THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable Tanya A. Gee, Circuit Court Judge

Case No: 2015-002240

Edward L. Green.....Appellant

v.

Mark Keel, Director of the South Carolina Law Enforcement Division and the State of South Carolina .....Respondent

---

RECORD ON APPEAL

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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**

2015 OCT 13 PM 12:48

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.

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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), 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(C)(6); s*ee 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".

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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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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. 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.

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

Columbia, South Carolina
October 2, 2015

SCANNED

STATE OF SOUTH CAROLINA,)
)
COUNTY OF RICHLAND)

EDWARD L GREEN)
Plaintiff,)

vs.)

MARK KEEL, DIRECTOR, SLED, ET AL)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2015-CP-40-____

RICHLAND COUNTY FILED
2015 MAY 18 AM 10:08
JEANNETTE W. WALKER C.C.P. & G.S.

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: May 1, 2015

Plaintiff/Attorney for Plaintiff

Address: 309 Broad Street, Sumter, SC 29150

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND)	**C/A NO.: 2015-CP-40-_____**
)	
EDWARD L. GREEN,)	
)	
PETITIONER,)	
)	
VS.)	**PETITION FOR**
)	**DECLARATORY JUDGMENT**
MARK KEEL,)	**(Non-Jury)**
DIRECTOR, SOUTH CAROLINA)	
LAW ENFORCEMENT)	
DIVISION (SLED), AND THE)	
STATE OF SOUTH CAROLINA,)	
)	
RESPONDENT.)	

****

RICHLAND COUNTY FILED
2015 MAY 18 AM 10:03
JEANNETTE W. MOSELEY C.C.P. & G.S.

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 Richland, 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.

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 §16-3-654 (Criminal Sexual Conduct, 3rd Degree).

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 Criminal Sexual Conduct-3rd Degree in 2005 in Richland County.

6. The Petitioner was sentenced to be committed to the State Department of Corrections under the Youthful Offender Act for a determinate term not to exceed six (6) years.

7. That the Petitioner, after his release, was required to begin to Register as a Sex Offender in accordance with "Megan's Law".

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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(803) 418-5708
cbrooks@ctbrooks.com

Dated: 5/1/2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

VERIFICATION

Edward L Green 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.

RICHLAND COUNTY
FILED
2015 MAY 18 AM 10:04
JEANETTE W. McBRIDE
C.C.P. & G.S.

SWORN to and Subscribed before me)

this 13th day of May , 2015.)

Elizabeth Leigh McCord)

Notary Public for South Carolina)

My Commission expires: 6/2/2020)

Signature of Petitioner

Edward L. Green)

Signature of Petitioner

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	Case No.: 2015-CP-40-00590
Edward L. Green,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ANSWER**
	)	
Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina,	)	
	)	
Defendants.	)	

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), SCRCP this action should be dismissed due to insufficiency of service of process.

FOR A THIRD DEFENSE
Response to Allegations

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

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

11

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.

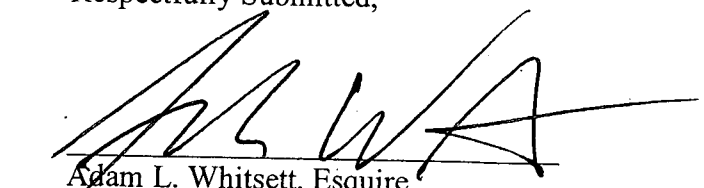
WHEREFORE, having fully answered the Plaintiff's complaint, Defendants pray that this Honorable Court:

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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ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
JUNE 18, 2015

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Edward L. Green, Plaintiff, vs. Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina, Defendants.	)	Civil Action No. 2015-CP-40-00590 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

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

PLEASE TAKE NOTICE THAT the Defendants Chief Mark Keel, the 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 criminal sexual conduct, third degree (Section 16-3-654) on or about January 18, 2005. He was sentenced to be committed to the South Carolina Department of Corrections under the Youthful Offender Act for a determinate term not to exceed six (6) years. Compl. ¶¶6. Upon being released from incarceration, Plaintiff was required to register as a sex offender[1] pursuant to the South Carolina Sex Offender Registry Act ("SORA").

[1] Plaintiff is classified as Tier III offender pursuant to the Sex Offender Registration and Notification Act (SORNA) based on his 2005 conviction and must register every ninety (90) days. S.C. Code Ann. 23-3-460(B).

On or about May 18, 2015, Plaintiff Edward L. Green filed this "Petition for Declaratory Judgment" against Defendants Chief Keel, SLED, and the State of South Carolina, regarding 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

[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.

