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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

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Appellate Case No. 2016-000561

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

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John Gregory, Appellant,

v.

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

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# RECORD ON APPEAL

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**INDEX**

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DARLINGTON | ) | IN THE COURT OF COMMON PLEAS<br>FOURTH JUDICIAL CIRCUIT<br>Case No.: 2015-CP-16-0301 |
| John Gregory,<br><br>Plaintiff/Petitioner,<br><br>v.<br><br>Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina,<br><br>Defendants/Respondents. | ) | **ORDER GRANTING SUMMARY JUDGMENT** |

This matter came before me on February 2, 2016 on the Defendants' Motion for Summary Judgment. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division.[1] The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Summary Judgment.

**BACKGROUND**

The Plaintiff was convicted of six (6) counts of Criminal Sexual Conduct in the First Degree (S.C. Code Ann. § 16-3-652) in 1996. The Plaintiff was sentenced to fifteen (15) years of incarceration, suspended to 3 years of incarceration and 5 years of probation for these offenses. 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

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

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Act does not violate the *ex post facto* clauses of the state or federal constitutions"); Hazel v. State, 377 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 May of 2015 seeking for this Court to fashion equitable personal relief for the Plaintiff. The Defendants Answered the Complaint and filed the present Motion for Summary Judgment.

**STANDARD OF REVIEW**

A motion for summary judgment shall be granted "if the pleadings... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (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**

Based on the following, there is no genuine issue of material fact in dispute in this matter. Further, there is no factual dispute requiring the services of a fact finder. Accordingly, Defendants are entitled to a judgment as a matter of law. *See* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRCP

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)(4); State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (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 v. State, 377 S.C. 60, 64, 659



2

S.E.2d 137, 139 (2008) (holding that "the applicable [SORA] statute is the statute that existed at the time of respondent's release from prison."). SORA is clear and unambiguous and mandates lifetime registration for all sex offenders in South Carolina. S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life").[2] In that regard, the South Carolina Supreme Court has held that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest." Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003). Further, SORA also provides the only lawful avenues by which individuals can be removed from the registry.[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 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

[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.



pwb 3

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

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

Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675 (2007). Moreover, "[i]f a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." State v. Smith, 330 S.C. 237, 240, 498 S.E.2d 648, 650 (Ct.App. 1998). Accordingly, for this Court to fashion an equitable remedy outside of the clear and unambiguous provisions of SORA would exceed this Court's authority and this Court's equitable powers must yield to the clear and unambiguous language of SORA.

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

sentence, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals above or below the statutorily set amounts. However, these statutory sentence provisions are, and have been consistently upheld as being, lawful. *See* State v. De La Cruz, 302 S.C. 13, 393 S.E.2d 184 (1990); State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001); State v. Johnson, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). In fact, the South Carolina Supreme Court conclusively resolved this issue in *State v. De La Cruz* indicating

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

[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." 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.



PMB 5

Furthermore, the purely equitable relief sought by the Plaintiff in this matter is simply not available as a matter of law. The South Carolina Supreme Court has noted that "[e]quitable relief is generally available only where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (citing 27 *Am.Jur.* 2d, *Equity,* § 94 (1966)) (emphasis added). The Santee Cooper Court further noted that an "'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.* This does not however mean that the person seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that some certain definitive statutory relief exists. Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Ultimately, the Court in Santee Cooper noted that "the court's equitable powers must yield in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). 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.

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



PWB 6

Moreover, any constitutional challenge by the Plaintiff to his SORA registration requirement also fails. The South Carolina Supreme Court has long held that SORA passes constitutional muster. *See* Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320, (2003); In re Ronnie A., 355 S.C. 407, 585 S.E.2d 311 (2003); State v. Walls, 348 S.C. 26, 558 S.E.2d 524 (2002). This law is rationally related to the legislative purpose sought to be effected; all members of the class. *i.e.* all those individuals convicted of Criminal Sexual Conduct in the First Degree (S.C. Code Ann. § 16-3-652) are treated the same; and the classification rests on a reasonable basis. Classifying individuals, like the Plaintiff, who are lawfully convicted of Criminal Sexual Conduct in the First 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 v. Taylor, 353 S.C. 542, 549-50, 579 S.E.2d 320, 324 (2003); *see also* In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003); 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); *see also* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). In addition, all members of the Plaintiff's class, *i.e.* those persons convicted of Criminal Sexual Conduct in the First Degree (S.C. Code Ann. § 16-3-652), 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); *see also* S.C. Code Ann. § 23-3-400. Accordingly, the Plaintiff's constitutional challenge is without merit.

## CONCLUSION

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

**AND IT IS SO ORDERED.**

Paul M. Burch
Presiding Judge
4th Circuit Court of Common Pleas

Darlington, South Carolina
February 23, 2016



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STATE OF SOUTH CAROLINA, )
)
COUNTY OF DARLINGTON )
)
JOHN GREGORY )
Plaintiff, )
)
vs. )
)
MARK KEEL, DIRECTOR, SLED, ET AL )
Defendant. )

IN THE COURT OF COMMON PLEAS

15CP160301

SUMMONS

FILE NO. 2015-CP-16-

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SCOTT B. SUGGS
CLERK OF COURT/CIRCUIT CT.
DARLINGTON COUNTY, S.C.

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: March 24, 2015

Plaintiff/Attorney for Plaintiff

Address: 309 Broad Street, Sumter, SC 29150

SCCA 401 (5/02)

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|---|---|
| **STATE OF SOUTH CAROLINA )**<br>**)**<br>**COUNTY OF DARLINGTON )**<br>**)**<br>**JOHN GREGORY, )**<br>**)**<br>**PETITIONER, )**<br>**)**<br>**VS. )**<br>**)**<br>**MARK KEEL, )**<br>**DIRECTOR, SOUTH CAROLINA)**<br>**LAW ENFORCEMENT )**<br>**DIVISION (SLED), AND THE )**<br>**STATE OF SOUTH CAROLINA, )**<br>**)**<br>**RESPONDENT. )**<br>********** | **IN THE COURT OF COMMON PLEAS**<br>**FOURTH JUDICIAL CIRCUIT**<br>**C/A NO.: 2015-CP-16-_____**<br>15CP160301<br><br>**PETITION FOR DECLARATORY JUDGMENT (Non-Jury)** |

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**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 Darlington, 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.

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DARLINGTON COUNTY, S.C.

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.

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 6 counts of Criminal Sexual Conduct-1st Degree in Darlington County. (1996-GS-16-1539, 1540, 1541, 1542, 1543, and 1544)

6. The Petitioner was sentenced to a term of incarceration of fifteen (15) years, suspended to 3 years and 5 years of probation for the charges, sentenced to be served concurrently with the South Carolina Department of Corrections. The Petitioner was released from incarceration on May 1999.

7. That the Petitioner, after his release, 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: 3/24/2015

STATE OF SOUTH CAROLINA )
)
COUNTY OF DARLINGTON )

VERIFICATION

15CP1 60301

John Gregory 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 3rd day of April , 2015 )
)
Notary Public for South Carolina )
)
My Commission expires: 6-2-2020 )

John R Gregory
Signature of Petitioner

Signature of Petitioner

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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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SCCA/403

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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOURTH JUDICIAL CIRCUIT |
| COUNTY OF DARLINGTON | ) | Case No.: 2015-CP-16-0301 |
| John Gregory, | ) | |
| | ) | |
| 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.



15

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

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

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

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

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

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

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

10. Paragraph twelve (12) is denied.

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

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

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

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

**FOR A FOURTH DEFENSE**
Proper Inclusion on the Registry

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

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

A. dismisses the Plaintiff's Complaint entirely;

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

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

Respectfully Submitted,

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ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
JUNE 2, 2015

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DARLINGTON | ) | IN THE COURT OF COMMON PLEAS<br>IN THE FOURTH JUDICIAL CIRCUIT |
| John Gregory,<br><br>Plaintiff,<br><br>vs.<br><br>Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina,<br><br>Defendants. | ) | Civil Action No. 2015-CP-16-00301<br><br>**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** |

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

PLEASE TAKE NOTICE THAT the Defendants Chief Mark Keel, the South Carolina Law Enforcement Division ("SLED"), and the State of South Carolina, through the undersigned attorneys, will move before this Court within ten (10) days of the date hereof (or at such other time and place as the Court determines) for summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure.

