STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY LEXINGTON	)	2017-CP-32-00712
John Doe,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	Order Regarding Defendants'
	)	Motion for Summary Judgment
Mark Keel, Chief, State Law Enforcement	)	
Division, and the State of South Carolina,	)	
Defendants.	)	
	)	
	)	

Hearing Date:	December 19th, 2018, @ 2:00 p.m.
Hearing Judge:	Grace Gilchrist Knie
Counsel for Plaintiff/s:	Jonathan M. Milling
Counsel for Defendant/s:	Adam L. Whitsett
Court Reporter:	Steven E. LeBlanc

This matter was before the court on Wednesday, December 19th, 2018, at 2:00 p.m., in Lexington County, SC, the Eleventh Judicial Circuit, upon Defendants' SCRCP, Rule 56 Motion for Summary Judgment, filed with the Court on October 18th, 2018. Attorney, Jonathan M. Milling, of the Milling Law Firm, LLC, was present representing the interests of the Plaintiff. Attorney, Adam L. Whitsett, of the South Carolina Law Enforcement Division was present representing the interests of the Defendants. Steven E. LeBlanc was the court reporter.

PROCEDURAL /FACTUAL BACKGROUND:

Plaintiff filed the Summons and Complaint with the Clerk of Court, Court of Common Pleas on March 3rd, 2017, commencing this action. The action has been filed in this matter on behalf of the plaintiff, "John Doe." Plaintiff's complaint provides that Doe pled guilty to Assault and Battery of a High and Aggravated Nature ("ABHAN") in 2005. In addition, the Circuit Court

ordered Doe to register as a sex offender pursuant to S.C Code Ann. § 23-3-430(D). Accordingly, Doe has been registering in Lexington County, South Carolina, since that time. Plaintiff filed this "Petition for Declaratory Judgment" against Defendants regarding certain provisions governing the South Carolina Sex Offender Registry.

In the Complaint, Plaintiff alleges that the State of South Carolina, in adopting an across the board lifetime registration requirement, has established no rational basis reasonably tied to a governmental interest in: exceeding SORNA's tiered registration requirement which allows for cessation of registration for certain offenders, and requiring persons convicted of ABHAN, a non-specifically identified registration offense, to suffer a lifetime registration requirement, and for treating those convicted of ABHAN and Criminal Sexual Conduct 1st Degree identically, while SORNA has found justification in treating them differently, and also required the lifetime registration without judicial review. SORNA also found that by requiring lifetime registration without judicial review for those convicted of ABHAN, violates the Due Process clause of the Fourteenth Amendment. Plaintiff alleges that Plaintiff is entitled to a finding and an Order concluding that the lifetime registration scheme is unconstitutional, and adopting SORNA's tiered system, and concluding that the lifetime registration scheme for persons convicted of ABHAN violates due process, and is unconstitutional. Plaintiff is requesting that the Court declare South Carolina's lifetime registration requirement for all offenses, even non-enumerated offenses, unconstitutional, and order Defendants to remove Plaintiff's name from the Sex Offender Registry, and award Plaintiff costs, and reasonable attorneys' fees associated with the prosecution of this action. Defendants filed their Answer on July 17th, 2017. Defendants filed their Motion for Summary Judgment and Memorandum in Support on October 18th, 2018.

LAW:

"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." Rule 56, SCRCP; 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).

"Upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere of a person of an offense not listed in this article, the presiding judge may order, as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the solicitor." S.C. Code Ann. § 23-3-430(D).

In South Carolina, courts have consistently held that registration pursuant to SORA is not punishment. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002); Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) (finding 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 re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003) (finding that "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated."); In re Justin B., 405 S.C. 391, 409, 747 S.E.2d 774, 783 (2013) (finding that the electronic monitoring provisions of SORA constitutes a civil non-punitive remedy.) S.C. Code Ann. § 23-3-400 provides [that the intent of SORA is] "to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens" and to "provide law enforcement with the tools needed in investigating criminal offenses.

