22402

RECEIVED
JAN 20 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Honorable Clifton Newman, Circuit Court Judge

Case No: 2015-001076

Kenneth W. Signor.....Appellant

v.

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

---

RECORD ON APPEAL

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

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

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

Office of SC Attorney General
ATTN: Marcie E. Greene
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

INDEX

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.

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

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
1 of 7

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

STATE OF SOUTH CAROLINA,)
)
COUNTY OF SUMTER)
)
KENNETH W. SIGNOR)
Plaintiff,)
)
vs.)
)
MARK KEEL, DIRECTOR, SLED, ET AL)
Defendant.)

IN THE COURT OF COMMON PLEAS

RECEIVED
2014 MAY 14 PM 3:44
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

SUMMONS

FILE NO. 2014-CP-43-968

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 14, 2014

Plaintiff/Attorney for Plaintiff

Address: 309 Broad Street, Sumter, SC 29150

SCCA 401 (5/02)

RECORDED

2014 MAY 14 PM 3:44

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

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF SUMTER)	**THIRD JUDICIAL CIRCUIT**
)	**C/A NO.: 2014-CP-43-** 918
KENNETH W. SIGNOR,)	
)	
PETITIONER,)	
)	
VS.)	**PETITION FOR**
)	**DECLARATORY JUDGMENT**
MARK KEEL,)	**(Non-Jury)**
DIRECTOR, SOUTH CAROLINA)	
LAW ENFORCEMENT)	
DIVISION (SLED), AND THE)	
STATE OF SOUTH CAROLINA,)	
)	
RESPONDENT.)	

****

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 Sumter, 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 §16-3-655(b) (Criminal Sexual Conduct, 2nd Degree) and §16-15-140 (Lewd Act on a Minor).

4. This Honorable Court has jurisdiction over the parties to, and subject matter of, the present action.

5. The Petitioner in this matter was convicted in the State of South Carolina of CSC-2nd and Lewd Act with a Minor in 1987 in Greenville County.

6. The Petitioner was sentenced to a term of incarceration of fifteen (15) years for the charge of CSC-2nd and five (5) years for the charge of Lewd Act, with those sentenced to be served concurrently with the South Carolina Department of Corrections. The Petitioner was released from incarceration on April 1, 1994.

7. In 2003, a period of sixteen (16) years after the conviction of the Petitioner and after the Petitioner relocated to Sumter County, the Petitioner was required to begin to Register as a Sex Offender in accordance with "Megan's Law" which was enacted subsequent to the release of the Petitioner from the Department of Corrections.

8. That, under §23-3-430(F), even if Petitioner was pardoned by the Governor, Petitioner "may not be removed" from the Registry unless the Attorney General notified a Defendant that the conviction "was reversed, overturned, or vacated on appeal". §23-3-430(E), South Carolina Code of Laws, as amended.

9. That the Petitioner did not file a timely appeal of his conviction, nor did he timely file an application for Post-conviction Relief.

10. That, upon information and belief, Petitioner has suffered and continues to suffer grievous consequences as a result of being a registered sex offender, including:

    a. Permanent ban from volunteering with most youth events, including any involving his own minor relatives (nieces, nephews, etc.) or any children he may father in the future.

    b. Limited employment opportunities; and

    c. Embarrassment and humiliation for himself and his relatives.

FOR A FIRST CAUSE OF ACTION
Equity

11. The above set forth facts are made part of this cause of action through incorporation by reference.

12. That the Petitioner is entitled to equitable personal relief in this matter.

13. That the Petitioner is informed and believed that equity is reserved for situations where there is no adequate remedy of law.

14. That the purpose of the Sex Offender Registry is to protect the public from those sex offenders who may re-offend and to aid Law Enforcement in solving sex crimes.

15. That the Petitioner is informed and believes the facts before this Court do not support a finding that he Petitioner is or ever was a predator or child molester.

16. That the Petitioner is informed and believes that the requirement of lifelong Sex Offender Registry is wildly disproportionate to the underlying conduct.

17. That the Petitioner is informed and believes that justice compels a remedy for this particular situation and that justice is served by granting the Petitioner personal relief.

18. That Petitioner is entitled to an Order of this Court directing Defendant Keel to remove his name from the South Carolina Sex Offender Registry immediately.

WHEREFORE, Petitioner prays this Court for an Order:

1. Declares the Petitioner has established his claim for relief by evidence satisfactory to this Court; and
2. Ordering the Defendants to remove the Petitioner from the Sex Offender Registry; and

3. For any such other and further relief as may be deemed appropriate by this Court.

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

Dated: 5/12/2014

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

RECORDED
2014 MAY 14 PM 3:44
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

VERIFICATION

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

SWORN to and Subscribed before me)

this 12th day of May , 2014)

Notary Public for South Carolina)

My Commission expires: 6/2/2020)

Signature of Petitioner

Signature of Petitioner

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	Case No.: 2014-CP-43-968
Kenneth W. Signor,	)	
	)	
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.

