THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Thomas A. Russo, Circuit Court Judge

Appellate Case No.: 2017-000271

Melvin T. Roberts, ... Petitioner,

v.

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

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENTS

TABLE OF CONTENTS

QUESTIONS PRESENTED

I. **Did the Court of Appeals err in affirming the trial court's grant of judgment on the pleadings to respondents when no genuine issue of material fact exists and the only relief sought in this action is not available as a matter of law?**

II. **Did the Court of Appeals err in affirming the trial court's finding that the South Carolina Sex Offender Registry Act (SORA), S.C. Code Ann. §§ 23-3-400 *et seq.*, provides adequate relief to all sex offenders, including petitioner?**

STATEMENT OF THE CASE

The petitioner was convicted of Rape in 1975 and was sentenced to forty (40) years. (Tr. pp. 3-4, 14)(R. pp. 29-30, 40). Upon the inception of the South Carolina Sex Offender Registry Act ("SORA"), which is S.C. Code §§ 23-3-400 *et seq.*, the petitioner was required to register as a sex offender and did in fact so register. (Tr. pp. 3-4)(R. pp. 29-30). On or about July 14, 2014, the petitioner filed a summons and complaint initiating this action seeking only equitable relief because the petitioner acknowledges that he does not meet the statutory criteria for removal set forth in the plain language of SORA. *See* S.C. Code Ann. § 23-3-430(E), (F), (G). (Tr. pp. 19-20)(R. pp. 45-46). The respondents filed an answer and a motion for judgment on the pleadings. The Honorable Thomas A. Russo heard the motion on March 19, 2015 and granted respondents judgment on the pleadings. The petitioner appealed, and the South Carolina Court of Appeals affirmed the judgment of the trial court without oral argument on November 9, 2016. The Court of Appeals denied petitioner's request for a rehearing on November 23, 2016. This petition for writ of certiorari follows.

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(c), 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. Where, as 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); Rule 12, SCRCP.

A "motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue." Rosenthal v. Unarco Indus., Inc., 278 S.C. at 422, 297 S.E.2d at 640 (1982) (citing Wooten v. Std. Life and Casualty Ins. Co., 239 S.C. 243, 122 S.E.2d 637 (1961)).[1]

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).

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[1] Prior to this appeal, the arguments in this action focused solely on judgment on the pleadings. However, in his brief, the petitioner asserted for the first time that a summary judgment standard is appropriate because the petitioner presented matters outside the pleadings at the hearing, to wit: the affidavit of Dr. Thomas Martin. Respondents then acknowledged the presentation of materials outside the pleadings at the hearing. However, respondent believes that the trial court's decision should be affirmed under either standard of review and that the trial judge properly exercised his discretion in this matter.

When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. WDW Properties v. City of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000) (citing J.K. Constr., Inc. v. Western Carolina Regional Sewer Authority, 336 S.C. 162, 519 S.E.2d 561 (1999).

ARGUMENTS

I. The Court of Appeals did not err in affirming the trial court's grant of judgment on the pleadings to respondents because no genuine issue of material fact exists and the only relief sought in this action is not available as a matter of law.

Based on the following, respondents assert that the petitioner's pleadings were fatally deficient in that the pleadings failed to state a good cause of action in favor of the petitioner against the respondents. Accordingly, the Court of Appeals was correct in affirming that the trial judge properly exercised his discretion in granting judgment on the pleadings to respondents in this matter. *See* Rosenthal v. Unarco Indus., Inc., 278 S.C. at 422, 297 S.E.2d at 640; Rule 12, SCRCP. Further, there is no genuine issue of material fact in dispute in this action and there is certainly no factual dispute requiring the services of a fact finder. Accordingly, the Court of Appeals was correct in finding that the trial judge properly exercised his discretion in granting respondents judgment as a matter of law, regardless of whether it is styled judgment on the pleadings or summary judgment. *See* George v. Fabri, 345 S.C. at 452, 548 S.E.2d at 874; Rule 56(c), SCRCP; Rule 12, SCRCP.

