

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Honorable G. Thomas Cooper, Circuit Court Judge

RECEIVED

AUG 14 2017

S.C. SUPREME COURT

Case No: 2015-002387

David Johnson.....^{Petitioner}
~~Appellant~~

v.

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

APPENDIX

Charles T. Brooks, III
Attorney for Petitioner
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708

Other Counsel of Record:
SLED
Adam L. Whitsett, Esq.
Post Office Box 21398
Columbia, South Carolina 29221
Attorney for Respondent

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

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JUL 25 2016

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SC Court of Appeals

Case No: 2015-002387

David Johnson.....Appellant

v.

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

RECORD ON APPEAL

Charles T. Brooks, III
Post Office Box 3512
Sumter, South Carolina 29151
Telephone: (803) 418-5708
Facsimile: (803) 934-9618
Attorney for Appellant

SLED
Adam L. Whitsett, Esq.
Post Office Box 21398
Columbia, South Carolina 29221
Attorney for Respondent

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

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

David Johnson,

Plaintiff,

v.

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

Defendants.

RECORDED IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No.: 2015-CP-43-00033
2015 NOV -6 PM 2:55

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

**ORDER GRANTING SUMMARY
JUDGMENT**

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER
SOUTH CAROLINA

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

BACKGROUND

The Plaintiff was convicted of Criminal Sexual Conduct with a Minor 1st Degree in 1992. The Plaintiff was sentenced to twenty-six (26) years of incarceration for this offense. Upon the Plaintiff's release from incarceration, he was required and did in fact register as a sex offender pursuant to the South Carolina Sex Offender Registry Act, § 23-3-400 *et seq.* ("SORA"). See State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding that SORA "is not so punitive in purpose or effect as to constitute a criminal penalty" and that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"); Hazel v. State, 377 S.C.

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

60, 64, 659 S.E.2d 137, 139 (2008) (holding that “the applicable [Sex Offender Registry] statute is the statute that existed at the time of respondent’s release from prison.”). The Plaintiff filed this present action in January of 2015 seeking for this Court to fashion equitable personal relief for the Plaintiff. The Defendants Answered the Complaint and filed the present Motion for Summary Judgment.

STANDARD OF REVIEW

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

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

LAW/ANALYSIS

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

The Plaintiff was properly registered as a sex offender upon being released from incarceration in accordance with SORA. S.C. Code Ann. § 23-3-430(C)(4); State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina’s SORA “is not so punitive in purpose or effect as to constitute a criminal penalty” and that “the Act does not violate the *ex post facto* clauses of the state or federal constitutions”); Hazel v. State, 377 S.C. 60, 64, 659 S.E.2d 137, 139 (2008) (holding that “the applicable [SORA] statute is the statute that existed at

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

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

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

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

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

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

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

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

24

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

[w]e have held in the past that “[t]he penalty assessed for a particular offense is, except in the rarest of cases, “purely a matter of legislative prerogative,” and the legislature’s judgment will not be disturbed.” State v. Smith, 275 S.C. 164, 167, 268 S.E.2d 276, 277 (1980) (quoting Rummel v. Estelle, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980)). Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restriction. See Mistretta v. United States, 488 U.S. 361, ---, 109 S.Ct. 647, 650, 102 L.Ed.2d 714, 725-726 (1989), wherein the United States Supreme Court noted, *16 “Congress, of course, has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control.” (Citing United States v. Wiltberger, 18 U.S. (5 Wheat) 76, 5 L.Ed. 37 (1820); Ex Parte United States, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916)).

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990).⁴ Similarly, the duration of an individual’s sex offender registration pursuant to SORA is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the South Carolina Constitution and South Carolina law. S.C. Const. art. I, § 8; S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute).

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

⁴ It is noteworthy that sex offender registration has been consistently held not to be “punitive in purpose or effect as to constitute a criminal penalty.” State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

CS

seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that some certain definitive statutory relief exists. Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Ultimately, the Court in Santee Cooper noted that "the court's equitable powers must yield in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). The statutory language of SORA providing for lifetime registration in South Carolina is unambiguously worded. See S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life.").⁵ Accordingly, this Court's equitable powers must yield to the clear and unambiguous language of SORA and there is no legal or constitutional basis for the Plaintiff to be removed from the registry.

CONCLUSION

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

AND IT IS SO ORDERED.


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

COLUMBIA, South Carolina
NOVEMBER 3, 2015

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

STATE OF SOUTH CAROLINA,

COUNTY OF SUMTER

DAVID JOHNSON

vs.

MARK KEEL, DIRECTOR, SLED, ET AL

RECORDED IN THE COURT OF COMMON PLEAS
2015 JAN -8 PM 12: 52
JAMES G. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Defendant.

SUMMONS

FILE NO. 2014-CP-43-_____

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: December 12, 2014

Charles T. Starks III
Plaintiff/Attorney for Plaintiff

Address: 309 Broad Street, Sumter, SC 29150

RECORDED

2015 JAN -8 PM 12:52
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
JAMES C. CAMPBELL) THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER) CLERK OF COURT C/A NO.: 2014-CP-43-
SUMTER COUNTY, S.C.

DAVID JOHNSON,

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 Criminal Sexual Conduct w/ Minor(s) in 1992 in Clarendon County.
6. The Petitioner was sentenced to a term of incarceration of twenty-six (26) years for the charge of Criminal Sexual Conduct w/Minor(s) sentenced to be served with the South Carolina Department of Corrections.
7. That the Petitioner, after his release, was required to begin to Register as a Sex Offender in accordance with "Megan's Law" which was enacted subsequent to the release of the Petitioner from the Department of Corrections.
8. That, under §23-3-430(F), even if Petitioner was pardoned by the Governor, Petitioner "may not be removed" from the Registry unless the Attorney General notified a Defendant that the conviction "was reversed,

overturned, or vacated on appeal". §23-3-430(E), South Carolina Code of Laws, as amended.

9. That the Petitioner did not file a timely appeal of his conviction, nor did he timely file an application for Post-conviction Relief.
10. That, upon information and belief, Petitioner has suffered and continues to suffer grievous consequences as a result of being a registered sex offender, including:
 - a. Permanent ban from volunteering with most youth events, including any involving his own minor relatives (nieces, nephews, etc.) or any children he may father in the future.
 - b. Limited employment opportunities; and
 - c. Embarrassment and humiliation for himself and his relatives.

FOR A FIRST CAUSE OF ACTION

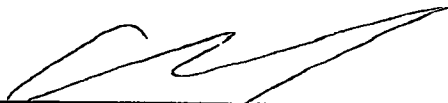
Equity

11. The above set forth facts are made part of this cause of action through incorporation by reference.
12. That the Petitioner is entitled to equitable personal relief in this matter.
13. That the Petitioner is informed and believed that equity is reserved for situations where there is no adequate remedy of law.
14. That the purpose of the Sex Offender Registry is to protect the public from those sex offenders who may re-offend and to aid Law Enforcement in solving sex crimes.

