

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No 2016-001700

Mark Anderko, Appellant,

vs.

South Carolina Law Enforcement Division Respondent.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

Question I

Did the trial court err in finding that Mark Anderko was required to continue to have his name on the out of state Sex Offender Registry when he was not a resident of the State of South Carolina?

The Respondent argues that the issue of Mark Anderko not being a resident of South Carolina was not preserved below. Br. of Respondent at 13. The record in this case suggests otherwise. At the hearing below counsel for Mr. Anderko emphasized to the lower court that Mr. Anderko was no longer a resident of South Carolina. Rec. on App. at 25, ll 9-20. The trial court then ruled that Mr. Anderko should continue to be listed on the South Carolina Sex Offender Registry as “residing out of state.” The lower Court held “In addition, SORA mandates lifetime registration for all sex offenders properly registered in South Carolina.” Rec. on App. at 61. Thus, the lower Court ruled that once Mr. Anderko was required to register in South Carolina the obligation continued for his lifetime regardless of where he was living. The lower Court was well aware Mr. Anderko was not residing in South Carolina. The issue was presented to the lower Court and the lower Court ruled upon it. As the statute only applies to a resident of South Carolina, even the obligation to register for a lifetime does not apply to a non-resident.

As noted in the opening brief, regardless of the policy concerns, the statute only applies to persons residing in South Carolina. It does not apply to person not residing in South Carolina. As Mr. Anderko is not residing here, the requirement to register does not apply to him. He should be removed from the “out of state” registry maintained by the

State Law Enforcement Division. The statute is plain and unambiguous that only persons residing in South Carolina come under the statute.

Question II

Did the lower court err in failing to require the State Law Enforcement Division (SLED) to remove the name of Mark Anderko from the out of state Sex Offender Registry when the State of Washington had, after a hearing, removed him from having to register as a sex offender in the State of Washington?

Both sides in this Appeal and the lower Court all agree that Mr. Anderko was required to register when he lived in South Carolina only because he was required to register in the State of Washington for his offense. Once the obligation to register in the State of Washington ended, his obligation to register in South Carolina, if he were residing here, also ended. S. C. Code § 23- 3-430 applies to this case only if there is an underlying obligation to register in the state where the crime occurred. That obligation no longer exists.

The Respondent argues that once a person is required to register in another state they are required to register here regardless of what the sister state may later do. Such is not the way the statute is worded. Had the legislature desired to achieve the result urged by Respondent, all that would have been required is for the legislature to say registration is required “if the person has ever been required to register in the state of the offense.” They did not.

Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003) is not applicable to this case. In *Hendrix* the defendant was in fact required to register in Colorado. At the time

Mr. Hendrix filed his action in South Carolina in 2000, just a few months after he entered his plea in Colorado, he was required to register in Colorado. Under his plea, he was required to register as a sex offender in Colorado. Thus, he was also required to register as a sex offender in South Carolina. Mr. Anderko agrees with this decision.

In *Hendrix*, the South Carolina Supreme Court said “We reserve for another day the question of whether Appellant’s right of equal protection would be offended if his petition to be removed from the Colorado registry is granted, yet he remains on the South Carolina registry for life.” *Id.* at 552 579 S.E.2d at 325. By this statement, the Court acknowledges that the case has no application to this case. Here Mr. Anderko has filed his petition after being relieved of his obligation to register in the State of Washington. *Hendrix* is not authority that the full faith and credit clause of the United States Constitution is not a bar to removing Mr. Anderko from being on the out of state registry in South Carolina.

Mr. Anderko contends that this Court need not reach an equal protection argument that Mr. Hendrix attempted to raise. All that is needed is for this Court to apply the plain wording of the statute and rule that because Mr. Anderko is no longer required to register in the State of Washington, the statute does not require him to register in South Carolina.

The Respondent also urges that Mr. Anderko is requiring South Carolina Court to apply a Washington Statute - RCW 9A.44.142. This is not correct. All Mr. Anderko urges is that this Court apply the South Carolina Statute which requires registration if a person is required to register in the state of conviction. As Mr. Anderko is no longer required to register in the state of conviction, he should no longer be required to register

in South Carolina.

The State also argues “All out-of-state listings provide notice to South Carolina residents that an individual who would be registering otherwise is not and **should not** be residing in this State.” Br. Of Resp. at 8 (emphasis in original). If the person is not residing in South Carolina it is not a notice that he should be registering. In addition, if the law is notice that he should not be residing in South Carolina then all sex offender nationally should be on the out-of-state listing.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the opening brief, this Court should reverse the decision of the lower Court and remand the matter to the lower court for a ruling that Mark Anderko be removed from the Sex Offender Registry for the State of South Carolina.

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