3. Paragraphs two (2) and three (3), to the extent they are characterizations as to the type of action this is require no response. The remaining allegations of paragraphs two (2) and three (3) are admitted upon information and belief.

4. Paragraphs four (4), five (5), and six (6) are admitted upon information and belief.

5. The Defendants are without information or knowledge to admit or deny the allegations of paragraph seven (7) and would therefor deny the same. However, the Defendants would aver that the Plaintiff's inclusion on the South Carolina Sex Offender Registry was proper, was in accordance with South Carolina law, and was constitutional.

6. The Defendants deny the allegations of paragraph eight (8) in that the allegations mischaracterize South Carolina law. The Defendants would crave reference to the actual text of §§ 23-3-430(E) and 23-3-430(F) of the South Carolina Code of Laws for a proper recitation of these statutes.

7. The Defendants are without information and belief to admit the allegations of paragraph nine (9); however, the Defendants would admit these allegations.

8. The Defendants deny the allegations of paragraph ten (10).

9. As to paragraph eleven (11), the Defendants incorporate the responses to each of preceding paragraphs by reference.

10. Paragraph twelve (12) is denied.

11. Paragraph thirteen (13) is denied and the Defendants would aver that § 23-3-430 is an unambiguously worded statute and that equity follows the law. *See* Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) (holding that a "court's equitable powers must yield in the face of an unambiguously worded statute").

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

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

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

FOR A FOURTH DEFENSE
Proper Inclusion on the Registry

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

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

A. dismisses the Plaintiff's Complaint entirely;

B. denies any and all relief sought by the Plaintiff; and

C. grants such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

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

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

ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
JUNE 20, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) IN THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER)

RECORDED
2014 OCT 21 PM 12:06
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Kenneth W. Signor,) Civil Action No. 2014-CP-43-00968

Plaintiff,)

vs.)

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

Defendants.)

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

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

BACKGROUND

The Plaintiff was convicted of criminal sexual conduct in the second degree ("CSC–2nd") and lewd act on a child under the age of sixteen (16) on or about March 27, 1987. Plf's. Compl. ¶¶5. He was sentenced to fifteen (15) years for CSC–2nd and five (5) years for the charge of lewd act. Both sentences were served concurrently. *Id.* at ¶¶6. Upon being released

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

from incarceration on April 1, 1994, Plaintiff was required to register as a sex offender[2] on the South Carolina Sex Offender Registry ("Registry"). *Id.*

On or about May 14, 2014, Plaintiff Kenneth W. Signor filed this "Petition for Declaratory Judgment" against Defendants Chief Keel and the State of South Carolina, regarding certain provisions governing the Registry. The Plaintiff contends that "the facts before this Court do not support a finding that he is or ever was a predator or child molester;" the lifelong Registry requirement is wildly disproportionate to the underlying conduct;" "justice compels a remedy...and that justice is served by granting the Plaintiff personal relief;" and "...Plaintiff is entitled to an Order...remov[ing] his name from the South Carolina Sex Offender Registry immediately." Plf's. Compl. ¶¶15-18.

ARGUMENT

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

South Carolina law is clear that "[e]quitable relief is generally available only where there is no adequate remedy at law." *Santee Cooper Resort, Inc. v. South Carolina Public Service Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). "Whether an individual must be placed on the sex offender registry is a question of law." *Lozada v. South Carolina Law Enforcement Div.*, 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) (citing *Noisette v. Ismail*, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App. 1989) ("Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law.")).

[2] Plaintiff is classified as Tier III offender pursuant to the Sex Offender Registration and Notification Act based on his 1987 convictions.

"[T]he court's equitable powers *must yield* in the face of an unambiguously worded statute." *Id.* (emphasis added).

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

Plaintiff is not entitled to the equitable relief sought because the statute governing removal from the Registry provides an adequate remedy at law. The mechanism for both placement on and removal from the Registry is provided by the same code section. *See* S.C. Code Ann. § 23-3-430 (Supp. 2013). Under section 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E) (Supp. 2013). Other subsections provide for removal if the person receives a pardon "based on a finding of not guilty specifically stated in the pardon," or if he or she

receives a new trial following the discovery of new evidence and a verdict of acquittal is returned at that new trial. S.C. Code Ann. § 23-3-430(F), (G) (Supp. 2013).