**BACKGROUND**

The Plaintiff was convicted of six (6) counts of criminal sexual conduct, first degree—of those six (6) counts, two were criminal sexual conduct with a minor, first degree (Section 16-3-655(A)(1))—on or about November 17, 1997. He was sentenced to fifteen (15) years, suspended to three (3) years and five (5) years of probation for the charges. Compl. ¶¶5-6. Upon being released from incarceration, Plaintiff was required to register as a sex offender[1] pursuant to the South Carolina Sex Offender Registry Act ("SORA").

[1] Plaintiff is classified as Tier III offender pursuant to the Sex Offender Registration and Notification Act (SORNA) based on his 1997 conviction and must register every ninety (90) days. S.C. Code Ann. 23-3-460(B).

On or about April 17, 2015, Plaintiff John Gregory filed this "Petition for Declaratory Judgment" against Defendants Chief Keel, SLED and the State of South Carolina, regarding certain provisions governing the Registry. The Plaintiff contends that "equity is reserved for situations where there is no adequate remedy at law;" "the facts before this Court do not support a finding that he is or ever was a predator or child molester;" the lifelong Registry requirement is wildly disproportionate to the underlying conduct;" "justice compels a remedy...and that justice is served by granting the Petitioner personal relief;" and "Petitioner is entitled to an Order ... remov[ing] his name from the South Carolina Sex Offender Registry immediately." Compl. ¶¶13, 15-18.

**STANDARD OF REVIEW**

"Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Rules Civ. Proc., Rule 56. *Knight v. Austin*, 396 S.C. 518, 521-22, 722 S.E.2d 802, 804 (2012). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Englert, Inc. v. Leafguard USA, Inc.*, 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008). In determining whether summary judgment is appropriate, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

**ARGUMENT**

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

sex offender registry is a question of law." *Lozada v. S.C. Law Enforcement Div.*, 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011).

The South Carolina Sex Offender Registry Act ("SORA") lists the only mechanisms and avenues by which an individual can be removed from the Sex Offender Registry.[2] Pursuant to § 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). Pursuant to § 23-3-430(F), an offender who receives a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed from sex offender registry. S.C. Code Ann. § 23-3-430(F). And finally, § 23-3-430(G) mandates removal for individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial. S.C. Code Ann. § 23-3-430(F). These are the only lawful avenues by which an individual who is properly placed on the Registry can be removed.

Equitable relief sought by the Plaintiff in this matter is not simply available. The South Carolina Supreme Court has noted that "[e]quitable relief is generally available ***only*** where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (emphasis added). The Court further noted that an "'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id* at 621. This does not, however, mean that the person seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that

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

some certain definitive statutory relief exists. *Key Corp. Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 644 S.E.2d 675 (2007); *Santee Cooper Resort, Inc.*, 298 S.C. at 185, 379 S.E.2d at 123. Ultimately, the Supreme Court in *Santee Cooper* noted that "the court's equitable powers must yield in the face of an unambiguously worded statute." 298 S.C. at 185, 379 S.E.2d at 123 (emphasis added).

Moreover, it is well-known and undisputed that "equity follows the law." This maxim alone is a basis for denying equitable relief in this case. *See Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011); *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 319–20, 659 S.E.2d 263, 267 (Ct. App. 2008). Furthermore, South Carolina law is also clear that "[w]hether an individual must be placed on the sex offender registry is a question of law." *Lozada*, 395 S.C. at 512, 719 S.E.2d at 259.

South Carolina's statutory lifetime registration requirement is set forth in an unambiguously worded statute. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life.").[3] As such, South Carolina law mandates that there is ***no equitable jurisdiction*** in this matter. The Defendants respectfully assert that this Court's powers must yield in the face of South Carolina's unambiguously worded SORA, which sets forth lifetime registration. Removal of an individual, by another means other than one of the enumerated avenues, is a violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8; *Key Corp. Capital, Inc.*, 373 S.C. 55, 644 S.E.2d 675 (2007) (finding error in fashioning an equitable remedy in the face of an unambiguously worded statute setting forth certain remedies); *Santee Cooper Resort, Inc.*, 298 S.C. at 185, 379 S.E.2d at 123.

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

This situation is analogous to legislatively mandated minimum sentences for criminal offenses. *See* S.C. Code Ann. § 16-11-330 (10 years); S.C. Code Ann. § 44-53-370 (various mandatory minimums for distribution or trafficking illegal drugs); S.C. Code Ann. § 16-3-30 (30 years). Following convictions of these offenses, the General Assembly has prohibited judges from sentencing individuals below the statutorily set amount, and these statutory minimums have been consistently upheld as being lawful. *See State v. De La Cruz*, 302 S.C. 13, 393 S.E.2d 184 (1990); *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001); *State v. Johnson*, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). There is no equitable allowance for a lighter sentence. The South Carolina Supreme Court has also noted that:

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

*Jones*, 344 S.C. at 56, 543 S.E.2d at 545 (internal citations omitted) (emphasis added).

Similarly, the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the South Carolina Constitution. *See* S.C. Const. art. I, § 8 ("In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.").

The Plaintiff asserts that he "is entitled to equitable relief in this matter" and that "equity is reserved for situations where there is no adequate remedy at law." Compl. ¶¶12-13. However, the law in South Carolina is clear; the Plaintiff does not meet any of these statutory criteria in §

23-3-430 such that he is entitled to removal. In fact, there is no indication that he have even attempted to avail himself of any of the statutory avenues for removal. Since the Plaintiff does not qualify for removal, he is simply asking this Court to legislate and create a remedy for him that does not exist in the statute. Therefore, this requested relief requires this Court to impermissibly act as a superlegislature and to add language to an unchallenged constitutional and unambiguously worded statute, which would violate the South Carolina Constitution. Essentially the Plaintiff argues that if a statute does not include him, he is entitled to equitable relief to obtain indirectly what he cannot obtain directly.

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

**CONCLUSION**

For the reasons stated above and all those to be advanced at the hearing of this matter, judgment should be granted to the Defendants Chief Keel and the State of South Carolina.

[Signature Page Follows]

Respectfully submitted,

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ATTORNEYS FOR CHIEF KEEL, SLED, THE STATE OF SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA
JUNE 19, 2015

STATE OF SOUTH CAROLINA )
) COURT OF COMMON PLEAS
COUNTY OF DARLINGTON ) 2015-CP-16-00301

JOHN GREGORY )
PLAINTIFF )
vs. ) TRANSCRIPT OF RECORD
)
MARK KEEL, DIRECTOR, SC LAW )
ENFORCEMENT DIVISION, ET AL. )
DEFENDANTS )

February 2, 2016
Darlington, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

CHARLES T. BROOKS III, ESQUIRE
Attorney for the Plaintiff

ADAM L. WHITSETT, ESQUIRE
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

# INDEX

## EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

THE COURT: All right. Which one was this?

MR. WHITSETT: Your Honor, this is Number 23. It's Gregory v -- it's actually Keel and the State of South Carolina.

THE COURT: Okay.

MR. WHITSETT: Your Honor, if I may before we get going I did file a memo on this case a while back. I've got an additional copy and I've got a couple of cases that I would just like to go ahead and hand up?

THE COURT: Okay.

MR. WHITSETT: We have had this case in various versions around the state. Thank you, Your Honor. May it please the Court. We're here today on the defendant's motion for summary judgment filed sort of jointly by myself and members of the Attorney General's Office who are representing both the defendants, both the State and Chief Keel.

Asking for summary judgment. There are really no material facts in dispute in this matter, and we feel that we are entitled to judgment as a matter of law because the only relief that is requested in this action which was sort of for this Court to rewrite several clear and unambiguous statutes simply doesn't exist as a matter of law. It's purely equitable relief seeking for this Court

to go outside to very straight forward, very clear and very unambiguous statutes that are constitutional, that are not even being challenged in this action.

It's just Mr. Brooks' argument that they don't go far enough which is certainly a legitimate argument, but the Legislature in the State writes the laws. They write the policy. They set the policy, and so any challenge that they should go farther with what they have done needs to go to the Legislature. Pure and simple it's simply beyond this Court or any Court's powers.

We're here today on Mr. Gregory. Mr. Gregory is lawfully and constitutionally registering as a sex offender. He was convicted of six separate counts of C.S.C. first. Any one of which is mandatory registration. South Carolina Registry sets forth very clearly and very unambiguously that registration in South Carolina is for life. 23-3-460 says, "Registration for life."

The Supreme Court has ruled previously in the Hendrix v. Taylor case that the duration of registration is constitutional and doesn't affect a constitutionally protected liberty. So with that as the backdrop the Legislature has enacted three avenues by which individuals can come off the registry.

