

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

Certiorari - COA - Common Pleas
Appeal from York County
S. Jackson Kimball, Special Circuit Court Judge

Appellate Case № 2019-000225

Mark Anderko Petitioner,

v.

South Carolina Law Enforcement Division Respondent.

PETITIONER'S REPLY TO RESPONDENT'S RETURN

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 06188
rauchwise@gmail.com

Christopher A. Wellborn
142 Oakland Avenue
Rock Hill, SC 29730
(803) 366-1065
cawlaw@comporium.net

Attorneys for Petitioner

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Argument

Question I

Did the Court of Appeals err as a matter of law in finding that Mark Anderko was required to continue to have his name on the out of state Sex Offender Registry when he was not a resident of the State of South Carolina?

SLED contends that because the statute is written in the past tense, once a person is required to register they will always be required to register. This interpretation ignores the fact that all convictions will be referred to in the past tense because they occurred in the past. When a person is no longer required to register in the State of their conviction, then the South Carolina law would require that our State would look to see if the crimes are similar enough to require registration. SLED has not argued the law in Washington alone would require Mr. Anderko to register.

SLED argues that notwithstanding the fact that any person leaves the State of South Carolina they will forever be required to be listed on the out of state register, regardless of where they live. SLED argues “It is inarguable that had the South Carolina Legislature intended for moving out of state to be an additional avenue for removal, the Legislature would have specifically stated such in statute.” Br. of Resp. at 7. The legislature did specifically say that a person moving out of state should be removed when they made the law applicable to residents of the State of South Carolina. In fact, the argument can easily be made that had the legislature intended to apply the registration requirement to former residents, the law would have applied to “residents or former residents.” The law only applies to residents.

SLED has argued that the Mr. Anderko did not preserve the “resident” argument. The

record suggests otherwise. On page 22 of the Appendix at line 20 to 23, line 4, Mr. Welborn argues he is no longer a resident of South Carolina and is a resident of the State of Washington with no intent of residing here. See, also, App. 25, ll 9-20; 29, ll 5-9; App. 40, ll 18-24; App. 60-61. The parties argued about the fact that Mr. Anderko was not a resident of the State of South Carolina. The mandate of lifetime registration is for South Carolina residents only. This fact is acknowledged by SLED when they do not require an active registration for an out-of-state person. If the law was interpreted as SLED suggests, then SLED should be required to keep an active registration including current addresses of any person who has ever been registered in South Carolina. Such an interpretation is absurd. As one court has said, "When all else is said and done, common sense must not be a stranger in the house of the law." *Cantrell v. Kentucky Unemployment Ins. Comm'n*, 450 S.W.2d 235, 237 (Ky. 1970). Common sense should say a non-resident should not have his name on a list designed to protect the residents of South Carolina.

SLED has argued "All out-of-state listings provide notice to South Carolina residents that an individual who would be registering is not and **should not** be residing in this State." Ret. of Resp. at 9 (emphasis in original). First, the sexual registration laws are not a ban that keeps a person from residing in our State. While such a law may discourage a person from residing here, it does not mean they should not be residing here. If SLED truly believes this statement is true, then it should maintain a list of all sex offenders in the United States as any one of them has the potential of moving to our State. SLED contends our citizens should be forewarned before a sex offender moves here. Nothing in our statute suggests such an interpretation.

SLED in its brief also fails to recognize that the requirement of South Carolina Code §

23-3-460 to register for life applies only to a person who is a South Carolina resident. By its plain meaning, the statute applies only to a person “residing in the State of South Carolina.” The statute does not say “or formerly residing in the State of South Carolina.” Residing means presently living in and not formerly. Black’s Law Dictionary defines “reside” as “live, dwell, abide, sojourn, stay remain, lodge.” Black’s Law Dictionary 14th Ed. (1951). None of these terms would apply to a person living in another state. The complete sentence requiring lifetime registration reads “(A) A person required to register pursuant to this article is required to register biannually for life.” South Carolina Code § 23-3-460(A). SLED does not require its “out-of-state” registrants to register “biannually.” In fact they actually do not require them to register at all. Thus, the only common sense application of the “lifetime” is that it does not apply to people residing out of the State of South Carolina. The only reference to a person moving out of state is, “(F) If a person required to register pursuant to this article moves outside of South Carolina, the person must provide written notice within three business days of the change of address to a new state to the county sheriff with whom the person last registered.” S.C. Code Ann. § 23-3-460. The State does not provide for a penalty for giving an incorrect out-of-state residence. As noted in the Petition, giving the sheriff permission to destroy all information on a person moving out of state seems inconsistent with the objectives argued by SLED.

