

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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Appellate Case No. 2016-000561

AUG 14 2017

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Paul M. Burch, Circuit Court Judge

John Gregory,

Petitioner
~~Appellant,~~

v.

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

Respondents.

APPENDIX

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appellate Case No. 2016-000561

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

John Gregory,

Appellant,

v.

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

Respondents.

RECORD ON APPEAL

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ORDER GRANTING SUMMARY JUDGMENT

BACKGROUND

and did in
Act, § 23-3.

PWB
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Act does not violate the *ex post facto* clauses of the state or federal constitutions”); Hazel v. State, 377 S.C. 60, 64, 659 S.E.2d 137, 139 (2008) (holding that “the applicable [Sex Offender Registry] statute is the statute that existed at the time of respondent’s release from prison.”). The Plaintiff filed this present action in May of 2015 seeking for this Court to fashion equitable personal relief for the Plaintiff. The Defendants Answered the Complaint and filed the present Motion for Summary Judgment.

STANDARD OF REVIEW

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

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), 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)(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 In that regard, the South Carolina Supreme Court has held that “the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest.” Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003). Further, SORA also provides the only lawful avenues by which individuals can be removed from the registry.³ See S.C. Code Ann. § 23-3-430(E), (F), (G). However, there is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria for removal from SORA and he concedes that he does not. See Plaintiff’s Complaint pp. 2-3. Accordingly, there is no legal basis for the Plaintiff to be removed from the registry and the Defendants are entitled to judgment as a matter of law. See S.C. Code Ann. § 23-3-460; S.C. Code Ann. § 23-3-430; Lozada v. South Carolina Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011)(acknowledging that “[w]hether an individual must be placed on the sex offender registry is a question of law.”)

The Plaintiff’s argument in this matter is that his constitutional SORA registration requirement constitutes a “wrong” that would justify this Court fashioning the Plaintiff an equitable personal remedy. This argument is without merit. The constitutional application of the clear and unambiguous provisions of SORA is not a “wrong” cognizable in South Carolina law. The South Carolina Supreme Court has held unequivocally that “the court’s equitable powers

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

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

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

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

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

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

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

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

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

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990).⁴ Similarly, the duration of an individual’s sex offender registration pursuant to SORA is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the South Carolina Constitution and South Carolina law. S.C. Const. art. I, § 8; S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute) *see also Hendrix v. Taylor*, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) (holding that “the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest.”)

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

Furthermore, the purely equitable relief sought by the Plaintiff in this matter is simply not available as a matter of law. The South Carolina Supreme Court has noted that “[e]quitable relief is generally available only where there is no adequate remedy at law” and that an “adequate legal remedy may be provided by statute.” Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (citing 27 *Am. Jur.* 2d, *Equity*, § 94 (1966)) (emphasis added). The Santee Cooper Court further noted that an “‘adequate’ remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.” *Id.* This does not however mean that the person seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that some certain definitive statutory relief exists. Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Ultimately, the Court in Santee Cooper noted that “the court’s equitable powers must yield in the face of an unambiguously worded statute.” Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). The statutory language of SORA providing for lifetime registration in South Carolina is unambiguously worded. *See* S.C. Code Ann. § 23-3-460 (“A person required to register pursuant to this article is required to register biannually for life.”).⁵ Accordingly, this Court’s equitable powers must yield to the clear and unambiguous language of SORA and there is no legal or constitutional basis for the Plaintiff to be removed from the registry.