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

CONCLUSION

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

[Signature Page Follows]

Respectfully submitted,

Courtney E. Lowell, Esquire (S.C. Bar No.: 77175)
Marcie E. Greene, Esquire (S.C. Bar No.: 101041)
Assistant Attorney Generals
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549
Phone: 803.734.3177
803.734.3177
Fax: 803.734.3677
Email: clowell@scag.gov
mgreene@scag.gov

Adam L. Whitsett, Esquire (S.C. Bar No.: 74888)
General Counsel
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221-1398
Phone: 803.896.0647
Fax: 803.896.7588
Email: awhitsett@sled.sc.gov

ATTORNEYS FOR THE CHIEF KEEL AND THE STATE OF SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA
OCTOBER 20, 2014

Rule 11, SCRCP, Statement:

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

ATTORNEY FOR THE CHIEF KEEL AND THE STATE OF SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA
OCTOBER 20, 2014

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF SUMTER	**THIRD JUDICIAL CIRCUIT**
KENNETH W. SIGNOR,	**C/A NO.: 2014-CP-43-968**
PETITIONER,	
VS.	
MARK KEEL, DIRECTOR, SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED), AND THE STATE OF SOUTH CAROLINA,	**PETITIONER'S RETURN TO MOTION OF RESPONDENT(S)**
RESPONDENT.	

****

To: Courtney E. Lowell, Attorney for the Respondent(s):

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

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

The issue here 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 Judgment on the Pleadings should be denied.

THE BROOKS LAW OFFICES

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

Dated: 2/4/2015

State of South Carolina)
)
County of Sumter)
)

Signor,
Plaintiff

vs.

SLED and the State of South Carolina,
Defendants

Motions Hearing
2014-CP-43-00968

February 9, 2015
Sumter, S.C.

Before the Honorable Clifton Newman, Judge.

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

Mr. Charles T. Brooks,
Attorney for Plaintiff

Mr. Adam L. Whitsett,
Attorney for Defendants

Margaret T. Sullivan,
Court Reporter

THE COURT: Mr. Brooks.

MR. WHITSETT: Your Honor, let me give you a brief on this case. It's a little bit of a different factual scenario. In this case, this was a civil action filed by the plaintiff on behalf of Mr. Signor. And it's a Complaint to be removed from the sex offender registry based solely inequity. As I read the complaint, the plaintiff in this case pled guilty to a criminal sexual conduct second and to a lewd act. And either of which would require registration on South Carolina Sex Offender Registry. It's my understanding that there has been registration on the registry. But this is a Civil Declaratory Judgment seeking to be removed solely based on an equitable claim, as I understand it. Basically that it's just, he had done his time, it's time for him to come off. Which we obviously oppose based on similar arguments. And we believe that registration was proper. Both of these are sexual based offenses, which puts this a little bit different of a posture then the case before us. And so both of these were clearly sex offenses.

Registration on either of these offenses, were both clearly pursuant to the statute. And we believe that there simply is no equitable

jurisdiction for an individual to be removed. So we filed a Motion for a Judgment on the Pleadings based solely, even if you take the factual allegations as true, there's simply no relief that this court can grant. The Complaint does not indicate the plaintiff meets any of the statutory grounds for removal. It doesn't indicate that the plaintiff has even sought to avail himself of the statutory avenues for removal.

And so we've got a similar situation where we've got just an entire action based solely asking a court to do what we believe would be unconstitutional. And to be a violation and be something the court simply doesn't have equitable jurisdiction to do. Again, we've got the statutory framework. We've got clear compliance with it. We've got a constitutional nonpunitive statute. And the whole case is based on the argument that is constitutional nonpunitive statute, somehow constitutes a wrong that requires a remedy. We don't believe that the constitutional application of a nonpunitive statute constitutes a wrong, or that there is any equitable jurisdiction. In fact, we've got, like I said, we got the statute. This whole action is asking this court to rewrite a clear and

unambiguous statute. And we believe that the court's equitable powers must yield in the face of an unambiguous statute. That came straight out of the supreme court in the Santee Cooper case that also comes out of the Key Corporate Capital case, both of which are cited and quoted extensively in my brief.

The scenario that I also touched on the brief that I did not get to, the most analogous thing that I've got to this, it's a statutory mandatory minimum sentences. If the legislature puts in a statutory mandatory minimum sentence, court's don't have the ability or the authority or any equitable jurisdiction to say, well I don't think you deserve the 10 years that this statute requires that I give you. I'm just going to sentence you to something below that.

And so essentially we've got the same type of argument here. The statute says you go on. The statute---

THE COURT: We had a judge one time that said I don't care what the legislature said, I'm the judge.