SLED further asserts the “out-of-state” listing 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.” Ret. Of Resp. at 9 (citation omitted). How does listing an out of state name protect the public in South Carolina? As the person is not required to give a current picture or address each year, the information is only marginally useful, if at all. For the

information to be truly useful, the State would need to require a former resident to register each year with a current address and picture. Could the State of South Carolina legally require a non-resident to provide a current picture and address?

Question II

Did the Court of Appeals err as a matter of law in failing to require the State Law Enforcement Division (SLED) to remove the name of Mark Anderko from the out of state Sex Offender Registry when the State of Washington, after a hearing, had removed him from having to register as a sex offender in the State of Washington?

SLED in its Return states “However, as correctly noted by the trial court, this Order [from the State of Washington] does not command the the Respondent or the State of South Carolina to take any action whatsoever and does not have any effect whatsoever on the Appellant’s continued “out of state” listing or subsequent registration requirement in the State of South Carolina.” Ret. of Resp. at 11. Virtually no order from another state requires another state to do anything to be recognized by the Full Faith and Credit Clause found in Article IV, § 1 of the Constitution of the United States of America. A simple divorce in North Carolina does not ever require South Carolina or any other state to take any action. The Full Faith and Credit Clause simply requires another State to recognize the divorce as valid in their state. That is all Mr. Anderko is asking in this case. As South Carolina Code §23-3-430A requires Mr. Anderko to register here, or continue to have his name on an “out-of state” registry only if he is required to register in the original State, Mr. Anderko is simply asking this Court to recognize that he is no longer required to register in the State of Washington and, therefore, is not required to register here. He is asking this Court to give full faith and credit to the Washington Order. South

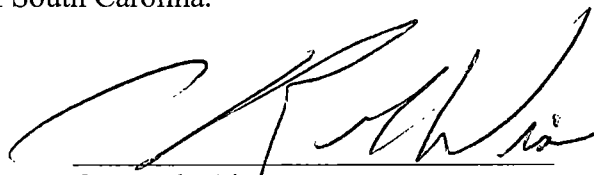
Carolina gave full faith and credit to the original Order from the State of Washington that requires him to register. Our courts should likewise give full faith and credit when he is not required to register.

SLED also argues, “Put simply, the jurisprudence of this State and the intent of the South Carolina Legislature is clear - the fact that Washington law allows an individual to be removed from the Washington’s registry has no bearing on the South Carolina Legislature’s mandate for lifetime registration in South Carolina.” Ret. Of Resp. at 12. This argument ignores that what required Mr. Anderko to register in South Carolina was the original requirement that he register in the State of Washington. Mr. Anderko is simply requesting that the new Order from the State of Washington be recognized in South Carolina.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Petition for Writ of Certiorari, this Court should grant the Petition filed in this matter and reverse the decision of the lower court and remand the matter to the lower court for a ruling that Mark Anderko be removed from the Sex Offender Registry for the State of South Carolina.

April 8, 2019



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar No 06188

Christopher A. Wellborn
142 Oakland Avenue
Rock Hill, SC 29730
(803) 366-1065
cawlaw@comporium.net

Attorneys of Mark Anderko

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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me, Sandy Traynham who, after being duly sworn, deposes and says that she is the Secretary for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on April 8, 2019, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Petitioner's Reply to Respondent's Return in the above case addressed to Adam Whitsett, South Carolina Law Enforcement Division, P.O. Box 21398, Columbia, SC 29221.

Sworn to and Subscribed

Sandy Traynham

before me this 8th day

of April, 2019

[Signature]

Notary Public for South Carolina

My Commission Expires: 12/17/2019