They're set forth in 23-3-430, Subparts E and F and G: If your case is vacated or overturned on appeal,

obviously, then it gives you the option. If you get a pardon based on a finding of not guilty you can be removed from the registry. Or if you are granted habeas corpus relief or some other new trial relief you can come off the registry.

Those are the only lawful and permissible avenues by which an individual can be removed from the registry. But in this action it is conceded that none of those apply; that none of those -- it simply does not qualify for any of the relief set forth by the Legislature, and as such he's seeking for this Court to just rewrite those statutes to add provisions that simply do not exist which we feel would be an unconstitutional violation of separation of powers.

The Legislature has enacted the laws that we are interpreting here today. Courts throughout South Carolina juris prudence have dealt with these similar types of issues. There is no specific Supreme Court opinion on point. We'll touch on Johnson which the Court withheld which is -- but is not precedent here today.

The courts across sort of the spectrum and the Santee Cooper Court and the Capital Court, and all of these are cited throughout my brief, has said, "A Court's equitable powers must yield in the face of a clear and unambiguous statute." And that's what we've got in this situation. A

clear, unambiguous, non-punitive and constitutional statute that says, "These are the avenues by which you come off." As you can see he doesn't meet them. So we think that is pretty straight forward.

The Courts have gone on to say that the statute language is clear and unambiguous to convey the clear meaning to rule the statutory interpretation are not needed, and the Court has no right to impose another meaning."

The Courts have said, you know, the Supreme Court said Courts don't sit at super legislature to second guess the folly of the General Assembly. There are some things that are just a matter of legislative prerogative, and we submit this is one of those things, with all due respect to this Court or any other Court.

The best analogy that I could come up with is legislative mandated sentencing ranges. There are some offense where the Legislature says, "Sentencing ranges for this offense is five years to 30 years," and courts simply don't have the power to sentence someone to four or sentence someone to 40 under that statute. There are certain things that are just a matter of legislative prerogative, and we feel this is one of those situations.

The only court, the only appellate court, that has actually dealt with this issue is the Court of Appeals in

a case called Johnson v. Lloyd, and I handed that up and highlighted the relevant sections. And the Court in Johnson in analyzing sort of the juris prudence, really -- I tracked my arguments based on what they said. And they said, "That it's well settled. Equity follows the law, you know, when providing equitable relief. Cannot simply disregard statutes and the law. And a Court's equitable powers must yield in the face of an unambiguously worded statute."

The factual situation presented in Johnson is somewhat similar in that Mr. Johnson did not qualify and was not able to utilize any of the statutory avenues of relief, and the Court said that nonetheless doesn't entitle him or entitle the courts to simply rewrite the statute. He doesn't qualify for them, but it is still equitable relief because there was an avenue. He just couldn't take advantage of it personally.

And so that issue was deal with pretty squarely by the Court of Appeals. Unfortunately, that specific issue was not preserved for appellate review. So the Supreme Court ultimately reversed, but they did that specifically on issue preservation grounds. And I think noted they found error in addressing the merits. And so, you know, while that is not precedent, that's the only court that has ruled on this issue.

Although I would submit, and the last item that we submitted, was an unpublished Supreme Court Opinion from November of last year wherein they dealt with this issue and did rule in the Dean v. Brown -- Dean and Brown v. Keel case. In that the statute does provide for adequate relief and that a Court's equitable powers must yield citing the same Capital case that we cited. That's the last one in our brief. It is obviously unpublished so we don't cite it as having precedential value, but I think it is some guidance from which we can draw the Supreme Court may look at this.

And so, you know, to sum up we're talking about no factual dispute. There is no reason to move forward. There is no testimony they could affect the outcome of this case. The relief simply is not available as a matter of law. So we believe that this is a case where summary judgment is appropriate and would ask for that. Thank you.

THE COURT: Thank you.

MR. BROOKS: May it please the Court, Judge.

THE COURT: Yes, sir.

MR. BROOKS: And he said I filed a bunch of these cases. Some of them are on appeal now, so I kind of anticipate a lot of his arguments. I'm sure he anticipates a lot of mine. Obviously, Judge, the

appellate record in the Johnson case from the Court of Appeals is not binding because that's not longer the law in the case. The Supreme Court ruled that they will turn the Appeals Court rule, and, basically, you have Mr. Johnson in that case which Mr. Whitsett was talking about who was on the registry. Who is no longer on the registry as of this moment.

As the trial judge, Judge Seals, had indicated that this was wildly disproportionate for him to be on this registry for the offenses that he had committed. Mr. Johnson's in the same situation whereby he was clearly on the statute as having to register. He would clearly have to register, and none of those prongs that Mr. Whitsett talked about would have been available to Mr. Johnson.

But the Supreme Court, knowing it's not in that vacuum and knowing that that case is not subject to the unpublished opinion, non-prejudicial values that are cited in the last exhibit under the Defendant's appendix that he's handed to you. That case, Johnson, doesn't have that restriction of, as the Supreme Court said, "Please don't cite me." That is a clearly defined case that has published out there that is obviously to be used in order for a potential other than against to see if they can potentially qualify.

When the Supreme Court says, "We don't think that --

we grant this and overturn the Appeals Court's decision based on the issue of issue preservation," what they're basically saying is it should have been an issue preserved and that issue being equitable relief.

Now, I know my esteems colleague did say we didn't necessarily challenge the constitutionality of it, but I would like to break away from that and say that we are challenging the constitutionality of it. Of this as it relates to my client and the fact that the constitutionality that this guy, Mr. Gregory, of all of the litigants, would be entitled to argue equitable relief. The constitution and the statute doesn't go far enough. It doesn't include people in this particular place.

It talks about in order for you to be able to get off of the sexual registry you need to either get your case overturned on appeal, pardon, habeas corpus, P.C.R. Obviously, these situations don't apply when you're talking about cases from years ago where -- and the person is no longer in prison. Habeas corpus only applies to somebody wrongfully detained. Obviously, they're not -- they're not longer detained so that wouldn't apply.

P.C.R., something that a person has to file within one year. I'm sure Your Honor has heard numerous arguments in P.C.R. Court. So that wouldn't apply. And,

obviously, it is not very practical to go back and have a case overturned that occurred years, years, years and years ago and appeal. You can't just wait and do it years later. You've got a statute of limitations as it relates to that.

So then you've got the statute that our position is that it doesn't go far enough. It doesn't right that, and I know the -- Mr. Whitsett is going to say that, you know, the Court, the judiciary, is not supposed to encroach onto areas that are presumed to be the Legislatures domain, but obviously it has. It has, and continues to do it all the time.

Got a situation where there was a case where you had the ankle monitors. The Legislature in that statute where a person has to wear an ankle monitor. Well, Supreme Court went into that domain and now limited where no a person has an opportunity to have a review like after ten years. That wasn't in the statute. Supreme Court obviously has jumped in and has changed the rules on that.

So I guess what I'm saying is that that's something they do all the time. They may say they don't want to do it and said on this case or that case, but they've done it. And the Johnson case they clearly did, because they're not in a vacuum. They know that when they made that ruling in regards to equitable relief not being

preserved they're in essence saying that it's an issue that needed to be preserved. It's an issue that should have been dealt with.

And since it wasn't, in the grand scheme of everything, we're not in a vacuum. Here you've got this guy that falls into the same category who now had to register but no longer has to register. What makes him different than anybody else. And, obviously, our position is that Mr. Gregory along with many other litigants that I have should have an opportunity to be heard. And we've obviously taken the opportunity to have them evaluated.

I think there is an affidavit in the file from Dr. Thomas Martin. Your Honor has heard and seen before some of the sexually violent predator cases from the -- you perhaps have seen before, and that's our position. And that this motion to dismiss this case is premature and should be denied.

THE COURT: Any pending legislation filed? That's been file on this issue?

MR. WHITSETT: Not that would address the lifetime registration issue. I think none that's actually been filed that I'm aware of. There was talk of juveniles, but nothing touching this that I'm aware of.

MR. BROOKS: There's been some chatter. Adam and I have talked about it. There's been some chatter, but I

would agree with him. There hasn't been anything really substantial. There had been some talk about it, juvenile situation, but nothing -- I would say nothing.

MR. WHITSETT: I think that's a fair characterization.

MR. BROOKS: And he and I have been, you know, arguing a bunch of these cases. I think this is maybe seven or eight.