As a threshold matter, it is noteworthy that petitioner is **not** challenging the constitutionality of his SORA registration requirement. (Tr. p. 23)(R. p. 49). Nevertheless, the petitioner's non-punitive SORA registration requirement is in fact 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."); Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) (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."). In addition, SORA is intended for investigative, statistical, and public safety purposes for the

citizens of South Carolina and is not meant to punish or violate one's constitutional rights. Specifically, § 23-3-400 provides:

> The intent of this article is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens. Notwithstanding this legitimate state purpose, these provisions are not intended to violate the guaranteed constitutional rights of those who have violated our nation's laws.
>
> The sex offender registry will provide law enforcement with the tools needed in investigating criminal offenses. Statistics show that sex offenders often pose a high risk of re-offending. Additionally, law enforcement's efforts to protect communities, conduct investigations, and apprehend offenders who commit sex offenses are impaired by the lack of information about these convicted offenders who live within the law enforcement agency's jurisdiction.

S.C. Code Ann. § 23-3-400.

Petitioner was convicted of Rape in 1975 and this conviction mandates lifetime registration in South Carolina pursuant to SORA.[2] *See* S.C. Code Ann. § 23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute - "for life"); (Tr. pp. 3-4, 14)(R. pp. 29-30, 40). Moreover, SORA's statutory lifetime registration requirement exists for all sex offenders, including the petitioner, and is set forth in a clear and unambiguously worded statute. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually **for life**.") (emphasis added).[3]

[2] The crime of Rape in South Carolina is now Criminal Sexual Conduct in the First Degree, which is S.C. Code Ann. § 16-3-652.

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

As the trial court correctly held, SORA lists the only mechanisms and avenues by which an individual who is properly registered pursuant to SORA can be removed from the registry.[4] *See* S.C. Code Ann. § 23-3-430(E), (F), (G). Pursuant to § 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). Pursuant to § 23-3-430(F), an offender who receives a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed from sex offender registry. S.C. Code Ann. § 23-3-430(F). And finally, § 23-3-430(G) mandates removal for individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial. S.C. Code Ann. § 23-3-430(F). These are the **only lawful avenues** by which an individual who is properly placed on the SORA registry can be removed.

However, there is no genuine issue of material fact to suggest that petitioner meets any of these statutory criteria. Rather, as the petitioner concedes, petitioner has not even sought to avail himself of any of the statutory avenues for removal set forth in SORA. (Tr. pp. 19-20)(R. pp. 45-46). Accordingly, the trial court correctly held that there is no legal or constitutional basis for the petitioner to be removed from the SORA registry. Therefore, the trial court correctly granted judgment as a matter of law to the respondents and the Court of Appeals was correct to affirm the same. *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).

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

The petitioner's entire argument in this action is that his non-punitive and constitutional SORA registration requirement is somehow a "wrong" in need of an equitable remedy. This argument is without merit and was correctly rejected by the trial court. The constitutional application of a clear, unambiguous, and non-punitive statute is not a "wrong" cognizable in the law. *See* State v. Walls, 348 S.C. at 31, 558 S.E.2d at 526 (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."); Hendrix, 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."). Further, it is well-known that "equity follows the law." *See* Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011). Moreover, "[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)).

The South Carolina Supreme Court has also held unequivocally that "the court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)(emphasis added); *see also* Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007) (finding error in fashioning an equitable remedy in the face of an unambiguously worded statute setting forth certain remedies). As such, the trial court's rejection of the petitioner's equitable claim was correct and its findings should not be disturbed on appeal.

