

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

Appeal from York County
S. Jackson Kimball, Special Circuit Court Judge

Appellate Case № 2016-001700
Opinion № 2018-UP-461
Heard November 1, 2018 - Filed December 12, 2018

Mark Anderko Petitioner,

v.

South Carolina Law Enforcement Division Respondent.

APPENDIX

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**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**

Mark Anderko, Appellant,

v.

South Carolina Law Enforcement Division, Respondent.

Appellate Case No. 2016-001700

Appeal From York County
S. Jackson Kimball, III, Special Circuit Court Judge

Unpublished Opinion No. 2018-UP-461
Submitted November 1, 2018 – Filed December 12, 2018

AFFIRMED

Clarence Rauch Wise, of Greenwood; and Christopher A.
Wellborn, of Christopher A. Wellborn P.A., of Rock Hill,
both for Appellant.

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

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *Felts v. Richland Cty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991)
("A suit for declaratory judgment is neither legal nor equitable, but is determined
by the nature of the underlying issue."); *Lozada v. S.C. Law Enft Div.*, 395 S.C.

509, 512, 719 S.E.2d 258, 259 (2011) ("Whether an individual must be placed on the sex offender registry is a question of law."); *id.* ("When reviewing an action at law, our scope of review is limited to the correction of errors of law."); S.C. Code Ann. § 23-3-430(A) (2007) ("Any person, regardless of age, residing in the [s]tate of South Carolina . . . who has been convicted of . . . an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register pursuant to the provisions of this article."); S.C. Code Ann. § 23-3-460(A) (Supp. 2018) ("A person required to register pursuant to this article is required to register biannually for life."); S.C. Code Ann. § 23-3-430(E) to (G) (2007 & Supp. 2018) (allowing removal under any of the following conditions: (1) the offender's underlying conviction was "reversed, overturned, or vacated on appeal and a final judgment has been rendered"; (2) the offender received a pardon based on a finding of not guilty; or (3) if the offender successfully moved for a new trial and obtained a verdict of acquittal); *Williams v. North Carolina*, 317 U.S. 287, 295 (1942) ("[E]very state is entitled to enforce in its own courts its own statutes, lawfully enacted."); *Sun Oil Co. v. Wortman*, 486 U.S. 717, 722 (1988) ("The Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'" (quoting *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501 (1939))).

AFFIRMED.¹

KONDUROS, MCDONALD, and HILL, JJ., concur.

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Mark Anderko, Appellant,

v.

South Carolina Law Enforcement Division, Respondent

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Appellate Case № 2016-001700

DEC 27 2018

Appeal from York County
S. Jackson Kimball, Special Circuit Court Judge

SC Court of Appeals

Opinion № 2018-UP-461

Heard November 1, 2018 - Filed December 12, 2018

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Rules of Appellate Practice, Mark Anderko respectfully requests that this Court rehear this matter to correct the following errors and omissions:

1. This Court failed to consider or rule upon that the fact that Mark Anderko is no longer a resident of the State of South Carolina and therefore S. C. Code § 23-3-430 has no application to a non-resident. This Court correctly noted in the opinion the law applies only to persons residing in the State. This Court did not explain how the law which is applicable by its plain language to persons residing in this State is now applicable to a person not residing in this State. As noted in the Brief of Appellant, and the Opinion filed in this matter, the plain language of the statute applies to "Any person . . . residing in the State of South Carolina . . ." S. C. Code § 23-

3-430. This Court cannot by judicial decision impose the requirement upon a person who formerly resided in this State, but is not currently residing in this State. Such a reading imposes a requirement upon Mr. Anderko that does not exist under the plain wording of the statute.

Support for this position is further found in the SLED regulations. The regulations authorize a sheriff to destroy the registration information if the person moves to another state. If the registration records may be destroyed, this is further evidence of an intent for the law to apply only to persons actually residing in the State. The SLED list should also be destroyed as to a person who has moved out of state. No statutory authority is given the law for SLED to maintain such an out of state listing.

2. The Court in the Opinion failed to consider that the only basis upon which Mr. Anderko was required to register in South Carolina was because the offense for which he was convicted in the State of Washington required that he register. This is opposed to the requirement to register because the sex crime involved is sufficiently similar to a South Carolina law that does require registration. This Court apparently failed to consider that once the requirement to register in the State of Washington is removed there is no legal basis to require Mr. Anderko to register in South Carolina. Under the statute, a person is not required to register simply because he was convicted of a violation of the law in another state that may have some sexual connotations. Contributing to the delinquency of a minor may have sexual connotations, but that conviction does not require carry mandatory registration.

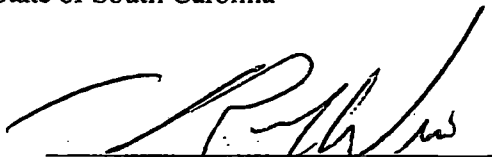
This Court should re-hear this matter and determine that if the only reason a person is required to register in South Carolina is because of a requirement in a sister state, then the obligation to register in South Carolina, or in this case, continue to be listed on an out of state

list, then the obligation ends when the obligation to register in another state ends. If Mr. Anderko had never been required to register in the State of Washington, he would never have been required to register in South Carolina. Logic should follow that if the requirement to register in the State of Washington has been removed, then his conviction simply does not fall under the South Carolina sex offender registration requirement.

3. The Opinion of this Court failed to recognize that when the State of Washington removed the obligation to register, then under the full faith and credit clause of Article IV, § 1 of the Constitution of the United States, the finding must be recognized by South Carolina. This case is not similar to cases in which a state may not require registration but because of the similarity of the offenses a sister state requires that the individual register. In this case, full faith and credit must be given to the registration requirement of the State of Washington. It was that registration requirement that triggered the initial obligation to register. Once that obligation is removed, then South Carolina is required to give full faith and credit to that finding as that finding is the sole basis for requiring Mr. Anderko to remain on the sexual registration list in South Carolina. The registration requirement, unlike many other cases, is the same matter that is to be decided between the two states. "The purpose of the Full Faith and Credit Clause is to avoid conflicts between States in adjudicating the same matters, functioning to 'weld the independent States into a Nation.'" *Luna v. Dobson*, 97 N.Y.2d 178, 182, 763 N.E.2d 1146, 1150 (2001)(internal citations omitted)

For the foregoing reasons, this Court should rehear this matter and issue an Opinion addressing the issues stated above and issue an Opinion holding Mark Anderko is not to be placed on the out of state registration list in the State of South Carolina

December 26, 2018



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The South Carolina Court of Appeals

Mark Anderko, Appellant,

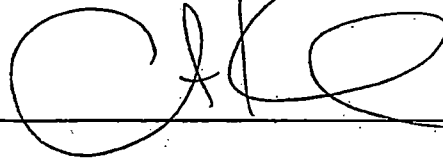
v.

South Carolina Law Enforcement Division, Respondent.

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ORDER

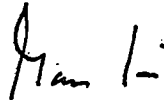
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Clarence Rauch Wise, Esquire
Christopher A. Wellborn, Esquire
Adam L. Whitsett, Esquire
The Honorable S. Jackson Kimball, III

FILED

January 17, 2019