MR. WHITSETT: This is Number Eight, and I think I've cited -- I put the orders in there granting our relief of the other ones in there with the exception of one that came out last week in which case the Judge Benjamin did rule in our favor.

MR. BROOKS: So, in all fairness, Judge, I do think that what most trial courts are doing is basically saying -- if fact I did have one trial judge tell me, "If you're going to get some relief you better get it from Columbia," and I totally understand that. But I do think that this is a significant issue. I think it's an issue that needs to be raised. We have people in this class that still don't have any other relief, and we just don't this that's fair.

Hence, Johnson v. Law. My client totally understands. I've told him necessarily have to be here today. It's going to be motions and arguments, and things

of that sort because he did come to the last time we had it and I think it was scheduled in front of you, Judge, but I think you had probably 40 or 50 cases that day, and you continued some and came back another day.

THE COURT: So you mentioned Judge Benjamin. Has the State appealed that?

MR. WHITSETT: We won that case and he has appealed. The State has been successful and been granted summary judgment or judgment on the pleadings. All eight cases or all seven cases have been up on this specific issue, but he has appealed them all of those, and we're dealing with it.

THE COURT: Okay.

MR. WHITSETT: On appeal, at least.

MR. BROOKS: We submitted some briefs on some of those. In the process of filing -- they fall into two different categories, the ones I've had thus far. One is someone got into trouble prior to the registry's existence and then got out of prison or jail, whatever. And then registry comes along. They don't do anything. They haven't done anything, and then they get put on and then we have a group that fall into the second group where his crime occurred after the registry was in existence.

So I can tell you that they fall into two different groups. And I tell -- I tease Adam all the time. I've

got another group that's coming; that I've got a guy who I represented in some Family Court cases who got into trouble in North Carolina. He is no longer on the registry up here. But lives here, and I keep teasing Adam about it cause I'm wait for this guy to file and present a whole different issue as it relates to this type of stuff, sexual registry. But that does kind of sum it up.

But in fairness to him he has, you know, been successful with the courts as it relates, and I understand that because I understand the sensitive nature of it. But the position is, I think, it's something that is worth while. Like I said you've got this group of people who now don't have any relief. Things that occurred years ago.

It's not like they can get a regular pardon. They can't just apply for a pardon. A member of the Parole and Pardon Board says, you know, they never granted one of these that would fall under the statute to allow somebody to get off the registry. You know, so obviously, you've got a situation where you've got people who can't get any relief, and that's where I think the problem comes in. We feel like there needs to be something. Statute doesn't provide for it. And when it's a situation where the statute doesn't provide for it then, obviously, there can be some equitable relief. Hence, that's what happened in

the Johnson case.

THE COURT: All right. Proposed orders, how long y'all want?

MR. WHITSETT: You tell me.

MR. BROOKS: I can get that to you in probably ten days. I think he's got a cookie cutter one. I've got a cookie cutter one, too, so.

THE COURT: Okay.

MR. BROOKS: And, Judge, before I go I do have an order for you on that case from yesterday that I had to have continued.

THE COURT: Okay.

END OF TRANSCRIPT OF RECORD

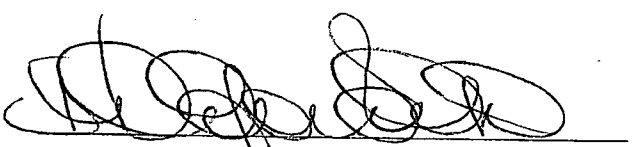
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )
)
COUNTY OF DARLINGTON )

I, HATTIE O. GORDON, Official Court Reporter for the 4th 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 in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Darlington County, South Carolina, on the 2nd day of February, 2016.

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

April 26, 2016



HATTIE O. GORDON, Court Reporter

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|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | TWELFTH JUDICIAL CIRCUIT |
| COUNTY OF FLORENCE | ) | C/A NO.: 2015-CP-16-0301 |
| | ) | |
| JOHN RUSSELL GREGORY | ) | 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 | ) | |

2015 NOV 12 AM 10:50
SCOTT B. BIGGS
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

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 and the American Board of Forensic Psychiatry. 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 includes 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. John Russell Gregory is a 55 year old, disabled, married male from Florence, South Carolina. Mr. Gregory has been married to Ms. Valerie Ann Gregory since 1990 and the couple have no children together. Mr. Gregory was arrested between 1995 and 1996, pled guilty to multiple counts of sexual offenses to two male minors in Darlington County, was sentenced to the South Carolina Department of Corrections (SCDC), and was released to the SC Department of Pardon, Probation, and Parole Services (SCDPPPS) for five years without any violations. Mr. Gregory has been required by the State of South Carolina 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 Mr. Gregory's case and petition included a two and a half hour interview with Mr. Gregory, consultation with his attorney and his spouse, and a review of his criminal record.
3) Mr. Gregory has become a variable recluse within his community and remains isolated on his farm. He has no prior or subsequent criminal record, has been married to his current wife for twenty-five years, and maintains close relationships with his family.
4) Throughout the consultation, Mr. Gregory felt embarrassed and ashamed by his sex offender history. After his release from the SCDC, Mr. Gregory has resided with his spouse, reunited with his extended family, renewed his spiritual faith within his church, and has no aberrant patterns of behavior.

TRUE CERTIFIED COPY,
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC



44

5) Diagnostically, Mr. Gregory has developed a major depressive disorder surrounding the issues following his sexual offending. He has no history of addictive substance abuse or dependence. Mr. Gregory does not suffer from an ongoing sexual perversion disorder, Paraphilia. He suffers from chronic, cervical neck pain requiring pain management, and draws disability. He maintains healthy interpersonal relationships with his spouse and family. Mr. Gregory's family corroborates his denial of aberrant behaviors or relationships, especially with children. Mr. Gregory would benefit from psychotherapeutic intervention for the treatment of depressive illness. A treatment plan should also include his enhancement of socialization. Mr. Gregory does not require sexual offender-specific therapy.

6) In conclusion, Mr. Gregory poses a very low risk to sexually offend. He has only gradually integrated into his family and local community since his release for the SCDC. He consistently demonstrates appropriate behavior in his church and with his family. His quarterly re-registry as a sexual offender has only proven to be detrimental to Mr. Gregory's sense of integrity, is preventing him from attending many of his family's activities and is creating stress precluding his desire to integrate further with his neighbors and church families who have expressed interest in relationships with him. Mr. Gregory feels haunted by the fact that his name remains on the registry and when friends have incidentally seen his name, many have seemed perplexed and guarded. Mr. Gregory does not need any further deterrent to prevent him from 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. Gregory does not meet these criteria, nor requires such monitoring.

Further affiant sayeth not.

Thomas V. Martin, M.D.

Sworn to before me this 3rd day of November 2015

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

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DARLINGTON | ) | IN THE COURT OF COMMON PLEAS<br>FOURTH JUDICIAL CIRCUIT<br>Case No.: 2015-CP-16-0301 |
| John Gregory,<br><br>Plaintiff/Petitioner,<br><br>v.<br><br>Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina,<br><br>Defendants/Respondents. | ) | **DEFENDANTS' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT** |

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

## STANDARD OF REVIEW

A motion for summary judgment shall be granted "if the pleadings... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (*citing* Rule 56(c), SCRCP (emphasis in original)).

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

## ARGUMENT

Based on the following, there is no genuine issue of material fact in dispute in this matter. Further, there is no factual dispute requiring the services of a fact finder. Accordingly, Defendants are entitled to a judgment as a matter of law. *See George v. Fabri*, 345 S.C. at 452, 548 S.E.2d at 874; Rule 56(c), SCRCP.

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South Carolina's Sex Offender Registry statutes, S.C. Code Ann. § 23-3-400 *et seq.*, list the only mechanisms and avenues by which an individual can be removed from the Sex Offender Registry.[1] *See* S.C. Code Ann. § 23-3-430(E), (F), (G). As such, these are the only lawful and permissible avenues by which an individual who is properly placed on the Registry can be removed. However, there is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria. Rather, the Plaintiff was convicted of Lewd Act on a Minor[2] in 2012, and this conviction mandates lifetime registration. *See* S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute - "for life"). Accordingly, there is no legal or constitutional basis for the Plaintiff to be removed from South Carolina's Sex Offender Registry and the Defendants are entitled to judgment as a matter of law. *See* S.C. Code Ann. § 23-3-460 (mandating lifetime registration in South Carolina); S.C. Code Ann. § 23-3-430 (setting forth the only avenues for removal).