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. 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.

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

This situation is analogous to legislatively mandated minimum sentences for criminal offenses. *See* S.C. Code Ann. § 16-11-330 (10 years); S.C. Code Ann. § 44-53-370 (various mandatory minimums for distribution or trafficking illegal drugs); S.C. Code Ann. § 16-3-30 (30 years). Following convictions of these offenses, the 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.

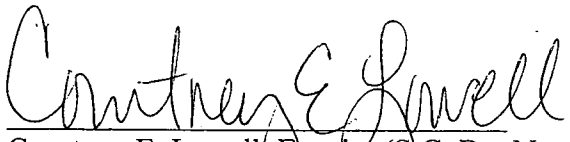
Since there is no legal basis for the Plaintiff to be removed from the Registry, the Plaintiff is not entitled to removal through equitable relief.

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
JUNE 19, 2015

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	**C/A NO.: 2015-CP-40-590**
	)	
EDWARD L. GREEN,	)	
	)	
PETITIONER,	)	
	)	
VS.	)	**PETITIONER'S RETURN TO MOTION OF RESPONDENT(S)**
	)	
MARK KEEL, DIRECTOR, SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED), AND THE STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	

****

RICHLAND COUNTY
FILED
2015 JUL 13 AM 9:07
JEANNETTE W. McBRIDE
C.C.P. & G.S.

To: Adam L. Whitsett, Attorney for the Respondent(s):

The Petitioner, by and through his counsel, Charles T. Brooks III, responds to the Respondent's Motion for Summary Judgment as filed with this Court as follows:

The Respondent's Motion for Summary Judgment should be denied for the following grounds;

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

The issue here in not whether the Petitioner should be placed on the sex offender registry, which is a question of law, but rather and most importantly here, whether the Petitioner should

be removed from the sex offender registry based on the principles of equity, for which there is no complete remedy provided at law for such removal.

The Respondent argues there is an adequate remedy at law that governs the facts herein because South Carolina Code Ann. Section 23-3-430 (Supp. 2013) provides the procedure for placement on and removal from the sex offender registry. The question here is certainly not placement on the sex offender registry, but rather, removal therefrom. Section 23-3-430(E) provides "SLED shall remove a person's name and any information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of *nolo contendere* for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. Sec. 23-3-430(E) (Supp. 2013).

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

The other subsections of Section 23-3-430, do not provide other remedies at law for the removal from the sex offender registry that would and could afford the Petitioner herein complete relief at law such as the pardon procedure or the new trial procedure. S.C. Code Ann.

Sec. 23-3-430(E) (Supp. 2013). Therefore, there is no complete remedy at law and equitable relief is appropriate.

For all of the foregoing reasons, the Respondent's Motion for Summary Judgment should be denied.

THE BROOKS LAW OFFICES

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Dated: 7/10/2015

State of South Carolina — Court of Common Pleas

County of Richland — Fifth Judicial Circuit

Edward L. Green,
Plaintiff,
vs.
Mark Keel and SLED, et al.,
Defendant.

Transcript of Record
2015-CP-40-03001

September 29, 2015
Columbia, South Carolina

B E F O R E:

The Honorable Tanya A. Gee, Judge

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

Charles Thomas Brooks, III, Esquire
Attorney for the Plaintiff

Adam L. Whitsett, Esquire
Attorney for the Defendant

STACY S. JOHNSON
CIRCUIT COURT REPORTER

ORIGINAL

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EXHIBTS

NUMBER	DESCRIPTION	ID.	EVD.

(No exhibits marked.)

P R O C E E D I N G S

THE COURT: All right. Are y'all here for Keel? Green versus Mark Keel?

MR. WHITSETT: We are, Your Honor.

THE COURT: All right. So you're here for Defendant's Motion for Summary Judgment in Edward Green versus Mark Keel from SLED. The Plaintiff is represented by Charles Brooks?

MR. BROOKS: That's me.

THE COURT: And the Defendant by Adam Whitsett; is that correct?

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

THE COURT: All right. And, Mr. Whitsett, I'll hear from you. This is your motion.

MR. WHITSETT: Thank you, Your Honor. May it please the Court? I would like to go ahead and hand up some materials that I will reference throughout the argument.

THE COURT: Okay.

MR. WHITSETT: I know I filed the memo last week, but I have an additional copy just in case.

THE COURT: Okay. And I do have your memorandum.