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

Moreover, any constitutional challenge by the Plaintiff to his SORA registration requirement also fails. The South Carolina Supreme Court has long held that SORA passes constitutional muster. See Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320, (2003); In re Ronnie A., 355 S.C. 407, 585 S.E.2d 311 (2003); State v. Walls, 348 S.C. 26, 558 S.E.2d 524 (2002). This law is rationally related to the legislative purpose sought to be effected; all members of the class. *i.e.* all those individuals convicted of Criminal Sexual Conduct in the First Degree (S.C. Code Ann. § 16-3-652) are treated the same; and the classification rests on a reasonable basis. Classifying individuals, like the Plaintiff, who are lawfully convicted of Criminal Sexual Conduct in the First Degree (S.C. Code Ann. § 16-3-652), as sex offenders is “reasonably related to the legitimate state purpose of protecting the public and aiding law enforcement in limiting the risk that sex offenders pose to communities.” Hendrix v. Taylor, 353 S.C. 542, 549-50, 579 S.E.2d 320, 324 (2003); *see also* In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003); S.C. Code Ann. § 23-3-400. Registration as a sex offender is not a punishment, but rather a regulatory requirement imposed to promote public safety. Williams v. State, 378 S.C. 511, 516, 662 S.E.2d 615, 618 (2008); *see also* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). In addition, all members of the Plaintiff’s class, *i.e.* those persons convicted of Criminal Sexual Conduct in the First Degree (S.C. Code Ann. § 16-3-652), are treated identically. Further, all members of the class “are subject to uniform administrative and legal procedures.” See Hendrix, 353 S.C. 542, 550-51, 579 S.E.2d 320, 324 (2003). And finally, the classification of the Plaintiff as a sex offender “is reasonable because the purpose of the law is to protect the public welfare and to assist law enforcement in accomplishing that goal.” Hendrix, 353 S.C. 542, 551, 579 S.E.2d 320, 324 (2003); *see also* S.C. Code Ann. § 23-3-400. Accordingly, the Plaintiff’s constitutional challenge is without merit.

PMB

CONCLUSION

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

AND IT IS SO ORDERED.


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

Charleston, South Carolina
February 23, 2016

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

IN THE COURT OF COMMON PLEAS

SUMMONS

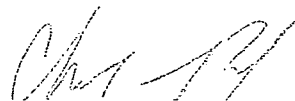
FILE NO. 2015-CP-16-

2015 APR 17 PM 1:58
CLERK OF COURT
DARLINGTON COUNTY, SC

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



Plaintiff/Attorney for Plaintiff

Dated: March 24, 2015

Address: 309 Broad Street, Sumter, SC 29150

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

JOHN GREGORY,)

PETITIONER,)

VS.)

MARK KEEL,)

DIRECTOR, SOUTH CAROLINA)

LAW ENFORCEMENT)

DIVISION (SLED), AND THE)

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

C/A NO.: 2015-CP-16-_____

PETITION FOR
DECLARATORY JUDGMENT
(Non-Jury)

2015 APR 17 PM 2:08
CLERK OF COURT
DARLINGTON COUNTY S.C.

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

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

3. That the State of South Carolina, a sovereign State and body politic, enacts its legislation through its State Legislature (the South Carolina General Assembly and Senate) and the Governor. The present action is an action in part for a Declaratory Judgment regarding the constitutionality of provisions of the South Carolina Code of Laws, as amended, specifically §23-3-430, Sex Offender Registry legislation.
4. This Honorable Court has jurisdiction over the parties to, and subject matter of, the present action.
5. The Petitioner in this matter was convicted in the State of South Carolina of 6 counts of Criminal Sexual Conduct-1st Degree in Darlington County. (1996-GS-16-1539, 1540, 1541, 1542, 1543, and 1544)
6. The Petitioner was sentenced to a term of incarceration of fifteen (15) years, suspended to 3 years and 5 years of probation for the charges, sentenced to be served concurrently with the South Carolina Department of Corrections. The Petitioner was released from incarceration on May 1999.
7. That the Petitioner, after his release, was required to begin to Register as a Sex Offender in accordance with "Megan's Law" which was enacted subsequent to the release of the Petitioner from the Department of Corrections.
8. That, under §23-3-430(F), even if Petitioner was pardoned by the Governor, Petitioner "may not be removed" from the Registry unless the Attorney General notified a Defendant that the conviction "was reversed,

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

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

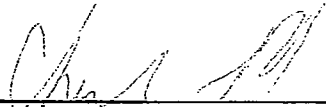
FOR A FIRST CAUSE OF ACTION
Equity

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

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

WHEREFORE, Petitioner prays this Court for an Order:

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


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Dated: 3/24/2015

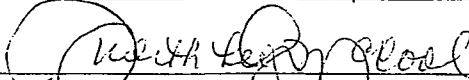
STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

VERIFICATION

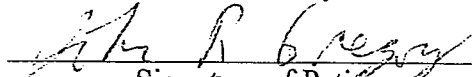
John Gregory and , being duly sworn, say that they are the Petitioners herein, and have read the foregoing Petition and know the contents thereof, that the same is true of their own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters they believe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

