

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Fred S. Davis,)
)
 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.: 2016-CP-40-00751

ORDER GRANTING SUMMARY
 JUDGMENT

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SEP 23 2016

SC Court of Appeals

RICHLAND COUNTY
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 JEANE W. MORBRIDGE
 C. C. S. & G. S.

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 This matter came before me on September 7, 2016 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 filings submitted in this matter, the arguments presented at the hearing, and the applicable South Carolina law; I hereby GRANT the Defendants' Motion for Summary Judgment in this matter.

BACKGROUND

The Plaintiff was convicted of three counts of lewd act upon a child and one count of contributing to the delinquency of a minor on or about July 12, 2006.² Based on these convictions, the Plaintiff was required to, and did in fact, register as a sex offender pursuant to the South Carolina Sex Offender Registry Act, § 23-3-400 *et seq.* ("SORA"). See S.C. Code Ann. § 23-3-430; State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding that

¹ The Defendants are additionally represented in this action by Assistant Attorney General Harley Kirkland

² The Plaintiff was sentenced to 10 years for the lewd act upon a child and 3 years for the contributing; however, the sentencing court suspended these sentences to the service of 90 days to be served on the weekends and 5 years' probation.

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SORA “is not so punitive in purpose or effect as to constitute a criminal penalty” and that “the Act does not violate the *ex post facto* clauses of the state or federal constitutions”). The Plaintiff filed this present action in February of 2016 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 along with a Memorandum in support thereof.

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), SCRCPP) (emphasis in original).

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

LAW/ANALYSIS

Based on the following, 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. at 452, 548 S.E.2d at 874; Rule 56(c), SCRCPP

Based on his convictions, the Plaintiff was properly registered as a sex offender upon in accordance with SORA. S.C. Code Ann. § 23-3-430; Walls, 348 S.C. at 31, 558 S.E.2d at 526 (holding South Carolina’s SORA “is not so punitive in purpose or effect as to constitute a criminal penalty” and that “the Act does not violate the *ex post facto* clauses of the state or federal constitutions”); Hazel, 377 S.C. at 64, 659 S.E.2d at 139 (holding that “the applicable [SORA] statute is the statute that existed at the time of respondent’s release from prison.”).

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SORA is constitutional, 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”).³ In that regard, the South Carolina Supreme Court has held that “the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest.” Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003). Further, SORA also provides the only lawful avenues by which individuals can be removed from the registry.⁴ See S.C. Code Ann. § 23-3-430(E), (F), (G). However, there is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria for removal from SORA and he concedes that he does not. See Plaintiff’s Complaint pp. 2-3. 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

³ 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”.

⁴ 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.

must yield in the face of an unambiguously worded statute.” Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). In addition, the South Carolina Supreme Court has also specifically held that,

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

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

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 constitutional, clear, and unambiguous provisions of SORA would exceed this Court’s authority and this Court’s equitable powers must yield to the clear and unambiguous language of SORA.

In addition, fashioning an equitable remedy in the face of the clear and unambiguous provisions of SORA would constitute a violation of the South Carolina Constitution’s mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The length of an individual’s sex offender registration pursuant to SORA is solely a matter of legislative prerogative and there is no judicial discretion over such without violating the South Carolina Constitution. *Id.* This situation is comparable to legislatively mandated minimum or maximum sentences for criminal offenses. With regard to sentencing for an offense that has a mandatory minimum or maximum

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sentence, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals above or below the statutorily set amounts. However, these statutory sentence provisions 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)).

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302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990).⁵ Similarly, the duration of an individual’s sex offender registration pursuant to SORA 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) see also Hendrix v. Taylor, 353 S.C. at 552, 579 S.E.2d at 325 (holding that “the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest.”)

⁵ 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.” Walls, 348 S.C. at 31, 558 S.E.2d at 526. However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

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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, 298 S.C. at 185, 379 S.E.2d at 123 (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, 373 S.C. at 55, 644 S.E.2d at 675; Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123. Ultimately, the 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 179, 379 S.E.2d at 119. The statutory language of SORA 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 Accordingly, this Court’s equitable powers must yield to the clear and unambiguous language of SORA and there is no legal or constitutional basis for the Plaintiff to be removed from the registry.

Moreover, any constitutional challenge by the Plaintiff to his SORA registration also fails. The South Carolina Supreme Court has long held that SORA passes constitutional muster. See Hendrix, 353 S.C. at 542, 579 S.E.2d at 320; In re Ronnie A., 355 S.C. 407, 585 S.E.2d 311 (2003); Walls, 348 S.C. at 26, 558 S.E.2d at 524. This law is rationally related to the legislative purpose sought to be effected; all members of the class. *i.e.* all those individuals convicted of

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

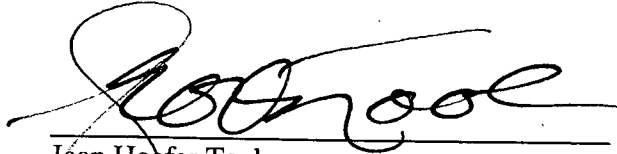
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committing a lewd act on a child are treated the same; and the classification rests on a reasonable basis. Classifying individuals, like the Plaintiff, who are lawfully convicted of committing a lewd act on a child as sex offenders is “reasonably related to the legitimate state purpose of protecting the public and aiding law enforcement in limiting the risk that sex offenders pose to communities.” Hendrix, 353 S.C. at 549-50, 579 S.E.2d at 324; In re Ronnie A., 355 S.C. at 409, 585 S.E.2d at 312; S.C. Code Ann. § 23-3-400. Registration as a sex offender is not a punishment, but rather is a regulatory requirement imposed to promote public safety. Williams v. State, 378 S.C. 511, 516, 662 S.E.2d 615, 618 (2008); Walls, 348 S.C. at 31, 558 S.E.2d at 526. In addition, all members of the Plaintiff’s class are treated identically. Further, all members of the class “are subject to uniform administrative and legal procedures.” See Hendrix, 353 S.C. 542, 550-51, 579 S.E.2d 320, 324 (2003). And finally, the classification of the Plaintiff as a sex offender “is reasonable because the purpose of the law is to protect the public welfare and to assist law enforcement in accomplishing that goal.” Hendrix, 353 S.C. 542, 551, 579 S.E.2d 320, 324 (2003); S.C. Code Ann. § 23-3-400. Accordingly, any challenge to the constitutionality of the Plaintiff’s SORA registration is without merit.

CONCLUSION

Therefore, based on the foregoing and all applicable South Carolina law, it is hereby ORDERED, DECREED, and ADJUDGED that the Defendants' Motion for Summary Judgment is GRANTED.

AND IT IS SO ORDERED.



Jean Hofer Toal
Presiding Judge
Court of Common Pleas
5th Judicial Circuit

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Columbia, South Carolina
Sept. 9, 2016