15. That the Petitioner is informed and believes the facts before this Court do not support a finding that he Petitioner is or ever was a predator or child molester.
16. That the Petitioner is informed and believes that the requirement of lifelong Sex Offender Registry is wildly disproportionate to the underlying conduct.
17. That the Petitioner is informed and believes that justice compels a remedy for this particular situation and that justice is served by granting the Petitioner personal relief.
18. That Petitioner is entitled to an Order of this Court directing Defendant Keel to remove his name from the South Carolina Sex Offender Registry immediately.

WHEREFORE, Petitioner prays this Court for an Order:

1. Declares the Petitioner has established his claim for relief by evidence satisfactory to this Court; and
2. Ordering the Defendants to remove the Petitioner from the Sex Offender Registry; and
3. For any such other and further relief as may be deemed appropriate by this Court.



CHARLES T. BROOKS, III
Attorney for the Petitioner
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708
cbrooks@ctbrooks.com

Dated: 12/13

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

RECORDED

2015 JAN -8 PM 12:53

VERIFICATION

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

David Johnson 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 15th day of December, 2014

[Signature]
Notary Public for South Carolina

My Commission expires:

6/2/2020

David G. Johnson
Signature of Petitioner

Signature of Petitioner

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

David Johnson,

Plaintiff,

v.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
) Case No.: 2015-CP-43-33

ANSWER

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.

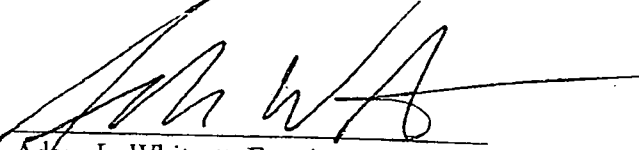
FOR A FOURTH DEFENSE
Proper Inclusion on the Registry

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,


Adam L. Whitsett, Esquire
General Counsel
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221-1398
Phone: (803) 896-0647
Fax: (803) 896-7588
Email: awhitsett@sled.sc.gov
S.C. Bar Number: 74888

Courtney E. Lowell, Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549
Phone: (803) 734-3177
Fax: (803) 734-33677
Email: clowell@scag.gov
S.C. Bar No.: 77175

Marcie Green, Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549
Phone: (803) 734-3759
Fax: (803) 734-3677
Email: mgreen@scag.gov
S.C. Bar No.: 101041

ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
JANUARY 27, 2015

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

David Johnson,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) IN THE THIRD JUDICIAL CIRCUIT
)

) Civil Action No. 2015-CP-43-00033
)

) **NOTICE OF MOTION AND**
) **MOTION FOR SUMMARY JUDGMENT**
)
)
)
)
)
)
)

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

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

BACKGROUND

The Plaintiff was convicted of criminal sexual conduct with a minor, first degree (Section 16-3-655(A)(1)) on or about September 24, 1992. He was sentenced to twenty-six (26) years. Compl. ¶¶5-6. Upon being released from incarceration, Plaintiff was required to register as a sex offender¹ pursuant to the South Carolina Sex Offender Registry Act ("SORA").

On or about January 8, 2015, Plaintiff David Johnson filed this "Petition for Declaratory Judgment" against Defendants Chief Keel, SLED and the State of South Carolina, regarding

¹ Plaintiff is classified as Tier III offender pursuant to the Sex Offender Registration and Notification Act (SORNA) based on his 1992 conviction and must register every ninety (90) days. S.C. Code Ann. 23-3-460(B).

certain provisions governing the Registry. The Plaintiff contends that “equity is reserved for situations where there is no adequate remedy at law;” “the facts before this Court do not support a finding that he is or ever was a predator or child molester;” the lifelong Registry requirement is wildly disproportionate to the underlying conduct;” “justice compels a remedy...and that justice is served by granting the Petitioner personal relief;” and “Petitioner is entitled to an Order ... remov[ing] his name from the South Carolina Sex Offender Registry immediately.” Compl. ¶¶13, 15-18.

STANDARD OF REVIEW

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

ARGUMENT

“A declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue.” *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009). “Whether an individual must be placed on the sex offender registry is a question of law.” *Lozada v. S.C. Law Enforcement Div.*, 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011).

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

Equitable relief sought by the Plaintiff in this matter is not simply available. The South Carolina Supreme Court has noted that “[e]quitable relief is generally available *only* where there is no adequate remedy at law” and that an “adequate legal remedy may be provided by statute.” *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (emphasis added). The Court further noted that an “‘adequate’ remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.” *Id* at 621. This does not, however, mean that the person seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that some certain definitive statutory relief exists. *Key Corp. Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 644 S.E.2d 675 (2007); *Santee Cooper Resort, Inc.*, 298 S.C. at 185, 379 S.E.2d at 123.

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

Ultimately, the Supreme Court in *Santee Cooper* noted that “the court’s equitable powers must yield in the face of an unambiguously worded statute.” 298 S.C. at 185, 379 S.E.2d at 123 (emphasis added).

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

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

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

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

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

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

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

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

The Plaintiff asserts that he "is entitled to equitable relief in this matter" and that "equity is reserved for situations where there is no adequate remedy at law." Compl. ¶¶12-13. However, the law in South Carolina is clear; the Plaintiff does not meet any of these statutory criteria in § 23-3-430 such that he is entitled to removal. In fact, there is no indication that he have even attempted to avail himself of any of the statutory avenues for removal. Since the Plaintiff does

not qualify for removal, he is simply asking this Court to legislate and create a remedy for him that does not exist in the statute. Therefore, this requested relief requires this Court to impermissibly act as a superlegislature and to add language to an unchallenged constitutional and unambiguously worded statute, which would violate the South Carolina Constitution. Essentially the Plaintiff argues that if a statute does not include him, he is entitled to equitable relief to obtain indirectly what he cannot obtain directly.

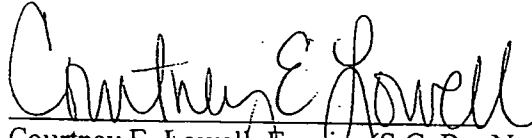
Since there is no legal basis for the Plaintiff to be removed from the Registry, the Plaintiff is not entitled to removal through equitable relief.