MR. WHITSETT: And then there's a couple of cases which we'll cover in-depth, both the Court of Appeals opinion and the Supreme Court opinion from the same case, but there's a very sort of interesting history that we'll

touch on and we'll cover.

THE COURT: Okay.

MR. WHITSETT: Thank you, Your Honor. May it please the Court? We're here today because we believe that the Defendant -- all of the Defendants in this action are entitled to a judgment as a matter of law, and that's based largely on the requested relief in this action, which would be a request of this Court to remove Mr. Green from the Sex Offender Registry outside the confines of the statutory sort of mechanisms to do that is simply not relief that is available. And, in fact, for this Court to basically rewrite the statute would be unconstitutional, would be contrary to the clear and unambiguous laws of this state, and it's simply relief that's not available as a matter of law.

Essentially they're asking for this Court to act as a super-legislature, and that's a term that's coined by the South Carolina Supreme Court, and to simply just rewrite a constitutional, clear, unambiguous statute and add language to a statute that just does not exist and we believe that for any court to simply rewrite, you know, a constitutional, clear and unambiguous statute would be a clear violation of the separation of powers as set forth in the South Carolina Constitution.

You know, the South Carolina legislature writes and

enacts the laws of this state. They set the legislative -- you know, they set all of the laws that we all follow as the executive branch, as the judiciary, and the statutes in place in this type of action, which is specifically 23-3-430, sets forth the only legal and permissible avenues for individuals that are on the registry to seek removal from the registry, and it's really only the legislature, and that's a matter of sort of legislature prerogative to do that.

I mean, everyone can think they should do more, they should do less. That's sort of public opinion on it; it is what it is, but that's a matter of legislative prerogative and the legislature has said clearly and unequivocally these are the only avenues for which someone that's on the registry can seek removal from the registry and that registration in South Carolina is for life. It's clear, it's unambiguous, it's very straightforward statutes.

The Plaintiff in this case has not even sought to use those statutory avenues for relief, but is asking for this Court to sort of just disregard that they exist and to rewrite that statute to add an additional avenue and just to say well, it's just somehow the constitutional application of a constitutional, non-punitive clear and unambiguous statute somehow constitutes a wrong, that this Court should step in and sort of exercise some equitable

power to rewrite this statute. We don't believe that that is even a permissible or constitutional application of the law and it's a well-known equitable maxim.

THE COURT: And here there's no -- there's no constitutional arguments being made. This is purely one of equity that's being made?

MR. WHITSETT: That's how we certainly read the --

THE COURT: Well, when I see the complaint, it's --

MR. WHITSETT: It's purely an equitable -- it's purely equitable relief there and so in the equitable maxim, equity follows the law, and when crafting -- and the courts have also provided a significant amount of guidance on when crafting an equitable relief or even contemplating that you have to follow the statutes, you can't simply disregard the law, you can't simply disregard the rules. And, in fact, the South Carolina Supreme Court has said unequivocally that the Court's equitable powers must yield in the face of an unambiguously worded statute. That comes from the Santee Cooper case that's quoted throughout the motion and the memo and so we would incorporate all of those arguments as well.

And the situation -- the best analogy that I can come up with is one that I've referenced and it's certainly within the legislature setting the statutory minimums or maximum sentences, okay? If the legislature says that

the sentencing range in the statute is between five and thirty years, the Court simply doesn't have the equitable jurisdiction to go below that or to go above that. I mean, there are some things that just the legislature sets that must be followed and so, you know, if you take the argument that's being offered in this case that Court's have the equitable powers to sort of go beyond the statutes when they think they should, it would be the same type of argument. Well, I know the sentencing range on this offense is five years, but I think he should get two, so I'm just gonna give you two. I just don't think that is a constitutional or sort of legal analysis or legal argument here.

And, in fact, if you look at the Key Corporate Capital, the actual Key Corporate Capital and Supreme Court case quoted in our material, it says it's beyond the court's power to effect a change in the statutes and the courts -- and I think that quotes the Heinzerling case which says the courts do not sit as a super-legislature to second guess the wisdom or the following of the decisions of the General Assembly. I mean, it's really -- we can like it, we cannot like it, but some things are just for the legislature and if, you know, the lifetime registration is an issue that should be revisited or should be looked at, that's something for the legislature to do. The

legislature is free to enact a statute and change it and add more avenues or to lessen the amount of time, but that's something that -- that, you know, absent some statutory authorization or some legal authorization, the courts and the executive branch are just simply without the power to do. And so, you know, we -- we feel, you know, that because this entire action is really just asking the Court to go around the statutory framework, that, you know, the defendants are entitled to judgment as a matter of law.