The Plaintiff's entire argument in this matter is that his constitutional registration requirement is still somehow a "wrong" in need of an equitable remedy. This argument is without merit. The constitutional application of a non-punitive statute is not a "wrong" cognizable in the law. Further, it is well-known that "equity follows the law." *See Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011). Moreover, South Carolina law is clear: "[w]hether an individual must be placed on the sex offender registry is a question of law." *Lozada v. South Carolina Law Enforcement Div.*, 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) (citing *Noisette v. Ismail*, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App. 1989)).

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[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.
[2] Formerly S.C. Code Ann. § 16-15-140.

The South Carolina Supreme Court has also held unequivocally that "the court's equitable powers **must yield** in the face of an unambiguously worded statute." *Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)(emphasis added); *see also Key Corporate Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 644 S.E.2d 675 (2007) (finding error in fashioning an equitable remedy in the face of an unambiguously worded statute setting forth certain remedies).

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

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

*Key Corporate*, 373 S.C. at 59, 644 S.E.2d at 675 (emphasis added). This entire action seeks for this Court to impermissibly and unconstitutionally act as a "superlegislature" and to add language to an unambiguously worded constitutional statute. As such, this request must fail and the Defendants are entitled to summary judgment in this matter.

This situation is comparable to legislatively mandated sentences for criminal offenses, whether minimums or maximums. With regard to sentencing for an offense that has a mandatory sentence range, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals outside the statutorily set amounts. However, these statutory ranges, and more specifically the statutorily mandated minimum sentences are, and have been consistently upheld as being, lawful. *See State v. De La Cruz*, 302 S.C. 13, 393 S.E.2d 184 (1990); *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001); *State v. Johnson*, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). In fact, the South Carolina Supreme Court conclusively resolved this issue in *De La Cruz* indicating:

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

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).[3] Similarly, the duration of an individual's sex offender registration is **purely a matter of legislative prerogative** and there is no judicial discretion over this duration without violating the South Carolina Constitution and South Carolina law. S.C. Const. art. I, § 8; S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute).

Furthermore, the purely equitable relief sought by the Plaintiff in this matter is simply not available as a matter of law. The South Carolina Supreme Court has noted that "[e]quitable relief is generally available **only** where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." *Santee Cooper Resort, Inc.*, 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 Resort, Inc.*, 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." *Santee Cooper Resort, Inc.*, 298 S.C. at 185, 379 S.E.2d at 123 (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.

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[3] 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.

## OTHER CIRCUIT COURT RULINGS

While not binding authority in this action, the Defendants wish to notify this Court of several recent circuit court rulings on the issue at bar.[4]

On May 1, 2015, the Honorable Clifton Newman ruled that "there is no equitable remedy or equitable jurisdiction applicable to this matter" in a case involving identical arguments to those being set forth in this case. Order of The Honorable Clifton Newman, *Kenneth W. Signor v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina*, Civil Action No(s).: 2014-CP-43-00968, May 1, 2015, pg. 7 (unpublished). A copy of this order is attached hereto, incorporated by reference herein, and identified as Attachment 1.

On May 20, 2015, the Honorable Thomas A. Russo granted a Judgment on the Pleadings to these same Defendants in a case that is identical to this case.[5] Specifically, Judge Russo ruled that "there is simply no equitable remedy or equitable jurisdiction application to this matter and the Defendants are entitled to judgment on the pleadings. Furthermore, I find and conclude that for this court to act as a 'superlegislature' and to unilaterally add language to an unchallenged, unambiguously worded statute would violate South Carolina law and the South Carolina Constitution." *Melvin T. Roberts v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina*, Civil Action No(s).: 2014-CP-21-01973, May 20, 2015, pg. 7 (unpublished). A copy of this order is attached hereto, incorporated by reference herein, and identified as Attachment 2.

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

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

On June 16, 2015, the Honorable Clifton Newman ruled again that there was no equitable jurisdiction applicable to remove an individual from South Carolina's Sex Offender Registry. *Marty Lee Barnes v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina*, Civil Action No(s).: 2012-CP-43-00535, June 16, 2015 (unpublished). A copy of this order is attached hereto, incorporated by reference herein, and identified as Attachment 3.

On October 11, 2015, the Honorable Tanya Gee ruled that the constitutional application of the clear and unambiguous provisions of the Sex Offender Registry Act is not a "wrong cognizable in South Carolina law and that her equitable powers must yield in the face of South Carolina's clear and unambiguous sex offender registry statutes. As such, Judge Gee granted the Defendants' summary judgment. *Edward L. Green v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina*, Civil Action No(s).: 2015-CP-40-00590, October 11, 2015 (unpublished). A copy of this order is attached hereto, incorporated by reference herein and is identified as Attachment 4.

On November 3, 2015, the Honorable G. Thomas Cooper granted summary judgment on a similar case and ruled that the constitutional application of the clear and unambiguous provisions of the Sex Offender Registry Act is not a "wrong cognizable in South Carolina law". Judge Cooper also ruled that fashioning a remedy outside the clear and unambiguous provisions of SORA would exceed his equitable powers and that his equitable powers must yield in the face of South Carolina's clear and unambiguous sex offender registry statutes. *David Johnson v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina*, Civil Action No(s).: 2015-CP-43-0033, November 6, 2015 (unpublished). A copy of this order is attached hereto, incorporated by reference herein and is identified as Attachment 5.

On November 13, 2015, The Honorable D. Craig Brown ruled that the constitutional application of the clear and unambiguous provisions of the Sex Offender Registry Act is not a "wrong cognizable in South Carolina law" and that his equitable powers must yield in the face of South Carolina's clear and unambiguous sex offender registry statutes. As such, Judge Brown granted the Defendants' summary judgment. *Mansy McNeil v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina*, Civil Action No(s).: 2014-CP-21-2220, November 13, 2015 (unpublished). A copy of this order is attached hereto, incorporated by reference herein and is identified as Attachment 6.

**UNPUBLISHED SOUTH CAROLINA SUPREME COURT OPINION**

In addition, while having no precedential value on this action in accordance with Rule 268(d)(1), SCACR, the South Carolina Supreme Court issued an unpublished opinion on November 4, 2015 denying the request of several individuals to be removed from the SORA registry in equity citing S.C. Code Ann. § 23-3-430(F)-(G) as "enumerating specific circumstances under which a person's name may be removed from the registry" and citing to *Key Corporate Capital*, 373 S.C. at 61, 644 S.E.2d at 678 while acknowledging that "a court's equitable powers must yield in the face of an unambiguously worded statute." *Dean and Brown v. Keel*, 2015-MO-065 (filed November 4, 2015) *r'hrg denied* December 2, 2015. A copy of this order is attached hereto, incorporated by reference herein and is identified as Attachment 7.

**CONCLUSION**

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

[Signature Page Follows]

Respectfully submitted,

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ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
DECEMBER 14, 2015

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DARLINGTON COUNTY, SC

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SCOTT B. SUGGS
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.



54

*John Gregory*

*v.*

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

**Civil Case No. 2015-CP-16-00301**
**Defendants' Memorandum in Support of Summary Judgment**

# ATTACHMENT 1

STATE OF SOUTH CAROLINA )
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COUNTY OF SUMTER )
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

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**

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DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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.

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56

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

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[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.



60

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

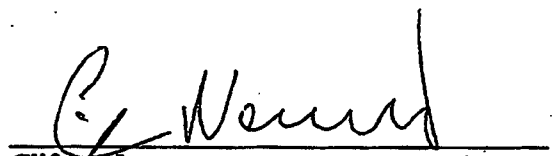
Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. For this Court to act as a "superlegislature" and to unilaterally

[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

*John Gregory*

*v.*

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

**Civil Case No. 2015-CP-16-00301**
**Defendants' Memorandum in Support of Summary Judgment**

# ATTACHMENT 2

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

FILED
2015 MAY 20 PM 1:52
CONNIE REEL-SULLIVAN
CCP & GS
FLORENCE COUNTY, S.C.

This matter came before me on March 19, 2015, for a motion hearing on the Defendants' Motion for Judgment on the Pleadings. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division.[1] The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Judgment on the Pleadings in this matter.

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

## BACKGROUND

By way of background, the Plaintiff was convicted of Rape on or about the year 1975 and was sentenced to forty (40) years of incarceration for this conviction. The Plaintiff was released from incarceration on or about February 8, 1989. Upon the inception of the South Carolina Sex Offender Registry,[2] the Plaintiff was required to register as a sex offender. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's sex offender registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"). The Plaintiff has registered since that time.

