

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2015-001076

Kenneth W. Signor,

Petitioner,

v.

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

Respondents.

APPENDIX

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S.C. SUPREME COURT

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

Case No: 2015-001076

Kenneth W. Signor.....Appellant

v.

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

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

Kenneth W. Signor,

RECORDED
2015 MAY -1 PM 2: 35
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.)

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
DEPOSITED TO COURT COPY
OF ORIGINAL FILE

B. Baker
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

**ORDER GRANTING JUDGMENT
ON THE PLEADINGS**

This matter came before me on February 9, 2015 for a motion hearing on the Defendants' Motion for Judgment on the Pleadings. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division and Assistant Attorney General Courtney Lowell.¹ The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Judgment on the Pleadings in this matter.

BACKGROUND

In or about 1987, Plaintiff was convicted of Criminal Sexual Conduct with a Minor 2nd Degree and Lewd Act with a Minor on or about the year 1987 and was sentenced to fifteen (15) years of incarceration for to the Criminal Sexual Conduct conviction and a term of five (5) years for the Lewd Act conviction. The Plaintiff was released from incarceration on or about April 1, 1994.

¹ The Defendants are additionally represented by Assistant Attorney General Marcie Greene.

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During Plaintiff's incarceration, the South Carolina Sex Offender Registry Act² 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, SCRPC.

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

A "motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or

² S.C. Code § 23-3-400 *et seq.*

present merely an immaterial issue.” Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982).

DISCUSSION

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

The pleadings demonstrate that the Plaintiff does not contend that he meets any of the statutory criteria that entitle him to removal from the registry and he did not argue any statutory entitlement to relief. However, Plaintiff contends that he is entitled to relief based upon equity.

The statute providing for lifetime registration is unambiguously worded. *See* S.C. Code Ann. § 23-3-460 (“A person required to register pursuant to this article is required to register biannually for life.” (emphasis added))⁴. The South Carolina Supreme Court has specifically held that

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

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

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

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

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

administration as the remedy in equity.” *Id.* South Carolina’s Sex Offender Registry provides an adequate remedy to the Plaintiff in that there are several statutory methods through which the Plaintiff could be legally removed from the registry. It appears that he simply does not qualify for them.

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

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

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

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

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

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

CONCLUSION

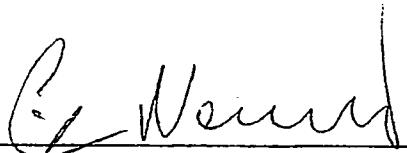
Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. For this Court to act as a "superlegislature" and to unilaterally

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

deviate from an unchallenged and unambiguously worded statute would be contrary to South Carolina law and the South Carolina Constitution.

It is therefore ORDERED that the Defendants' Motion for Judgment on the Pleadings is hereby GRANTED.

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

Columbia, South Carolina
April __, 2015

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

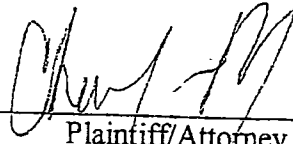
IN THE COURT OF COMMON PLEAS
RECORDED
2014 MAY 14 PM 3:44
SUMMONS
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY S.C.
FILE NO: 2014-CP-43-968

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

SUMTER, South Carolina

Dated: May 14, 2014



Plaintiff/Attorney for Plaintiff

Address: 309 Broad Street, Sumter, SC 29150

RECORDED

2014 MAY 14 PM 3:44
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
JAMES C. CAMPBELL)
COUNTY OF SUMTER) CLERK OF COURT) THIRD JUDICIAL CIRCUIT
SUMTER COUNTY, S.C.) C/A NO.: 2014-CP-43- 968

KENNETH W. SIGNOR,)

PETITIONER,)

VS.)

MARK KEEL,)

DIRECTOR, SOUTH CAROLINA)

LAW ENFORCEMENT)

DIVISION (SLED), AND THE)

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

PETITION FOR
DECLARATORY JUDGMENT
(Non-Jury)

THE PETITIONER IN THIS MATTER, BY AND THROUGH HIS
COUNSEL, ALLEGES AS FOLLOWS:

1. That the Petitioner is a citizen and resident of the County of Sumter, State of South Carolina.
2. That the Respondent, Mark Keel, is the Chief of the South Carolina Law Enforcement Division (hereinafter referred to as "SLED"), maintaining the Sex Offender Registry for the State of South Carolina. The present action is an action in part for a Declaratory Judgment regarding certain provisions of the South Carolina Sexual Registry (hereinafter referred to as "Registry"), and pursuant to §23-3-410, Code of Laws for South Carolina, 1976, as amended, the Registry is under the direction of the Respondent Keel.

3. That the State of South Carolina, a sovereign State and body politic, enacts its legislation through its State Legislature (the South Carolina General Assembly and Senate) and the Governor. The present action is an action in part for a Declaratory Judgment regarding the constitutionality of provisions of the South Carolina Code of Laws, as amended, specifically §23-3-430, Sex Offender Registry legislation, as it applies differently to §16-3-655(b) (Criminal Sexual Conduct, 2nd Degree) and §16-15-140 (Lewd Act on a Minor).
4. This Honorable Court has jurisdiction over the parties to, and subject matter of, the present action.
5. The Petitioner in this matter was convicted in the State of South Carolina of CSC-2nd and Lewd Act with a Minor in 1987 in Greenville County.
6. The Petitioner was sentenced to a term of incarceration of fifteen (15) years for the charge of CSC-2nd and five (5) years for the charge of Lewd Act, with those sentenced to be served concurrently with the South Carolina Department of Corrections. The Petitioner was released from incarceration on April 1, 1994.
7. In 2003, a period of sixteen (16) years after the conviction of the Petitioner and after the Petitioner relocated to Sumter County, the Petitioner was required to begin to Register as a Sex Offender in accordance with "Megan's Law" which was enacted subsequent to the release of the Petitioner from the Department of Corrections.