SWORN to and Subscribed before me)

this 3rd day of April , 2015)


Notary Public for South Carolina)

My Commission expires: 6-2-2020)


Signature of Petitioner

Signature of Petitioner

2015 APR 17 PM 2:00
JOHN R. GREGORY
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

)

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ANSWER

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

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

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

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

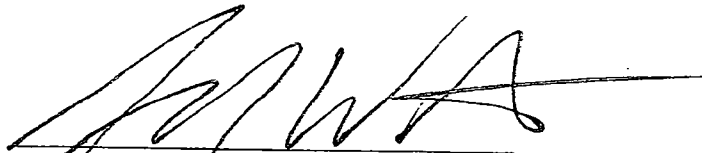
FOR A FOURTH DEFENSE
Proper Inclusion on the Registry

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

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

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

Respectfully Submitted,



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ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
JUNE 2, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON) IN THE FOURTH JUDICIAL CIRCUIT
)

John Gregory,) Civil Action No. 2015-CP-16-00301
)

Plaintiff,)
)

vs.)
)

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

Defendants.)
)

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

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

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

BACKGROUND

The Plaintiff was convicted of six (6) counts of criminal sexual conduct, first degree—of those six (6) counts, two were criminal sexual conduct with a minor, first degree (Section 16-3-655(A)(1))—on or about November 17, 1997. He was sentenced to fifteen (15) years, suspended to three (3) years and five (5) years of probation for the charges. Compl. ¶¶5-6. Upon being released from incarceration, Plaintiff was required to register as a sex offender¹ pursuant to the South Carolina Sex Offender Registry Act ("SORA").

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

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

STANDARD OF REVIEW

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

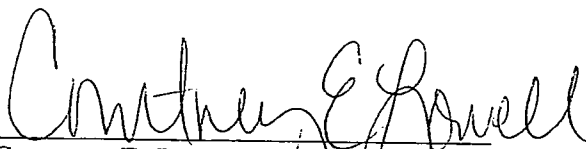
Since there is no legal basis for the Plaintiff to be removed from the Registry, the Plaintiff is not entitled to removal through equitable relief.

CONCLUSION

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

[Signature Page Follows]

Respectfully submitted,



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COLUMBIA, SOUTH CAROLINA
JUNE 19, 2015

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

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

February 2, 2016
Darlington, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

CHARLES T. BROOKS III, ESQUIRE
Attorney for the Plaintiff

ADAM L. WHITSETT, ESQUIRE
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

Colloquy	4
Certificate of Reporter	18

EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

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COLLOQUY

1
2 THE COURT: All right. Which one was this?

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

6 THE COURT: Okay.

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

11 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 THE COURT: Thank you.

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

21 THE COURT: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 THE COURT: Okay.

14 MR. WHITSETT: On appeal, at least.

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

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

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

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

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

1 the Johnson case.

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

4 MR. WHITSETT: You tell me.

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

8 THE COURT: Okay.

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

12 THE COURT: Okay.

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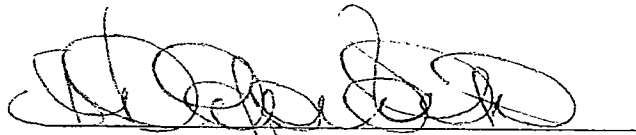
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Darlington County, South Carolina, on the 2nd day of
February, 2016.

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

April 26, 2016



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	C/A NO.: 2015-CP-16-0301
	)	
JOHN RUSSELL GREGORY	)	AFFIDAVIT OF THOMAS V. MARTIN, M.D.
PETITIONER	)	
VS	)	
MARK KEEL	)	
DIRECTOR, SOUTH CAROLINA	)	
LAW ENFORCEMENT	)	
DIVISION (SLED), AND THE	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT	)	

NOV 12 AM 10:50
CLERK OF COURT
J. EMMETT GREGG, JR.
CLERK OF COURT
J. EMMETT GREGG, JR.