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

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

## STANDARD OF REVIEW

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

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

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

## LAW / ANALYSIS

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

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



66

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

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

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

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



67

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

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

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

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

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

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

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[5] In the same way, legislatively enacted maximum sentences also apply.

[6] It is noteworthy that sex offender registration has been consistently held not to be "punitive in purpose or effect as to constitute a criminal penalty." State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001). Similarly, I find and conclude that the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated by the South Carolina Constitution. *See* S.C. Const. art. I, § 8 ("In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."). Furthermore, South Carolina law is clear, "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. S.C. Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) *citing* Noisette v. Ismail, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App. 1989) ("Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law.").

## CONCLUSION

Based on the foregoing and all applicable South Carolina law, I find and conclude there is simply no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. Furthermore, I find and conclude that for this court to act as a "superlegislature" and to unilaterally add language to an unchallenged, unambiguously worded statute would violate South Carolina law and the South Carolina Constitution. *See* Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989); S.C. Const. art. I, § 8.

Therefore, it is hereby ORDERED, DECREED, and ADJUDGED that the Defendants' Motion for Judgment on the Pleadings is GRANTED.



70

**AND IT IS SO ORDERED.**

Thomas A. Russo
Presiding Judge
Court of Common Pleas
12th Judicial Circuit

Lexington, South Carolina
4-16, 2015

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CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

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

*John Gregory*

*v.*

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

**Civil Case No. 2015-CP-16-00301**
**Defendants' Memorandum in Support of Summary Judgment**

# ATTACHMENT 3

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

RECORDED
2015 JUN 16 PM 12:44
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Marty Lee Barnes,

Petitioner,

vs.

The State of South Carolina,

Respondent.

**ORDER GRANTING MOTION TO SET ASIDE JUDGMENT**

CERTIFIED TRUE COPY
OF ORIGINAL FILED
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter came before me on a Motion to Set Aside Judgment filed on behalf of the State of South Carolina. The Defendants were represented at the hearing by Adam L. Whitsett, General Counsel to the South Carolina Law Enforcement Division and Assistant Attorney General Courtney Lowell.[1] The Petitioner was represented by Jack D. Howle, Jr., Esquire, of the Third Circuit Chief Public Defender. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion to Set Aside Judgment in this matter.

## BACKGROUND

In or about 1986, the Petitioner was tried in absentia in the General Sessions Court of Sumter County and was convicted of two counts of kidnapping.[2] As a result of the Petitioner's kidnapping convictions, the Petitioner was sentenced to imprisonment for the balance of his natural life. One of these convictions was for the kidnapping of a person under the age of eighteen who was not the Petitioner's child. The other involved the kidnapping of an adult.

[1] The Defendant is additionally represented in this action by Assistant Attorney General Marcie Greene.
[2] The Petitioner was also convicted of Assault and Battery with Intent to Kill, Assault and Battery with Intent to Kill 2nd, and Carrying a Concealed Weapon at that time, but those convictions do not bear on this action.

Cw
1 of 6

During the Petitioner's incarceration, the South Carolina Sex Offender Registry Act[3] was passed. In or about 2002, the Petitioner was paroled and released from incarceration and was required to register as a sex offender at that time. *See* S.C. Code Ann. § 23-3-430(C)(16) (Supp. 2000). The Petitioner's parole was revoked in 2008 and the Petitioner was returned to incarceration where he currently remains.

In or about February of 2011, the Petitioner filed a Motion of Sentence Clarification seeking removal from the registry. The matter was heard on April 2, 2012, subsequently this Court issued an order dated April 16, 2012 removing the Petitioner from the South Carolina Sex Offender Registry based on equitable grounds. The State of South Carolina filed a Motion to Set Aside Judgment pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.

## DISCUSSION

The Petitioner was properly registered as a sex offender upon being released from incarceration in 2002. S.C. Code Ann. § 23-3-430(C)(16) (Supp. 2000); *see also* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's sex offender registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"). The Petitioner's conviction involved the kidnapping of a person under the age of 18 who was not the Petitioner's child. As such, the plain language of § 23-3-430(C)(16), requires the Petitioner to register as a sex offender regardless of whether his kidnapping involved any criminal sexual offense or attempted criminal sexual offense. *Id.*[4]

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[3] S.C. Code § 23-3-400 *et seq.*,

[4] There is a different code section with different criteria that applies to individuals convicted of kidnapping adults. *See* S.C. Code Ann. § 23-3-430(C)(15) (registration is required unless a "court makes a finding on the record that the offense did not involve criminal sexual offense or attempted criminal sexual offense").

South Carolina's Sex Offender Registry statutes, S.C. Code § 23-3-400 *et seq.*, provide the only lawful mechanisms and avenues by which an individual who is properly placed on the registry can be removed.[5] Pursuant to § 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). Pursuant to § 23-3-430(F), an offender who receives a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed. S.C. Code Ann. § 23-3-430(F). Pursuant to § 23-3-430(G) individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial are removed. S.C. Code Ann. § 23-3-430(F).

In this case the Petitioner does not contend that he meets any of the statutory criteria that entitle the Petitioner to removal from the registry.

The statute providing for lifetime registration in South Carolina is unambiguously worded. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually **for life**.").[6] The South Carolina Supreme Court has held that

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

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

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

Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007). It is also well-known that "equity follows the law." *See* Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 319-20, 659 S.E.2d 263, 267 (Ct. App. 2008). Moreover, the South Carolina Supreme Court has held that a "court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (emphasis added).

South Carolina law provides that "[w]hen providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). Furthermore, the South Carolina Supreme Court has held that "[e]quitable relief is generally available only where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) *citing* 27 *Am.Jur.* 2d, *Equity*, § 94 (1966). The Supreme Court has also noted that an "'adequate remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.*

South Carolina's Sex Offender Registry provides an adequate remedy to the Petitioner in that there are several statutory methods through which the Petitioner could be legally removed from the registry, if he so qualifies.

The duration of an individual's sex offender registration is purely a matter of legislative prerogative and there exists no judicial discretion without violating the separation of powers

mandated by the South Carolina Constitution. South Carolina law is clear, "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. S.C. Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) *citing* Noisette v. Ismail, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App. 1989) ("Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law.").

**CONCLUSION**

Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and this Court's previous order should be set aside and vacated pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.

For this court to act as a "superlegislature" and to unilaterally add language to an unambiguously worded statute would violate South Carolina law and the South Carolina Constitution. *See* Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989); S.C. Const. art. I, § 8.

It is therefore ordered that the Defendants' Motion to Set Aside Judgment is GRANTED and the Order of this Court entered on April 16, 2014 is hereby vacated.

**AND IT IS SO ORDERED.**

Clifton Newman
Presiding Judge

Columbia, South Carolina
June 8, 2015



77

*John Gregory*
*v.*
*Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina*

**Civil Case No. 2015-CP-16-00301**
**Defendants' Memorandum in Support of Summary Judgment**

# ATTACHMENT 4

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF RICHLAND<br><br>Edward L. Green,<br><br>Plaintiff,<br><br>v.<br><br>Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina,<br><br>Defendants. | IN THE COURT OF COMMON PLEAS<br>FIFTH JUDICIAL CIRCUIT<br>Case No.: 2015-CP-40-~~00590~~ 3001<br><br>**ORDER GRANTING SUMMARY JUDGMENT** |

2015 OCT 13 PM 12:40

This matter came before me on September 29, 2015, on the Defendants' Motion for Summary Judgment. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division.[1] The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Summary Judgment.

## BACKGROUND

The Plaintiff was convicted of criminal sexual conduct with a minor, third degree, in violation of § 16-3-655(C) of the South Carolina Code of Laws (as amended) on January 18, 2005. The Plaintiff was sentenced to a Youthful Offender Act sentence for a determinate term not to exceed six (6) years. Upon being released from incarceration, the Plaintiff was required to register as a sex offender pursuant to the South Carolina Sex Offender Registry Act, § 23-3-400 *et seq.* ("SORA") and did in fact so register. The Plaintiff filed this present action in May of

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

SCANNED 1064 JAB

2015 seeking for this Court to fashion equitable personal relief for the Plaintiff. The Defendants Answered the Complaint and filed the present Motion for Summary Judgment.

## STANDARD OF REVIEW

A motion for summary judgment shall be granted "if the pleadings... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)(emphasis in original). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976).

## LAW/ANALYSIS

I find that there is no genuine issue of material fact in dispute in this matter and that there is no factual dispute requiring the services of a fact finder. Accordingly, the Defendants are entitled to a judgment as a matter of law. *See* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRCP.