I've handed up the Johnson case because I think it's an important case and I think it forms a lot of the basis of opposing counsel's arguments on this case. In this specific issue, the court's equitable powers to remove someone has not been finally adjudicated by the appellate courts. There was a case out of Marion County or Florence County, it was the Twelfth Circuit, the Johnson case, where it started off as a constitutional challenge and sort of through the course of that case ultimately the judge said well, it's constitutional that he remain on there, but I'm gonna just use my equitable powers and simply remove you. There was a motion for reconsideration filed on that case, but unfortunately at the trial court level the court's equitable powers and the court's equitable jurisdiction was not specifically raised. That issue was addressed very

squarely at the South Carolina Court of Appeals and they issued a very sort of detailed analysis on the court's equitable powers as it relates to the Sex Offender Registry, and I've handed that up and highlighted it, and the Court of Appeals specifically said it's well-known that equity follows the law and that, you know, while equitable relief is generally available when there's no adequate remedy at law, an adequate remedy may be provided by statute. The courts cannot simply disregard the statutes when contemplating and fashioning equitable remedies and specifically the court's equitable powers must yield in the face of unambiguously worded statutes. They sort of analyzed this very specifically and went through look, there's several statutory methods that individuals can seek. In that case, he simply didn't qualify for them, but the court said that's not enough to exercise equitable jurisdiction. He's still got an adequate legal remedy, the statute provides them, but just because he doesn't qualify doesn't mean that this court can go beyond the statutes and rewrite it.

THE COURT: Uh-huh.

MR. WHITSETT: Now, unfortunately, as I said --

THE COURT: Well, then certainly this is something that could have been brought up on appeal if there was a constitutional argument with regard to cruel and unusual

punishment. I know that we've had a Supreme Court case recently with regard to GPS monitoring for folks where the Supreme Court has made some changes to the law based on constitutional arguments.

MR. WHITSETT: And Johnson really started out as a constitutional argument and he -- the trial court in that case ruled it was absolutely constitutional for this individual to have remained on the registry and that there was no legitimate constitutional challenge and then just sort of on its own exercised equitable jurisdiction and so the constitutionality wasn't appealed when they had their favorable ruling, so they didn't appeal the constitutionality, so that -- that wasn't the issue that went up to the Court of Appeals. It really just went up on, you know, the state's appeal of his sort of exercising equitable jurisdiction and --

THE COURT: And the Supreme Court reversed the Court of Appeals based on grounds of preservation?

MR. WHITSETT: Preservation only, and was very specific about that and said it was error to deal with the merits, you know, to deal with the equitable jurisdiction, and reversed it. Now, you know, I know opposing counsel and I read that case differently. I don't believe that that is a merits ruling by the Supreme Court that the trial court was correct in its equitable analysis. I think that

case says what it says. You know, the State did not properly preserve the equitable issue and the Court of Appeals was wrong for addressing it.

THE COURT: Right, and they're reversing the Court of Appeals opinion on preservation only.

MR. WHITSETT: On preservation, and they say that very specifically in the very last line. We reverse on preservation grounds. And so -- I mean, my position is while it's certainly not binding authority, the Court of Appeals is the only appellate court to have actually analyzed this issue and we think that the analysis is obviously supported by the law and that's the same analysis that we would argue be applied in this case.

And so, you know, at the end of the day we do think that the Defendant -- there is no equitable jurisdiction that applies in this matter, that the constitutional application of a clear and unambiguous and constitutional statute does not constitute a wrong for which equity even need be sort of analyzed, but even if you get into the equity analysis, equity follows the law and the court's equitable powers must yield in the face of these statutes.

And so -- and there's just no legal or permissible avenue for relief in this case and we believe that it is appropriate for summary judgment because there's no genuine issue of material fact, there's no dispute that none of the

statutory avenues were even attempted or that they somehow apply and so there's really no genuine issue of material fact, you know, on the legal issue of whether this court has the equitable power to simply remove someone that's properly on the registry from the registry sort of the outside the confines of the statutes and so we would ask for summary judgment on that because we do believe that we are entitled to it as a matter of law.

THE COURT: Okay. Thank you very much. Mr. Brooks, I'll hear from you.

