't think this guy needs to be on the
10 registry." So --

11 THE COURT: And that --

12 MR. BROOKS: -- that goes towards your question about why
13 the statute was enacted in the first place. Knew you would
14 ask that, Judge. Knew you would ask that. So I had that
15 planned for you.

16 THE COURT: I appreciate that.

17 MR. BROOKS: So here in this situation what we're asking
18 for, we think that Adam's motion is premature without the
19 necessity of having a hearing for a Judge.

20 THE COURT: Let me ask this question, has our legislature
21 set out under our laws a method, manner or procedure for this
22 to take place?

23 MR. BROOKS: I would say no. Adam may say yes.

24 THE COURT: Let me ask you this, has our U.S. Supreme
25 Court or our State Supreme Court said that lifelong

1 registration is unconstitutional? Has it ever been
2 challenged, and if so either, either one of those courts said
3 it's unconstitutional?

4 MR. BROOKS: I would say in fairness no. I don't have
5 any --

6 THE COURT: Okay.

7 MR. BROOKS: -- case law in regards to that because the
8 Courts have determined that they don't think these things are
9 punitive. However, we think that things have changed in the
10 day and age that we live in where one could argue that they
11 are punitive now because we're not talking about just you
12 going down, a person going down to the sheriff's department
13 registering. Now you're talking about being broadcast over
14 the internet and what you're -- what, what I'm finding with my
15 various clients is that the general public doesn't really
16 treat an individual by what they did. They, they put them in
17 a big old box --

18 THE COURT: Uh-huh.

19 MR. BROOKS: -- for all of them. They don't distinguish
20 between somebody who's on there for indecent exposure because
21 he might have been caught, you know, urinating under the tree,
22 versus somebody who may have done what -- that the guy at Penn
23 State has done.

24 THE COURT: Well --

25 MR. BROOKS: They kind of putting them all in a broader

1 boat, and, and that's walking around with this, this scarlet
2 letter.

3 THE COURT: Well, I'll say this now, the years I've been
4 on the bench, and I'm going on six, I mean, I've had a few
5 indecent exposure pleas in front of me, but it -- they do
6 separate those things out now, and these prosecutors tell me
7 all the time, "Judge, they were just urinating on the side of
8 the street. He doesn't need to" -- here -- he, I say he, I
9 hadn't had a female plead to that in front of me, but they
10 say, "Judge, he doesn't need to be on the Sex Offender
11 Registry."

12 MR. BROOK: It, it --

13 THE COURT: So, I mean, it's, it's -- I say that to say
14 they delineate between those two. They differentiate between
15 them.

16 MR. BROOKS: But in the event that they didn't, what
17 recourse would that individual have?

18 THE COURT: Would it not be up to the Judge at that point
19 to make that decision? I mean, that's what the law provides;
20 does it not?

21 MR. BROOKS: Right. And, and, and --

22 MR. WHITSETT: Specifically on indecent exposure it does
23 give the Court and the Prosecutor specific authority over that
24 offense because it is somewhat of a -- there are --

25 MR. BROOKS: Using, using that analogy that I brought up,

1 I could understand that, but what if you had a situation where
2 the Judge says, "No, I'm going to put him on the registry,"
3 even though you come back and you look at the facts and he was
4 just urinating under the tree, and then he -- but he has no
5 recourse and that's the problem because what we're saying here
6 --

7 THE COURT: Is that this kind of case?

8 MR. BROOKS: No. It's not this kind, that's not this
9 kind of case, Judge, but I've had -- I've just -- I just
10 wanted to be fair and let you know I've been arguing these
11 things in a broader scheme by saying that a gentleman has the
12 opportunity to at least have a hearing and --

13 THE COURT: Well, that -- okay. I'm sorry.

14 MR. BROOKS: -- I would comment on the Johnson case, and
15 the reason the Johnson case is very important, and Adam knows
16 my arguments backwards and forwards now, is while the Court of
17 Appeals gives the brilliant analysis, the problem is it's not
18 the law. There is no law on whether or not a person is
19 entitled to an -- a hearing in regards to equitable relief.
20 You've got one case where Judge Seals' order is the law in
21 that case that says equitable relief is possible, and as far
22 as talking about the branches of government and whether or not
23 we're asking for the judiciary to overstep its bounds, I'm,
24 I'm, I'm going to slow it down, overstep its bounds into the
25 legislative branch, the Supreme Court has done so before and