MR. WHITSETT: Your Honor, that happens. And that's why this argument is always the toughest

for me to sit here and say, Judge, you just don't have the power to do what you may or may not want to do. And so I understand---

THE COURT: Of course, he was run off the bench too.

MR. WHITSETT: ---the difficulty of those types of arguments. But We just think the statute is very clear and very unambiguous. There is no equitable jurisdiction for a court to rewrite the statute to add avenues for removal. Again that's solely in the legislature's province. That's solely a legislative prerogative. And the legislature whether you feel it's right or wrong, they've done what they've done. They've written the statutes. So we're here to enforce the statute and to uphold the statute. Because's there no real obligation that it's unconstitutional or it's unconstitutionally applied. We're solely saying, I don't like to still beyond, so I want to come off. And that's what we don't believe a court has the equitable jurisdiction to do that. Again, equity follows the law. And the court's equitable powers has much---

THE COURT: I get your point. Let me hear from Mr. Brooks over there.

MR. BROOKS: Good morning, Judge.

THE COURT: Good morning.

MR. BROOKS: First of all, in regards to his argument about comparing this to mandatory minimums that the legislature sets out, and I think that is a false analogy. The reason that it is false is, when you talk about a mandatory minimum, that means that the statute was in place prior to the person committing the crime. Then the person commits the crime clearly after the statute is in place. In this particular situation, Mr. Signor had committed his offense and pled guilty back in the 1980's. And did time. Obviously, Judge, the registry apparatus was not even in existence. It wasn't even thought of.

He got out. He's been a model citizen. He's not gotten so much as a speeding ticket. Years later when the police came to interrogate and search a residence that he was sharing with a friend to solely look for that friend, my client cooperates, and the police do a background check and say, hey, you've got this offense, you need to register. And that's what prompted him to register to make sure he was in accordance with the law.

Now we're not talking about whether or not

this gentleman should be on the registry. What we're talking about is, what is his says of getting off the registry. Because if you look clearly at the statute, it's only based in the legal recourse. And specifically legal recourses that specifically talks about an appeal.

So in order for him to get off the registry, he would have to go back in time to the 1980's, and have his conviction overturned. Something that wasn't even put in place back then. If he filed a post conviction relief application, the attorney general's office would stand up and say, he's had a one year statute of limitations. The pardon provision is not just a general pardon, he's basically got to overtone the conviction. And the other provision of that statute it says that he's got to basically find new evidence. But none of those are remedies of law that are applicable for Mr. Signor who had a conviction back in the 1980's.

THE COURT: How does he get off, or can he get off? He's saying he can't get off.

MR. BROOKS: And our provision is where there is not a legal remedy, then there should be an equitable one. And that's been done in State v. Johnson, which the supreme court cited in April

2014.

THE COURT: State v. Johnson, 2014. What kind of case was that?

MR. BROOKS: Well that was a case where a gentleman down in the Kingstree area had pled guilty to, I believe, a lewd act on a minor who was 17, and kissed a girl who 13. He was on the registry. He did everything on the registry. In that case, Judge, that case, the incident, the conviction, all that happened after the registration status apparatus was put in place. And that gentleman went to court. And the trial court ruled that for him to have the life long requirement to register was wildly disproportionate to the offense that he had committed. And Judge Seals had ruled that he should be taken off.

So after that, the state appealed to the court of appeals to overturn him. And then the supreme court overturned the court of appeals. and that ruling came out in April of 2014. So there is a precedent. As a matter of fact, in my client's situation, his offense occurred prior to the registry apparatus being implemented. So obviously if Mr. Johnson could get off, Mr. Signor should get off as well. And, Judge, also in the file, we filed

a return to the defense's Motion to Dismiss; as well as, we went further than Mr. Johnson did in that case. While we've had Mr. Signor evaluated by a licensed forensic psychologist who has been admitted to testify to the court in numerous occasions. And even I'm sure in front of you, in terms of Dr. Tom Martin who evaluated him. And we've submitted an affidavit to talk about Mr. Signor. Because we felt it was reasonably necessary to put some more facts into the record for the court to consider, as far as is Mr. Signor is, and why the plaintiff's petition should be allowed to go forward and have a hearing to flesh out the facts in this situation. And therefore, Judge, we would ask for the defense's Motion to Dismiss be denied.

THE COURT: Yes, sir.

MR. WHITSETT: Your Honor, I would like to clarify that the status that the Johnson v. Lloyd case.

THE COURT: Johnson v. Lloyd. As in Reggie Lloyd out there?

MR. WHITSETT: And is the same Lloyd that is present today. And, Your Honor, I have got a copy of one of each to come up. I think it's a very

important distinction to note. Mr. Brooks is correct, the trial court in Johnson did rule, and said, pull this gentleman off inequity, despite him not ever having moved to come off in equity. But that's a different argument.