8. That, under §23-3-430(F), even if Petitioner was pardoned by the Governor, Petitioner “may not be removed” from the Registry unless the Attorney General notified a Defendant that the conviction “was reversed, overturned, or vacated on appeal”. §23-3-430(E), South Carolina Code of Laws, as amended.
9. That the Petitioner did not file a timely appeal of his conviction, nor did he timely file an application for Post-conviction Relief.
10. That, upon information and belief, Petitioner has suffered and continues to suffer grievous consequences as a result of being a registered sex offender, including:
 - a. Permanent ban from volunteering with most youth events, including any involving his own minor relatives (nieces, nephews, etc.) or any children he may father in the future.
 - b. Limited employment opportunities; and
 - c. Embarrassment and humiliation for himself and his relatives.

FOR A FIRST CAUSE OF ACTION
Equity

11. The above set forth facts are made part of this cause of action through incorporation by reference.
12. That the Petitioner is entitled to equitable personal relief in this matter.
13. That the Petitioner is informed and believed that equity is reserved for situations where there is no adequate remedy of law.

14. That the purpose of the Sex Offender Registry is to protect the public from those sex offenders who may re-offend and to aid Law Enforcement in solving sex crimes.
15. That the Petitioner is informed and believes the facts before this Court do not support a finding that he Petitioner is or ever was a predator or child molester.
16. That the Petitioner is informed and believes that the requirement of lifelong Sex Offender Registry is wildly disproportionate to the underlying conduct.
17. That the Petitioner is informed and believes that justice compels a remedy for this particular situation and that justice is served by granting the Petitioner personal relief.
18. That Petitioner is entitled to an Order of this Court directing Defendant Keel to remove his name from the South Carolina Sex Offender Registry immediately.

WHEREFORE, Petitioner prays this Court for an Order:

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

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



CHARLES T. BROOKS, III
Attorney for the Petitioner
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cbrooks@ctbrooks.com

Dated: 5/12/2014

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

RECORDED

2014 MAY 14 PM 3:44 VERIFICATION

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

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

SWORN to and Subscribed before me

this 12th day of May, 2014

[Signature]
Notary Public for South Carolina

My Commission expires:

6/2/2020

[Signature]
Signature of Petitioner

[Signature]
Signature of Petitioner

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No.: 2014-CP-43-968

Kenneth W. Signor,)
Plaintiff,)

v.)

ANSWER

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

Defendant Mark Keel, properly identified as the Chief of the South Carolina Law Enforcement Division (SLED) and Defendant State of South Carolina, hereby answer the Plaintiffs' Complaint as follows:

FOR A FIRST DEFENSE
Failure to State a Claim

The Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
Insufficient Service of Process

The Complaint in this matter was not served on Defendant Keel in accordance with the South Carolina Rules of Civil Procedure. As such, pursuant to Rule 12(b)(5), SCRPC this action should be dismissed due to insufficiency of service of process.

FOR A THIRD DEFENSE
Response to Allegations

1. The Defendants deny each and every allegation of the Plaintiffs' Complaint not herein specifically admitted, qualified, or explained.
2. Paragraph one (1) is admitted upon information and belief.

3. Paragraphs two (2) and three (3), to the extent they are characterizations as to the type of action this is require no response. The remaining allegations of paragraphs two (2) and three (3) are admitted upon information and belief.
4. Paragraphs four (4), five (5), and six (6) are admitted upon information and belief.
5. The Defendants are without information or knowledge to admit or deny the allegations of paragraph seven (7) and would therefor deny the same. However, the Defendants would aver that the Plaintiff's inclusion on the South Carolina Sex Offender Registry was proper, was in accordance with South Carolina law, and was constitutional.
6. The Defendants deny the allegations of paragraph eight (8) in that the allegations mischaracterize South Carolina law. The Defendants would crave reference to the actual text of §§ 23-3-430(E) and 23-3-430(F) of the South Carolina Code of Laws for a proper recitation of these statutes.
7. The Defendants are without information and belief to admit the allegations of paragraph nine (9); however, the Defendants would admit these allegations.
8. The Defendants deny the allegations of paragraph ten (10).
9. As to paragraph eleven (11), the Defendants incorporate the responses to each of preceding paragraphs by reference.
10. Paragraph twelve (12) is denied.
11. Paragraph thirteen (13) is denied and the Defendants would aver that § 23-3-430 is an unambiguously worded statute and that equity follows the law. *See Key Corporate Capital, Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) (holding that a "court's equitable powers must yield in the face of an unambiguously worded statute").

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

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

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

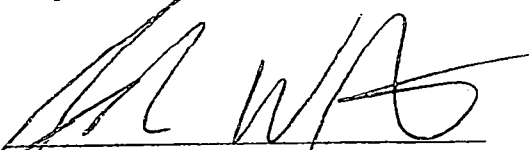
FOR A FOURTH DEFENSE
Proper Inclusion on the Registry

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

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

- A. dismisses the Plaintiff's Complaint entirely;
- B. denies any and all relief sought by the Plaintiff; and
- C. grants such other and further relief as the Court may deem just and proper.

Respectfully Submitted,



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ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
JUNE 20, 2014

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED) IN THE COURT OF COMMON PLEAS
IN THE THIRD JUDICIAL CIRCUIT
2014 OCT 21 PM 12:06

Kenneth W. Signor,

Plaintiff,

vs.

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

Defendants.

JAMES C. CAMPBELL Civil Action No. 2014-CP-43-00968
CLERK OF COURT
SUMTER COUNTY, S.C.

