STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	Case No.: 2015CP4302548
Mack Paul, Jr.,	)	
	)	
Plaintiff,	)	
	)	**ORDER GRANTING SUMMARY JUDGMENT**
v.	)	
	)	
Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina,	)	
	)	
Defendants.	)	
	)	

This matter came before me on April 25, 2016 for hearing of 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. For the reasons set forth herein, the motion is granted.

BACKGROUND

The Plaintiff was convicted of Criminal Sexual Conduct with a Minor in the Second Degree (S.C. Code Ann. § 16-3-655(B) in 1995, and was incarcerated for this offense. Upon the Plaintiff's release from incarceration, he 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* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding that 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 v. State, 377

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

S.C. 60, 64, 659 S.E.2d 137, 139 (2008) (holding that "the applicable [Sex Offender Registry] statute is the statute that existed at the time of respondent's release from prison."). The Plaintiff filed this present action in November of 2015 seeking equitable personal relief. 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), SCRCP) (emphasis in original).

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

LAW/ANALYSIS

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)(5); 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.").

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").[2] The Supreme Court of South Carolina 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.[3] *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 continued, but 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

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[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".

[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.

> [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). 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, the fashioning of an equitable remedy outside of the constitutional, 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.

In addition, the granting of 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. In instances involving mandatory minimum and maximum sentences, our legislature has unilaterally prohibited judges from sentencing individuals to prison terms above or below the statutorily set maximums and minimums. However, these statutory sentence provisions 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).[4] 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.")

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

[4] It is noteworthy that sex offender registration has been consistently held not to be "punitive in purpose or effect as to constitute a criminal penalty." 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.

"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.").[5] 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 over the age of 18 convicted of Criminal Sexual Conduct in the Second Degree (S.C. Code Ann. § 16-3-655(B)) are treated the same; and the classification rests on a reasonable basis. Classifying individuals, like the Plaintiff, who are over the age of 18 and lawfully convicted of Criminal Sexual Conduct

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

in the Second Degree (S.C. Code Ann. § 16-3-652), 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 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, *i.e.* those persons over the age of 18 convicted of Criminal Sexual Conduct in the Second Degree (S.C. Code Ann. § 16-3-655(B)), 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.

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SO ORDERED

s/ George C. James, Jr. 2143