CONCLUSION

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

[Signature Page Follows]

Respectfully submitted,



Courtney E. Lowell, Esquire (S.C. Bar No.: 77175)

Marcie E. Greene, Esquire (S.C. Bar No.: 101041)

Assistant Attorneys General

Office of the Attorney General

State of South Carolina

Post Office Box 11549

Columbia, South Carolina 29211-1549

Phone: 803.734.3177

803.734.3759

Fax: 803.734.3677

Email: clowell@scag.gov

mgreene@scag.gov

Adam L. Whitsett, Esquire (S.C. Bar No.: 74888)

General Counsel

South Carolina Law Enforcement Division

Post Office Box 21398

Columbia, South Carolina 29221-1398

Phone: 803.896.0647

Fax: 803.896.7588

Email: awhitsett@sled.sc.gov

ATTORNEYS FOR CHIEF KEEL AND THE STATE OF SOUTH
CAROLINA

COLUMBIA, SOUTH CAROLINA
JUNE 19, 2015

State of South Carolina)
County of Sumter)

In The Court of Common Pleas
Third Judicial Circuit
2015-CP-43-0033

David Johnson,

Plaintiff,

vs.

SLED and The State of South
Carolina,

Defendants.

Transcript of Record

October 26, 2015
Sumter, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Judge

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

Charles T. Brooks, III, Esquire
Attorney for the Plaintiff

Adam L. Whitsett, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

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Certificate Page	16

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
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No exhibits introduced.

1 MR. WHITSETT: Your Honor, if I may approach? I've
2 got some materials to hand up. Mr. Brooks and I have
3 numerous of these cases around the state, so it's materials
4 that he has seen many times before.

5 THE COURT: All right. Just one minute, please.

6 (A PAUSE.)

7 THE COURT: All right, you're Mr. Law?

8 MR. WHITSETT: Adam Whitsett, general counsel for
9 SLED.

10 THE COURT: Oh, you're from SLED, okay.

11 MR. WHITSETT: Yes, Your Honor.

12 THE COURT: Whitsett.

13 MR. WHITSETT: I'm here on behalf of all the, all the
14 defendants.

15 THE COURT: Tell me what's this case about.

16 MR. WHITSETT: Your Honor, this is a sex offender
17 registry case in which the plaintiff, Mr. Johnson, has
18 requested to come off the South Carolina Sex Offender
19 Registry basically outside the statutory avenues for
20 relief. And so he's asking for this court to basically
21 exercise equitable jurisdiction and to create an avenue of
22 relief that we don't feel exists in the law. And so we
23 have filed a summary judgment motion in that regard, and
24 I'll be happy to sort of flesh through that argument.

25 THE COURT: Yes. Hasn't there been some recent case

1 law on that?

2 MR. WHITSETT: Your Honor, there was a case that went
3 up to the Supreme Court, the *Johnson* case. The Court of
4 Appeals ruled that this was -- that there was no equitable
5 relief available, but the Supreme Court reversed that on
6 issue preservation grounds. And I've handed both of those
7 opinions up because I do think they are important for the
8 court.

9 We have litigated this issue numerous times in the
10 circuit courts around the state. I believe we had two in
11 Florence -- one in Florence, two in Sumter, and two in
12 Richland County so far, and I've provided the court with
13 all of those rulings. So far we've had favorable rulings
14 to our position on all of those. They are currently on
15 appeal, all of them that are at that point. So, we have
16 argued this as recently as, I think, last week or week
17 before in Richland County. But there isn't -- I mean, as
18 far as your answer, there's not a specific Supreme Court
19 opinion on this specific issue.

20 THE COURT: No. I knew it, knew it wasn't on that
21 issue, but I know, I knew I read something two years ago
22 maybe.

23 MR. WHITSETT: That's correct. That's correct, Your
24 Honor, and we'll be happy -- we'll flesh through that
25 because I do, I do think that ---

1 THE COURT: Go ahead.

2 MR. BROOKS: --- that's important.

3 THE COURT: Start fleshing.

4 MR. WHITSETT: Thank you, Your Honor. May it please
5 the court? Here on the defendants' motion for summary
6 judgement because we do believe that the defendants are
7 entitled to a judgment as a matter of law and, and that
8 there's just no reason to get into a full hearing on this.

9 The relief requested in this action is for this court
10 to basically go outside the statutory avenues of relief and
11 to essentially rewrite a constitutionally clear and
12 unambiguous statute, and we think that that in and of
13 itself is contrary to the clear and unambiguous law. It is
14 a violation of the separation of powers, and that it's just
15 not relief that's available as a matter of law. What the
16 court -- what the plaintiff's asking this court to do is
17 essentially just rewrite a constitutional, clear, and
18 unambiguous statute.

19 THE COURT: You have told me that.

20 MR. WHITSETT: And, you know, obviously the South
21 Carolina constitution mandates the separation of powers.
22 The legislature writes the laws, and we feel this very
23 strongly. Any change to the statutes must come from the
24 legislature. I mean, we have a constitutional statute
25 that's been constitutionally applied, and we just feel that

1 there's no equitable relief outside of that -- the -- you
2 know, outside the specific statutory framework that exists.

3 As far as the clear and unambiguous language, the
4 South Carolina registry statutes say that a person must
5 register for life unless they meet the specific criteria
6 set forth in the statute, which is to have their charge
7 overturned or vacated, to be granted a pardon based on a
8 finding of not guilty, or to get a new trial or habeas
9 corpus relief. Legislature said those are the statutory
10 avenues that someone who was properly registered can use to
11 come off, but absent any of those, there's simply no avenue
12 to come off, and registry is for life.

13 The plaintiff in this case is properly registered. He
14 was convicted of a criminal sexual conduct with a minor in
15 the first degree in 1992. Actually got a twenty-six year
16 sentence for that, but was properly placed on the registry
17 upon his release from incarceration. So, he's properly on
18 the registry for a clear mandatory registry offense --
19 criminal sexual conduct with a minor in the first degree --
20 and has not even sought to avail himself of the statutory
21 avenues for relief. He's simply just asking this court to
22 go outside the statutes, to go outside the framework, and
23 to grant him relief that just does not exist in the
24 statutory framework or does not exist in South Carolina's
25 statutes.

1 He does that on a theory of equity, but we feel and
2 the case law in this state is that the courts' equitable
3 powers must yield in the face of a clear and unambiguous
4 statute. Equity follows the law and that courts can't
5 simply disregard statutes when contemplating equitable
6 relief.

7 The best analogy that I can come up with on this
8 specific issue is, is the statutorily set parameters of a
9 sentence. If the legislature says that a sentence for
10 kidnapping is between ten years and thirty years, courts
11 just don't have the ability to go below that or above that,
12 and that's essentially what we've got here. We've got very
13 clear, very defined avenues of relief, and we feel that it
14 would be error for court to just go outside those and to
15 create a remedy that does not exist, a remedy that would be
16 in direct contravention of the statutes.