1 has not been shy about it. GPS monitoring case is a clear
2 example. The legislature said this is life-long. The Supreme
3 Court jumped in and says, "Nah, wait a minute. This isn't
4 fair. We're going to put some limits on it and say it needs
5 to have some judicial review." They did it before. So
6 there's no reason why they can't do it again. They do it all
7 the time. So --

8 THE COURT: But you're asking me here as a Trial Court
9 Judge to kind of write that law.

10 MR. BROOKS: Judge --

11 THE COURT: And I'm saying that to say this, other than
12 Judge Seals' case, which and I know -- I read that case. I
13 mean, I -- and I know the facts of that case, which is
14 tremendously different than what we have here, tremendously --
15 let me finish now --

16 MR. BROOKS: That's correct.

17 THE COURT: -- tremendously different than what we have
18 here, but you're asking me to carve out something from the
19 Trial Court when is that not more -- if they're going to do
20 it, more appropriate at the appellate level?

21 MR. BROOKS: Well, and I guess what I'm saying is we need
22 to have a hearing to flesh out all the facts in regards to Mr.
23 McNeil's case.

24 THE COURT: Well, let me ask this question. I, again, I
25 understand you and your client's position on this, but what,

1 under the Victims' Bill of Rights, what rights would they have
2 in this situation or scenario? I mean, we going to have go
3 try this whole thing again on a civil side?

4 MR. BROOKS: Well --

5 THE COURT: And what authority does the Court have to do
6 that?

7 MR. BROOKS: Well, it, it took -- but that's part of
8 whether or not a person should be entitled to the equitable
9 relief for the Court to decide, and of course, in using that
10 scenario, Judge, then the Attorney General or in this case
11 SLED and my good friend Mr. Adam here would go out and bring a
12 victim in and say, "You want to have a voice in regards to
13 this person's continuation of being on the registry?"

14 THE COURT: All right. Anything else?

15 MR. WHITSETT: With respect, Judge, I mean, I think
16 that's what the legislature was specifically trying to avoid
17 and, and to get into the GPS, I know that was a very different
18 situation, and in that case the Court took issue with the
19 constitutionality of certain portions of that statute. That's
20 not at issue here.

21 THE COURT: And if I recall that was a female that
22 challenged that; was it not, the GPS?

23 MR. WHITSETT: It was a challenge to -- there was one
24 portion of the GPS monitoring statute that did allow for
25 review under --

1 THE COURT: Right.

2 MR. WHITSETT: -- a limited number of offenses.

3 THE COURT: Right.

4 MR. WHITSETT: And the Supreme Court said that that --
5 the decision to limit the number of offenses that were
6 available for review was arbitrary, that they just weren't
7 picked two or three out of a hat. It wouldn't -- there were
8 some that were very bad, some that weren't bad sort of on the
9 scale, and they said that was an arbitrary decision, but it's
10 interesting in that case they did say that lifelong GPS
11 monitoring and in all the recent cases have said that's,
12 that's constitutional.

13 THE COURT: Right.

14 MR. WHITSETT: It's just if you're going to build a
15 review process you can't do it arbitrarily.

16 THE COURT: Right.

17 MR. WHITSETT: So --

18 THE COURT: All right.

19 MR. WHITSETT: -- it's clearly distinguishable when we
20 don't have the constitutional concerns in that this is a
21 constitutional application of a constitutional statute.

22 MR. BROOKS: In, in fairness to, to, to Adam, this case
23 does not arise -- it doesn't have those same heart of the --
24 sort of the heart facts that, that Johnson has or some of the
25 other cases that I've, I've actually had, and I think Adam

1 would, would acknowledge that. I've had some other cases that
2 probably were a little bit more deserving of having a hearing
3 in terms of people who did something prior to the registry
4 being enacted and being after they've been out, been good
5 citizens, and all of a sudden have to retroactively, and I
6 place those kind of in some different categories, and I think
7 that Mr. McNeil, in fairness, is not in that situation. So --

8 THE COURT: Right.

9 MR. BROOKS: -- I do acknowledge that, Judge.

10 THE COURT: All right. Final word since you're the
11 movant, anything else?

12 MR. WHITSETT: I mean, Judge, you know, candidly, I know
13 Mr. Brooks is, is asking sort of just for a hearing, but I
14 mean, at the end of the day if the Court cannot grant, cannot
15 lawfully or constitutionally grant the relief sought, I mean,
16 a hearing's -- seems to be just sort of an exercise in
17 futility.