SORA mandates registration as a sex offender in South Carolina if an individual is convicted of or pleads guilty to certain offenses. SORA specifically states that a person can be "convicted of, adjudicated delinquent for, pled guilty or nolo contendere to…." *See* S.C. Code Ann. § 23-3-430(A). The South Carolina Supreme Court has also noted that:

> there are several [alternative] bases on which to predicate registration in South Carolina: (1) the defendant was convicted in South Carolina of an offense delineated in South Carolina's registry statute, (2) the defendant was convicted of an offense in another jurisdiction for which registration is required in the jurisdiction where the offense occurred, or (3) the defendant was convicted in another jurisdiction of an offense that is similar to a South Carolina offense requiring registration.

In re Shaquille O'Neal B., 385 S.C. 243, 251-52, 684 S.E.2d 549, 554 (2009). As such, any conviction or guilty plea in another jurisdiction of an offense that is similar to any South Carolina registerable offense requires registration, and the fact that an individual is not required to register in the jurisdiction of conviction is not dispositive. *Id*. *See also* Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003); Lozada v. S. Carolina Law Enf't Div., 395 S.C. 509, 514-15, 719 S.E.2d 258, 261 (2011) (noting that "whether the defendant was required to register in the state where the offense occurred does not control the analysis of whether the offenses are similar, but is instead 'an *alternative* basis for registration.'"

The "rational relationship" test determines whether the sex offender registry laws violate the Plaintiff's right to equal protection. The classification as a sex offender in South Carolina is justified and does not violate equal protection if: "(1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis." Hendrix v. Taylor, 353 S.C. 542, 550, 579 S.E.2d 320, 324 (2003). "The initial determination of

reasonableness in a classification lies with the legislature and will not be set aside by this court unless it is plainly arbitrary." Samson v. Greenville Hospital System, 295 S.C. 359, 367, 368 S.E.2d 665, 669 (1988) (internal citations omitted).

The South Carolina Supreme Court has previously ruled that the SORA registry "complies with the first prong of the test, as the legislative purpose is clearly defined" in the text of the law. Hendrix v. Taylor, 353 S.C. 542, 550, 579 S.E.2d 320, 324 (2003) (citing S.C. Code Ann. § 23-3-400). Classifying an individual as a sex offender 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." *Id.*; *see also* In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003).

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 ordered to register pursuant to S.C. Code Ann. 23-3-430 et al., are treated identically. All members of the class "are subject to uniform administrative and legal procedures." Hendrix v. Taylor, 353 S.C. 542, 550, 551, 579 S.E.2d 320, 324 (2003). And, as to the third and final component of the test, 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 v. Taylor, 353 S.C. 542, 551, 579 S.E.2d 320, 324 (2003); *see also* S.C. Code Ann. § 23-3-400.

In order to show the state violated a due process right and deprived an individual of a liberty interest without a hearing, the individual must first "show that he has a constitutionally protected liberty or property interest, and that he has been deprived of that protected interest by some form

of state action." Fleming v. Rose, 338 S.C. 524, 539-40, 526 S.E.2d 732, 740 (Ct. App. 2000), *rev'd on diff. grounds*, 350 S.C. 488, 567 S.E.2d 857 (2002).

SORA registration is a non-punitive imposition and is regulatory, as such no liberty interest is implicated. State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524 (2002); In re. Ronnie A., 355 S.C. 407, 585 S.E.2d 311 (2003); Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003); In the Interest of Justin B., a Juvenile under the Age of Seventeen, 419 S.C. 575, 799 S.E.2d 672 (2017)(reaffirming the constitutionality of SORA and reaffirming unequivocally that SORA is not punishment).

In addition, "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. S. Carolina Law Enf't 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)).

ARGUMENTS OF COUNSEL:

Plaintiff alleges that SORNA provides minimum standards that all states must meet and that South Carolina is required to adopt SORNA's tiered system. Plaintiff also asserts that a lifetime registration requirement as a sex offender violates his liberty interests. Plaintiff contends the State of South Carolina has enacted burdens and requirements for Sex Offender registrants that violate due process rights because it deprives Plaintiff's liberty interests.

In response to Plaintiff's allegation that SORNA provides minimum standards that all states must meet and that South Carolina is required to adopt SORNA's tiered system, Defendant contends that the South Carolina Legislature is constitutionally empowered to enact laws applicable to South Carolina sex offenders and is not required to enact SORNA and that Plaintiff's contention is simply incorrect.