**DEFENDANTS' MOTION
FOR JUDGMENT
ON THE PLEADINGS**

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

BACKGROUND

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

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

from incarceration on April 1, 1994, Plaintiff was required to register as a sex offender² on the South Carolina Sex Offender Registry ("Registry"). *Id.*

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

ARGUMENT

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

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

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

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

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

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

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

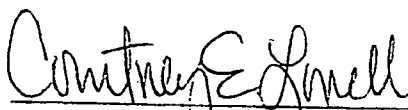
Plaintiff is not entitled to equitable relief merely because he does not qualify for removal under the current law. The unambiguously worded statute sets forth how an individual can be removed from the Registry, and equitable relief is not included within S.C. Code Ann. § 23-3-430. Moreover, the Plaintiff's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

CONCLUSION

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

[Signature Page Follows]

Respectfully submitted,



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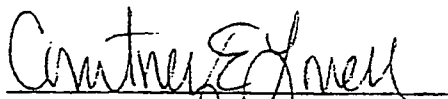
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ATTORNEYS FOR THE CHIEF KEEL AND THE STATE OF
SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA
OCTOBER 20, 2014

Rule 11, SCRCP, Statement:

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



ATTORNEY FOR THE CHIEF KEEL AND THE STATE OF
SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA
OCTOBER 20, 2014

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2015 FEB -4 AM 11:55) THIRD JUDICIAL CIRCUIT
 COUNTY OF SUMTER) C/A NO.: 2014-CP-43-968
 KENNETH W. SIGNOR,) JAMES D. CAMPBELL
) CLERK OF COURT
) SUMTER COUNTY, S.C.
)
 PETITIONER,)
)
 VS.)
)
 MARK KEEL,) PETITIONER'S RETURN TO MOTION
) OF RESPONDENT(S)
 DIRECTOR, SOUTH CAROLINA)
 LAW ENFORCEMENT)
 DIVISION (SLED), AND THE)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)

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

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

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

The issue here is not whether the Petitioner should be placed on the sex offender registry, which is a question of law, but rather and most importantly here, whether the Petitioner should

be removed from the sex offender registry based on the principles of equity, for which there is no complete remedy provided at law for such removal.

The Respondent argues there is an adequate remedy at law that governs the facts herein because South Carolina Code Ann. Section 23-3-430 (Supp. 2013) provides the procedure for placement on and removal from the sex offender registry. The question here is certainly not placement on the sex offender registry, but rather, removal therefrom. Section 23-3-430(E) provides "SLED shall remove a person's name and any information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of *nolo contendere* for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. Sec. 23-3-430(E) (Supp. 2013).

Section 23-3-430(E) provides for the "resulting action" of "when" a person's name may be removed from the sex offender registry and it is strictly limited to an appeal. S.C. Code Ann. Sec. 23-3-430(E) (Supp. 2013). Further, the code section does not provide for a complete remedy at law for removal from the sex offender registry, and the code section does not restrict the ability to pursue an equitable relief action for removal since it only provides a remedy relating to an appeal. S.C. Code Ann. Sec. 23-3-430(E) (Supp. 2013). Therefore, there is not an adequate and complete remedy available at law for the removal from the sex offender registry, especially as in the case herein, when the qualifying offense occurred decades ago from any appealable time frame.

The other subsections of Section 23-3-430, do not provide other remedies at law for the removal from the sex offender registry that would and could afford the Petitioner herein complete relief at law such as the pardon procedure or the new trial procedure. S.C. Code Ann.

Sec. 23-3-430(E) (Supp. 2013). Therefore, there is no complete remedy at law and equitable relief is appropriate.

For all of the foregoing reasons, the Respondent's Motion for Judgment on the Pleadings should be denied.

THE BROOKS LAW OFFICES


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Attorney for the Petitioner

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Sumter, South Carolina 29150

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Dated: 2/4/2015

State of South Carolina)
)
County of Sumter)
)

Signor,
Plaintiff

Motions Hearing
2014-CP-43-00968

vs.

February 9, 2015
Sumter, S.C.

SLED and the State of South Carolina,
Defendants

Before the Honorable Clifton Newman, Judge.

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

Mr. Charles T. Brooks,
Attorney for Plaintiff

Mr. Adam L. Whitsett,
Attorney for Defendants

Margaret T. Sullivan,
Court Reporter

1 THE COURT: Mr. Brooks.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 MR. BROOKS: Good morning, Judge.

2 THE COURT: Good morning.

3 MR. BROOKS: First of all, in regards to
4 his argument about comparing this to mandatory
5 minimums that the legislature sets out, and I think
6 that is a false analogy. The reason that it is
7 false is, when you talk about a mandatory minimum,
8 that means that the statute was in place prior to
9 the person committing the crime. Then the person
10 commits the crime clearly after the statute is in
11 place. In this particular situation, Mr. Signor had
12 committed his offense and pled guilty back in the
13 1980's. And did time. Obviously, Judge, the
14 registry apparatus was not even in existence. It
15 wasn't even thought of.

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

25 Now we're not talking about whether or not

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

7 So in order for him to get off the
8 registry, he would have to go back in time to the
9 1980's, and have his conviction overturned.
10 Something that wasn't even put in place back then.
11 If he filed a post conviction relief application,
12 the attorney general's office would stand up and
13 say, he's had a one year statute of limitations.
14 The pardon provision is not just a general pardon,
15 he's basically got to overtone the conviction. And
16 the other provision of that statute it says that
17 he's got to basically find new evidence. But none
18 of those are remedies of law that are applicable for
19 Mr. Signor who had a conviction back in the 1980's.

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

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

1 2014.

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

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

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

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

17 THE COURT: Yes, sir.

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

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

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

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

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

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

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

1 get off the registry despite the law to the
2 contrary?

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

7 THE COURT: And the supreme court agreed
8 or disagreed.

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

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

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

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

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

11 MR. WHITSETT: Potentially, Your Honor.

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

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

24 MR. BROOKS: I do, judge.

25 THE COURT: Of course his argument in

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

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

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

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

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

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

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

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

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

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

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

8 THE COURT: Last word, Mr. Brooks.

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

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

1 again?

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

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

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

9 MR. BROOKS: Yes, sir.

10 MR. WHITSETT: Thank you, Your Honor.

11 THE COURT: Thank you, Your Honor.

12 --End of Requested Transcript of Record--
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C-E-R-T-I-F-I-C-A-T-E

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

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

6-18-15
DATE

Margaret T. Sullivan
COURT REPORTER

My Commission expires: 9/7/2021

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

KENNETH W. SIGNOR,
PETITIONER,
VS.

MARK KEEL,
DIRECTOR, SOUTH CAROLINA
LAW ENFORCEMENT
DIVISION (SLED), AND THE
STATE OF SOUTH CAROLINA,

RESPONDENT.

RECORDED
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2015 JAN 21 PM 2:16
C/A No. 2014-CP-43-968

JAMES D. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
AFFIDAVIT OF THOMAS V. MARTIN, M.D.