MR. BROOKS: Mr. Whitsett and I've argued a few of these and so I've kind of gotten accustomed to his points of argument and he's probably got accustomed to mine. Judge, our position is this. Here you have -- in this case, the case that I'm bringing before you is Edward Green, and Edward Green pled guilty back in 2005 and got sentenced under the YOA statute. Under the sexual registry statute, the only way he can get off is to go back and overturn that conviction. It's 2015. That's not practical. If he filed a PCR, the attorney general's office, as Your Honor is well aware, they'd come in and say hey, it's a one-year statute of limitations and even if he filed it back then they would say you pled guilty, you were of sound mind and knew exactly what you were doing, and the only other way to get off of it is to get a specific pardon

that said he didn't do it. Well, that's really not something that -- that he can do because obviously he's pled guilty to it, but you're talking about something over the course of ten years.

Now a few of the other cases that Mr. Whitsett and I've argued dealt with people who were -- that had been -- had received convictions prior to the implementation of the registry and Mr. Green's situation is different because he clearly was convicted with the registry in place. Our position is that the statute is not necessarily adequate and I know Mr. Whitsett makes arguments about the judiciary staying in its place and the legislative branch --

THE COURT: Why didn't he appeal it from that perspective? Even if he was otherwise okay with the sentence, if he believed that this piece of the registry was inequitable, unfair, unconstitutional, why not at that point make the argument rather than try to have a declaratory judgment based on -- where you ask for a court in equity to say that the legislature was wrong? I mean, that's a really tough ask of a court.

MR. BROOKS: I understand, Judge. I understand the arguments that my esteemed opposing counsel has made and I understand what you're asking, but understand that you're talking about in terms of Mr. Green's situation, we're looking at his case individually, you're talking about a

guy who, you know, plead guilty in 2005 under the Youthful Offender Act. Obviously he's a young guy, didn't know, and a lot of times people don't really know what the ramifications are of the registry until they have gotten through the punitive part of whatever the sentence is that they had. In his situation, he got a youthful offender, he comes out, he does everything he's supposed to do, but all of a sudden he realizes hey, while I'm out I've got to go and comply and register with the sheriff's department every six months, every three months, depending on the person's situation, and we think that that's a hardship bordering on the lines of being a punitive situation. I know the courts have kind of jumped in in some of those situations, but that brings me to the case you had already mentioned that dealt with GPS monitoring with Dykes. In that situation, the Supreme Court jumped in when it really wasn't asked and said this statute was not proper and invalidated the statute when it dealt with GPS monitoring.

THE COURT: Well, how was that brought before the court? How did that come to the court's attention, that issue?

MR. BROOKS: That issue came up in terms of that individual bringing an action challenging the constitutionality of the GPS monitoring, if I'm not mistaken. Obviously -- I do have the opinion on it.

THE COURT: If you have it, could you hand me the case?

MR. BROOKS: I don't have the case. I have the opinion on it.

THE COURT: Okay. That will help.

MR. BROOKS: It is 27124.

THE COURT: Yeah, that's just the opinion number. That's not the cite. It think you can just do Dykes and GPS monitoring and it will come up. D-Y-K-E-S. Let me just quickly review this. It's a 2013 case.

Okay. So she was arrested for violating her probation and at that point it was determined that she was subject to lifetime GPS monitoring and -- and so Ms. Dykes appealed the circuit court's order at the point when the judge ordered her to be subject to satellite monitoring for the rest of her life.

MR. BROOKS: That is -- that is correct. And granted Mr. Green is in a different situation.

THE COURT: Right.

MR. BROOKS: But obviously I'm using that case to point out that the judiciary has jumped in where -- to use my opposing counsel's argument.

THE COURT: Right. But procedure is so important. There they were determining whether a statute was constitutional and -- and they were able to explain why

they thought that it was not constitutional. Here it's not an issue of constitutionality, it's just fairness.

MR. BROOKS: I agree, Judge, and -- and bear in mind, like I said, Mr. Whitsett and me, we've got a couple of these cases.

THE COURT: You've duke'd it out before, sure.

MR. BROOKS: We've duke'd it out. Some of my clients are in different situations, which he's not in.

THE COURT: Right.

MR. BROOKS: Mr. Green's situation is probably more --

THE COURT: He's just a sympathetic character.

MR. BROOKS: Right. Because a lot of times --

THE COURT: He's a young guy.

MR. BROOKS: -- in the cases we've had that we've argued before the people had done something long before the registry was even in existence.

THE COURT: Right.