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

Being duly sworn I do swear and affirm the following:

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

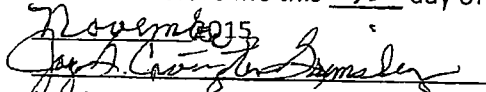
- 5) Diagnostically, Mr. Gregory has developed a major depressive disorder surrounding the issues following his sexual offending. He has no history of addictive substance abuse or dependence. Mr. Gregory does not suffer from an ongoing sexual perversion disorder, Paraphilia. He suffers from chronic, cervical neck pain requiring pain management, and draws disability. He maintains healthy interpersonal relationships with his spouse and family. Mr. Gregory's family corroborates his denial of aberrant behaviors or relationships, especially with children. Mr. Gregory would benefit from psychotherapeutic intervention for the treatment of depressive illness. A treatment plan should also include his enhancement of socialization. Mr. Gregory does not require sexual offender-specific therapy.
- 6) In conclusion, Mr. Gregory poses a very low risk to sexually offend. He has only gradually integrated into his family and local community since his release for the SCDC. He consistently demonstrates appropriate behavior in his church and with his family. His quarterly re-registry as a sexual offender has only proven to be detrimental to Mr. Gregory's sense of integrity, is preventing him from attending many of his family's activities and is creating stress precluding his desire to integrate further with his neighbors and church families who have expressed interest in relationships with him. Mr. Gregory feels haunted by the fact that his name remains on the registry and when friends have incidentally seen his name, many have seemed perplexed and guarded. Mr. Gregory does not need any further deterrent to prevent him from sexual acting out behavior. The SC Sex Offender Registry serves to assist law enforcement and the community in monitoring those dangerous individuals who do not manage their aberrant sexual behaviors and fail to follow our social and community mores. Mr. Gregory does not meet these criteria, nor requires such monitoring.

Further affiant sayeth not.



Thomas V. Martin, M.D.

Sworn to before me this 3rd day of

November 2015


Joy G. Covington Grimsley

A Notary Public for South Carolina

My Commission Expires: 12-15-2017

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South Carolina's Sex Offender Registry statutes, S.C. Code Ann. § 23-3-400 *et seq.*, list the only mechanisms and avenues by which an individual can be removed from the Sex Offender Registry.¹ See S.C. Code Ann. § 23-3-430(E), (F), (G). As such, these are the only lawful and permissible avenues by which an individual who is properly placed on the Registry can be removed. However, there is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria. Rather, the Plaintiff was convicted of Lewd Act on a Minor² in 2012, and this conviction mandates lifetime registration. See S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute - "for life"). Accordingly, there is no legal or constitutional basis for the Plaintiff to be removed from South Carolina's Sex Offender Registry and the Defendants are entitled to judgment as a matter of law. See S.C. Code Ann. § 23-3-460 (mandating lifetime registration in South Carolina); S.C. Code Ann. § 23-3-430 (setting forth the only avenues for removal).

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

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

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

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

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

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

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

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

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

Similarly, the Defendants respectfully assert that this Court's equitable powers must yield in the face of South Carolina's unambiguously worded Sex Offender Registry laws, which set forth lifetime registration.

³ It is noteworthy that sex offender registration has been consistently held not to be "punitive in purpose or effect as to constitute a criminal penalty." *State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

OTHER CIRCUIT COURT RULINGS

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

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

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

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

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

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

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

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

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

UNPUBLISHED SOUTH CAROLINA SUPREME COURT OPINION

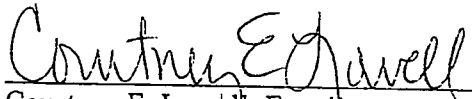
In addition, while having no precedential value on this action in accordance with Rule 268(d)(1), SCACR, the South Carolina Supreme Court issued an unpublished opinion on November 4, 2015 denying the request of several individuals to be removed from the SORA registry in equity citing S.C. Code Ann. §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

CONCLUSION

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

[Signature Page Follows]

Respectfully submitted,



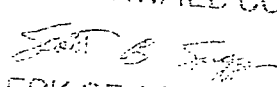
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ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
DECEMBER 14, 2015

TRUE CERTIFIED COPY,

CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

2015 DEC 15 PM 4:06
SCOTT B. SUGGS
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

FILED

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

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

ATTACHMENT 1

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

Kenneth W. Signor,

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

Plaintiff,)

vs.)

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

Defendants.)