17 South Carolina Supreme Court said in the *Key Corporate*
18 *Capital* case that's cited in our materials:

19 It's beyond the court's power to effect the
20 change in the statutes enacted by the legislature,
21 and that courts do not sit as super legislatures
22 to second-guess the wisdom or the folly of the
23 General Assembly.

24 There are just certain things that are in the
25 legislative purview, and we feel that this is one of them:

1 that the avenues of relief from the Sex Offender Registry
2 are there.

3 As this court sort of noted, I do want to touch on the
4 *Johnson* case because the Court of Appeals in *Johnson* -- and
5 I provided that -- is the only appellate court that has
6 actually analyzed that specific issue. And what the court
7 said there is very similar to what I've argued here today.
8 Equity follows the law within that -- when equitable -- is
9 only available if there's no adequate remedy at law, and an
10 adequate remedy can't be provided by a statute, but that
11 court's equitable powers must yield in the face of clear,
12 unambiguous statutes.

13 They specifically said as it relates -- that case very
14 similar to this case procedurally. Mr. Johnson had not
15 even attempted any of the statutory avenues. Just sort of
16 said, well, none of those would apply to me. So, I need
17 you to grant me new relief, and the Court of Appeals said
18 there are several statutory avenues of relief. He simply
19 doesn't qualify for them, but that does not allow a court
20 to go outside those statutorily. They said:

21 General Assembly's enacted an unambiguously-
22 worded statute that sets forth the legal remedies
23 available to an individual on the registry.
24 Because the Offender Registry Statute provides an
25 adequate remedy, it was error for the trial court

1 in that case to grant him relief.

2 Now, the Supreme Court did reverse that, but they
3 reversed it solely on issue preservations grounds. That
4 specific issue had not been argued at the trial court
5 level.

6 Johnson was somewhat of an interesting case below. It
7 was a constitutional challenge to the registry itself. The
8 complaint itself listed two constitutional challenge --
9 equal protection and due process -- and didn't mention or
10 address this equitable argument, and Judge Seals in that
11 case denied the constitutional relief. Ruled unequivocally
12 that registry is constitutional and was applied
13 constitutionally to Mr. Johnson. However, he sort of took
14 it a step and ruled, even though it had not been argued or
15 put forth before him. He just granted equitable relief.
16 Just said, well, I'm just going to give you this equitable
17 personal relief.

18 The Attorney General's Office at that time filed a
19 motion for reconsideration, arguing equitable defenses, but
20 didn't specifically challenge the equitable jurisdiction,
21 didn't specifically challenge the heart of that issue. It
22 was argued and briefed fully at the Court of Appeals, and
23 they issued the ruling. But when it got to the Supreme
24 Court, they went back and realized that that specific issue
25 was not addressed at the trial court. So, they said it was

1 error for the Court of Appeals to address the merits and
2 reversed it on, quote, preservation grounds.

3 Now, we think that opinion means exactly what it says.
4 I know opposing counsel would have that opinion mean that
5 this is a possible avenue for trial courts to use and that
6 despite the Supreme Court saying it's on preservation, that
7 that -- somehow the Court of Appeals analysis was somehow
8 wrong. I mean, I think we read it for what it says: that
9 it was not properly preserved. But I think the analysis
10 done by the Court of Appeals was grounded in law, was
11 grounded in sort of the similar arguments and everything
12 that attaches here today.

13 Santee-Cooper case quoted throughout the Court of
14 Appeals opinion is good law. The *Key Corporate Capital*
15 case, that wasn't discussed there but was something the
16 trial court in *Johnson* ruled. That, that -- the *Key*
17 *Corporate Capital* case was actually reversed in the -- by
18 the *Key Corporate Capital* case that I cite throughout all
19 my materials saying the courts cannot act as super
20 legislatures.

21 So, we say that -- not that Court of Appeals is, is
22 binding authority, but we certainly think that it is the
23 only appellate decision to analyze this issue. And we
24 think that decision is grounded in the law, and that that
25 is the appropriate decision on this case. Put simply, the

1 legislature has enacted clear and unambiguous statute.

2 THE COURT: Let me hear from Mr. ---

3 MR. WHITSETT: Thank you, Your Honor.

4 THE COURT: --- Brooks.

5 MR. BROOKS: Please the court, Judge.

6 THE COURT: You're sure it's clear and unambiguous?

7 MR. BROOKS: Our position is that it's not complete.

8 That's what our position has been. When you have
9 individuals that fall into a particular class that -- and
10 we use Mr. Johnson, for instance. He was convicted prior
11 to the registry ever being in existence and now has this
12 scarlet letter for the rest of his life with no real remedy
13 to get off.

14 I do think that I have a little bit of a difference in
15 regards to Mr. Johnson's procedure. While he was in
16 prison, I think he availed himself of post-conviction
17 relief, and that would have been done back in the mid-90s.

18 But back to as it related to the statute, the statute
19 pretty much says that you've either got to file a PCR, show
20 newly-discovered evidence, or you've got to get a habeas
21 corpus. Well, you can't get a habeas corpus unless you're
22 in custody. He's not in custody. Getting a pardon, it's
23 not a regular pardon, but a pardon that specifically says
24 you didn't do it. Well, that's like retrying the whole
25 case again fifteen, twenty years later. And a PCR, if he's

1 already had it before, the Attorney General will argue it's
2 successive. If he hadn't filed a PCR, then they're going
3 to say statute of limitations. And clearly you or any
4 other judge would grant the relief. So, my point is the
5 statute doesn't deal with this particular class of
6 individuals: somebody who has done something or has been
7 adjudicated as doing something prior to the registry being
8 in existence.

9 Now, the reason that the *Johnson* case is really
10 important is because even though the Court of Appeals does
11 this analytical recitation as to why the registry is sound
12 constitutionally, the Supreme Court when they overturned it
13 -- for whatever reason they overturned it -- basically said
14 that the Court of Appeals case is no longer the law in this
15 state. So, what we've got now is we really don't have any
16 law dealing with this issue. Whether they -- whether the
17 Supreme Court chose to overturn it for issue preservation
18 or anything else, the point is the Supreme Court went in
19 and overturned it.

20 And that brings me to my argument about should the
21 judiciary branch yield to the legislative branch. Well,
22 the Supreme Court has obviously, by looking at the *Johnson*
23 case, they have jumped in. Issued an opinion that is
24 different than what the statute says. They've also done
25 that before as it relates to the GPS monitoring. The

1 statute clearly says that a person who now must have the
2 ankle monitor on, said they had to stay on for the rest of
3 their life by being on the registry. But the Supreme Court
4 had a case recently that indicated didn't have to do that.
5 So, the thing about -- this, this argument about the
6 judiciary not jumping into where we think is in the purview
7 of the legislature, they've done it before and they clearly
8 did it as it relates to the sexual registry issues in this
9 case.