Furthermore, as the trial court correctly noted, for any court to fashion an equitable remedy in the face of an unambiguously worded statue would be a clear violation of the South

Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The South Carolina Constitution specifically provides that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." S.C. Const. art. I, § 8. The trial court correctly held that the duration of sex offender registration is a matter of public policy that is solely in the province of the South Carolina Legislature. As such, any attempt by any court to invade the Legislature's exclusive province is a violation of the separation of powers and is unconstitutional. *Id.*

In addition, the South Carolina Supreme Court has specifically held that

> If 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, 373 S.C. at 59, 644 S.E.2d at 675 (emphasis added). As noted by the trial court, this entire action sought for the trial court to impermissibly and unconstitutionally act as a "superlegislature" and to add language to an unambiguously worded constitutional statute. As such, the trial court correctly exercised his discretion and rejected this claim as a matter of law.

As the trial court also correctly noted, this situation is comparable to legislatively mandated sentences for criminal offenses, whether minimums or maximums. (Tr. p. 8)(R. p.

34). With regard to sentencing for an offense that has a mandatory sentence range, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals outside the statutorily set amounts. However, these statutory ranges, and more specifically the statutorily mandated minimum sentences are lawful, and have been consistently upheld as being such. *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 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. at 15-16, 393 S.E.2d at 186 (emphasis added).[5] Similarly, the trial court correctly held that the duration of an individual's sex offender registration is **purely a matter of legislative prerogative** and that there is no judicial discretion over this duration without violating the South Carolina Constitution and South Carolina law. *See* 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); Hendrix, 353 S.C. at 552, 579 S.E.2d at 325 (holding that "the

[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. 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.

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."). As such, the trial court properly exercised his discretion in granting respondents a judgment as a matter of law in this matter.

The petitioner also attempts to assert that there is a material fact in dispute as to the existence or non-existence of the equitable relief sought in this matter. (Initial Br. p. 5). This argument is without merit because any argument regarding the availability of an equitable remedy, or any remedy for that matter, is purely a matter of law. There is no factual dispute at issue whatsoever as to whether South Carolina courts can simply disregard the South Carolina law and remove an individual from the SORA registry in equity. As such, there is no material fact in dispute and trial court correctly granted judgment as a matter of law to the respondents in this matter. Therefore, the Court of Appeals' decision to affirm and uphold the trial court's in its entirety should be affirmed.

II. The Court of Appeals did not err in affirming the trial court's finding that the South Carolina Sex Offender Registry Act (SORA), S.C. Code §§ 23-3-400 *et seq.*, provides adequate relief to all sex offenders, including petitioner.

The trial court also correctly held that SORA provides adequate relief to all sex offenders, including the petitioner. Accordingly, the Court of Appeals was correct in affirming this decision. As a threshold issue, petitioner has raised the issue of the constitutionality of the SORA registry for the first time on appeal. Yet, "[a]t a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. . . . It is 'axiomatic that an issue cannot be raised for the first time on appeal.'" Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citing Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). See also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724

(2000)) (Imposing this requirement on the appellant "is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments."); Herron, 395 S.C. at 465, 719 S.E.2d at 642 ("Constitutional arguments are no exception to the preservation rules, and if not raised to the trial court, the issues are deemed waived on appeal.") (citing Glover v. County of Charleston, 361 S.C. 634, 606 S.E.2d 773 (2004) *overruled on other grounds by* Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005); Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995) (holding that a due process claim raised for the first time on appeal was not preserved); Merriman v. Minter, 298 S.C. 110, 378 S.E.2d 441 (1989) (refusing to consider an equal protection challenge to a statute on appeal where it was not raised to the trial court). "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Furthermore, this Court has repeatedly observed that "issue preservation rules 'prevent[ ] a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.'" Herron, 395 S.C. at 470, 719 S.E.2d at 645 (quoting I'On, 338 S.C. at 406, 526 S.E.2d at 724). Here, petitioner, while conceding the constitutionality of the statute at the trial court level, has attempted to keep the issue as an "ace card up his sleeve" in the hope that this Court will accept that ace card if his preserved issues fall short once again on appeal. (R. p. 47). Unfortunately for the petitioner, his failure to raise this issue in the trial court constitutes a waiver of the issue on appeal.

