**THE STATE OF SOUTH CAROLINA**

**In the Court of Appeals**



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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable DeAndrea G. Benjamin, Circuit Court Judge

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Case No: 2016-000180

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Demetrius Palmer.....Appellant

v.

Mark Keel, Chief of the South Carolina Law Enforcement Division and the State of South Carolina .....Respondent

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# RECORD ON APPEAL

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| STATE OF SOUTH CAROLINA ) | COURT OF COMMON PLEAS |
| ) | FIFTH JUDICIAL CIRCUIT |
| COUNTY OF RICHLAND ) | Civil Action No. 2015-CP-40-00818 |
| ) | |
| Demetrius Palmer, ) | |
| ) | |
| Plaintiff, ) | |
| ) | |
| vs. ) | **ORDER** |
| ) | |
| Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, ) | |
| ) | |
| Defendants. ) | |



This matter came before me on September 2, 2015 for a motion hearing on the Defendants' Motion for Summary Judgment. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division and Assistant Attorney General Courtney Lowell.[1] The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, the Defendants' Motion for Summary Judgment is granted.

## BACKGROUND

The Plaintiff was convicted of criminal sexual conduct with a minor, second degree (§ 16-3-655(B)) (two counts) on or about November 5, 1997. He was sentenced to fifteen years, suspended to three years and four years probation. Upon being released from incarceration, Plaintiff was required to register as a sex offender[2] pursuant to the South Carolina Sex Offender Registry Act ("SORA").

[1] The Defendants are additionally represented by Assistant Attorney General Marcie Greene.
[2] Plaintiff is classified as Tier III offender pursuant to the Sex Offender Registration and Notification Act (SORNA) based on his 1997 conviction and must register every ninety days S.C. Code Ann. 23-3-460 (B).

On or about 2015, Plaintiff Demetrius Palmer filed this "Petition for Declaratory Judgment" against Defendants Chief Keel and the State of South Carolina, regarding certain provision governing the Registry. *See* Complaint. The Plaintiff contends that "equity is reserved for situations where there is no adequate remedy at law;" "the facts before this Court do not support a finding that he is or ever was a predator or child molestor;" "the lifelong Registry requirement is wildly disproportionate to the underlying conduct;" "justice compels a remedy. . .and that justice is served by granting the Petitioner personal relief;" and "Petitioner is entitled to an Order remov[ing] his name from the South Carolina Sex Offender Registry immediately."

## STANDARD OF REVIEW

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law."[3]

"In determining whether any triable issue of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party."[4] "Summary judgement is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law."[5]

In a motion for summary judgment, one party must lose as a matter of law.[6]

## LAW/ ANALYSIS

The Defendants are entitled to Summary Judgment because the there is no genuine issue of material fact in this matter. South Carolina's Sex Offender Registry statutes, S.C. Code Ann.

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[3] Rule 56(c), SCRCP.
[4] *Evening Post Pub. Co. v. Berkeley County School Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011).
[5] *Id.*
[6] *Main v. Corley* 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

§ 23-3-400 *et seq.*, provide the only lawful mechanisms and avenues by which an individual who is properly placed on the registry can be removed.[7] Pursuant to § 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). And 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 removed. S.C. Code Ann. § 23-3-430(F). These are the only lawful avenues by which an individual who is properly placed on the Registry can be removed. Because the Plaintiff does not meet any of these statutory criteria, the equitable relief sought of removal from the sex offender registry is not available.

The South Carolina Supreme Court has held that "[e]quitable relief is generally available only where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute."[8] The Supreme Court has also noted that an "'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity."[9] This does not mean that the person seeking relief must be eligible for the relief set forth in the statute; rather, "adequate relief" means only that some certain definitive statutory relief exists.[10] Accordingly, this Court concludes that South

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[7] The mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by the same code section, to wit: S.C. Code Ann. § 23-3-430.

[8] *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) *citing* 27 *Am.Jur.* 2d, *Equity*, § 94 (1966).