10 So, here we got a situation where there is no law.
11 So, what we're asking for is to basically have a hearing as
12 it relates to this individual to determine is it equitable
13 for him to stay on the registry. We've got, as a result of
14 the *Johnson* case, as a result of the Supreme Court
15 overturning the Court of Appeals ruling, getting left Judge
16 Seals's order as the law in that case that basically said
17 that equity can be an issue as it relates to whether or not
18 a person should or should not remain on the registry. And
19 that's the way we brought this case to -- along those lines
20 to say, well, if it worked for Mr. Johnson, let's allow Mr.
21 David Johnson to have a hearing in regards to that.

22 THE COURT: All right. I understand. Anything
23 further from either party?

24 MR. WHITSETT: I mean, I, I can certainly distinguish
25 GPS monitoring, but I, I -- I mean, that's a very separate

1 case dealing with a very separate issue. I don't believe
2 that's applicable today, and I do -- would close. I mean,
3 the Supreme Court precedent in this state is that the sex
4 offender registry in an of itself is nonpunitive. It's not
5 punishment and so that there's, there's no ---

6 THE COURT: Nobody that wrote it was ever on it
7 either.

8 MR. WHITSETT: I concede that, Your Honor, but I do
9 believe that is the law in the state. It's not -- it's a
10 nonpunitive, you know, regulatory function, and so I think
11 to ---

12 THE COURT: Does the fact that, as Mr. Brooks said,
13 this plaintiff was convicted prior to the establishment of
14 the registry, is that of any significance?

15 MR. WHITSETT: No, Your Honor. The court has ruled
16 on, on numerous occasion it -- that because it is
17 nonpunitive, it applies retroactively. In the *Hendricks*
18 *vs. Taylor*, they actually said that the registry that
19 applies to an individual is the one that applies when that
20 individual gets out of jail. And with this conviction in
21 1992 and a twenty-six year sentence, the registry that
22 would have applied to him was the registry when he got out.

23 And so there are numerous cases, I believe. *Hendricks*
24 *vs. Taylor*, *State vs. Walls*, I mean, there's a handful of
25 cases that say that there is no *ex post facto* violation.

1 That that -- that the registry applies retroactively, and
2 so -- I mean, there's just no -- I mean, there is the issue
3 with that, Your Honor.

4 THE COURT: All right, let me have proposed orders in
5 ten days.

6 MR. WHITSETT: Thank you, Judge.

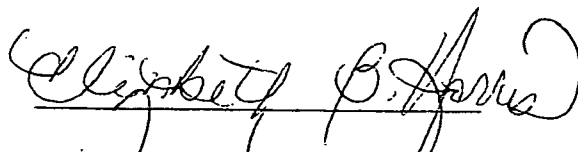
7 MR. BROOKS: Thank you, Your Honor.

8 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON
THE 26TH DAY OF OCTOBER, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

DECEMBER 12TH, 2015

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
RECORDED IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-43-33
DEC 22 4:11:39 PM
JANIS S. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

DAVID JOHNSON
PETITIONER

VS

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

AFFIDAVIT OF THOMAS V. MARTIN, M.D.

21 DEC 22 10:10 AM
NOT RECORDED
CANCELLING

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

Being duly sworn I do swear and affirm the following:

- 1) Mr. David Johnson is a 57 year old unemployed, never married African American male from Paxville, South Carolina. Mr. Johnson was arrested in 1991 on the charge of Criminal Sexual Conduct 1st Degree with a Minor, was sentenced to the South Carolina Department of Corrections (SCDC) for 26 years, and was released in 2005 after serving 14 years to the SC Department of Pardon, Probation, and Parole Services (SCDPPPS) where he committed no violations. Mr. Johnson has been required by the State of South Carolina to register with the SC Sex Offender Registry and has never failed to comply. He is now petitioning to have this requirement removed and be taken off the lifetime registry.
- 2) This Examiner's assessment of Mr. Johnson's case and petition included a two and one half hour interview with Mr. Johnson, consultation with his attorney and a review of his criminal record.
- 3) Mr. Johnson described a torrid and dysfunctional relationship with his girlfriend's family that was fraught with malignant personality discord. He claimed that disgruntled relatives of his girlfriend repeatedly solicited funds from Mr. Johnson. His refusal to support his girlfriend's family led to their ultimate accusation of his sexual offense. Mr. Johnson consistently denied any wrongdoing and went to trial on September 24, 1992 in Clarendon County, SC. The jury found Mr. Johnson guilty of the sexual offense and he was sentenced to 26 years in the South Carolina Department of Corrections. He served 14 years, committed no infractions, and was released in 2005. In Sumter, he actively participated and graduated from a sexual offending treatment program.

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
42

group. Since his release from the Department of Corrections, Mr. Johnson has remained a law-abiding citizen, has committed no criminal acts, and has attempted to reintegrate into his community. He has established a new and healthier intimate relationship and has made futile efforts to return to the workforce.

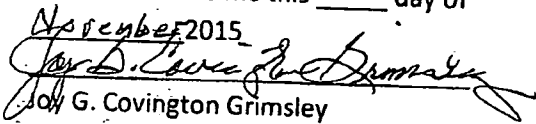
- 4) Diagnostically, Mr. Johnson does not meet the criteria for a major mental illness, nor a sexual perversion disorder (Paraphilia).
- 5) In conclusion, it is not this Examiner's position to opine whether Mr. Johnson did, or did not, commit a sexual offense. Still after 24 years, he has maintained a laudable demeanor, and has made valiant efforts to reintegrate into the community as a productive citizen. Mr. Johnson consistently demonstrates appropriate behavior in his church and with his girlfriend.
- 6) It is pertinent to note that Mr. Johnson's quarterly re-registry as a sexual offender has only proven to be detrimental to his sense of integrity, is preventing him from forming healthy relationships with friends and restricts his travel. He feels haunted by the fact that his name remains on the registry and when friends have incidentally seen his name, many have become inquisitive, guarded, or avoidant.
- 7) It is the opinion of this Examiner to a reasonable degree of medical and psychiatric certainty that Mr. Johnson poses a very low risk to sexually reoffend. Mr. Johnson does not need any deterrent to prevent him from sexual acting out behavior. The SC Sex Offender Registry serves to assist law enforcement and the community in monitoring those dangerous individuals who do not manage their aberrant sexual behaviors and fail to follow our social and community mores. Mr. Johnson does not meet these criteria, nor does he require such monitoring.

Further affiant sayeth not.


Thomas V. Martin, M.D.

Sworn to before me this 30th day of

November 2015


Joy G. Covington Grimsley

A Notary Public for South Carolina

My Commission Expires: 12-15-2017

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

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

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.