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

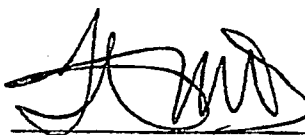
Being duly sworn I do swear and affirm the following:

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

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

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

Further affiant sayeth not.



Thomas V. Martin, M.D.

Sworn to before me this 13th day of

January 2015



Joy E. Covington Grimsley

A Notary Public for South Carolina

My Commission Expires: 12-15-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

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

Kenneth W. Signor,)
)
Plaintiff,)
)
vs.)
)
Mark Keel, Chief of the South Carolina)
Law Enforcement Division, and the State of)
South Carolina,)
)
Defendants.)
)

**DEFENDANTS' BRIEF
IN SUPPORT OF JUDGMENT
ON THE PLEADINGS**

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

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

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

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

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

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

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

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

[i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636,

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

⁴ In addition, the application of a constitutional statute to the Plaintiff is not a "wrong" that requires an equitable remedy.

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

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

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

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

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

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).⁵ In addition, the Supreme Court has also noted that

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

State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001) (emphasis added). Similarly, the duration of an individual’s sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the South Carolina Constitution. S.C. Const. art. I, § 8.

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

⁵ It is noteworthy that sex offender registration has been consistently held not to be “punitive in purpose or effect as to constitute a criminal penalty.” *State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

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

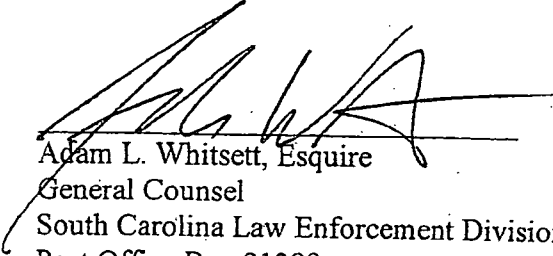
Moreover, it is well-known that “equity follows the law”. This maxim alone is a basis for denying equitable relief in this case as it has been in other cases. See Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) citing Smith v. Barr, 375 S.C. 157, 164,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

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

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

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

Respectfully Submitted,



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COLUMBIA, SOUTH CAROLINA
FEBRUARY 9, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

ON WRIT OF CERTIORARI

RECEIVED

APPEAL FROM SUMTER COUNTY

FEB 02 2016

Court of Common Pleas

Clifton Newman, Circuit Court Judge

SC Court of Appeals

Case No. 2015-001076

Kenneth W. Signor,

Appellant,

v.

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

Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY GRANTING RESPONDENTS JUDGMENT ON THE PLEADINGS BECAUSE A GENUINE ISSUE EXISTS AS TO THE MATERIAL FACT REGARDING VIABLE REMEDIES AVAILABLE FOR APPELLANT FOR REMOVAL FROM THE SOUTH CAROLINA SEX OFFENDER REGISTRY?
2. DID THE TRIAL COURT ERR BY GRANTING RESPONDENTS JUDGMENT ON THE PLEADINGS BECAUSE THE SOUTH CAROLINA SEX OFFENDER REGISTRY LAWS DO NOT PROVIDE AN ADEQUATE AND COMPLETE REMEDY AT LAW, THEREBY MAKING EQUITABLE RELIEF AN APPROPRIATE REMEDY AVAILABLE TO APPELLANT?

STATEMENT OF THE CASE

This case was initiated by Appellant filing on May 14, 2014, a Summons and a Petition for Declaratory Judgment for equitable relief for removal from the registry requirements under "Megan's Law", mandating registration with the South Carolina Sex Offender Registry. (R.p.9-14) The Appellant also filed with the Court an Affidavit of Thomas V. Martin, M.D., a licensed physician who rendered an opinion about the likelihood of the risk regarding the Appellant to re-offend. (R.p.44-45)

Respondents filed an answer generally denying the allegations in Appellant's Petition for Declaratory Judgment. (R.p.15-18) Respondents also filed a Motion for Judgment on the Pleadings asserting that the Appellant was not entitled to equitable relief because the statute governing removal from the Registry provides an adequate remedy at law. (R.p.19-23)

A hearing was held on February 9, 2015, on the Respondents'/Defendants' Motion for Judgment on the Pleadings before the Honorable Clifton Newman. The Court entered judgment in favor of the motion concluding that the Appellant was not entitled to any equitable remedy and that no equitable jurisdiction applied to the relief the Appellant sought. The Court further concluded "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." (R.p. 6) This appeal follows.

ARGUMENT

Summary judgment is defined by Rule 12(c), SCRCp: If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. *Hooper v. Ebenezer*, 377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008).

When reviewing a grant of summary judgment, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRCp: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id. citing Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006); *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005); *Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007); *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006).

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Id. citing Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *Medical Univ. of S.C. v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Hackworth v. Greenville County*, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct. App. 2006); *Rife v. Hitachi Constr. Mack Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005).

Further, since the purpose of summary judgment is to expedite the disposition of cases where the services of a fact finder are not necessary, it is a drastic remedy. *Id. citing Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003)(*quoting George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007); *Mulherin-Howell v. Cobb*, 362 S.C. 588, 596-97, 608 S.E.2d 587, 592 (Ct. App. 2005). “Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Id. citing Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); *B & B Liquors, Inc. v. O’Neil*, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004).

I. THE TRIAL COURT ERRED BY GRANTING RESPONDENTS JUDGMENT ON THE PLEADINGS BECAUSE A GENUINE ISSUE EXISTS AS TO THE MATERIAL FACT REGARDING VIABLE REMEDIES AVAILABLE FOR APPELLANT FOR REMOVAL FROM THE SOUTH CAROLINA SEX OFFENDER REGISTRY.

The Respondents argued that judgment should be granted on the pleadings because the pleadings herein presented no cause of action in favor of the plaintiff pursuant to the South Carolina Sex Offender Registry statutes, S.C. Code Ann. Sec. 23-3-400 *et seq.*

The Respondents relied on *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), asserting 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.”

In further support for the Respondents’ Motion for Judgment on the Pleadings, Respondents argue that the South Carolina Sex Offender Registry law, specifically S.C. Code Ann Sec. 23-3-460, provides that a person is required to register biannually for life and the statute provides remedies for removal. The Respondents argue that since the South Carolina Sex Offender Registry statutes are clear and unambiguous on the face of the statutes, no equitable remedy exists for the Appellant to be removed from the Registry, other than the statutory remedies provided by the law.