The court of appeals ruled pretty clearly and pretty succinctly. There is no equitable jurisdiction for a court to remove an individual. And I've got that case, I was going to hand it up. The supreme court ultimately did kick that, but on the sole route of issue preservation. That issue was not raised at the trial court. So the supreme court, because the State failed to argue that petitioner was not entitled to equitable relief until this brief at the court of appeals, the issue was not preserved for appellate review. We therefore, reversed the court of appeal's opinion on preservation grounds. It was not authority that the court of appeals was wrong.

And actually I would submit that the court of appeals accurately reflected the law in this case, despite the fact that it was subsequently overturned on issue preservation.

THE COURT: Do you get the sense that appellate court's are finding avenues for people to

get off the registry despite the law to the contrary?

MR. WHITSETT: I actually do not believe that at all, Your Honor. I think the court of appeals specifically ruled you could not. And that a court pull someone off in equity.

THE COURT: And the supreme court agreed or disagreed.

MR. WHITSETT: The supreme court disagreed because that issue wasn't raised. It was solely on issue preservation. The supreme court could have taken have the step indictor and said, the court of appeals wrongly decided the case. But the supreme court specifically did not touch the court of appeal's legal findings, because I believe they are in accordance with the law of the state. They specifically said well that specific issue wasn't properly raised at the trial level. And so they denied it on issue preservation grounds solely. They could have taken that opportunity to say, the court of appeals was wrong. They could have done that, but they did.

THE COURT: Do they have other cases pending in which these issues are percolating?

MR. WHITSETT: To be honest, that's why we

are here so many of these cases, because we're trying to get some up for further guidance. Because, you know, and that's we're fighting as many as we can fight to get them up. We thought the Saltz case and couple of others might have gone up, but none have been appealed there. We've not had an unfavorable opinion from a court that has been taken up.

THE COURT: So this is it. This is a battleground.

MR. WHITSETT: Potentially, Your Honor.

MR. BROOKS: Judge, it would be our position that when the supreme court issued its ruling, in effect it made Judge Seals' order, the law in this case on this issue. And that law is, that equity is a perfect remedy where there is no legal remedy for an individual such as Mr. Signor.

THE COURT: So, I'm asking you the same question that I asked earlier as requires the court seemingly trying to create avenues to get people off the registry if a -- if as a matter of equity they shouldn't be on it. Do you sense that there's some movement in that direction or not?

MR. BROOKS: I do, judge.

THE COURT: Of course his argument in

equity has nothing to do with it, because the law it clear.

MR. BROOKS: But obviously if equity had anything to do with it, the supreme court could have actually said back in April, we affirm the court of appeals ruling. Because equity is not an actual issue that should have been preserved or raised or defended against.

THE COURT: You know, this issue preservation when the court's -- of course many times the issues aren't preserved and they address it anyway. Because they seemingly just want to address it.

MR. BROOKS: Thinking that it may be a situation that may needs to be addressed on future cases of similar.

THE COURT: Well the standard of whether something has been preserved is not, has seemed to be floating with the facts.

MR. BROOKS: And more often, Judge, is we've been talking in terms of being defense counsel in criminal cases, we've taught to raise everything in regards to protect our client's individual rights on appeal. When in this situation if it wasn't never addressed, the court took it upon itself to

address it. And by addressing and saying it was not preserved, actually it's says it's a real issue. Because otherwise, there wouldn't be any need for them to address it.

THE COURT: I got you. Anything else on this matter?

MR. WHITSETT: Obviously I would disagree with that analysis. And, you know, interestingly I think the issue for the supreme court, having had some experience. Because equity was never pled. It was never raised, and it was never dealt with. And then when the judge ruled, the State actually did file a Motion for Reconsideration, but didn't raise the court's lack of equitable jurisdiction; tried to assert just equitable defenses on that case. The only court that's ever actually looked at whether a court had equitable jurisdiction was the court of appeals who were pretty clearly and pretty succinctly, there were no equitable jurisdiction, in the face of an unambiguously worded, constitutional, nonpunitive statute.

However that issue, the sole issue that the court of appeals looked at, wasn't actually ever preserved or raised or addressed at the trial level. And so I believe that's why the court did it. I

don't believe it's any tacit authorization that something could be done, because it didn't say it could be. It's simply -- it was just an issue preservation issue and nothing more than the basis, the entire basis of the court of appeal ruling in accordance with the law, was on an issue that was not properly preserved.

THE COURT: Last word, Mr. Brooks.