18 THE COURT: Well, I'm going to grant the State's motion
19 for summary judgment. With all due respect to you, Mr.
20 Brooks, I understand your argument and appreciate what you've
21 said here today, but I just think it'd be inappropriate for
22 this Court, maybe not the Appellate Court, but at least for
23 this Court to, to do that.

24 MR. BROOKS: I understand, Judge, and we kind of
25 anticipated that, but I had to put these things on the record

1 and --

2 THE COURT: I understand, and I want you to put what you
3 need to on the record to protect your client.

4 MR. WHITSETT: And I'll be happy to prepare an order.

5 THE COURT: If you'll do that I'd appreciate it. Thank
6 you.

7 MR. WHITSETT: Thank you, Your Honor.

8 THE COURT: All right. Mr. Brooks, good seeing you.

9 MR. BROOKS: Thank you, Judge.

10 MR. WHITSETT: Thank you, Judge.

11 (Adjourned.)

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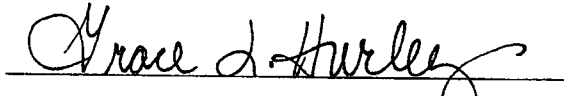
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C E R T I F I C A T E

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I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of Mansy McNeil v. Law Enforcement Division South Carolina, et al., held in the Court of Common Pleas for Florence County, Florence County Courthouse, Florence, South Carolina, on November 4, 2015.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.


Grace L. Hurley, CVR-CM-M
Official Reporter

January 22, 2016.

COUNTY OF FLORENCE

Mansy McNeil,

Plaintiff/Petitioner,

V.

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
Case No.: 2014-CP-21-2220

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT**

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

STANDARD OF REVIEW

A motion for summary judgment shall be granted “if the pleadings... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) *citing* Rule 56(c), SCRPC (emphasis in original).

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976).

ARGUMENT

Based on the following, there is no genuine issue of material fact in dispute in this matter. Further, there is no factual dispute requiring the services of a fact finder. Accordingly, Defendants are entitled to a judgment as a matter of law. See George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRPC.

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 See S.C. Code Ann. § 23-3-430(E), (F), (G). As such, these are the only lawful and permissible avenues by which an individual who is properly placed on the Registry can be removed. However, there is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria. Rather, the Plaintiff was convicted of Lewd Act on a Minor² in 2012, and this conviction mandates lifetime registration. See S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute - "for life"). Accordingly, there is no legal or constitutional basis for the Plaintiff to be removed from South Carolina's Sex Offender Registry and the Defendants are entitled to judgment as a matter of law. 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).

The Plaintiff's entire argument in this matter is that his constitutional registration requirement is still somehow a "wrong" in need of an equitable remedy. This argument is without merit. The constitutional application of a non-punitive statute is not a "wrong" cognizable in the law. Further, it is well-known that "equity follows the law". See Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011). Moreover, South Carolina law is clear: "[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).

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.

² Formerly S.C. Code Ann. § 16-15-140.

The South Carolina Supreme Court has also held unequivocally that “the court’s equitable powers **must yield** in the face of an unambiguously worded statute.” Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)(emphasis added); *see also* Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007) (finding error in fashioning an equitable remedy in the face of an unambiguously worded statute setting forth certain remedies).

Furthermore, for a Court to fashion an equitable remedy in the face of an unambiguously worded statute would be a clear violation of the South Carolina Constitution’s mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The South Carolina Constitution specifically provides that “the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.” S.C. Const. art. I, § 8. The duration of sex offender registration is a matter of public policy that is solely in the province of the South Carolina Legislature. As such, any attempt by any court to invade the Legislature’s exclusive province is a violation of the separation of powers and is unconstitutional. *Id.* In addition, the South Carolina Supreme Court has specifically held that

[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). This entire action seeks for this Court to impermissibly and unconstitutionally act as a “superlegislature” and to add language to an unambiguously worded constitutional statute. As such, this request must fail and the Defendants are entitled to summary judgment in this matter.