South Carolina Code Ann. Section 23-3-430(E) provides “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.” Another statutory remedy for removal is found in South Carolina Code Section 23-3-430(F) which provides an offender who receives a pardon “based on a finding of not guilty specifically state in the pardon” shall be removed from the registry. A third category for statutory remedy for

removal is found in South Carolina Code Section 23-3-430(G) where a person may be removed if exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial.

The Appellant argues that equity was appropriate here because the South Carolina Sex Offender Registry laws regarding removal did not provide an adequate or complete remedy at law for Appellant because Appellant could not avail himself of any of the statutory remedies because his crime was committed and he was adjudicated prior to the creation of the Registry and subsequent laws. The Appellant was convicted of Criminal Sexual Conduct with a Minor 2nd Degree and Lewd Act with a Minor and was released from incarceration on or about April 1, 1994. The South Carolina Sex Offender Registry laws became effective in 1994. The Appellant discovered he was required to register in 2004 and he has registered continuously as required by the law ever since. Any applicable statutes of limitation long expired before the creation of the Registry laws.

After considering the arguments of the parties, the Trial Court concluded that equity follows 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. (R.p.4). The Trial Court erred in granting the Respondents' Motion for Judgment on the Pleadings because the issue here, specifically as it relates to the motion, is the fact that Appellant does not have an adequate or complete remedy at law for removal from the Registry because his offense occurred before the institution of the registry laws and none of the statutory remedies for removal are legally applicable to his situation. While the Trial Court concluded that the Registry laws are unambiguous as to the requirement for registration for life, the genuine issue of fact in dispute here is the law's application to a person, such as Appellant, who has no legal remedy available

under the law, thereby requiring that equitable relief be available. Since Appellant's crime was committed prior to the institution of the South Carolina Sex Offender Registry laws, and Appellant served his time and was released during the same year as the creation of the law, Appellant does not and never will have any opportunity to avail himself of any of the removal remedies provided under the law. A genuine issue of fact then exists as to whether the Appellant can avail himself of relief through and pursuant to the equitable remedies of the court when an adequate and complete remedy does not exist under the law.

The very fact that the South Carolina Sex Offender Registry laws do not provide a remedy at law for Appellant's situation is the reason why Appellant filed an action seeking equitable relief for removal from the Registry. The Trial Court's granting of the Respondents' Motion for Judgment on the Pleadings is the type of drastic remedy that is error, thereby depriving the Appellant of a trial on the disputed factual issues of whether equitable relief can be afforded to the Appellant for removal from the Registry. As a result, the Order of the Trial Court should be reversed and the case remanded for a full hearing on the disputed issues.

II. THE TRIAL COURT ERRED BY GRANTING RESPONDENTS JUDGMENT ON THE PLEADINGS BECAUSE THE SOUTH CAROLINA SEX OFFENDER REGISTRY LAWS DO NOT PROVIDE AN ADEQUATE AND COMPLETE REMEDY AT LAW, THEREBY MAKING EQUITABLE RELIEF AN APPROPRIATE REMEDY FOR APPELLANT.

Summary judgment is defined by Rule 12(c), SCRCP: If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56,

and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. *Hooper v. Ebenezer*, 377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008).

When reviewing a grant of summary judgment, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRCp: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id. citing Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006); *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005); *Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007); *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006).

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Id. citing Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *Medical Univ. of S.C. v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Hackworth v. Greenville County*, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct. App. 2006); *Rife v. Hitachi Constr. Mack Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005).

Further, since the purpose of summary judgment is to expedite the disposition of cases where the services of a fact finder are not necessary, it is a drastic remedy. *Id. citing Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007); *Mulherin-Howell v. Cobb*, 362 S.C. 588, 596-97, 608 S.E.2d 587, 592 (Ct. App. 2005). “Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Id. citing*

Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004).

Generally, equitable relief is available only where there is no adequate remedy at law. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). "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.*

Respondents argue that the South Carolina Sex Offender Registry laws provide the complete remedy for statutory removal from the Registry. Appellant argues that the statutory remedies do not apply to him because his crime was committed before the creation of the laws and he completed the service for his crimes and was released the same year the Registry was created, Appellant could not avail himself of any of the statutory remedies for removal under the Registry law. All applicable statutes of limitations have and would have expired long before the effective date of the Registry in 1994. Therefore, the Appellant argues that there is no remedy at law for his removal from the Registry because the remedies are not certain, practical, or complete as they relate to his situation. Consequentially, if no remedy exists at law, the Appellant should be able to avail himself of the equitable remedies of the court.

The Trial Court granted Judgment on the Pleadings, concluding that the South Carolina Sex Offender Registry laws offered an adequate and complete remedy at law for removal from the registry, therefore, equitable relief would not be appropriate for the Appellant. The Trial Court's ruling is in error because a genuine issue as to the material fact of whether the South Carolina Sex Offender Registry laws offered an adequate and complete remedy at law for removal from the Registry for Appellant exists. It was inappropriate for the Trial Court to grant relief on the Motion for Judgment on the Pleadings since there is a dispute between the parties

regarding the factual issues of whether the South Carolina Sex Offender Registry laws offer an adequate and complete legal remedy for removal from the Registry, or if equitable relief is available in the absence of adequate and complete legal relief under the statute. Since there is a genuine disputed issue as to the facts, the granting of Judgment on the Pleadings was not appropriate.

The Trial Court's granting of the Respondents' Motion for Judgment on the Pleadings is the type of drastic remedy that is error, thereby depriving the Appellant of a trial on the disputed factual issues of whether equitable relief can be afforded to the Appellant for removal from the Registry in light of the fact that the statutory remedies are not an adequate and complete remedy at law. As a result, the Order of the Trial Court should be reversed and the case remanded for a full hearing on the disputed issues.