MR. BROOKS: Judge, the court of appeal's ruling, issued opinion, is not the law in the case. It's not. The law in the case now is Judge Seals' order. Which gives an individual, pending a certain factual situation, a way to get off the registry. That individual is off the registry. And that individual pled guilty to an offense that was in effect during the time that the registry apparatus was in existence. Mr. Signor's conviction is from the 80's. Here is a guy that has no record, and that's why we submitted an affidavit to give the court an idea of about Mr. Signor's situation from an expert, or therefore should be allowed to go to trial.

THE COURT: We'll take this one under advisement as well and delve into it. How many days? You all submit proposed orders. 60 days

again?

MR. WHITSETT: Yeah, I can do 30 or 60, whichever, Your Honor.

MR. BROOKS: And like Mr. Howle before me, Judge, I'll probably want something from Ms. Sullivan. I'm sure like she said, she's backlogged.

THE COURT: Well 60 days, and it will give us a give us chance and come back to this subject.

MR. BROOKS: Yes, sir.

MR. WHITSETT: Thank you, Your Honor.

THE COURT: Thank you, Your Honor.

--End of Requested Transcript of Record--

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced on February 9, 2015, in the Common Pleas Nonjury Court, Sumter County, Sumter, South Carolina.

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

6-18-15
DATE

Margaret T. Sullivan
COURT REPORTER
My Commission expires: 9/7/2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
		THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	C/A No.: 2014-CP-43-968
KENNETH W. SIGNOR,		AFFIDAVIT OF THOMAS V. MARTIN, M.D.
PETITIONER,	)	
VS.	)	
MARK KEEL, DIRECTOR, SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED), AND THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	

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

Being duly sworn I do swear and affirm the following:

1) Mr. Kenneth W. Signor is a 60 year old divorced male, who is a gainfully employed real estate paralegal of his self-owned business, Signor & Company, LLC for over 20 years. In 1986 in Greenville County, SC, Mr. Signor self-reported and later pled guilty to Criminal Sexual Conduct (CSC) 2nd Degree with a Minor and Lewd Act on a Minor after sexually victimizing his adopted sons, ages 13 and 14 yrs. He was subsequently sentenced to 15 years for the CSC and five years for the Lewd Act charges to run concurrently and was incarcerated from 1986 until April 1994. In 2001, Mr. Signor was required by the State to register with the SC Sex Offender Registry. He is now petitioning to have this requirement removed and be taken off the lifetime Registry.
2) This Examiner's assessment of this forensic case and petition included a review of Mr. Signor's criminal record, his arrest warrants and indictments, letters from Tommy R. Mims, Sheriff of Sumter County, and a letter from Major Mark Huguley, SC Law Enforcement Division. This review was followed by an individual two hour clinical

consultation and risk assessment of Mr. Signor. What follows is a summary of this Examiner's findings.

3) Mr. Signor has been a viable and productive citizen within his community. He has no subsequent criminal record, and suffered no emotional difficulty following the divorce from his spouse in 1985. While incarcerated in the SC Department of Corrections (SCDC), Mr. Signor successfully completed sex offender therapy and treatment. As an inmate, he gained employment as a teacher, served as an inmate administrator, committed no major infractions, and developed a closer and supportive relationship to his family.
4) Throughout the consultation, Mr. Signor remained candid and genuine surrounding his sexual offense history. He acknowledged full responsibility for his aberrant behaviors, had empathy for those he hurt by his actions, and understood the cognitive distortions and dysfunctional interpersonal dynamics that were in play during his time of offending. His time incarcerated was spent building healthier prosocial skills, and he has continued this pattern of model behavior in his lifestyle and work ethic since his release. Mr. Signor has never failed to register as a sexual offender in accordance to the statute.
5) Diagnostically, Mr. Signor does not suffer from a major mental illness. He has no history of addictive substance abuse or dependence. Furthermore, Mr. Signor does not suffer from a sexual perversion disorder, Paraphilia. He has developed healthy and long-term interpersonal relationships and has built a successful business that has not only bolstered his character development, but his contribution to society. Mr. Signor has a supportive character reference from the former Sheriff of Sumter County. He has no subsequent history of aberrant behaviors or relationships with adults or children. Mr. Signor does not require psychotherapeutic intervention or treatment.
6) In conclusion, Mr. Signor poses a very low risk to sexually reoffend. He has consistently demonstrated admirable and laudable behavior in his community and with his family. His annual re-registry as a sexual offender has only proven to be detrimental to Mr. Signor's clear pattern of progress and is not required as a deterrent to further sexual acting out behavior. The SC Sex Offender Registry serves to assist law enforcement and the community in monitoring those dangerous individuals who do not manage their aberrant sexual behaviors and fail to follow our social and community mores. Mr. Signor does not meet these criteria.