This situation is comparable to legislatively mandated sentences for criminal offenses, whether minimums or maximums. With regard to sentencing for an offense that has a mandatory sentence range, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals outside the statutorily set amounts. However, these statutory ranges, and more specifically the statutorily mandated minimum sentences are, 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).³ 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 and South Carolina law. S.C. Const. art. I, § 8; S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute).

Furthermore, the purely equitable relief sought by the Plaintiff in this matter is simply not available as a matter of law. 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.

³ 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.

OTHER CIRCUIT COURT RULINGS

While not binding authority in this action, the Defendants wish to notify this Court of several recent circuit court rulings on the issue at bar.⁴

On May 1, 2015, The Honorable Clifton Newman ruled that “there is no equitable remedy or equitable jurisdiction applicable to this matter” in a case involving identical arguments to those being set forth in this case. Order of The Honorable Clifton Newman, Kenneth W. Signor v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, Civil Action No(s): 2014-CP-43-00968, May 1, 2015, pg. 7 (unpublished). A copy of this order is attached hereto, incorporated by reference herein, and identified as Attachment 1.

On May 20, 2015, The Honorable Thomas A. Russo granted a Judgment on the Pleadings to these same Defendants in a case that is identical to this case.⁵ Specifically, Judge Russo ruled that “there is simply no equitable remedy or equitable jurisdiction application to this matter and the Defendants are entitled to 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.” Melvin T. Roberts v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, Civil Action No(s): 2014-CP-21-01973, May 20, 2015, pg. 7 (unpublished). A copy of this order is attached hereto, incorporated by reference herein, and identified as Attachment 2.

⁴ Upon information and belief, all of these orders have been appealed and are currently awaiting adjudication at the South Carolina Court of Appeals.

⁵ Judge Russo signed this Order on April 16, 2015; however, it was not filed until May 20, 2015.

On June 16, 2015, The Honorable Clifton Newman ruled again that there was no equitable jurisdiction applicable to remove an individual from South Carolina's Sex Offender Registry. Marty Lee Barnes v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, Civil Action No(s): 2012-CP-43-00535, June 16, 2015 (unpublished). A copy of this order is attached hereto, incorporated by reference herein, and identified as Attachment 3.

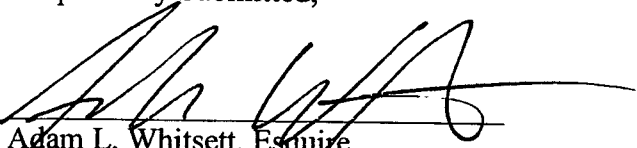
On October 11, 2015, The Honorable Tanya Gee ruled that the constitutional application of the clear and unambiguous provisions of the Sex Offender Registry Act is not a "wrong cognizable in South Carolina law and that her equitable powers must yield in the face of South Carolina's clear and unambiguous sex offender registry statutes. As such, Judge Gee granted the Defendants' summary judgment. Edward L. Green v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, Civil Action No(s): 2015-CP-40-00590, October 11, 2015 (unpublished). A copy of this order is attached hereto, incorporated by reference herein and is identified as Attachment 4.

CONCLUSION

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

[SIGNATURE PAGE ATTACHED]

Respectfully Submitted,



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South Carolina Law Enforcement Division

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ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
NOVEMBER 2, 2015

ATTACHMENT 1

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Kenneth W. Signor,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
Plaintiff,

vs.

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

Defendants.

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Civil Action No. 2014-CP-43-00968
OF ORIGINAL FILE

B. L. Hanger
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

**ORDER GRANTING JUDGMENT
ON THE PLEADINGS**

This matter came before me on February 9, 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 and Assistant Attorney General Courtney Lowell.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

In or about 1987, Plaintiff was convicted of Criminal Sexual Conduct with a Minor 2nd Degree and Lewd Act with a Minor on or about the year 1987 and was sentenced to fifteen (15) years of incarceration for to the Criminal Sexual Conduct conviction and a term of five (5) years for the Lewd Act conviction. The Plaintiff was released from incarceration on or about April 1, 1994.

¹ The Defendants are additionally represented by Assistant Attorney General Marcie Greene.