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

ORDER GRANTING JUDGMENT
ON THE PLEADINGS
CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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

BACKGROUND

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

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

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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

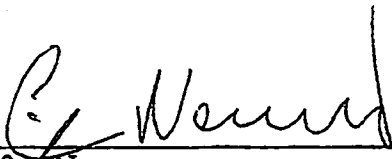
Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. For this Court to act as a "superlegislature" and to unilaterally

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

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

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

ATTACHMENT 2

STATE OF SOUTH CAROLINA

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

FILED
2015 MAY 20 PM 1:52
CLERK OF COURT C.P. & G.S.
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 C.P. & G.S.
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.

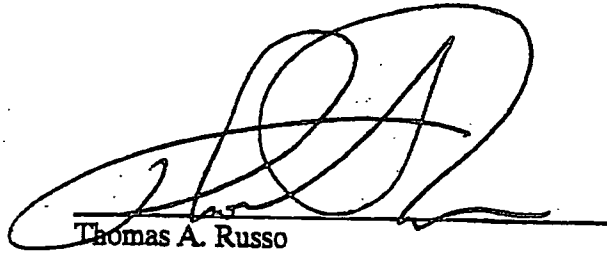
State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001). Similarly, I find and conclude that the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated 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 1:58
CONNIE REEL-SHEARMAN
CCCP & GS
FLORENCE COUNTY, SC

FILED

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

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

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

ATTACHMENT 3

STATE OF SOUTH CAROLINA
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 12:41 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**

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry S. Hunt
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.

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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.").

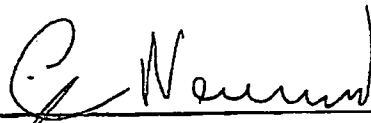
CONCLUSION

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

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

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

ATTACHMENT 4

STATE OF SOUTH CAROLINA

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-40-00596

3001

**ORDER GRANTING SUMMARY
JUDGMENT**

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C.C.P. & G.S.

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 JAG

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

STANDARD OF REVIEW

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

LAW/ANALYSIS

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

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

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

SCANNED

Page 2 of 4

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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 Kevserling 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

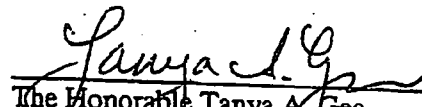
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Moreover, "[i]f a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." State v. 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

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

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

ATTACHMENT 5

STATE OF SOUTH CAROLINA

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
2015 NOV -6 PM 2:55 THIRD JUDICIAL CIRCUIT
Case No.: 2015-CP-43-00033

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

**ORDER GRANTING SUMMARY
JUDGMENT**

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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

BACKGROUND

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

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

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

STANDARD OF REVIEW

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

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), 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)(4); State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's SORA "is not so punitive in purpose or effect as to constitute a criminal penalty" and that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"); Hazel v. State, 377 S.C. 60, 64, 659 S.E.2d 137, 139 (2008) (holding that "the applicable [SORA] statute is the statute that existed at

GC 2

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

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

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

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

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

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

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

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

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

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

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

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

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

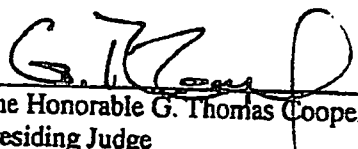
⁴ It is noteworthy that sex offender registration has been consistently held not to be "punitive in purpose or effect as to constitute a criminal penalty." State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration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

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

CONCLUSION

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

AND IT IS SO ORDERED.


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

COLUMBIA, South Carolina
NOVEMBER 3, 2015

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

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

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

ATTACHMENT 6

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Mansy McNeil,)

Plaintiff/Petitioner,)

v.)

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
Case No.: 2014-CP-21-2220

**ORDER GRANTING SUMMARY
JUDGMENT**

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

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

CERTIFIED: A TRUE COPY

Connie Red Stearns

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

BACKGROUND

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

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

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

STANDARD OF REVIEW

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

LAW/ANALYSIS

Based on the following, I find that there is no genuine issue of material fact in dispute in this matter and that there is no factual dispute requiring the services of a fact finder. Accordingly, the Defendants are entitled to a judgment as a matter of law. *See* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), 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; *see also* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's sex offender registry constitutional). SORA is clear and unambiguous and mandates lifetime registration for all sex offenders in South Carolina. S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life").² SORA also provides the only

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

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

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

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

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

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

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

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

CONCLUSION

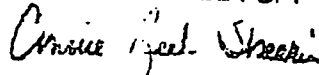
Therefore, the Defendants' Motion for Summary Judgment is GRANTED.

