

ORIGINAL

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY COURT OF COMMON PLEAS
THE HONORABLE R. MARKLEY DENNIS, JR., CIRCUIT COURT JUDGE

Case Tracking Number: 2010-161446

Clifford Thompson Appellant,

v.

State of South Carolina Respondent,

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The Appellant's action was dismissed because it was not ripe for adjudication. It was not dismissed because of any other jurisdictional issue.

II.

The Appellant's request to be removed from the sex offender registry is not ripe for adjudication because future registry requirements are not known for year 2020 when Appellant will be released from prison.

STATEMENT OF THE CASE

The Appellant pled guilty on May 2, 2001 to four counts of kidnapping and six counts of armed robbery. The Appellant filed a petition in 2009 requesting the Court make a finding on the record that the Appellant's kidnapping offenses should not place him on the sex offender registry upon his release in August of 2020. Conditions requiring registration for a kidnapping conviction have changed multiple times since the inception of the sex offender registry, and it is not known whether the Appellant will be required to register nearly a decade in the future. The State of South Carolina filed a motion to dismiss because this matter is not ripe for judicial consideration. A hearing on the matter was convened at the Berkley County Courthouse on November 18, 2009. At the hearing the Appellant attempted to amend his Complaint to request adjudication that his kidnapping charges were not sexual in nature. Permission to amend the Complaint was denied. The Court found that the Appellant's request is not ripe for judicial consideration because he will not have to register, if at all, until year 2020. The Appellant's action was dismissed without prejudice so that he could file the same Complaint near the time of his release, or immediately file a Motion for Declaratory Judgment to request adjudication that his kidnapping charges were not sexual in nature.

Appellant filed a notice of appeal from Judge Dennis' order. This appeal follows.

STATEMENT OF FACTS

The Appellant pled guilty to four counts of kidnapping and six counts of armed robbery, and will not be released from prison until year 2020.

ARGUMENT

I.

The Appellant's action was dismissed because it was not ripe for adjudication. It was not dismissed because of any other jurisdictional issue.

The Appellant listed several Issues on Appeal relating to jurisdiction of the Court of Common Pleas to make a declaratory judgment of whether a person has to register as a sex offender. The Court of Common Pleas has jurisdiction to make a declaratory judgment on a person's requirement to register because the Sex Offender Registry is a civil statute. *Hazel v. State*, 377 S.C. 60, 659 S.E.2d 137 (2008). This action was not dismissed based on the issue of whether the Circuit Court has such jurisdiction, but rather because the Circuit Court cannot predict whether the Appellant will be required to register pursuant to distant future versions of statutory law.

II.

The Appellant's request to be removed from the sex offender registry is not ripe for adjudication because future registry requirements are not known for Appellant's year 2020 release from prison.

The sex offender registry law in effect at the time of an incarcerated inmate's release from prison determines registration requirements. *Hazel v. State*, 377 S.C. 60, 659 S.E.2d 137 (2008). The Appellant is currently incarcerated and will not be released from prison until August of 2020. The Appellant is not currently registered or listed on the sex offender registry because registration as a sex offender does not occur until an inmate is released from prison. The sex offender registry law in place at the time of his year 2020 release from prison will determine the Appellant's sex offender registry status.

The sex offender registry statutes, South Carolina Code Annotated Sections 23-3-400 *et seq.* have undergone numerous changes regarding the treatment of kidnapping convictions. The continuous change in requirements triggering sex offender registration is best illustrated by amendments to § 23-3-430. Four amendments since 1994 have changed the status of kidnapping as a registration triggering offense. The first version of South Carolina's sex offender registry included kidnapping as an offense requiring sex offender registration. § 23-3-430(8) (Supp.1995). In 1996 an amendment dropped kidnapping from the list of offenses triggering sex offender registration. § 23-3-430(C) (Supp.1996). A 1998 amendment reinstated kidnapping as an offense triggering sex offender registration. § 23-3-430(C)(15) (Supp.1998). Kidnapping was again the subject of a 1999 amendment stating that a person convicted of kidnapping a person eighteen years of age or older would be required to register as a sex offender. An exception was included that does not require registration if the court made a finding on the record that the

offense did not include a criminal sexual offense or an attempted criminal sexual offense. § 23-3-430(C)(15) (Supp.1999). Because of the numerous changes to the sex offender registry statutes with regard to kidnapping, the status of kidnapping with regards to the sex offender registry statutes in the far distant future are unknown.

In order to maintain a legal action there must be “a real and substantial controversy which is appropriate for judicial determination, as distinguished from a contingent, hypothetical, or abstract dispute.” *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983); *Thrifty Rent-A-Car Sys., Inc. v. Thrifty Auto Sales of Charleston, Inc.*, 849 F.Supp. 1083, 1085-86 (D.S.C.1991) (stating a “court should not decide a controversy grounded in uncertain and contingent events that may not occur as anticipated or may not occur at all”). Because The Appellant does not have to currently register as a sex offender and the requirement of the Appellant’s registration upon his release in year 2020 is uncertain, there is no real and substantial controversy at the present time.

CONCLUSION

For all of the foregoing reasons, the Common Pleas Court's Order should be upheld.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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CERTIFICATE OF SERVICE

I hereby certify that this 11th day of February 2013, I served a copy of the
within **Final Brief of Respondent** on the Appellant by depositing a copy of same in the
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