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During Plaintiff's incarceration, the South Carolina Sex Offender Registry Act² was passed requiring Plaintiff to register as a sex offender. The Plaintiff has registered since that time. 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 filed this action based solely on equitable grounds, seeking a declaratory judgment and requesting that this Court remove the Plaintiff from the South Carolina Sex Offender Registry. See Complaint. The Plaintiff concedes that he does not meet any of the statutory criteria for removal as 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.* The Defendants filed this Motion for Judgment on the Pleadings asserting that South Carolina law prohibits the relief sought by the Plaintiff.

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, SCRPC.

"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

² S.C. Code § 23-3-400 *et seq.*

present merely an immaterial issue.” Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982).

DISCUSSION

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). 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).

The pleadings demonstrate that the Plaintiff does not contend that he meets any of the statutory criteria that entitle him to removal from the registry and he did not argue any statutory entitlement to relief. However, Plaintiff contends that he is entitled to relief based upon equity.

The statute providing for lifetime registration is unambiguously worded. *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 The South Carolina Supreme Court has specifically

held that

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.

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

[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 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)).

South Carolina law 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 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.* South Carolina’s Sex Offender Registry provides an adequate remedy to the Plaintiff in that there are several statutory methods through which the Plaintiff could be legally removed from the registry. It appears that he simply does not qualify for them.

The issues presented in this case are 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)).

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

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.*

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

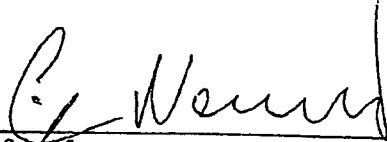
Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. For this Court to act as a "superlegislature" and to unilaterally

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.

deviate from an unchallenged and unambiguously worded statute would be contrary to South Carolina law and the South Carolina Constitution.

It is therefore ORDERED that the Defendants' Motion for Judgment on the Pleadings is hereby GRANTED.

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

Columbia, South Carolina
April __, 2015

ATTACHMENT 2

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO: 2014 CP-21-01973

Melvin T. Roberts

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Adam L. Whitsett, Esquire

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

- DISPOSITION TYPE (CHECK ONE)**
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 20 day of May, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of May, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

C. T. Brooks III
P.O. Box 3512
Sumter, SC 29151
ATTORNEY(S) FOR THE PLAINTIFF(S)

A.L. Whitsett
P.O. Box 21398
Columbia, SC 29221-1398
ATTORNEY(S) FOR THE DEFENDANT(S)
Connie Keel-Shearin
CLERK OF COURT
C.E. Lowell, P.O. Box 11549
Columbia, SC 29211

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

2015 MAR 20 PM 1:59
CLERK OF COURT
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.

¹ The Defendants are additionally represented by Assistant Attorneys General Courtney Lowell and Marcie Greene.
² S.C. Code § 23-3-400 *et seq.*

CERTIFIED: A TRUE COPY
Cynthia Redd Wilson
CLERK OF COURT, C.P.C.G.S.
FLORENCE COUNTY, S.C.

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, SCRPC.

"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. BarI, 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.

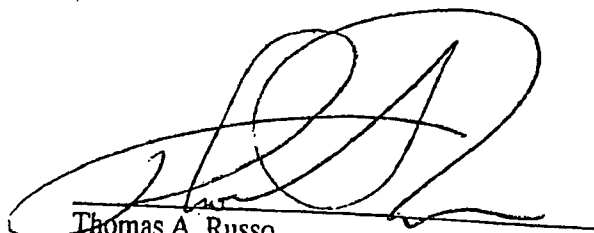
State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001). Similarly, I find and conclude that the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated 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

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CLERK OF COURT
FLORENCE COUNTY, S.C.

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Christina K. [illegible]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ATTACHMENT 3

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Marty Lee Barnes,

Petitioner,

vs.

The State of South Carolina,

Respondent.

RECORDED IN THE COURT OF COMMON PLEAS
2015 JUN 16 PM 12:41 TWELFTH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-43-00535

JAMES C. CARROLL
CLERK OF COURT
SUMTER COUNTY, S.C.

