

STATE OF SOUTH CAROLINA)
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)
COUNTY OF LAURENS)
)
Andrew Young,)
)
)
Plaintiff,)
)
)
vs.)
)
Mark Keel, Chief of the)
South Carolina Law Enforcement,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Case No.: 2017-CP-30-338

ORDER DENYING
DECLARATORY JUDGMENT

RECEIVED

JAN 18 2018

SC Court of Appeals

Addy, J.

THIS MATTER CAME BEFORE THE COURT on October 2, 2017 on Motion of Plaintiff Andrew Young, seeking an order granting declaratory judgment in this matter. Plaintiff was present for the hearing represented by Joseph St. Pierre, Esq. Defendant South Carolina Law Enforcement Division was represented by Adam Whitsett, Esq. For the reasons set forth herein, Plaintiff's motion is DENIED.

1. The Plaintiff was sentenced under the Youthful Offender Act on or about October 26, 1995 for lewd act on a minor. As a result of this conviction, Plaintiff was required to register as a sex offender. Plaintiff served his sentence, and he subsequently sought expungement of his conviction pursuant to S.C. Code Ann. §22-5-920. On March 15, 2017, the Court ordered the destruction of the records related to Plaintiff's conviction and sentence. However, because the South Carolina Sex Offender Registry requires mandatory, life-time registration, Plaintiff remains on the sex offender registry. S.C. Code Ann. §23-3-460. Plaintiff essentially argues that the expungement of his conviction should result in his



removal from the Registry, and Plaintiff seeks an order requiring his removal from the Registry.

2. The Sex Offender Registry Act ("SORA") sets forth the available avenues by which an individual may lawfully be removed from the registry. Pursuant to section 23-3-430(e) "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). 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). 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 to be removed. S.C. Code Ann. §23-3-430(F). These are the only statutory avenues by which an individual who is properly placed on the SORA registry can be removed.
3. The answer to the present question requires the Court to ascertain exactly what the legal effect of an expungement is. Depending upon the circumstances under which the charges were brought and resolved, an expungement can have different legal results. For example, an expungement for successfully completing a Pre-trial Intervention program "restore[s] the person, in the contemplation of the law, to the status he occupied before the arrest." S.C. Code Ann. §17-22-150 (a). Furthermore, a PTI participant whose record is expunged may lawfully deny the occurrence of the arrest and charge without fear of committing perjury. S.C. Code Ann. §17-1-40, which addresses expungements where the charges

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resulted in a dismissal or acquittal, specifically provides that any retained records must remain under seal and are not subject to public disclosure. In the present case, Plaintiff's expungement is controlled by S.C. Code Ann. §22-5-920(B)(3); therefore, any records of Plaintiff's conviction, including the indictment, warrant, and sentencing sheet, have presumably been destroyed by the Laurens Clerk of Court. As it relates to any records retained by SLED, per S.C. Code Ann. §22-5-920(C), SLED's non-public record of Plaintiff's conviction may only be used to prevent Plaintiff from seeking a second expungement at some future date.¹ Unlike the provisions governing PTI expungements, however, Plaintiff is not free to deny his arrest or conviction.²

4. Black's Law Dictionary defines an "expungement of record" as simply "The removal of a conviction from a person's criminal record." *Expungement of Record*, Black's Law Dictionary (10th ed. 2014). Clearly, an expungement is not a pardon or an exoneration. This Court concludes that an expungement is best defined as a means by which a person convicted or charged with a particular offense may ministerially request removal of the arrest or conviction record from their criminal history and seek destruction of any public records associated with their charge and/or conviction. An expungement, however, does not change or rewrite history; it does not operate to vacate or undo a prior adjudication.

¹ The way this statute is configured raises an interesting question. Hypothetically speaking, if someone in Plaintiff's situation were to fail to re-register, and assuming that all records relating to his conviction have been destroyed pursuant to the requirements of the law, how would law enforcement go about prosecuting him for his failure to register? SLED is prohibited from disclosing any record of his conviction except as necessary to prevent Plaintiff from seeking a second expungement, and assuming that the Laurens Clerk of Court has destroyed any and all records of the charge, plea, and sentencing, such a prosecution would appear to be somewhat problematic. Fortunately, this question is not presently before the Court, so the Court need not answer it.

² Because participation in a PTI program does not result in a conviction under the law and requires no admission of guilt, an individual whose charges are resolved and expunged via PTI is clearly in a different position than one whose charges are expunged subsequent to a conviction at trial or guilty plea.

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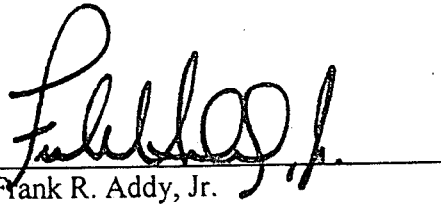
Rather, to the extent permitted by law, an expungement merely removes any mention of the charge and/or conviction from the individual's criminal history and the public record.

5. 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. Carolina Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). As previously explained, the Registry is extremely specific as to how an individual's name can be removed. Even a gubernatorial pardon, absent a finding of innocence, cannot affect a removal. Essentially, only an exoneration can undo the requirement to register as a sex offender.
6. This Court is fully aware that the final result of Court's reasoning is counter-intuitive and, in many ways, irrational. The very purpose of a YOA expungement is to make allowances for the impulsivity of youth and thereby allow a person, who commits a crime during their developmental years, to escape the inherent stigma of that conviction. A YOA expungement keeps youthful mistakes from following a person to their grave. Simply put, an expungement of a YOA sentence is meant to give a reformed individual a fresh start. To allow for the destruction of every record pertaining to the offense, while in the same breath maintaining Plaintiff's sex offender status for the rest of his life, simply defies logic, reason, and the underlying purpose of a YOA expungement. However, because Plaintiff was convicted, because this Court finds that the expungement of his charge does not operate to vacate or invalidate that conviction, and due to the unambiguous language of the statutes in issue, Plaintiff's requested relief must be denied.

WHEREFORE, for the reasons stated herein, the Court denies Plaintiff's requested relief.

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IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Frank R. Addy, Jr.", written over a horizontal line.

Frank R. Addy, Jr.
Circuit Court Judge

December 19, 2017
Greenwood, South Carolina