In response to Plaintiff's allegation that a lifetime registration requirement as a sex offender violates his liberty interests, Defendant contends that this argument fails as a matter of law. The equal protection clause of the United States Constitution provides that "no state shall ... deny to any person within its jurisdiction the equal protection of the laws." The question under equal protection analysis is whether the legislation is rationally related to a legitimate state purpose. The scope of review is limited in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be so construed to render them valid. In applying the "rational relationship" test to determine whether the sex offender registry laws violate the Plaintiff's right to equal protection, the Plaintiff's classification as a sex offender in South Carolina is justified and does not violate equal protection if:(1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis. Registration as a sex offender is not a punishment, but rather a regulatory requirement imposed to promote public safety. Classification of 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. As such, Plaintiff's SORA registration protects society and aids law enforcement as a matter of law.

In response to Plaintiff's contention that the State of South Carolina has enacted burdens and requirements for Sex Offender registrants that violate due process rights because it deprives Plaintiff's liberty interests, Defendants respond that Plaintiff incorrectly argues that required lifetime sex offender registration violates his right to due process because, unlike civil collateral consequences associated with other types of criminal charges, there is no administrative procedure

avenue for removal in regards to SORA. This argument fails because SORA registration is a non-punitive imposition and is regulatory, as such that no liberty interest is implicated. As such, any due process claim fails as a matter of law.

Defendants also argue that this action fails to state a claim Rule 12(b)(6) of the South Carolina Rules of Civil Procedure in that the applicable statute of limitations bars this action. In South Carolina, a civil action based upon a liability created by statute, other than a penalty or forfeiture, must commence within three years. *See* S.C. Code Ann. § 15-3-530(2). Plaintiff was informed of his SORA registration requirement in March 2005, and Plaintiff properly began regularly registering at approximately that same time. As such, in accordance with S.C. Code Ann. § 15-3-530(2), any cause of action for relief commenced when Plaintiff first registered. Therefore, any civil action challenging the Plaintiff's SORA registration must have been commenced no later than 2008. However, this action was not filed until March of 2017. As such, this claim is barred by the applicable statute of limitation and thus fails as a matter of law.

It is Defendants' contention that summary judgment is appropriate in this matter. The analysis turns on the resolution of purely legal issues for which summary judgment appears proper. Plaintiff's guilty plea to Assault and Battery of a High and Aggravated Nature mandated registration, pursuant to S.C. Code § 23-3-430(D). Defendants contend that the guilty plea and sentence are sufficient to require Plaintiff to continue registering in South Carolina in accordance with SORA. South Carolina's SORA registration is for life. *See* S.C. Code Ann. § 23-3-460 (mandating registration "for life"). This lifetime mandate is set forth in clear statutory language. As such, this specific statutory language is determinative and leaves no room for judicial interpretation and Defendants argue that therefore Plaintiff's claims fail as a matter of law.

CONCLUSION:

After consideration of the record, memoranda, arguments of counsel, and the applicable law, The Court makes the following findings of fact and conclusions of law:

Plaintiff's guilty plea to Assault and Battery of a High and Aggravated Nature mandated registration, pursuant to S.C. Code § 23-3-430(D). The guilty plea and sentence are sufficient to require Plaintiff to continue registering in South Carolina in accordance with SORA. South Carolina's SORA registration is for life. This lifetime mandate is set forth in clear statutory language. As such, this specific statutory language is determinative and leaves no room for judicial interpretation and therefore Plaintiff's claims fail as a matter of law. Summary judgment is proper when the resolution is of purely legal issues.

Therefore the Court finds that summary judgment is appropriate in this matter and finds that Defendants' Motion for Summary Judgment filed with the Court on October 18th, 2018, should be and is therefore granted.

IT IS SO ORDERED.

/s/Grace Gilchrist Knie
Honorable Grace Gilchrist Knie
Presiding Judge, Eleventh Judicial Circuit

February 8th, 2019
Spartanburg, South Carolina

Lexington Common Pleas

Case Caption: John Doe VS Mark Keel

Case Number: 2017CP3200712

Type: Order/Summary Judgment

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760