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

Furthermore, for a Court to fashion an equitable remedy in the face of an unambiguously worded 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 duration of sex offender registration is a matter of public policy that is solely in the province of the South Carolina Legislature. As such, any attempt by any court to invade the Legislature’s exclusive province is a violation of the separation of powers and is unconstitutional. *Id.* In addition, the South Carolina Supreme Court has specifically held that

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

Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675 (2007) (emphasis added). This entire action seeks for this Court to impermissibly and unconstitutionally act as a “superlegislature” and to add language to an unambiguously worded constitutional statute. As such, this request must fail and the Defendants are entitled to summary judgment in this matter.

This situation is comparable to legislatively mandated sentences for criminal offenses, whether minimums or maximums. With regard to sentencing for an offense that has a mandatory sentence range, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals outside the statutorily set amounts. However, these statutory ranges, and more specifically the statutorily mandated minimum sentences are, and have been consistently upheld as being, lawful. See State v. De La Cruz, 302 S.C. 13, 393 S.E.2d 184 (1990); State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001); State v. Johnson, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). In fact, the South Carolina Supreme Court conclusively resolved this issue in 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).² Similarly, the duration of an individual's sex offender registration is **purely a matter of legislative prerogative** and there is no judicial discretion over this duration without violating the South Carolina Constitution and South Carolina law. S.C. Const. art. I, § 8; S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute).

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

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

OTHER CIRCUIT COURT RULINGS

While not binding authority in this action, the Defendants wish to notify this Court of several recent circuit court rulings on the issue at bar.³

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

On May 20, 2015, The Honorable Thomas A. Russo granted a Judgment on the Pleadings to these same Defendants in a case that is identical to this case.⁴ Specifically, Judge Russo ruled that “there is simply no equitable remedy or equitable jurisdiction application to this matter and the Defendants are entitled to judgment on the pleadings. Furthermore, I find and conclude that for this court to act as a ‘superlegislature’ and to unilaterally add language to an unchallenged, unambiguously worded statute would violate South Carolina law and the South Carolina Constitution.” Melvin T. Roberts v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, Civil Action No(s): 2014-CP-21-01973, May 20, 2015, pg. 7 (unpublished). A copy of this order is attached hereto, incorporated by reference herein, and identified as Attachment 2.

³ Upon information and belief, all of these orders have been appealed and are currently awaiting adjudication at the South Carolina Court of Appeals.

⁴ Judge Russo signed this Order on April 16, 2015; however, it was not filed until May 20, 2015.

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

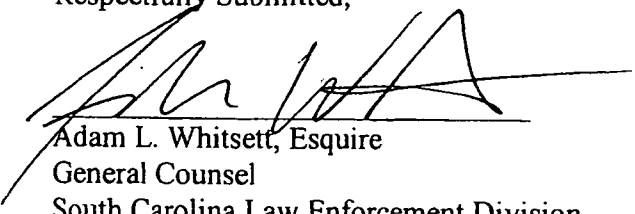
On October 11, 2015, The Honorable Tanya Gee ruled that the constitutional application of the clear and unambiguous provisions of the Sex Offender Registry Act is not a "wrong cognizable in South Carolina law and that her equitable powers must yield in the face of South Carolina's clear and unambiguous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

CONCLUSION

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

[SIGNATURE PAGE ATTACHED]

Respectfully Submitted,



Adam L. Whitsett, Esquire

General Counsel

South Carolina Law Enforcement Division

Post Office Box 21398

Columbia, South Carolina 29221-1398

Phone: (803) 896-0647

Fax: (803) 896-7588

Email: awhitsett@sled.sc.gov

S.C. Bar Number: 74888

Courtney E. Lowell, Esquire

Assistant Attorney General

Office of the Attorney General

State of South Carolina

Post Office Box 11549

Columbia, SC 29211-1549

Phone: (803) 734-3177

Fax: (803) 734-3677

Email: clowell@scag.gov

S.C. Bar No.: 77175

Marcie Green, Esquire

Assistant Attorney General

Office of the Attorney General

State of South Carolina

Post Office Box 11549

Columbia, SC 29211-1549

Phone: (803) 734-3759

Fax: (803) 734-3677

Email: mgreen@scag.gov

S.C. Bar No.: 101041

ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
OCTOBER 23, 2015

ATTACHMENT 1

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Kenneth W. Signor,

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
OF ORIGINAL FILE

Barbara Phelan
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

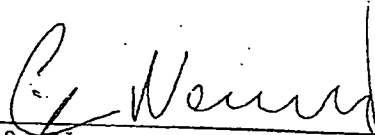
Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. For this Court to act as a "superlegislature" and to unilaterally

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

ATTACHMENT 2

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO: 2014 CP-21-01973

Melvin T. Roberts

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

2015 MAR 20 11:15:53

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Adam L. Whitsett, Esquire

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

NOTIFIED: A TRUE COPY
Christie Keel, Clerk
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

601

For Clerk of Court Office Use Only

This judgment was entered on the 20 day of May, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of May, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

C. T. Brooks III
P.O. Box 3912
Sumter, S.C. 29151
ATTORNEY(S) FOR THE PLAINTIFF(S)

A. L. Whitsett
P.O. Box 21398
Columbia, SC 29221-1398
ATTORNEY(S) FOR THE DEFENDANT(S)
Connie Reel-Shearin
CLERK OF COURT
C.E. Lowell, P.O. Box 11549
Columbia, SC 29211

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Melvin T. Roberts,

Plaintiff/Petitioner,

vs.

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

Defendants/Respondents.

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
) Civil Action No. 2014-CP-21-01973

ORDER GRANTING
JUDGMENT ON THE
PLEADINGS

2015 MAY 20 PM 1:53
CLERK OF COURT
FLORENCE COUNTY, S.C.

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

BACKGROUND

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

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

CERTIFIED: A TRUE COPY
Clerk of Court
FLORENCE COUNTY, S.C.

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

STANDARD OF REVIEW

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12, 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 present merely an immaterial issue." Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982) *citing* Wooten v. Std. Life and Casualty Ins. Co., 239 S.C. 243, 122 S.E.2d 637 (1961).

LAW/ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

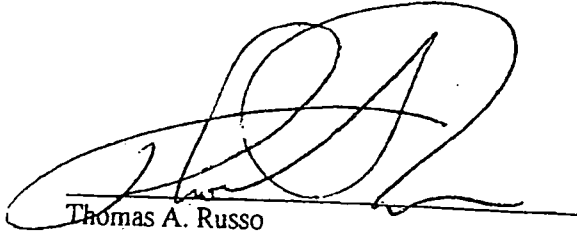
State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001). Similarly, I find and conclude that the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated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

CONCLUSION

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

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

AND IT IS SO ORDERED.