[9] *Id.*

[10] *Key Corporate Capital, Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 644 S.E.2d 675 (2007); *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 379 S.E.2d 119 (1989).

Carolina's Sex Offender Registry provides an adequate remedy to the Plaintiff in this matter because there are several statutory methods in which the Plaintiff can be legally removed from the registry, he simply does not qualify for them. Therefore, summary judgment as a matter of law is proper.

Additionally, it is noteworthy that South Carolina Carolina's Sex Offender Registry is constitutional.[11] This Court finds that South Carolina's statutory lifetime registration requirement is set forth in an unambiguously worded statute.[12] S.C. Code Ann. § 23-3-460 states "A person required to register pursuant to this article is required to register biannually **for life**." (emphasis added)).[13] As such, South Carolina law mandates that there is no equitable jurisdiction in this matter. The South Carolina Supreme Court has specifically held that

> [i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly").[14]

Also, the equity maxim "equity follows the law" is well known in South Carolina.[15] The South Carolina Supreme Court has held that a "court's equitable powers **must yield** in the face of an

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[11] *State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"); *see also In re Justin B.*, 405 S.C. 391, 747 S.E.2d 774 (2013) *cert. denied sub nom. Justin B. v. S. Carolina*, 134 S. Ct. 1496 (2014) (finding South Carolina's lifetime electronic monitoring program constitutional).

[12] *See* S.C. Code Ann. § 23-3-460

[13] However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

[14] *Key Corporate Capital, Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007).

[15] *See Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 319-20, 659 S.E.2d 263, 267 (Ct. App. 2008).

unambiguously worded statute."[16] Accordingly, this Court finds that equity must follow the law in this matter and that this Court's equitable powers must yield in the face of South Carolina's unambiguously worded Sex Offender Registry law, which mandate lifetime registration.

This situation is akin to legislatively mandated minimum sentences for criminal offenses.[17] Following convictions of these offenses, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals below the statutorily set amounts.[18] These statutory minimums are, and have been consistently upheld as being, lawful.[19] In fact, the South Carolina Supreme Court conclusively resolved this issue in *State v. De La Cruz* indicating

> [w]e have held in the past that "[t]he penalty assessed for a particular offense is, except in the rarest of cases, '**purely a matter of legislative prerogative**,' and the legislature's judgment will not be disturbed." State v. Smith, 275 S.C. 164, 167, 268 S.E.2d 276, 277 (1980) (*quoting* Rummel v. Estelle, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980)). Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restriction. *See* Mistretta v. United States, 488 U.S. 361, ----, 109 S.Ct. 647, 650, 102 L.Ed.2d 714, 725-726 (1989), wherein the United States Supreme Court noted, "Congress, of course, has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control." (*Citing* United States v. Wiltberger, 18 U.S. (5 Wheat) 76, 5 L.Ed. 37 (1820); Ex Parte United States, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916)).[20]

In addition, the Supreme Court has also noted that

> [u]nder the mandatory sentencing guidelines, the prosecutor can still choose not to pursue the triggering offenses or to plea the charges down to non-triggering offenses. Choosing which crime to charge a defendant with is the essence of prosecutorial discretion, not choosing which sentence the court shall impose upon

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[16] *Santee Cooper Resort, Inc.*, 298 S.C. at 185, 379 S.E.2d at 123 (1989) (emphasis added)
[17] *See* S.C. Code Ann. § 16-11-330 (10 years); S.C. Code Ann. § 44-53-370 (various mandatory minimums for distribution or trafficking illegal drugs); S.C. Code Ann. § 16-3-30 (30 years).
[18] In the same way, legislatively enacted maximum sentences also apply.
[19] *See State v. De La Cruz*, 302 S.C. 13, 393 S.E.2d 184 (1990); *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001); *State v. Johnson*, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002).
[20] 302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).

conviction. Further, we found the matter of sentencing if convicted of a triggering offense to be a matter within the province of the legislature.[21]

Similarly, this Court finds that the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated by the South Carolina Constitution.[22] Furthermore, South Carolina law is clear, "[w]hether an individual must be placed on the sex offender registry is a question of law."[23]

## CONCLUSION

Based on the foregoing and all applicable South Carolina law, I find and conclude there is simply no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to summary judgment. Therefore, it is hereby ORDERED, DECREED, and ADJUDGED that the Defendants' Motion for Summary Judgment is GRANTED.