Further affiant sayeth not.

Thomas V. Martin, M.D.

Sworn to before me this 13th day of January 2015

Joy G. Covington Grimsley
A Notary Public for South Carolina
My Commission Expires: 12-15-2017

STATE OF SOUTH CAROLINA COUNTY OF SUMTER	)	COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT Civil Action No. 2014-CP-43-00968
Kenneth W. Signor, Plaintiff, vs. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, Defendants.	)	**DEFENDANTS' BRIEF IN SUPPORT OF JUDGMENT ON THE PLEADINGS**

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

South Carolina's Sex Offender Registry statutes, S.C. Code § 23-3-400 *et seq.*, list the only mechanisms and avenues by which an individual can be removed from the Sex Offender Registry.[1] Pursuant to § 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). Pursuant to § 23-3-430(F), an offender who receives a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed. S.C. Code Ann. § 23-3-430(F). And finally, pursuant to § 23-3-430(G) individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial are removed. S.C. Code Ann. § 23-3-430(F). These are the only lawful avenues by which an individual who is properly placed on the Registry can be removed.

[1] In fact, the mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by this same code section. *See* S.C. Code § 23-3-430.

However, the Complaint in this action does not indicate that the Plaintiff meets any of these statutory criteria such that the Plaintiff is entitled to removal.[2] In fact, the Complaint does not indicate that the Plaintiff has even attempted to avail himself of any of the statutory avenues for removal. Accordingly, there is no legal or constitutional basis for the Plaintiff to be removed from South Carolina's Sex Offender Registry. *See* S.C. Code Ann. § 23-3-460 (mandating lifetime registration in South Carolina); S.C. Code Ann. § 23-3-430 (setting forth the only avenues for removal). As such, the Complaint sets forth no lawful ground on which the Plaintiff is entitled to relief and the Defendants are entitled to a judgment on the pleadings in this matter. *See* Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991).

Furthermore, there is no equitable jurisdiction for a court to remove an individual from South Carolina's Sex Offender Registry without violating the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8; *see generally* Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007) (finding error in fashioning an equitable remedy in the face of an unambiguously worded statute setting forth certain remedies); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). The South Carolina Constitution specifically provides that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." S.C. Const. art. I, § 8. The duration of sex offender registration is a matter of public policy that is solely in the province of the South Carolina Legislature. As such, any attempt by any court to invade into the Legislature's exclusive province is unconstitutional. *Id.*

[2] There is no argument that the each of the Plaintiff's convictions, to wit: Criminal Sexual Conduct 2nd Degree and Lewd Act with a Minor, mandate registration in South Carolina. *See* S.C. Code Ann. §23-3-430.

As a threshold matter, it is noteworthy that South Carolina Carolina's Sex Offender Registry is constitutional. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions.") *see also* In re Justin B., 405 S.C. 391, 747 S.E.2d 774 (2013) cert. denied sub nom. Justin B. v. S. Carolina, 134 S. Ct. 1496, 188 L. Ed. 2d 380 (U.S.S.C. 2014) (finding South Carolina's lifetime electronic monitoring program constitutional). In addition, registration is **not punishment**, rather it is a non-punitive regulatory requirement "imposed to promote the public safety." Williams v. State, 378 S.C. 511, 516, 662 S.E.2d 615, 618 (Ct. App. 2008) (finding that registration had no effect on an individual's range of punishment). The South Carolina Supreme Court has noted that "[i]t is clear the General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes. Hence, the language indicates the General Assembly's intention to create a non-punitive act." State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). As such, registration is not a "wrong" requiring a remedy in the eyes of the law.

Moreover, South Carolina's statutory lifetime registration requirement is set forth in an unambiguously worded statute. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life.").[3] As such, South Carolina law mandates that there is no equitable jurisdiction in this matter.[4] 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,

[3] However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).
[4] In addition, the application of a constitutional statute to the Plaintiff is not a "wrong" that requires an equitable remedy.

> 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "**it is beyond this Court's power to effect a change in the statutes enacted by the Legislature.**" State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "**not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly**").

Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675 (2007) (emphasis added). The Complaint in this matter seeks for this Court to fashion a remedy that does not exist in South Carolina law. Further, this request seeks for this Court to impermissibly and unconstitutionally act as a "superlegislature" and to add language to an unambiguously worded constitutional statute. As such, the Defendants are entitled to the requested relief.