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

Lexington, South Carolina
4-16, 2015

2015 MAY 20 PM 1:53
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED TRUE COPY
Charles K. J. [Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

ATTACHMENT 3

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Marty Lee Barnes,

Petitioner,

vs.

The State of South Carolina,

Respondent.

RECORDED IN THE COURT OF COMMON PLEAS
2015 JUN 16 PM 12:44 TWELFTH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-43-00535

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

**ORDER GRANTING MOTION
TO SET ASIDE JUDGMENT**

DEPUTY CLERK OF COURT
OF SUMTER COUNTY

BY: JAMES C. CAMPBELL, II
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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

BACKGROUND

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

¹ The Defendant is additionally represented in this action by Assistant Attorney General Marcie Greene.

² The Petitioner was also convicted of Assault and Battery with Intent to Kill, Assault and Battery with Intent to Kill 2nd, and Carrying a Concealed Weapon at that time, but those convictions do not bear on this action.

During the Petitioner's incarceration, the South Carolina Sex Offender Registry Act³ was passed. In or about 2002, the Petitioner was paroled and released from incarceration and was required to register as a sex offender at that time. See S.C. Code Ann. § 23-3-430(C)(16) (Supp. 2000). The Petitioner's parole was revoked in 2008 and the Petitioner was returned to incarceration where he currently remains.

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

DISCUSSION

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

³ S.C. Code § 23-3-400 *et seq.*

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

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

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

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

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

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

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

Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007).

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

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

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

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

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

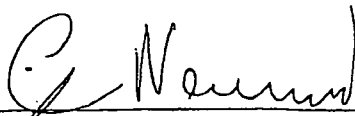
CONCLUSION

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

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

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

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

Columbia, South Carolina
June 8, 2015

ATTACHMENT 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4003001

Edward L Green

Mark Keel

PLAINTIFF(S)

South Carolina Law Enforcement

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 14 October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Charles Thomas Brooks III

Courtney Edwards Lowell

Adam L Whitsett

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeannette W. McBride

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Edward L. Green,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.: 2015-CP-40-~~00590~~

3001

**ORDER GRANTING SUMMARY
JUDGMENT**

2015 OCT 13 PM 12:48
CLERK OF COURT
C.C.P. 5th Cir.
JANUARY 13, 2016

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

BACKGROUND

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

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

SCANNED

1064 JAB

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

STANDARD OF REVIEW

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

LAW/ANALYSIS

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

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

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

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

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

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

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

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

SCANNED

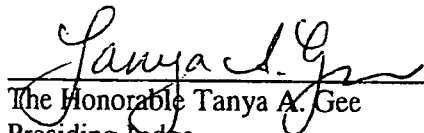
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Moreover, "[i]f a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." State v.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

CONCLUSION

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

AND IT IS SO ORDERED.



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

Columbia, South Carolina
October 2, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appellate Case No. 2015-002387

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED

AUG 22 2016

SC Court of Appeals

David Johnson,

Appellant,

v.

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

Respondents.

FINAL BRIEF OF APPELLANT

Charles T. Brooks, III, S.C. Bar # 11762
Attorney for Appellant
THE BROOKS LAW OFFICE, LLC
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708
803-934-9618 [Facsimile]
cbrooks@ctbrooks.com

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- 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.**

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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 January 8, 2015, 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. pp 7-12) Respondents filed an answer generally denying the allegations in Appellant's Petition for Declaratory Judgment (R. pp 13-16). 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 17-26)

A hearing was held on October 26, 2015, on the Respondents'/Defendants' Motion for Judgment on the Pleadings before the Honorable G. Thomas Cooper, Jr. 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. (R. pp 1-6)
This appeal follows.

ARGUMENT

Summary judgment is defined by Rule 12(c), SCRPC: 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), SCRPC: 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.* (R. pp. 17-26)

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. (R. p 20)

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 none of the statutory provisions for removal apply to Appellant's situation because he was convicted of a qualifying offense and served his time. He has subsequently registered and complied with all of the registry provisions since his release from incarceration. The statutory provisions specify removal is possible in limited situations such as the reversal of a conviction, a specific pardon of not guilty, or exoneration through a new trial or a writ of habeas corpus; none

of which apply to Appellant's situation. The statutory provisions do not allow for any type of review for removal especially where there is no evidence of the likelihood of re-offense. Therefore, in the case where a person was convicted and served time and has no grounds to avail him or herself of the statutory grounds for removal from the registry, no adequate and complete remedy exists at law and equitable relief would be appropriate.

After considering the arguments of the parties, the Trial Court concluded that there was no genuine issue of material fact to suggest that Appellant/Plaintiff meets any of the statutory grounds for removal from South Carolina's Sex Offender Registry law, which mandates lifetime registration. Accordingly, the Trial Court concluded that the Respondents/Defendants were entitled to judgment as a matter of law. (R. p 3) 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 the statutory provisions are not a complete and adequate remedy at law, especially when the statutory provision do not include any review mechanisms for lifelong registration, therefore equitable relief would be appropriate.

While the Trial Court concluded that the Registry laws are unambiguous as to the requirement for registration for life, (R. p 5) 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. As in the case here, if the statutory provisions for removal are limited in nature, then the provisions do not provide a complete and adequate remedy at law and equity is and should be available for relief. 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), SCRPC: 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), SCRPC: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to

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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 the provisions only offer limited situations in which a person can petition for removal from the register and an entire class of people like Appellant do not have adequate relief under the law for removal when no provisions exists when a person has been convicted, served the sentence and registers in compliance with the law for a certain period of time, and has no remedy for review for lifetime registration. 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. (R. pp 1-6) 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.

Also, the Trial Court's Order notes that Appellant/Plaintiff argues that lifelong registration constitutes a "wrong" that would justify the Court fashioning an equitable personal remedy. The Trial Court found this argument without merit. However, in *State v. Dykes*, 403 S.C. 499, 744 S.E.2d 505 (2013), 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.

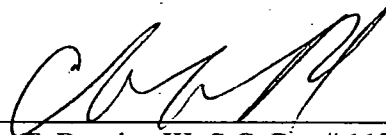
Herein, while the Respondents argued that the Appellant was asking the Trial Court to rewrite the South Carolina Sex Offender Registry laws by providing a remedy not allowed by the statute (R. p 28), the Appellant in fact was asking the Trial Court to allow the exercise of equitable relief since the 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,



Charles T. Brooks, III, S.C. Bar # 11762
Attorney for Appellant
THE BROOKS LAW OFFICE, LLC
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708
803-934-9618 [Facsimile]
cbrooks@ctbrooks.com

August 17, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellant Case No.: 2015-002387

David Johnson, ... Appellant,

v.