**AND IT IS SO ORDERED.**

The Honorable DeAndrea G. Benjamin
Presiding Judge
Court of Common Pleas
5th Judicial Circuit

1-6, 2016

[21] *Id; State v. Jones*, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001).
[22] *See* S.C. Const. art. I, § 8 ("In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.").
[23] *Lozada v. S.C. Law Enforcement 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) ("Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law.").

STATE OF SOUTH CAROLINA, )
)
COUNTY OF RICHLAND )
)
DEMETRIUS PALMER )
Plaintiff, )
)
vs. )
)
MARK KEEL, DIRECTOR, SLED, ET AL )
Defendant. )

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2015-CP-40-_____

RICHLAND COUNTY FILED
2015 FEB -9 AM 11:03
JEANNETTE W. BOYD
C.C.P. G.S.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

SUMTER, South Carolina

Dated: February 3, 2015

Plaintiff/Attorney for Plaintiff

Address: 309 Broad Street, Sumter, SC 29150

SCCA 401 (5/02)

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|---|---|
| **STATE OF SOUTH CAROLINA )** | **IN THE COURT OF COMMON PLEAS** |
| **)** | **FIFTH JUDICIAL CIRCUIT** |
| **COUNTY OF RICHLAND )** | **C/A NO.: 2015-CP-40-_____** |
| **)** | |
| **DEMETRIUS PALMER, )** | |
| **)** | |
| **PETITIONER, )** | |
| **)** | |
| **VS. )** | **PETITION FOR** |
| **)** | **DECLARATORY JUDGMENT** |
| **MARK KEEL, )** | **(Non-Jury)** |
| **DIRECTOR, SOUTH CAROLINA)** | |
| **LAW ENFORCEMENT )** | |
| **DIVISION (SLED), AND THE )** | |
| **STATE OF SOUTH CAROLINA, )** | |
| **)** | |
| **RESPONDENT. )** | |

**********



**THE PETITIONER IN THIS MATTER, BY AND THROUGH HIS COUNSEL, ALLEGES AS FOLLOWS:**

1. That the Petitioner is a citizen and resident of the County of Florence, State of South Carolina.

2. That the Respondent, Mark Keel, is the Chief of the South Carolina Law Enforcement Division (hereinafter referred to as "SLED"), maintaining the Sex Offender Registry for the State of South Carolina. The present action is an action in part for a Declaratory Judgment regarding certain provisions of the South Carolina Sexual Registry (hereinafter referred to as "Registry"), and pursuant to §23-3-410, Code of Laws for South Carolina, 1976, as amended, the Registry is under the direction of the Respondent Keel.

3. That the State of South Carolina, a sovereign State and body politic, enacts its legislation through its State Legislature (the South Carolina General Assembly and Senate) and the Governor. The present action is an action in part for a Declaratory Judgment regarding the constitutionality of provisions of the South Carolina Code of Laws, as amended, specifically §23-3-430, Sex Offender Registry legislation, as it applies differently to §16-3-655(b) (Criminal Sexual Conduct, 2nd Degree) and §16-15-140 (Lewd Act on a Minor).

4. This Honorable Court has jurisdiction over the parties to, and subject matter of, the present action.

5. The Petitioner in this matter was convicted in the State of South Carolina of 2 Counts of Criminal Sexual Conduct with a Minor-2nd Degree in 1997 in Richland County.

6. The Petitioner was sentenced to a term of incarceration of fifteen (15) years Suspended to 3 and 4 years Probation to be served concurrently. The Petitioner was released from probation in 2001.

7. That the Petitioner, after his release from Probation, was required to begin to Register as a Sex Offender in accordance with "Megan's Law" which was enacted subsequent to the release of the Petitioner from the Department of Corrections.