However, even if he had timely raised the issue, it has already been decided by this Court. *See* State v. Walls, 348 S.C. at 31, 558 S.E.2d at 526 (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"); Hendrix, 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."). The only argument properly preserved in this action is that the South Carolina Legislature enacted an incomplete statute and "should have" afforded individuals like the petitioner a "more" meaningful opportunity to seek removal from the SORA registry. As discussed in Section I, *supra*, the duration of an individual's SORA registration requirement is purely a matter of legislative prerogative and whether or not the South Carolina Legislature "should" add additional language to the clear and unambiguous provisions of SORA is a matter for the Legislature that is not constitutionally subject to judicial review. *See id.*

The South Carolina Supreme Court has specifically held that "the court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123 (emphasis added). In addition, the Court has specifically held that

> If 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, 373 S.C. at 59, 644 S.E.2d at 675 (emphasis added).

Moreover, 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 (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.* As the trial court correctly noted, 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. 55, 644 S.E.2d 675 (2007); Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123. Furthermore, it is noteworthy that "[w]hen providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank, 394 S.C. at 254-55, 715 S.E.2d at 355 (citing Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)).

Here, there is no dispute that some certain definitive statutory relief exists in SORA because § 23-3-430(E), (F), (G) clearly set forth definitive means by which an individual can seek removal from the SORA registry. However, despite the existence of definitive statutory relief, the petitioner, who has not even sought to avail himself of such relief, argues that because the remedies do not apply to him, and that the South Carolina Legislature "should have" added more avenues for relief, the courts should step in and add language to an unambiguously worded constitutional statute. As discussed in Section I, *supra*, for any court to fashion an equitable remedy in the face of an unambiguously worded statue such as SORA would be a clear violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. As such, the trial court correctly held that "equity follows the law" and that "the court's

equitable powers **must yield** in the face of an unambiguously worded statute." Regions Bank, 394 S.C. at 254-55, 715 S.E.2d at 355; Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123 (emphasis added). Because SORA sets forth an adequate remedy for the petitioner, and all sex offenders in South Carolina, the trial court properly held that equitable relief is not available and properly exercised his discretion in granting respondents judgment as a matter of law.

In addition, the petitioner's reliance on State v. Dykes, 403 S.C. 499, 744 S.E.2d 505 (2013), which was also raised for the first time on appeal,[6] is misplaced. Dykes involved the interpretation of a statute that provided relief to some offenders, but not to others who were similarly situated. As such, the South Carolina Supreme Court held that the sentence in the statute limiting relief to similarly situated individuals was arbitrary and unconstitutional and simply removed the limitation such that the statute applied to all similarly situated individuals. State v. Dykes, 403 S.C. 499, 508, 744 S.E.2d 505, 510 (2013). This ruling has no application to the case at bar because the removal provisions at issue in this action apply equally and uniformly to all offenders. As such, even if this issue was properly preserved, Dykes does not apply to this matter and does not support the petitioner's unconstitutional attempts to have courts re-write the constitutional, clear and unambiguous statutes at issue in this action. *See* S.C. Code Ann. § 23-3-430; S.C. Code Ann. § 23-3-460. Therefore, the Court of Appeals' decision to affirm the trial court's decision should be upheld and affirmed in its entirety.

[6] Again, this issue is therefore not properly preserved. *See* Herron, 395 S.C. at 465, 719 S.E.2d at 642 (citing Wilke, 330 S.C. at 76, 497 S.E.2d at 733).

CONCLUSION

In conclusion, based on the foregoing and the applicable laws of the State of South Carolina, this Court should deny the petitioner's request for certiorari in this matter and should uphold and affirm the lower courts' decisions in the entirety.

Respectfully Submitted,

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PROOF OF SERVICE

I hereby certify that I served the **Return to Petition for Writ of Certiorari** on petitioner by depositing a copy of the same in the United States mail, postage prepaid, and addressed to his attorney as follows:

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on March 13, 2017 from Columbia, South Carolina.

By: _____

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