Last, the Trial Court's Order notes restraint in attempting to change a person's duration on the Registry because "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." (R.p.7). However, in *State v. Dykes*, Opinion No. 27124 (S.C. Supreme Court), the Appellant contested the Circuit Court's Order requiring her to be subjected to satellite monitoring for the rest of her life pursuant to the South Carolina Sex Offender Registry laws, specifically, S.C. Code Ann. Section 23-3-540(C) and (H). The South Carolina Supreme Court invalidated the section of the statute that required lifetime satellite monitoring without judicial review as unconstitutional and left effective the remaining portion of the statute.

Herein, while the Respondents argued that the Appellant was asking the Trial Court to rewrite the South Carolina Sex Offender Registry laws by providing a remedy not allowed by the

statute, the Appellant in fact was asking the Trial Court to allow the exercise of equitable relief since the statute does not provide an adequate and complete remedy at law for removal from the Registry. The Appellant's request for equitable relief is far less imposing than the invalidation of a section of the statute by the South Carolina Supreme Court.

The Appellant maintains that the equitable relief he seeks should proceed to trial on the disputed facts and that the granting of the Motion for Judgment on the pleadings was improper by the Trial Court.

CONCLUSION

For all of the foregoing reasons, the Order Granting Judgment on the Pleadings of the Trial Court should be reversed and/or remanded for a full hearing on the disputed issues, and for the granting of any other remedy that is just and proper in this case.

RESPECTFULLY SUBMITTED,



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ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

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

Appellate Case No.: 2015-001076
Circuit Court Case No.: 2014-CP-43-00968

Kenneth W. Signor, ... Appellant,

v.

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

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in granting judgment on the pleadings to respondents because no genuine issue of material fact exists and the only relief sought in this action is not available as a matter of law.
- II. The trial court did not err in finding that the South Carolina Sex Offender Registry Act (SORA), S.C. Code §§ 23-3-400 *et seq.*, provides adequate relief to all sex offenders, including appellant.

STATEMENT OF THE CASE

The appellant was convicted of criminal sexual conduct in the second degree and lewd act on a child under the age of sixteen in the year 1987, and was sentenced to fifteen years.¹ (Tr. p. 2)(R. p. 28). Upon the appellant's release from incarceration, he was required to register pursuant to the South Carolina Sex Offender Registry Act ("SORA"), which is S.C. Code §§ 23-3-400 *et seq.*, and did in fact so register. (Tr. pp. 2, 6)(R. pp. 28, 32). On or about May 14, 2014, the appellant filed a summons and complaint initiating this action seeking only equitable relief because the appellant acknowledges that he does not meet the statutory criteria for removal set forth in the plain language of SORA. *See* S.C. Code Ann. § 23-3-430(E), (F), (G). (Tr. pp. 3,7)(R. pp. 29, 33). The respondents filed an answer and a motion for judgment on the pleadings. The Honorable Clifton Newman heard the motion on February 9, 2015 and granted respondents judgment on the pleadings. This appeal follows.

¹ Criminal sexual conduct second degree is a violation of S.C. Code Ann. § 16-3-652 and lewd act on a child under the age of sixteen is formerly a violation of S.C. Code Ann. § 16-15-140. The appellant was sentenced to fifteen years on the criminal sexual conduct second degree and five years on the lewd act; however, those sentences ran concurrently.

STANDARD OF REVIEW

“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); Rule 12, SCRPC.

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

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), SCRPC) (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).

² Prior to this appeal, the arguments in this action focused solely on judgment on the pleadings. However, in his brief, the appellant asserts for the first time that a summary judgment standard is appropriate because the appellant presented matters outside the pleadings at the hearing, to wit: the affidavit of Dr. Thomas Martin. Respondent hereby acknowledges the presentation of materials outside the pleadings at the hearing. However, respondent believes that the trial court’s decision should be affirmed under either standard of review and that the trial judge properly exercised his discretion in this matter.

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

ARGUMENT

- I. The trial court did not err in granting judgment on the pleadings to respondents because no genuine issue of material fact exists and the only relief sought in this action is not available as a matter of law.**

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

As a threshold matter, it is noteworthy that appellant is **not** challenging the constitutionality of his SORA registration requirement. (Tr. p. 2-3)(R. p. 28-29). Nevertheless, the appellant's non-punitive SORA registration requirement is in fact constitutional. *See State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions."); *Hendrix v. Taylor*, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) (holding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."). In addition, SORA is

intended for investigative, statistical, and public safety purposes for the citizens of South Carolina and is not meant to punish or violate one's constitutional rights. Specifically, § 23-3-400 provides:

The intent of this article is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens. Notwithstanding this legitimate state purpose, these provisions are not intended to violate the guaranteed constitutional rights of those who have violated our nation's laws.

The sex offender registry will provide law enforcement with the tools needed in investigating criminal offenses. Statistics show that sex offenders often pose a high risk of re-offending. Additionally, law enforcement's efforts to protect communities, conduct investigations, and apprehend offenders who commit sex offenses are impaired by the lack of information about these convicted offenders who live within the law enforcement agency's jurisdiction.

S.C. Code Ann. § 23-3-400.

Appellant was convicted of criminal sexual conduct in the second degree and lewd act on a child under the age of sixteen in the year 1987, and each of these convictions mandate lifetime registration in South Carolina pursuant to SORA. *See* S.C. Code Ann. § 23-3-430; S.C. Code Ann. § 23-3-460 (setting forth the circumstances requiring registration in South Carolina and the mandatory lifetime duration of such registration); (Tr. p. 2)(R. p. 28). Moreover, SORA's statutory lifetime registration requirement exists for all sex offenders, including the appellant, and is set forth in a clear and unambiguously worded statute. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life.")³

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

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

However, there is no genuine issue of material fact to suggest that appellant meets any of these statutory criteria. Rather, as the appellant concedes, appellant has not even sought to avail himself of any of the statutory avenues for removal set forth in SORA. (Tr. p. 7)(R. p. 33). Accordingly, the trial court correctly held that there is no legal or constitutional basis for the appellant to be removed from the SORA registry. Therefore, the trial court correctly granted judgment as a matter of law to the respondents. See S.C. Code Ann. § 23-3-460 (mandating lifetime registration in South Carolina); S.C. Code Ann. § 23-3-430 (setting forth the only avenues for removal).