8. That, under §23-3-430(F), even if Petitioner was pardoned by the Governor, Petitioner "may not be removed" from the Registry unless the Attorney General notified a Defendant that the conviction "was reversed,

overturned, or vacated on appeal". §23-3-430(E), South Carolina Code of Laws, as amended.

9. That the Petitioner did not file a timely appeal of his conviction, nor did he timely file an application for Post-conviction Relief.

10. That, upon information and belief, Petitioner has suffered and continues to suffer grievous consequences as a result of being a registered sex offender, including:

a. Permanent ban from volunteering with most youth events, including any involving his own minor relatives (nieces, nephews, etc.) or any children he may father in the future.

b. Limited employment opportunities; and

c. Embarrassment and humiliation for himself and his relatives.

**FOR A FIRST CAUSE OF ACTION**
**Equity**

11. The above set forth facts are made part of this cause of action through incorporation by reference.

12. That the Petitioner is entitled to equitable personal relief in this matter.

13. That the Petitioner is informed and believed that equity is reserved for situations where there is no adequate remedy of law.

14. That the purpose of the Sex Offender Registry is to protect the public from those sex offenders who may re-offend and to aid Law Enforcement in solving sex crimes.

15. That the Petitioner is informed and believes the facts before this Court do not support a finding that he Petitioner is or ever was a predator or child molester.

16. That the Petitioner is informed and believes that the requirement of lifelong Sex Offender Registry is wildly disproportionate to the underlying conduct.

17. That the Petitioner is informed and believes that justice compels a remedy for this particular situation and that justice is served by granting the Petitioner personal relief.

18. That Petitioner is entitled to an Order of this Court directing Defendant Keel to remove his name from the South Carolina Sex Offender Registry immediately.

**WHEREFORE,** Petitioner prays this Court for an Order:

1. Declares the Petitioner has established his claim for relief by evidence satisfactory to this Court; and
2. Ordering the Defendants to remove the Petitioner from the Sex Offender Registry; and
3. For any such other and further relief as may be deemed appropriate by this Court.

**CHARLES T. BROOKS, III**
Attorney for the Petitioner
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708
cbrooks@ctbrooks.com

Dated: 2/5/2015

STATE OF SOUTH CAROLINA )
) VERIFICATION
COUNTY OF RICHLAND )

Demetrius Palmer and , being duly sworn, say that they are the Petitioners herein, and have read the foregoing Petition and know the contents thereof, that the same is true of their own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters they believe them to be true.

SWORN to and Subscribed before me
this 17th day of October, 2014
s/ Bennett Carnes
Notary Public for South Carolina
My Commission expires: 11-30-22

Demetrius L. Palmer Sr.
Signature of Petitioner

Signature of Petitioner

BENNETT CARNES NOTARY PUBLIC COM. EXP. 11.30.22 SOUTH CAROLINA

RICHLAND COUNTY FILED
2015 FEB -9 AM 11:03
JEANNETTE W. MCBRIDE C.C.P. & G.S.

| | | |
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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FIFTH JUDICIAL CIRCUIT |
| COUNTY OF RICHLAND | ) | Case No.: 2015-CP-40-00818 |
| Demetrius Palmer, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | **ANSWER** |
| | ) | |
| Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina, | ) | |
| | ) | |
| Defendants. | ) | |

Defendant Mark Keel, properly identified as the Chief of the South Carolina Law Enforcement Division (SLED) and Defendant State of South Carolina, hereby answer the Plaintiffs' Complaint as follows:

**FOR A FIRST DEFENSE**
Failure to State a Claim

The Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR A SECOND DEFENSE**
Insufficient Service of Process

The Complaint in this matter was not served on Defendant Keel in accordance with the South Carolina Rules of Civil Procedure. As such, pursuant to Rule 12(b)(5), SCRCP this action should be dismissed due to insufficiency of service of process.