The Plaintiff was properly registered as a sex offender upon being released from incarceration in accordance with SORA. S.C. Code Ann. § 23-3-430(C)(6); *see also* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's sex offender registry constitutional). SORA is clear and unambiguous and mandates lifetime registration for all sex offenders in South Carolina.. S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life").[2] SORA also provides the only

[2] I note that South Carolina law requires registration every ninety days for persons "classified as a Tier III offender by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006"; however, this registration is also "for life".



SCANNED

lawful avenues by which individuals can be removed from the registry.[3] *See* S.C. Code Ann. § 23-3-430(E), (F), (G). There is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria for removal from SORA. Accordingly, there is no legal basis for the Plaintiff to be removed from the registry, and the Defendants are entitled to judgment as a matter of law. *See* S.C. Code Ann. § 23-3-460; S.C. Code Ann. § 23-3-430; Lozada v. South Carolina Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011)(acknowledging that "[w]hether an individual must be placed on the sex offender registry is a question of law.")

The Plaintiff's argument in this matter is that his constitutional SORA registration requirement constitutes a "wrong" that would justify this Court fashioning the Plaintiff an equitable personal remedy. This argument is without merit. The constitutional application of the clear and unambiguous provisions of SORA is not a "wrong" cognizable in South Carolina law. The South Carolina Supreme Court has held unequivocally that "the court's equitable powers must yield in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). In addition, the South Carolina Supreme Court has also specifically held,

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

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

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[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.



SCANNED

Moreover, "[i]f a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." State v. Smith, 330 S.C. 237, 240, 498 S.E.2d 648, 650 (Ct.App. 1998). Accordingly, for this Court to fashion an equitable remedy outside of the clear and unambiguous provisions of SORA would exceed this Court's authority. This Court's equitable powers must yield to the clear and unambiguous language of SORA.

## CONCLUSION

Based on the foregoing, the Defendants' Motion for Summary Judgment is GRANTED.

**AND IT IS SO ORDERED.**

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

Columbia, South Carolina
October 2, 2015



SCANNED

*John Gregory*

*v.*

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

**Civil Case No. 2015-CP-16-00301**
**Defendants' Memorandum in Support of Summary Judgment**

# ATTACHMENT 5

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER ) Case No.: 2015-CP-43-00033

RECORDED
2015 NOV -6 PM 2:5
JAMES V. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

David Johnson,

Plaintiff,

v.

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

Defendants.

**ORDER GRANTING SUMMARY JUDGMENT**

CERTIFIED TRUE COPY OF ORIGINAL FILED
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter came before me on October 26, 2015 on the Defendants' Motion for Summary Judgment. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division.[1] The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Summary Judgment.

**BACKGROUND**

The Plaintiff was convicted of Criminal Sexual Conduct with a Minor 1st Degree in 1992. The Plaintiff was sentenced to twenty-six (26) years of incarceration for this offense. Upon the Plaintiff's release from incarceration, he was required 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 S.C.

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

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 January of 2015 seeking for this Court to fashion equitable personal relief for the Plaintiff. The Defendants Answered the Complaint and filed the present Motion for Summary Judgment.

## STANDARD OF REVIEW

A motion for summary judgment shall be granted "if the pleadings... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) *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

Based on the following, there is no genuine issue of material fact in dispute in this matter. Further, there is no factual dispute requiring the services of a fact finder. Accordingly, Defendants are entitled to a judgment as a matter of law. *See* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRCP

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)(4); State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (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 v. State, 377 S.C. 60, 64, 659 S.E.2d 137, 139 (2008) (holding that "the applicable [SORA] statute is the statute that existed at



GC 2

the time of respondent's release from prison."). SORA is clear and unambiguous and mandates lifetime registration for all sex offenders in South Carolina. S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life").[2] SORA also provides the only lawful avenues by which individuals can be removed from the registry.[3] *See* S.C. Code Ann. § 23-3-430(E), (F), (G). There is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria for removal from SORA. Accordingly, there is no legal basis for the Plaintiff to be removed from the registry and the Defendants are entitled to judgment as a matter of law. *See* S.C. Code Ann. § 23-3-460; S.C. Code Ann. § 23-3-430; Lozada v. South Carolina Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011)(acknowledging that "[w]hether an individual must be placed on the sex offender registry is a question of law.")

The Plaintiff's argument in this matter is that his constitutional SORA registration requirement constitutes a "wrong" that would justify this Court fashioning the Plaintiff an equitable personal remedy. This argument is without merit. The constitutional application of the clear and unambiguous provisions of SORA is not a "wrong" cognizable in South Carolina law. The South Carolina Supreme Court has held unequivocally that "the court's equitable powers must yield in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). In addition, the South Carolina Supreme Court has also specifically held 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,

[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.

> 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, for this Court to fashion an equitable remedy outside of the clear and unambiguous provisions of SORA would exceed this Court's authority and this Court's equitable powers must yield to the clear and unambiguous language of SORA.

In addition, fashioning an equitable remedy in the face of the clear and unambiguous provisions of SORA would constitute a violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The length of an individual's sex offender registration pursuant to SORA is solely a matter of legislative prerogative and there is no judicial discretion over such without violating the South Carolina Constitution. *Id.* This situation is comparable to legislatively mandated minimum or maximum sentences for criminal offenses. With regard to sentencing for an offense that has a mandatory minimum or maximum sentence, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals above or below the statutorily set amounts. However, these statutory sentence provisions are, and have been consistently upheld as being, lawful. *See* State v. De La Cruz, 302 S.C. 13, 393 S.E.2d 184 (1990); State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001); State v.

Johnson, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). In fact, the South Carolina Supreme Court conclusively resolved this issue in *State v. De La Cruz* indicating

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

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

[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." 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.



88

seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that some certain definitive statutory relief exists. Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Ultimately, the Court in Santee Cooper noted that "the court's equitable powers must yield in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). 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.

**CONCLUSION**

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

**AND IT IS SO ORDERED.**

The Honorable G. Thomas Cooper
Presiding Judge
Court of Common Pleas
3rd Judicial Circuit

Columbia, South Carolina
November 3, 2015

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

*John Gregory*

*v.*

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

**Civil Case No. 2015-CP-16-00301**
**Defendants' Memorandum in Support of Summary Judgment**

# ATTACHMENT 6

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF FLORENCE<br><br>Mansy McNeil,<br><br>Plaintiff/Petitioner,<br><br>v.<br><br>Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina,<br><br>Defendants/Respondents. | ) | IN THE COURT OF COMMON PLEAS<br>TWELFTH JUDICIAL CIRCUIT<br>Case No.: 2014-CP-21-2220<br><br>**ORDER GRANTING SUMMARY JUDGMENT** |

FILED
2015 NOV 13 AM 11:35
FLORENCE COUNTY, S.C.

This matter came before me on November 4, 2015 on the Defendants' Motion for Summary Judgment. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division.[1] The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Summary Judgment.

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

## BACKGROUND

The Plaintiff was convicted of lewd act on a minor violation of § 16-15-140 of the South Carolina Code of Laws (as amended) on or about November 6, 2012. The Plaintiff was sentenced to a term of incarceration of three (3) years. Upon being released from incarceration, the Plaintiff was required to register as a sex offender pursuant to the South Carolina Sex Offender Registry Act, § 23-3-400 *et seq.* ("SORA") and did in fact so register. The Plaintiff filed this present action in August of 2014 seeking for this Court to fashion equitable personal

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

relief for the Plaintiff. The Defendants Answered the Complaint and filed the present Motion for Summary Judgment.

## STANDARD OF REVIEW

A motion for summary judgment shall be granted "if the pleadings... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) *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

Based on the following, I find that there is no genuine issue of material fact in dispute in this matter and that there is no factual dispute requiring the services of a fact finder. Accordingly, the Defendants are entitled to a judgment as a matter of law. *See* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRCP.

The Plaintiff was properly registered as a sex offender upon being released from incarceration in accordance with SORA. S.C. Code Ann. § 23-3-430; *see also* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's sex offender registry constitutional). SORA is clear and unambiguous and mandates lifetime registration for all sex offenders in South Carolina. S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life").[2] SORA also provides the only

[2] I note that South Carolina law requires registration every ninety days for persons "classified as a Tier III offender by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006"; however, this registration is also "for life".

lawful avenues by which individuals can be removed from the registry.[3] *See* S.C. Code Ann. § 23-3-430(E), (F), (G). There is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria for removal from SORA. Accordingly, there is no legal basis for the Plaintiff to be removed from the registry and the Defendants are entitled to judgment as a matter of law. *See* S.C. Code Ann. § 23-3-460; S.C. Code Ann. § 23-3-430; Lozada v. South Carolina Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011)(acknowledging that "[w]hether an individual must be placed on the sex offender registry is a question of law.")