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

The appellant's entire argument in this action is that his non-punitive and constitutional SORA registration requirement is somehow a "wrong" in need of an equitable remedy. This argument is without merit and was correctly rejected by the trial court. The constitutional application of a clear, unambiguous, and non-punitive statute is not a "wrong" cognizable in the law. See State v. Walls, 348 S.C. at 31, 558 S.E.2d at 526 (holding South Carolina's registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions."); Hendrix, 353 S.C. at 552, 579 S.E.2d at 325 (holding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."). Further, it is well-known that "equity follows the law." See Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011). Moreover, "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. South Carolina Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011) (citing Noisette v. Ismail, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct. App. 1989)).

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

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

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

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

Key Corporate Capital, 373 S.C. at 59, 644 S.E.2d at 675 (emphasis added). As noted by the trial court, this entire action sought for the trial court to impermissibly and unconstitutionally act as a "superlegislature" and to add language to an unambiguously

worded constitutional statute. As such, the trial court correctly exercised his discretion and rejected this claim as a matter of law.

As the trial court also correctly noted, this situation is comparable to legislatively mandated sentences for criminal offenses, whether minimums or maximums. (Tr. p. 8)(R. p. 34). With regard to sentencing for an offense that has a mandatory sentence range, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals outside the statutorily set amounts. However, these statutory ranges, and more specifically the statutorily mandated minimum sentences are lawful, and have been consistently upheld as being such. See State v. De La Cruz, 302 S.C. 13, 393 S.E.2d 184 (1990); State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001); State v. Johnson, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). In fact, the South Carolina Supreme Court conclusively resolved this issue in De La Cruz indicating

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

302 S.C. at 15-16, 393 S.E.2d at 186 (emphasis added).⁵ Similarly, the trial court correctly held that the duration of an individual's sex offender registration is **purely a matter of legislative prerogative** and that there is no judicial discretion over this duration without violating the South Carolina Constitution and South Carolina law. See S.C. Const. art. I, § 8; S.C. Code Ann. § 23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute); Hendrix, 353 S.C. at 552, 579 S.E.2d at 325 (holding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."). As such, the trial court properly exercised his discretion in granting respondents a judgment as a matter of law in this matter.

The appellant also attempts to assert that there is a material fact in dispute as to the existence or non-existence of the equitable relief sought in this matter. (Final Br. pp. 5-6). This argument is without merit because any argument regarding the availability of an equitable remedy, or any remedy for that matter, is purely a matter of law. There is no factual dispute at issue whatsoever as to whether South Carolina courts can simply disregard the South Carolina law and remove an individual from the SORA registry in equity. As such, there is no material fact in dispute and trial court correctly granted judgment as a matter of law to the respondents in this matter. Therefore, the trial court's decision should be upheld and affirmed in its entirety.

⁵ It is noteworthy that sex offender registration has been consistently held not to be "punitive in purpose or effect as to constitute a criminal penalty." State v. Walls, 348 S.C. at 31, 558 S.E.2d at 526. However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

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

The trial court also correctly held that SORA provides adequate relief to all sex offenders, including the appellant. It is noteworthy yet again that there is no challenge whatsoever as to the constitutionality of SORA in this action. (Tr. p. 2-3)(R. p. 28-29); *see also State v. Walls*, 348 S.C. at 31, 558 S.E.2d at 526 (holding South Carolina's registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"); *Hendrix*, 353 S.C. at 552, 579 S.E.2d at 325 (holding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."). Rather, the only argument set forth in this action is that the South Carolina Legislature enacted an incomplete statute and "should have" afforded individuals like the appellant a "more" meaningful opportunity to seek removal from the SORA registry. As discussed in Section I, *supra*, the duration of an individual's SORA registration requirement is purely a matter of legislative prerogative and whether or not the South Carolina Legislature "should" add additional language to the clear and unambiguous provisions of SORA is a matter for the Legislature that is not constitutionally subject to judicial review. *See Id.*

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

If a statute's language is plain, unambiguous, and conveys a clear meaning; the rules of statutory interpretation are not

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

Key Corporate Capital, 373 S.C. at 59, 644 S.E.2d at 675 (emphasis added).

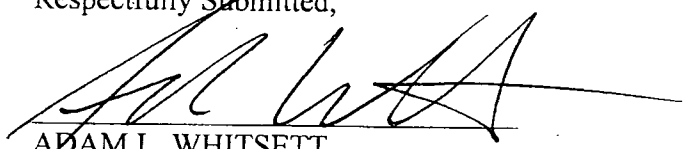
Moreover, the South Carolina Supreme Court has noted that “[e]quitable relief is generally available **only** where there is no adequate remedy at law” and that an “adequate legal remedy may be provided by statute.” Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123 (1989) (citing 27 Am.Jur. 2d, Equity, § 94 (1966)) (emphasis added). The Santee Cooper Court further noted that an “‘adequate’ remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.” *Id.* As the trial court correctly noted, this does not however mean that the person seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that some certain definitive statutory relief exists. Key Corporate Capital, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123. Furthermore, it is noteworthy that “[w]hen providing an equitable remedy, the court may not ignore statutes, rules, and other precedent.” Regions Bank, 394 S.C. at 254-55, 715 S.E.2d at 355 (citing Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)).

Here, there is no dispute that some certain definitive statutory relief exists in SORA because § 23-3-430(E), (F), (G) clearly set forth definitive means by which an individual can seek removal from the SORA registry. However, despite the existence of definitive statutory relief, the appellant, who has not even sought to avail himself of such relief, argues that because the South Carolina Legislature “should have” added more avenues for relief and the courts should step in and add language to an unambiguously worded constitutional statute. As discussed in Section I, *supra*, for any court to fashion an equitable remedy in the face of an unambiguously worded statute such as SORA would be a clear violation of the South Carolina Constitution’s mandate for the separation of powers. *See* S.C. Const. art. I, § 8. As such, the trial court correctly held that “equity follows the law” and that “the court’s equitable powers **must yield** in the face of an unambiguously worded statute.” Regions Bank, 394 S.C. at 254-55, 715 S.E.2d at 355; Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123 (emphasis added). Because SORA sets forth an adequate remedy for the appellant, and all sex offenders in South Carolina, the trial court properly held that equitable relief is not available and properly exercised his discretion in granting respondents judgment as a matter of law. Therefore, the trial court’s decision should be upheld and affirmed in its entirety.