**FOR A THIRD DEFENSE**
Response to Allegations

1. The Defendants deny each and every allegation of the Plaintiffs' Complaint not herein specifically admitted, qualified, or explained.

2. Paragraph one (1) is admitted upon information and belief.



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3. Paragraphs two (2) and three (3), to the extent they are characterizations as to the type of action this is require no response. The remaining allegations of paragraphs two (2) and three (3) are admitted upon information and belief.

4. Paragraphs four (4), five (5), and six (6) are admitted upon information and belief.

5. The Defendants are without information or knowledge to admit or deny the allegations of paragraph seven (7) and would therefor deny the same. However, the Defendants would aver that the Plaintiff's inclusion on the South Carolina Sex Offender Registry was proper, was in accordance with South Carolina law, and was constitutional.

6. The Defendants deny the allegations of paragraph eight (8) in that the allegations mischaracterize South Carolina law. The Defendants would crave reference to the actual text of §§ 23-3-430(E) and 23-3-430(F) of the South Carolina Code of Laws for a proper recitation of these statutes.

7. The Defendants are without information and belief to admit the allegations of paragraph nine (9); however, the Defendants would admit these allegations.

8. The Defendants deny the allegations of paragraph ten (10).

9. As to paragraph eleven (11), the Defendants incorporate the responses to each of preceding paragraphs by reference.

10. Paragraph twelve (12) is denied.

11. Paragraph thirteen (13) is denied and the Defendants would aver that § 23-3-430 is an unambiguously worded statute and that equity follows the law. *See* Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) (holding that a "court's equitable powers must yield in the face of an unambiguously worded statute").

12. As to paragraph fourteen (14), the Defendants would aver that the purpose of South Carolina's Sex Offender Registry Statute is set forth in § 23-3-400 and, to the extent inconsistent with this statute, paragraph fourteen (14) is denied.

13. Paragraphs fifteen (15), sixteen (16), seventeen (17), and eighteen (18) are denied.

14. To the extent inconsistent with the foregoing, Defendant denies the requests for relief set forth in the "WHEREFORE" section of the complaint.

**FOR A FOURTH DEFENSE**
Proper Inclusion on the Registry

15. The Defendants would aver that the Plaintiff's inclusion on the South Carolina Sex Offender Registry is proper, constitutional, and in accordance with South Carolina law. Accordingly, the Defendants are informed and believe that this action should be dismissed.

WHEREFORE, having fully answered the Plaintiff's complaint, Defendants pray that this Honorable Court:

A. dismisses the Plaintiff's Complaint entirely;

B. denies any and all relief sought by the Plaintiff; and

C. grants such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

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ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
MARCH 3, 2015

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | IN THE FIFTH JUDICIAL CIRCUIT |
| COUNTY OF RICHLAND | ) | |
| Demetrius Palmer, | ) | Civil Action No. 2015-CP-40-00818 |
| Plaintiff, | ) | |
| vs. | ) | |
| Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, | ) | **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** |
| Defendants. | ) | |

TO: CHARLES T. BROOKS, III, ESQUIRE, ATTORNEY FOR PLAINTIFF

PLEASE TAKE NOTICE THAT the Defendants South Carolina Law Enforcement Division ("SLED") and the State of South Carolina, through the undersigned attorneys, will move before this Court within ten (10) days of the date hereof (or at such other time and place as the Court determines) for summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure.

**BACKGROUND**

The Plaintiff was convicted of criminal sexual conduct with a minor, second degree (Section 16-3-655(B)) (two counts) on or about November 5, 1997. He was sentenced to fifteen (15) years, suspended to three (3) years and four (4) years' probation. Compl. ¶¶6. Upon being released from incarceration, Plaintiff was required to register as a sex offender[1] pursuant to the South Carolina Sex Offender Registry Act ("SORA").

[1] Plaintiff is classified as Tier III offender pursuant to the Sex Offender Registration and Notification Act (SORNA) based on his 1997 conviction and must register every ninety (90) days. S.C. Code Ann. 23-3-460(B).