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

> [w]e have held in the past that "[t]he penalty assessed for a particular offense is, except in the rarest of cases, "**purely a matter of legislative prerogative,**" and the legislature's judgment will not be disturbed." State v. Smith, 275 S.C. 164, 167, 268 S.E.2d 276, 277 (1980) (*quoting* Rummel v. Estelle, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980)). Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restriction. *See* Mistretta v. United States, 488 U.S. 361, ----, 109 S.Ct. 647, 650, 102 L.Ed.2d 714, 725-726 (1989), wherein the United States Supreme Court noted, *16 "Congress, of course, has the power to

> fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control." (*Citing* United States v. Wiltberger, 18 U.S. (5 Wheat) 76, 5 L.Ed. 37 (1820); Ex Parte United States, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916)).

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).[5] 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) (emphasis added). Similarly, the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the South Carolina Constitution. S.C. Const. art. I, § 8.

Furthermore, the purely equitable relief sought by the Plaintiff in this matter is simply not available. The South Carolina Supreme Court has noted that "[e]quitable relief is generally available **only** where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) *citing* 27 *Am.Jur.* 2d, *Equity,* § 94 (1966) (emphasis added). The *Santee Cooper* Court further noted that an "'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.* This does not however mean that the person seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that some certain definitive statutory relief exists. Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644

[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." 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.

S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Ultimately, the Court in *Santee Cooper* noted that "the court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)(emphasis added). Similarly, the Defendants respectfully assert that this Court's equitable powers must yield in the face of South Carolina's unambiguously worded Sex Offender Registry laws, which set forth lifetime registration. As such, the Defendants are entitled to a judgment on the pleadings in this matter.

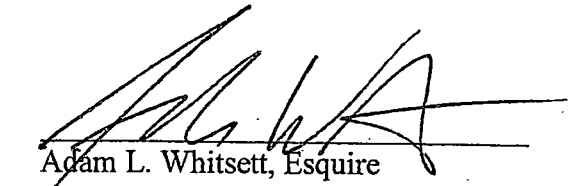
Moreover, it is well-known that "equity follows the law". This maxim alone is a basis for denying equitable relief in this case as it has been in other cases. *See* Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 319–20, 659 S.E.2d 263, 267 (Ct. App. 2008). The South Carolina Court of Appeals has also ruled that "[w]hen providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). The law in South Carolina is clear, the Plaintiff is simply not entitled to the requested relief in this matter because there is no equitable jurisdiction in this matter. Accordingly, the Defendants are entitled to a judgment on the pleadings.

Furthermore, South Carolina law is also clear that "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. South Carolina Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) (citing Noisette v. Ismail, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App. 1989) ("Unless the cause of action and the relief

sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law.")). As such, there is simply no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. For this court to act as a "superlegislature" and to unilaterally add language to an unchallenged, unambiguously worded statute violates the South Carolina Constitution. S.C. Const. art. I, § 8.

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

Respectfully Submitted,



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

Courtney E. Lowell, Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549
Phone: (803) 734-3177
Fax: (803) 734-3677
Email: clowell@scag.gov
S.C. Bar No.: 77175

Marcie Green, Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549

Phone: (803) 734-3759
Fax: (803) 734-3677
Email: mgreen@scag.gov
S.C. Bar No.: 101041

ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
FEBRUARY 9, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Honorable Clifton Newman, Circuit Court Judge

Case No: 2015-001076

Kenneth W. Signor.....Appellant

v.

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

RECORD ON APPEAL

CERTIFICATE OF COUNSEL

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

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

Dated; 12/30/2015
Sumter, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Honorable Clifton Newman, Circuit Court Judge

Case No: 2015-001076

Kenneth W. Signor.....Appellant

v.

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

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this January 15, 2016, I served the foregoing **RECORD ON APPEAL** as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on January 15, 2016, addressed to the following as indicated below:

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

SLED
Adam L. Whitsett, Esq.
Post Office Box 21398
Columbia, South Carolina 29221-1398

Dated: January 15, 2016

Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW
IRMA R. BROOKS, ATTORNEY AT LAW
309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8797
Email: **cbrooks@ctbrooks.com**

January 15, 2016

South Carolina Court of Appeals
Jenny Abbott Kitchings
Post Office Box 11629
Columbia, South Carolina 29211

RE: Signor vs. Mark Keel, Chief of the South Carolina Law Enforcement Division, et al
2015-001076

Dear Sir or Madam:

Enclosed herewith please find the original and fifteen (15) copies of the Record on Appeal and Proof of Service in the above titled matter.

Thank you for your attention to this matter. If there are any questions, please feel free to give me a call.

With kind regards,

Sincerely,

Charles T. Brooks, III
CTB,III/jlm
Enclosures as stated
cc: Office of SC Attorney General
ATTN: Courtney E. Lowell
Post Office Box 11549
Columbia, South Carolina 29211

SLED
Adam L. Whitsett, Esq.
Post Office Box 21398
Columbia, South Carolina 29221