**ORDER GRANTING MOTION
TO SET ASIDE JUDGMENT**

CERTIFIED TRUE COPY
OF ORDER GRANTING

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter came before me on a Motion to Set Aside Judgment filed on behalf of the State of South Carolina. The Defendants were represented at the hearing by Adam L. Whitsett, General Counsel to the South Carolina Law Enforcement Division and Assistant Attorney General Courtney Lowell.¹ The Petitioner was represented by Jack D. Howle, Jr., Esquire, of the Third Circuit Chief Public Defender. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion to Set Aside Judgment in this matter.

BACKGROUND

In or about 1986, the Petitioner was tried in absentia in the General Sessions Court of Sumter County and was convicted of two counts of kidnapping.² As a result of the Petitioner's kidnapping convictions, the Petitioner was sentenced to imprisonment for the balance of his natural life. One of these convictions was for the kidnapping of a person under the age of eighteen who was not the Petitioner's child. The other involved the kidnapping of an adult.

¹ The Defendant is additionally represented in this action by Assistant Attorney General Marcie Greene.

² The Petitioner was also convicted of Assault and Battery with Intent to Kill, Assault and Battery with Intent to Kill 2nd, and Carrying a Concealed Weapon at that time, but those convictions do not bear on this action.

During the Petitioner's incarceration, the South Carolina Sex Offender Registry Act³ was passed. In or about 2002, the Petitioner was paroled and released from incarceration and was required to register as a sex offender at that time. *See* S.C. Code Ann. § 23-3-430(C)(16) (Supp. 2000). The Petitioner's parole was revoked in 2008 and the Petitioner was returned to incarceration where he currently remains.

In or about February of 2011, the Petitioner filed a Motion of Sentence Clarification seeking removal from the registry. The matter was heard on April 2, 2012, subsequently this Court issued an order dated April 16, 2012 removing the Petitioner from the South Carolina Sex Offender Registry based on equitable grounds. The State of South Carolina filed a Motion to Set Aside Judgment pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.

DISCUSSION

The Petitioner was properly registered as a sex offender upon being released from incarceration in 2002. S.C. Code Ann. § 23-3-430(C)(16) (Supp. 2000); *see also* 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 Petitioner's conviction involved the kidnapping of a person under the age of 18 who was not the Petitioner's child. As such, the plain language of § 23-3-430(C)(16), requires the Petitioner to register as a sex offender regardless of whether his kidnapping involved any criminal sexual offense or attempted criminal sexual offense. *Id.*⁴

³ S.C. Code § 23-3-400 *et seq.*

⁴ There is a different code section with different criteria that applies to individuals convicted of kidnapping adults. *See* S.C. Code Ann. § 23-3-430(C)(15) (registration is required unless a "court makes a finding on the record that the offense did not involve criminal sexual offense or attempted criminal sexual offense").

South Carolina's Sex Offender Registry statutes, S.C. Code § 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.⁵ 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). 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).

In this case the Petitioner does not contend that he meets any of the statutory criteria that entitle the Petitioner to removal from the registry.

The statute providing for lifetime registration in South Carolina is unambiguously worded. See S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life").⁶ The South Carolina Supreme Court has 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").

⁵ In fact, I note that 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.

⁶ However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

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 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).

South Carolina law 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.*

South Carolina’s Sex Offender Registry provides an adequate remedy to the Petitioner in that there are several statutory methods through which the Petitioner could be legally removed from the registry, if he so qualifies.

The duration of an individual’s sex offender registration is purely a matter of legislative prerogative and there exists no judicial discretion without violating the separation of powers

mandated by the South Carolina Constitution. 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.”).

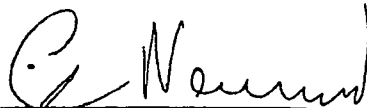
CONCLUSION

Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and this Court’s previous order should be set aside and vacated pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.

For this court to act as a “superlegislature” and to unilaterally add language to an 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.

It is therefore ordered that the Defendants’ Motion to Set Aside Judgment is GRANTED and the Order of this Court entered on April 16, 2014 is hereby vacated.

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

Columbia, South Carolina
June 8, 2015

ATTACHMENT 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2015CP4003001**

Edward L Green

Mark Keel

PLAINTIFF(S)

South Carolina Law Enforcement
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 14 October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Charles Thomas Brooks III

Courtney Edwards Lowell

Adam L Whitsett

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court




STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Edward L. Green,

Plaintiff,

v.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) Case No.: 2015-CP-40-~~00590~~
3001

**ORDER GRANTING SUMMARY
JUDGMENT**

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This matter came before me on September 29, 2015, on the Defendants' Motion for Summary Judgment. 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 Summary Judgment.