CONCLUSION

In conclusion, based on the foregoing and the applicable laws of the State of South Carolina, this Court should uphold and affirm the trial court's decision in its entirety.

Respectfully Submitted,



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February 19, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

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

FEB 23 2016
SC Court of Appeals

Appellate Case No.: 2015-001076
Circuit Court Case No.: 2014-CP-43-00968

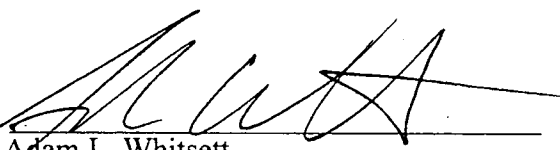
Kenneth W. Signor, ... Appellant,

v.

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

Rule 211(b) CERTIFICATION

I hereby certify that the Final Brief of Respondents complies with Rule 211(b),
SCACR and the August 13, 2007 Supreme Court Order regarding personal identifiers.

By: 
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February 19, 2016

**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 Court of Appeals**

Kenneth W. Signor, Appellant,

v.

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

Appellate Case No. 2015-001076

Appeal From Sumter County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2017-UP-022
Submitted November 1, 2016 – Filed January 11, 2017

AFFIRMED

Charles Thomas Brooks, III, of Law Office of Charles T.
Brooks, III, of Sumter, for Appellant.

Adam L. Whitsett, of the South Carolina Law
Enforcement Division, of Columbia, for Respondent,
Mark Keel.

Senior Assistant Attorney General T. Parkin C. Hunter,
of Columbia, for Respondents.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001) ("Upon review [of a motion for judgment on the pleadings,] the appellate tribunal applies the same standard of review that was implemented by the [circuit] court."); *Rosenthal v. Unarco Indus., Inc.*, 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982) ("A motion for Judgment on the Pleadings is proper where [the] pleadings entitle a party to judgment without proof, by disclosure of all facts, [or] where the pleadings present no issue of fact . . ."); *Edwards v. State Law Enft Div.*, 395 S.C. 571, 575, 720 S.E.2d 462, 464 (2011) ("Interpretation of a legislative enactment is a question of law."); *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("Questions of statutory interpretation are questions of law, which [this court is] free to decide without any deference to the [circuit court]."); *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) ("It is well-established that '[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.'" (alteration in original) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000))); *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992))); *Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 301 (Ct. App. 2005) ("The legislature's intent should be ascertained primarily from the plain language of the statute."); *id.* at 622, 611 S.E.2d at 302 ("The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose."); S.C. Code Ann. § 23-3-430(E)-(G) (2007 & Supp. 2016) (providing three avenues for removal from the sex offender registry: (1) notification to the State Law Enforcement Division "by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for" a registerable offense "was reversed, overturned, or vacated on appeal and a final judgment has been rendered"; (2) a pardon for the offense for which the person was required to register that specifically states its basis is a finding of not guilty; and (3) a grant of a habeas corpus petition ordering a new trial if a verdict of not guilty is returned at that trial or entered with the State's consent); *State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) ("[T]he General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes [T]he language [of section 23-3-400 (Supp. 2016)] indicates the General Assembly's intention to create a non-punitive act."); *Hendrix v. Taylor*, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) ("[T]he 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."); *Key Corp. Capital, Inc. v. Cty. of Beaufort*, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) ("[A] 'court's equitable powers must yield in the face of an unambiguously worded statute.'" (quoting *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989))); *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011) ("[E]quity follows the law").

AFFIRMED.¹

LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

82262

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

Case No: 2015-001076

RECEIVED
JAN 23 2017
SC Court of Appeals

Kenneth W. Signor.....Appellant

v.

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

PETITION FOR REHEARING

Appellant, Roberts, petitions the Court of Appeals to rehear/reconsider its ruling issued on January 11, 2017 in this matter based on, but not limited to, the following reasons;

A. The trial Court as well as the Court of Appeals have overlooked issues of material fact regarding remedies available for individuals for removal from the South Carolina Sexual Offender Registry, and;

B. The trial Court as well as the Court of Appeals have overlooked the fact that the Sex Offender Registry laws do not provide an adequate remedy and therefore equitable remedy should be made available, as appropriate.

For the reasons aforementioned the Court of Appeals should reconsider its decision.



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Sumter, SC
January 18, 2017

The South Carolina Court of Appeals

Kenneth W. Signor, Appellant,

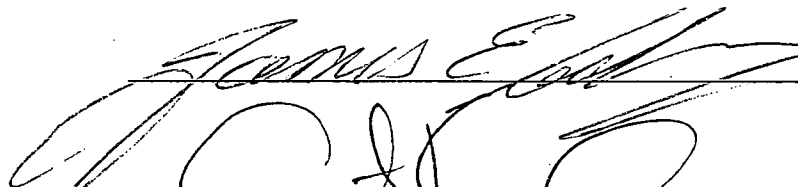
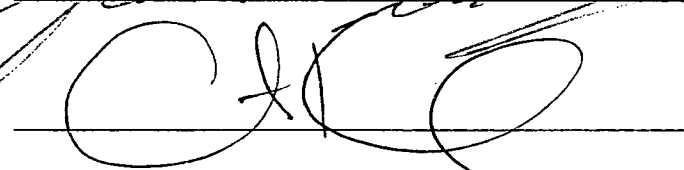
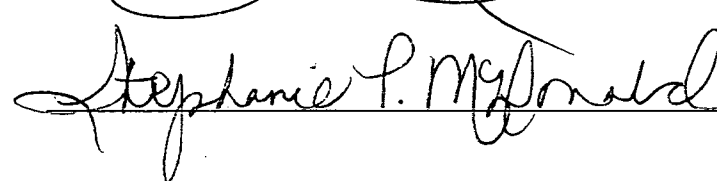
v.

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

Appellate Case No. 2015-001076

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Charles Thomas Brooks, III, Esquire
Adam L. Whitsett, Esquire

FILED

March 23, 2017

T. Parkin C. Hunter, Esquire
The Honorable Clifton Newman