MR. BROOKS: In Mr. Green's case, it does come down, you know, and he did -- he had this case during the time of the registry. Our position is that, you know, to have these individuals be subject to lifetime registration we feel that without some type of judicial review is just inadequate because the statute itself does not have an adequate remedy for the vast majority of these individuals who are faced with having to register and I know like Adam

said well, you know, the legislature, you need to go over there and you do all that, and he and I chatted about that just off the record, but, you know, our position is in the Johnson case while the Court of Appeals does go through and gives this analysis in regards to challenging the registration and all that, that's no longer the law simply because the Supreme Court overturned it. Now why they overturned it, you know, preservation or not preserving an issue of equity, well, you know, I would argue that, one, by them overturning that means that the Court of Appeals case is no longer the law --

THE COURT: That's right. You're right about that.

MR. BROOKS: And, number two, it's not like the Supreme Court was sitting in vacuum. They knew hey, if we overturn this, now the Court of Appeals case is no longer the law. By saying that there's no -- that we're overturning simply because of not preserving the issue of equity, we're, in fact, saying that equity is an issue worth arguing. If it wasn't, there wouldn't be any need to say you didn't preserve it. I mean, you -- because you know from your time as the Clerk of the Court of Appeals there's a lot of issues that people raise and people go up there and the court says well, you know, this is not an issue, we won't even entertain it, we won't do anything, but if the Supreme Court in this case says hey,

we're gonna overturn this because it wasn't preserved on an equity issue. Well, by saying that they're saying that this is a worthwhile issue and --

THE COURT: Not necessarily. I think that they are just reminding perhaps the Court of Appeals of what Judge Sanders said, which is that courts of appeal should behave like good stepchildren and only speak when spoken to and only answer questions that are asked of them.

MR. BROOKS: That's one way of looking at it, but now Mr. Green would say this is fair game, this opens the door. Mr. Johnson got off the registry, why can't I get off the registry? So at least let me have my hearing to determine am I somebody that is a threat because basically, going back, that's what the registry was all about. We wanted -- as a society, we wanted to know what individuals are a threat out there, we want the police to know about them, we want the public to know about them. That's more in letting all these people know. And the reason is because we have this assumption that if somebody did a sexual offense, they're likely to do it again. Now it may not be in Mr. Green's case, but I'm going into a lot of these cases I've had with Mr. Whitsett. I've had some of these guys evaluated by Dr. Thomas Martin, forensic psychiatrist, to determine whether or not a person is a risk and we have submitted some affidavits. Mind you, not in this case. I

don't think we've got one in this case, but the reason we did that was to kind of show hey, the guy has changed such. In Mr. Green's case, it's been ten years. In many other cases people have been on the registry for years and years and people had convictions that, you know, preceded the registry by five, ten years or such, and these individuals -- a lot of these individuals have not even gotten so much as a speeding ticket in a lot of cases. So while I am kind of expanding to talk about a lot of the individuals as it relates to Mr. Green's case, the reason I'm doing that, Judge, is I think it's very important to allow Mr. Green to have a hearing to determine whether or not he has an equitable issue at all.

THE COURT: Okay. Thank you very much.

All right. I have read the Motion for Summary Judgment and the pertinent cases and the Motion for Summary Judgment is granted. I find that the General Assembly enacted an unambiguously worded statute that sets forth the legal remedies available to an individual on the registry and where the sole issue before me is whether I can use my equitable powers to remove Mr. Green from the registry, I find that my equitable powers have to yield in the face of an unambiguously worded statute.

Mr. Whitsett, could you prepare an order for me, please?

MR. WHITSETT: Yes, Your Honor.

THE COURT: Thank you very much.

MR. WHITSETT: Thank you, Your Honor.

THE COURT: Do you know about how long it will be just so I can tickle it in my own records?

MR. WHITSETT: My hope would be to have it this week, maybe next week at the latest.

THE COURT: Okay. We'll start bugging you next week if we don't have it, okay?

MR. WHITSETT: Thank you, Your Honor.

THE COURT: Thank you all both. You both argued it very well.

(Proceedings were concluded at 11:25 AM.)

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 29th day of September, 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

December 1, 2015

Stacy S Johnson

STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	Case No.: 2015-CP-40-00590
Edward L. Green,	)	
	)	
Plaintiff,	)	
	)	**DEFENDANTS' MEMORANDUM IN**
v.	)	**SUPPORT OF SUMMARY JUDGMENT**
	)	
Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina,	)	
	)	
Defendants.	)	

RICHLAND COUNTY FILED
SEP 23 AM 10:30
JEANETTE W. WALKER
C.C.P. & G.S.

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), 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).

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), SCRCP.

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 Criminal Sexual Conduct 3rd Degree, 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.