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

FINAL BRIEF OF RESPONDENTS

ADAM L. WHITSETT
General Counsel
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221-1398
Phone: (803) 896-0647

T. PARKIN HUNTER
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211
(803) 734-6151

ATTORNEYS FOR RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

The appellant was convicted of criminal sexual conduct with a minor, first degree in violation of § 16-3-655(A) of the South Carolina Code of Laws in 1992. (Tr. p. 6)(R. p. 29). The Plaintiff was sentenced to 26 years' incarceration for this conviction. *Id.* Upon being released from incarceration, the Plaintiff was required to register as a sex offender pursuant to the South Carolina Sex Offender Registry Act, § 23-3-400 *et seq.* ("SORA") and did in fact so register. *Id.* On or about January 8, 2015, the appellant filed a summons and complaint initiating this action seeking only equitable relief. (Complaint p. 3)(R. p. 10). Further, 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. 11, 12)(R. pp. 34-5). The respondents filed an answer and a motion for summary judgment.¹ The Honorable G. Thomas Cooper, Jr. heard the motion on October 26, 2015 and granted respondents summary judgment in an order filed on November 9, 2015. This appeal follows.

¹ Appellant argues against a Judgment on the Pleadings throughout his initial brief and cites to case law regarding such. This is error. This appeal arose subsequent to the grant of summary judgment to the Respondents and there was no judgment on the pleadings in this matter.

STANDARD OF REVIEW

“When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRPC.” Turner v. Milliman, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011)(citing Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)).

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).

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 summary judgment 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 there is no genuine issue of material fact in dispute in this matter. Further, there is no factual dispute requiring the services of a fact finder. Accordingly, the trial court properly exercised his discretion in granting summary judgment to respondents. See George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRPC.

As a threshold matter, it is noteworthy that appellant is **not** challenging the constitutionality of his SORA registration requirement. (Tr. p. 13)(R. p. 36). 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. Section 23-3-400 of the South Carolina Code of Laws specifically 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 first degree and this conviction mandates 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. 6)(R. p. 29). 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.").²

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.³ *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

² However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

³ 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.

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. (Initial Brief p. 4) (Tr. pp. 12, 13)(R. pp. 35-6). 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).

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, 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 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). 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 her discretion and rejected this claim as a matter of law.

This situation is also comparable to legislatively mandated sentences for criminal offenses, whether minimums or maximums. With regard to sentencing for an offense that has a mandatory sentence range, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals outside the statutorily set amounts. However, these statutory ranges, and more specifically the statutorily mandated minimum sentences are 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).⁴ Similarly, 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 her discretion in granting summary judgment to respondents in this matter.

⁴ It is noteworthy that sex offender registration has been consistently held not to be “punitive in purpose or effect as to constitute a criminal penalty.” State v. Walls, 348 S.C. 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.

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. (Brief of Appellant 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.

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

Respondents also assert that SORA provides adequate relief to all sex offenders, including the appellant. It is noteworthy yet again that there is no challenge whatsoever to the constitutionality of SORA in this action. (Tr. p. 13)(R. p. 36); *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.*

As noted by the trial court, 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.* 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)).

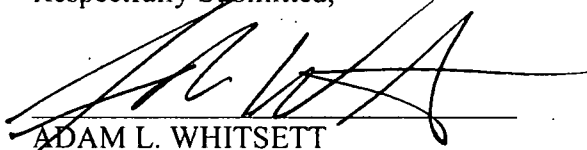
Here, there is no dispute that some certain definitive statutory relief exists in SORA because § 23-3-430(E), (F), (G) clearly set forth definitive means by which an individual can seek removal from the SORA registry. However, despite the existence of

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 “the court’s equitable powers **must yield** in the face of an unambiguously worded statute” and that “equity follows the law”. 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 her discretion in granting respondents judgment as a matter of law in this matter. 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,



ADAM L. WHITSETT
General Counsel
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221-1398
Phone: (803) 896-0647

T. PARKIN HUNTER
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211
(803) 734-6151

ATTORNEYS FOR RESPONDENTS

August 8, 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**

David Johnson, Appellant,

v.

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

Appellate Case No. 2015-002387

Appeal From Sumter County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-192
Submitted April 1, 2017 – Filed May 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, and Senior Assistant Attorney
General T. Parkin C. Hunter, both of Columbia, for
Respondents.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: Rule 56(c), SCRCP (providing a motion for summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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) ("On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party."); S.C. Code Ann. § 23-3-460(A) (Supp. 2016) ("A person required to register [on the sex offender registry] is required to register biannually *for life*." (emphasis added)); S.C. Code Ann. § 23-3-430 (E), (F), (G) (2007 & Supp. 2016) (setting forth three statutory mechanisms by which a person's name may be removed from the sex offender registry); *Key Corp. Capital, Inc. v. Cty. of Beaufort*, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007) ("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." (quoting *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006))); *id.* ("[T]his [c]ourt does 'not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.'" (quoting *Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996))); *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011) ("It is well known that equity follows the law." (quoting *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007))); *id.* ("When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent."); *Key Corp.*, 373 S.C. at 61, 644 S.E.2d at 678 ("Indeed, 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))).

AFFIRMED.¹

WILLIAMS and KONDUROS, JJ., and LEE, A.J., concur.

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

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Honorable G. Thomas Cooper, Circuit Court Judge

Case No: 2015-002387

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SC Court of Appeals

David Johnson.....Appellant

v.

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

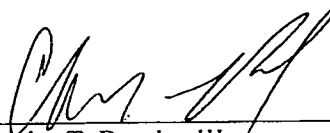
PETITION FOR REHEARING

Appellant, Johnson, petitions the Court of Appeals to rehear/reconsider its ruling issued on May 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 has 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.



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29150
(803) 418-5708 Telephone
(803) 934-9618 Facsimile

Sumter, SC
May 19, 2017

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The South Carolina Court of Appeals

David Johnson, Appellant,

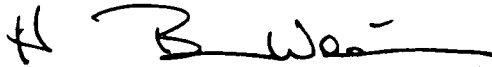
v.

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

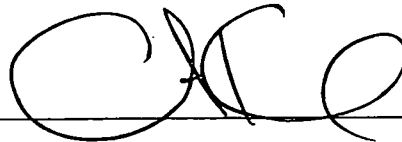
Appellate Case No. 2015-002387

ORDER

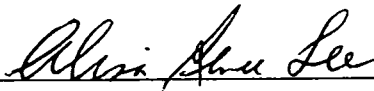
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

cc: Adam L. Whitsett, Esquire
Charles Thomas Brooks, III, Esquire
T. Parkin C. Hunter, Esquire
The Honorable G. Thomas Cooper, Jr.

FILED