AND IT IS SO ORDERED.


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

Flame, South Carolina
11-13, 2015

CERTIFIED: A TRUE COPY



CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

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

ATTACHMENT 7

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

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

Edward Dean and Nolan Brown, Appellants,

v.

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

Appellate Case No. 2014-002721

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

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

AFFIRMED

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

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

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

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

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

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

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

AFFIRMED.

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

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

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

Appellate Case No. 2016-000561

SEP 16 2016

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

SC Court of Appeals

Paul M. Burch, Circuit Court Judge

John Gregory,

Appellant,

v.

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

Respondents.

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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. 9-14) Respondents filed an answer generally denying the allegations in Appellant's Petition for Declaratory Judgment. (R. pp. 15-18) Respondents also filed a Motion for Judgment on the Pleadings asserting that the Appellant was not entitled to equitable relief because the statute governing removal from the Registry provides an adequate remedy at law. (R. pp. 19-25)

A hearing was held on February 2, 2016, on the Respondents'/Defendants' Motion for Judgment on the Pleadings before the Honorable Paul M. Burch. 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. p 1) 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. p. 24)

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. (R. p 22) 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 22)

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. (R. p 21)

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. (R. p 12) 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. 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, 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

judgment as a matter of law. *Id. citing Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006); *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005); *Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007); *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006).

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

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

Generally, equitable relief is available only where there is no adequate remedy at law. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). “An adequate remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.” *Id.*

Respondents argue that the South Carolina Sex Offender Registry laws provide the complete remedy for statutory removal from the Registry. (R. p 21) 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. (R. p. 36-38)

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

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

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.

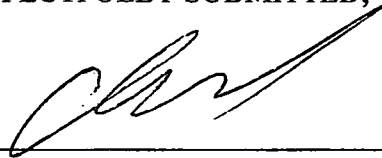
Herein, while the Respondents argued that the Appellant was asking the Trial Court to rewrite the South Carolina Sex Offender Registry laws by providing a remedy not allowed by the statute, the Appellant in fact was asking the Trial Court to allow the exercise of equitable relief since the statute does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

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

CONCLUSION

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

RESPECTFULLY SUBMITTED,



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September 12, 2016

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

The Honorable Paul M. Burch
Circuit Court Judge

Appellant Case No.: 2016-000561

RECEIVED

SEP 22 2016

SC Court of Appeals

John Gregory, ... Appellant,

v.

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

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<u>Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n</u> , 298 S.C. 179, 379 S.E.2d 119 (1989)	6, 10, 11, 12
<u>State v. Corey D.</u> , 339 S.C. 107, 529 S.E.2d 20 (2000)	7, 11

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<u>State v. Johnson</u> , 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002)	8
<u>State v. Jones</u> , 344 S.C. 48, 543 S.E.2d 541 (2001)	8
<u>State v. Smith</u> , 275 S.C. 164, 268 S.E.2d 276 (1980)	8
<u>State v. Walls</u> , 348 S.C. 26, 558 S.E.2d 524 (2002)	3, 5, 8, 10
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<u>WDW Properties v. City of Sumter</u> , 342 S.C. 6, 535 S.E.2d 631 (2000)	2
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STATUTES

S.C. Code Ann. § 16-3-655	1
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27 <u>Am.Jur.</u> 2d, <u>Equity</u> , § 94 (1966)	11
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S.C. Const. art. I, § 8	6, 7, 8, 12
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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 six (6) counts of criminal sexual conduct in the first degree in violation of § 16-3-652 of the South Carolina Code of Laws in 1996. (Tr. p. 5)(R. p. 30). The Plaintiff was sentenced to 15 years' incarceration for these convictions.¹ (Trial Court Order p. 1)(R. p. 1). 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 April 17, 2015, the appellant filed a summons and complaint initiating this action seeking only equitable relief. (Complaint p. 3)(R. p. 12). 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. 36-7). The respondents filed an answer and a motion for summary judgment.² The Honorable Paul M. Burch heard the motion on February 2, 2016 and granted respondents summary judgment in an order filed on February 23, 2016. This appeal follows.