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 statue would be a clear violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The South Carolina Constitution specifically provides that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." S.C. Const. art. I, § 8. The 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).[2] 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.

[2] 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.

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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.[3]

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.

Similarly, 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.[4] 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.

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

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

Finally, 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.

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.

Respectfully Submitted,

Adam L. Whitsett, Esquire
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ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
SEPTEMBER 22, 2015

ATTACHMENT 1

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

Kenneth W. Signor,

Plaintiff,

vs.

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

Defendants.

RECORDED
2015 MAY -1 PM 2:35
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Civil Action No: 2014-CP-43-00968

OF ORIGINAL FILE
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.

CW

During Plaintiff's incarceration, the South Carolina Sex Offender Registry Act[2] 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, SCRCP.

"Where the pleadings are fatally deficient in substance or fail to state a good cause of action in favor of the plaintiff and against the defendant, judgment on the pleadings is proper. Whereas here the pleadings disclose all facts necessary or where the pleadings present no issue of fact the Court may exercise its discretion." Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982). The grant of a judgment on the pleadings is within the discretion of the trial court. *Id.*

A "motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or

[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

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-21-01973

Melvin T. Roberts

2015 MAY 20 P 1:55

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

PLAINTIFF(S)

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

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.

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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, S.C. 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 Reel-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	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	Civil Action No. 2014-CP-21-01973
Melvin T. Roberts,	)	
Plaintiff/Petitioner,	)	**ORDER GRANTING JUDGMENT ON THE PLEADINGS**
vs.	)	
Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina,	)	
Defendants/Respondents.	)	

FILED
COMMON PLEAS
2015 MAY 20 P 1:59

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.

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

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

STANDARD OF REVIEW

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

"Where the pleadings are fatally deficient in substance or fail to state a good cause of action in favor of the plaintiff and against the defendant, judgment on the pleadings is proper. Whereas here the pleadings disclose all facts necessary or where the pleadings present no issue of fact the Court may exercise its discretion." Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982). The grant of a judgment on the pleadings is within the discretion of the trial court. *Id.*

A "motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue." Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982) *citing* Wooten v. Std. Life and Casualty Ins. Co., 239 S.C. 243, 122 S.E.2d 637 (1961).

LAW / ANALYSIS

I find and conclude that the Defendants are entitled to a Judgment on the Pleadings because the pleadings demonstrate that there is no cause of action in favor of the plaintiff in this matter. South Carolina's Sex Offender Registry statutes, S.C. Code Ann. § 23-3-400 *et seq.*, provide the only lawful mechanisms and avenues by which an individual who is properly placed on the registry can be removed.[3] Pursuant to § 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). Pursuant to § 23-3-430(F), an offender who receives a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed. S.C. Code Ann. § 23-3-430(F). And finally, pursuant to § 23-3-430(G) individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial are removed. S.C. Code Ann. § 23-3-430(G). I find and conclude that these are the only lawful avenues by which an individual who is properly placed on the Registry can be removed. However, as noted above, the pleadings demonstrate that the Plaintiff does not meet any of these statutory criteria such that the Plaintiff is lawfully entitled to removal from the Registry. Accordingly, I find that there is no legal or constitutional basis on which this Court could grant the relief requested by the Plaintiff and judgment on the pleadings is proper. *See* S.C. Code Ann. § 23-3-460 (mandating lifetime registration in South Carolina); S.C. Code Ann. § 23-3-430 (setting forth the only avenues for removal); Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638 (1982).

[3] In fact, I note that the mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by the same code section, to wit: S.C. Code Ann. § 23-3-430.

As a threshold matter, it is noteworthy that South Carolina Carolina's Sex Offender Registry is constitutional and the constitutionality of the Registry was not challenged in this action. *See* Complaint; State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"); *see also* In re Justin B., 405 S.C. 391, 747 S.E.2d 774 (2013) *cert. denied sub nom.* Justin B. v. S. Carolina, 134 S. Ct. 1496 (2014) (finding South Carolina's lifetime electronic monitoring program constitutional). Moreover, I find and conclude that South Carolina's statutory lifetime registration requirement is set forth in an unambiguously worded statute. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually **for life**." (emphasis added)).[4] As such, South Carolina law mandates that there is no equitable jurisdiction in this matter. The South Carolina Supreme Court has specifically held that

> [i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly").

Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007). It is also well-known that "equity follows the law." *See* Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 319-20, 659 S.E.2d 263, 267 (Ct. App. 2008). Moreover, the South Carolina Supreme Court has

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

held that a "court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (emphasis added). Accordingly, I find that equity must follow the law in this matter and that this Court's equitable powers must yield in the face of South Carolina's unambiguously worded Sex Offender Registry law, which mandates lifetime registration.