BACKGROUND

The Plaintiff was convicted of criminal sexual conduct with a minor, third degree, in violation of § 16-3-655(C) of the South Carolina Code of Laws (as amended) on January 18, 2005. The Plaintiff was sentenced to a Youthful Offender Act sentence for a determinate term not to exceed six (6) years. Upon being released from incarceration, the Plaintiff was required to register as a sex offender pursuant to the South Carolina Sex Offender Registry Act, § 23-3-400 *et seq.* ("SORA") and did in fact so register. The Plaintiff filed this present action in May of

¹ The Defendants are additionally represented in this action by Assistant Attorney General Courtney Lowell and Assistant Attorney General Marcie Greene.

SCANNED

1064 JAG

2015 seeking for this Court to fashion equitable personal relief for the Plaintiff. The Defendants Answered the Complaint and filed the present Motion for Summary Judgment.

STANDARD OF REVIEW

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

LAW/ANALYSIS

I find that there is no genuine issue of material fact in dispute in this matter and that there is no factual dispute requiring the services of a fact finder. Accordingly, the Defendants are entitled to a judgment as a matter of law. See George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRPC.

The Plaintiff was properly registered as a sex offender upon being released from incarceration in accordance with SORA. S.C. Code Ann. § 23-3-430(C)(6); see also State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's sex offender registry constitutional). SORA is clear and unambiguous and mandates lifetime registration for all sex offenders in South Carolina. S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life").² SORA also provides the only

² I note that South Carolina law requires registration every ninety days for persons "classified as a Tier III offender by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006"; however, this registration is also "for life".

lawful avenues by which individuals can be removed from the registry.³ See S.C. Code Ann. § 23-3-430(E), (F), (G). There is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria for removal from SORA. Accordingly, there is no legal basis for the Plaintiff to be removed from the registry, and the Defendants are entitled to judgment as a matter of law. See S.C. Code Ann. § 23-3-460; S.C. Code Ann. § 23-3-430; Lozada v. South Carolina Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011)(acknowledging that “[w]hether an individual must be placed on the sex offender registry is a question of law.”)

The Plaintiff’s argument in this matter is that his constitutional SORA registration requirement constitutes a “wrong” that would justify this Court fashioning the Plaintiff an equitable personal remedy. This argument is without merit. The constitutional application of the clear and unambiguous provisions of SORA is not a “wrong” cognizable in South Carolina law. The South Carolina Supreme Court has held unequivocally that “the court’s equitable powers must yield in the face of an unambiguously worded statute.” Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). In addition, the South Carolina Supreme Court has also specifically held,

[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).

³ In fact, the mechanisms for both placement on and removal from the registry are provided by this same code section, S.C. Code § 23-3-430.

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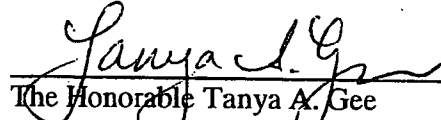
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Moreover, “[i]f a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” State v. Smith, 330 S.C. 237, 240, 498 S.E.2d 648, 650 (Cl.App. 1998). Accordingly, for this Court to fashion an equitable remedy outside of the clear and unambiguous provisions of SORA would exceed this Court’s authority. This Court’s equitable powers must yield to the clear and unambiguous language of SORA.

CONCLUSION

Based on the foregoing, the Defendants’ Motion for Summary Judgment is GRANTED.

AND IT IS SO ORDERED.



The Honorable Tanya A. Gee
Presiding Judge
Court of Common Pleas
5th Judicial Circuit

Columbia, South Carolina
October 2, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY

Court of Common Pleas

Honorable D. Craig Brown, Circuit Court Judge

Case No: 2015-002449

Mansy McNeil.....Appellant

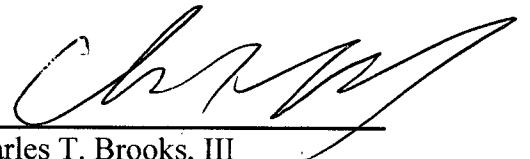
v.

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

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.



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