¹ However, this sentence was suspended to three years' incarceration and five years' probation. (Trial Court Order p. 1)(R. p. 1).

² Appellant argues against 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, not judgment on the pleadings.

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), SCRCP.” 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), 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).

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 that the trial court correctly held that 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 abandoned any attempted challenge to the constitutionality of his SORA registration requirement. (Initial Brief); Wright v. Craft, 372 S.C. 1, 21, 640 S.E.2d 486, 497 (Ct. App. 2006) (holding that an issue not address in brief is abandoned). 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. To that end, § 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 six counts criminal sexual conduct in the first degree and each of these convictions mandate lifetime registration in South Carolina pursuant to SORA. *See* S.C. Code Ann. § 23-3-430; S.C. Code Ann. § 23-3-460 (setting forth the circumstances requiring registration in South Carolina and the mandatory lifetime duration of such registration); (Tr. p. 5)(R. p. 30). Moreover, SORA's statutory lifetime registration requirement exists for all sex offenders, including the appellant, and is set forth in a clear and unambiguously worded statute. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life.").³

As the trial court correctly held, SORA lists the only mechanisms and avenues by which an individual who is properly registered pursuant to SORA can be removed from the registry.⁴ *See* S.C. Code Ann. § 23-3-430(E), (F), (G). Pursuant to § 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person

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

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

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

However, there is no genuine issue of material fact to suggest that appellant meets any of these statutory criteria. Rather, as the appellant concedes, appellant has not even sought to avail himself of any of the statutory avenues for removal set forth in SORA. (Initial Brief p. 4) (Tr. pp. 11-12)(R. pp. 36-7). 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 his 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).⁵ 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,

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

and it cannot constitute a deprivation of a constitutionally protected liberty interest.”). As such, the trial court properly exercised his discretion in granting summary judgment to respondents in this matter.

The appellant also attempts to assert that there is a material fact in dispute as to the existence or non-existence of the equitable relief sought in this matter. (Brief of Appellant p. 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. (Initial Brief); Wright v. Craft, 372 S.C. 1, 21, 640 S.E.2d 486, 497 (Ct. App. 2006); *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).

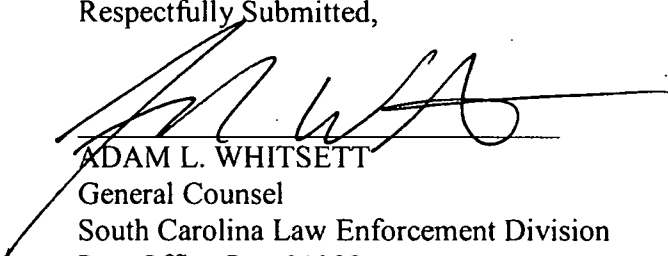
Moreover, the South Carolina Supreme Court has noted that "[e]quitable relief is generally available **only** where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123 (1989) (citing 27 Am.Jur. 2d, Equity, § 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 his 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,



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ATTORNEYS FOR RESPONDENTS

September 13, 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**

John Gregory, Appellant,

v.

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

Appellate Case No. 2016-000561

Appeal From Darlington County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2017-UP-193
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), SCRCRCP (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.

83475

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Honorable Paul M. Burch, Circuit Court Judge

Case No: 2016-000561

John Gregory Appellant

v.

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

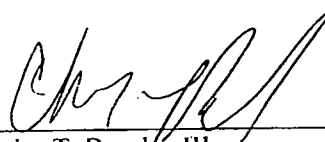
PETITION FOR REHEARING

Appellant, Gregory, 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.



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Sumter, SC
May 19, 2017

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MAY 22 2017

SC Court of Appeals

The South Carolina Court of Appeals

John Gregory, Appellant,

v.

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

Appellate Case No. 2016-000561

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.

41 B. We J.
OK J.
Ali Anna Lee A.J.

Columbia, South Carolina

cc: Charles Thomas Brooks, III, Esquire
Adam L Whitsett, Esquire
T. Parkin C. Hunter, Esquire
The Honorable Paul M. Burch

FILED

July 12, 2017