South Carolina jurisprudence also provides that "[w]hen providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). Furthermore, the South Carolina Supreme Court has held that "[e]quitable relief is generally available only where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) *citing* 27 *Am.Jur.* 2d, *Equity,* § 94 (1966). The Supreme Court has also noted that an "'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.* I find and conclude that this does not however mean that the person seeking relief must be eligible for the relief set forth in the statute; rather, "adequate relief" means only that some certain definitive statutory relief exists. Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119 (1989). Accordingly, I find and conclude that South Carolina's Sex Offender Registry provides an adequate remedy to the Plaintiff in this matter because there are several statutory methods in which the Plaintiff can be legally removed from the registry, he simply does not qualify for them. Therefore, judgment on the pleadings is proper.

This situation is analogous to legislatively mandated minimum sentences for criminal offenses. *See* S.C. Code Ann. § 16-11-330 (10 years); S.C. Code Ann. § 44-53-370 (various mandatory minimums for distribution or trafficking illegal drugs); S.C. Code Ann. § 16-3-30 (30 years). Following convictions of these offenses, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals below the statutorily set amounts.[5] However, these statutory minimums are, and have been consistently upheld as being, lawful. *See* State v. De La Cruz, 302 S.C. 13, 393 S.E.2d 184 (1990); State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001); State v. Johnson, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). In fact, the South Carolina Supreme Court conclusively resolved this issue in *State v. De La Cruz* indicating

> [w]e have held in the past that "[t]he penalty assessed for a particular offense is, except in the rarest of cases, '**purely a matter of legislative prerogative**,' and the legislature's judgment will not be disturbed." State v. Smith, 275 S.C. 164, 167, 268 S.E.2d 276, 277 (1980) (*quoting* Rummel v. Estelle, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980)). Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restriction. *See* Mistretta v. United States, 488 U.S. 361, ----, 109 S.Ct. 647, 650, 102 L.Ed.2d 714, 725-726 (1989), wherein the United States Supreme Court noted, "Congress, of course, has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control." (*Citing* United States v. Wiltberger, 18 U.S. (5 Wheat) 76, 5 L.Ed. 37 (1820); Ex Parte United States, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916)).

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).[6] In addition, the Supreme Court has also noted that

> [u]nder the mandatory sentencing guidelines, the prosecutor can still choose not to pursue the triggering offenses or to plea the charges down to non-triggering offenses. Choosing which crime to charge a defendant with is the essence of prosecutorial discretion, not choosing which sentence the court shall impose upon conviction. Further, we found the matter of sentencing if convicted of a triggering offense to be a matter within the province of the legislature. *Id.*

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[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.

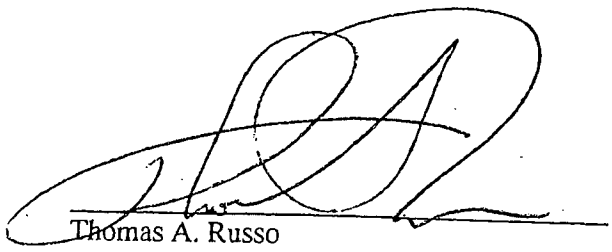
State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001). Similarly, I find and conclude that the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated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

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

ATTACHMENT 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
COUNTY OF SUMTER) Civil Action No. 2012-CP-43-00535

RECORDED
2015 JUN 16 P 12:4
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Marty Lee Barnes,

Petitioner,

vs.

The State of South Carolina,

Respondent.

ORDER GRANTING MOTION TO SET ASIDE JUDGMENT

CERTIFIED TRUE COPY OF ORIGINAL ON FILE
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.

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During the Petitioner's incarceration, the South Carolina Sex Offender Registry Act[3] 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); s*ee 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.").

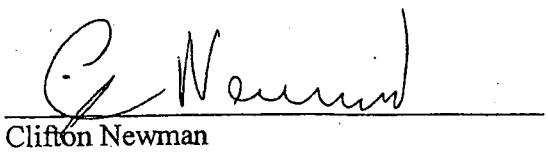
CONCLUSION

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

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED
AUG 25 2016
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable Tanya A. Gee, Circuit Court Judge

Case No: 2015-002240

Edward L. Green.....Appellant

v.

Mark Keel, Director of the South Carolina Law Enforcement Division and the State of South Carolina .....Respondent

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

Sumter, South Carolina