The Plaintiff's argument in this matter is that his constitutional SORA registration requirement constitutes a "wrong" that would justify this Court fashioning the Plaintiff an equitable personal remedy. This argument is without merit. The constitutional application of the clear and unambiguous provisions of SORA is not a "wrong" cognizable in South Carolina law. The South Carolina Supreme Court has held unequivocally that "the court's equitable powers must yield in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). In addition, the South Carolina Supreme Court has also specifically held that,

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

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

[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.

Moreover, "[i]f a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." State v. Smith, 330 S.C. 237, 240, 498 S.E.2d 648, 650 (Ct.App. 1998). Accordingly, for this Court to fashion an equitable remedy outside of the clear and unambiguous provisions of SORA would exceed this Court's authority and this Court's equitable powers must yield to the clear and unambiguous language of SORA.

In addition, fashioning an equitable remedy in the face of the clear and unambiguous provisions of SORA would constitute a violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The length of an individual's sex offender registration pursuant to SORA is solely a matter of legislative prerogative and there is no judicial discretion over such without violating the South Carolina Constitution. *Id.* Accordingly, there is no legal or constitutional basis for the Plaintiff to be removed from the registry and the Defendants are entitled to judgment as a matter of law.

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FLORENCE [illegible]

## CONCLUSION

Therefore, the Defendants' Motion for Summary Judgment is GRANTED.

**AND IT IS SO ORDERED.**

The Honorable D. Craig Brown
Presiding Judge
Court of Common Pleas
12th Judicial Circuit

Florence, South Carolina
11-13, 2015

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

*John Gregory*

*v.*

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

**Civil Case No. 2015-CP-16-00301**
**Defendants' Memorandum in Support of Summary Judgment**

# ATTACHMENT 7

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA**
**In The Supreme Court**

Edward Dean and Nolan Brown, Appellants,

v.

Mark Keel, in his Official Capacity as Chief of the South Carolina Law Enforcement Division, Respondent.

Appellate Case No. 2014-002721

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Appeal from Greenwood County
Donald B. Hocker, Circuit Court Judge

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Memorandum Opinion No. 2015-MO-065
Heard October 7, 2015 – Filed November 4, 2015

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**AFFIRMED**

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E. Charles Grose, Jr., of Greenwood, for Appellants.

Attorney General Alan Wilson, Assistant Attorney General Marcie E. Greene, Assistant Attorney General Courtney E. Lowell, and General Counsel Adam Whitsett, all of Columbia, for Respondent.

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**PER CURIAM:** In this direct appeal, Appellants Edward Dean and Nolan Brown appeal the circuit court's denial of relief as to various constitutional challenges to

the South Carolina Sex Offender Registry Act (the Act),[1] under which they are both required to register as sex offenders as a result of being adjudicated delinquent as juveniles for criminal sexual conduct with a minor in the first degree. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

**Constitutional Issues.** *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 6–8 (2003) (rejecting the argument that the Due Process Clause of the Fourteenth Amendment required the State of Connecticut to afford sex offenders a pre-registration hearing to determine whether they are "currently dangerous" before requiring them to register, finding Connecticut's statutory scheme required registration based solely on the fact of a previous conviction—not the fact of current dangerousness—and therefore due process does not require the opportunity to prove a fact that is not material to the state's statutory scheme); *Schall v. Martin*, 467 U.S. 253, 264–65 (1984) (stressing that "crime prevention is 'a weighty social objective,'" and noting that "this interest persists undiluted in the juvenile context" as "[t]he harm suffered by the victim of a crime is not dependent upon the age of the perpetrator" (footnote and citation omitted)); *In re Stephen W.*, 409 S.C. 73, 75–79, 761 S.E.2d 231, 232–33 (2014) (explaining the "important distinctions" between the family court juvenile adjudication process and the traditional criminal justice process and holding that neither the federal nor the state constitution entitles juveniles to a jury trial in family court adjudication proceedings); *In re Ronnie A.*, 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003) (finding "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated," and concluding the mandatory registration of sex offenders, including juveniles who have proved themselves capable of certain sex offenses, is rationally related to achieving the legitimate state objective of protecting the public from those who may re-offend); *Hendrix v. Taylor*, 353 S.C. 542, 549, 579 S.E.2d 320, 324 (2003) (holding the right to privacy does not extend to information about sexual offenses and finding the Act bears a rational relationship to the "legitimate state purpose of protecting the public and aiding law enforcement"); *State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (finding where the offender was convicted of a sexual offense in 1973, the imposition of registry requirements in 1998 did not constitute a violation of the ex post facto clause of either the state or the federal constitution because the registration requirements are "not so punitive in purpose or effect as to constitute a criminal penalty"); *see also In re Justin B.*, 405 S.C. 391, 409 n.3, 747 S.E.2d 774, 783 n.3 (2013) (finding the Act's satellite monitoring provisions were a civil, non-punitive remedy and therefore the Court did not need to reach the issue of whether such monitoring constituted cruel and unusual punishment, "regardless of the age of the offender"); *cf. United States v. Under Seal*, 709 F.3d 257, 261–62

[1] S.C. Code Ann. §§ 23-3-400 to -555 (2007 & Supp. 2014).

(4th Cir. 2013) (finding that although the federal Sex Offender Registration and Notification Act (SORNA) makes public certain offender information that would otherwise remain confidential under the Federal Juvenile Delinquency Act (FJDA), the registration provisions of the SORNA are more specific than those of the FJDA, and those specific provisions evince the legislative determination that the appropriate balance to be struck between the competing interests of juvenile confidentiality and public safety is the one "in favor of protecting victims, rather than protecting the identity of juvenile sex offenders"); *United States v. Juvenile Male*, 670 F.3d 999, 1007–09 (9th Cir. 2012) (noting neither age nor status as a juvenile sex offender constitutes a protected class and concluding the SORNA registration requirements apply to juvenile offenders notwithstanding confidentiality provisions in the FJDA, explaining that although the offenders may, as a policy matter, disagree with the provisions of the SORNA, particularly with regard to confidentiality, legislative intent is clear, and thus, the Court's review "is limited to interpreting the statutes").[2] **Equitable Relief.** S.C. Code Ann. § 23-3-430(F)–(G) (2007 & Supp. 2014)(enumerating specific circumstances under which a person's name may be removed from the registry); *Key Corporate Capital, Inc. v. Beaufort Cnty.*, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) (reversing the grant of equitable relief where an adequate legal remedy was set forth by statute, explaining "a 'court's equitable powers must yield in the face of an unambiguously worded statute'" (citation omitted)).

**AFFIRMED.**

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.**

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[2] We emphasize that the Act's satellite monitoring provisions are not implicated in this case. Thus, Appellants do not raise, and we do not reach, any issues addressed by the United States Supreme Court in its recent decision in *Grady v. North Carolina*, 135 S.Ct. 1368, 1371 (2015) (noting North Carolina's sex offender satellite monitoring program was "plainly designed to obtain information," and finding "since it does so by physically intruding on a subject's body, it effects a Fourth Amendment search").

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED
AUG 22 2016
SC Court of Appeals

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Appellate Case No. 2016-000561

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

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John Gregory, Appellant,

v.

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

Respondents.

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## CERTIFICATE OF COUNSEL

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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

Sumter, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2016-000561

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

RECEIVED
AUG 22 2016
SC Court of Appeals

John Gregory, Appellant,

v.

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

Respondents.

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**PROOF OF SERVICE**

I, the undersigned, do hereby certify that on this August 19, 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 August 19, 2016, addressed to the following as indicated below:

Office of SC Attorney General
ATTN: T Parkin C Hunter
Post Office Box 11549
Columbia, South Carolina 29211

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

Dated: August 19, 2016

Charles T. Brooks, III
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SC Court of Appeals

August 19, 2016

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

RE: Gregory vs. Mark Keel, Chief of the South Carolina Law Enforcement Division, et al
2016-000561

To Whom It May Concern:

Please find enclosed herewith the Record on Appeal with reference to the above matter along with the necessary copies of the same.

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: Adam L. Whitsett, SLED