On or about February 2015, Plaintiff Demetrius Palmer filed this "Petition for Declaratory Judgment" against Defendants Chief Keel and the State of South Carolina, regarding certain provisions governing the Registry. The Plaintiff contends that "equity is reserved for situations where there is no adequate remedy at law;" "the facts before this Court do not support a finding that he is or ever was a predator or child molester;" the lifelong Registry requirement is wildly disproportionate to the underlying conduct;" "justice compels a remedy…and that justice is served by granting the Petitioner personal relief;" and "Petitioner is entitled to an Order … remov[ing] his name from the South Carolina Sex Offender Registry immediately." Compl. ¶¶13, 15-18.

**ARGUMENT**

"A declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue." *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009). "Whether an individual must be placed on the sex offender registry is a question of law." *Lozada v. S.C. Law Enforcement Div.*, 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011).

The South Carolina Sex Offender Registry Act ("SORA") lists the only mechanisms and avenues by which an individual can be removed from the Sex Offender Registry.[2] Pursuant to § 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

[2] In fact, the mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by this same code section. *See* S.C. Code § 23-3-430.

a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed from sex offender registry. S.C. Code Ann. § 23-3-430(F). And finally, § 23-3-430(G) mandates removal for individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial. S.C. Code Ann. § 23-3-430(F). These are the only lawful avenues by which an individual who is properly placed on the Registry can be removed.

Equitable relief sought by the Plaintiff in this matter is not simply available. The South Carolina Supreme Court has noted that "[e]quitable relief is generally available ***only*** where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (emphasis added). The Court further noted that an "'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id* at 621. This does not, however, mean that the person seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that some certain definitive statutory relief exists. *Key Corp. Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 644 S.E.2d 675 (2007); *Santee Cooper Resort, Inc.*, 298 S.C. at 185, 379 S.E.2d at 123. Ultimately, the Supreme Court in *Santee Cooper* noted that "the court's equitable powers must yield in the face of an unambiguously worded statute." 298 S.C. at 185, 379 S.E.2d at 123 (emphasis added).

Moreover, it is well-known and undisputed that "equity follows the law." This maxim alone is a basis for denying equitable relief in this case. *See Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011); *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 319–20, 659 S.E.2d 263, 267 (Ct. App. 2008). Furthermore, South

Carolina law is also clear that "[w]hether an individual must be placed on the sex offender registry is a question of law." *Lozada*, 395 S.C. at 512, 719 S.E.2d at 259.

South Carolina's statutory lifetime registration requirement is set forth in an unambiguously worded statute. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually for life.").[3] As such, South Carolina law mandates that there is ***no equitable jurisdiction*** in this matter. The Defendants respectfully assert that this Court's powers must yield in the face of South Carolina's unambiguously worded SORA, which sets forth lifetime registration. Removal of an individual, by another means other than one of the enumerated avenues, is a violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8; *Key Corp. Capital, Inc.*, 373 S.C. 55, 644 S.E.2d 675 (2007) (finding error in fashioning an equitable remedy in the face of an unambiguously worded statute setting forth certain remedies); *Santee Cooper Resort, Inc.*, 298 S.C. at 185, 379 S.E.2d at 123.

This situation is analogous to legislatively mandated minimum sentences for criminal offenses. *See* S.C. Code Ann. § 16-11-330 (10 years); S.C. Code Ann. § 44-53-370 (various mandatory minimums for distribution or trafficking illegal drugs); S.C. Code Ann. § 16-3-30 (30 years). Following convictions of these offenses, the General Assembly has prohibited judges from sentencing individuals below the statutorily set amount, and these statutory minimums have been consistently upheld as being lawful. *See State v. De La Cruz*, 302 S.C. 13, 393 S.E.2d 184 (1990); *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001); *State v. Johnson*, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). There is no equitable allowance for a lighter sentence. The South Carolina Supreme Court has also noted that:

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[3] Certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

> [u]nder the mandatory sentencing guidelines, the prosecutor can still choose not to pursue the triggering offenses or to plea the charges down to non-triggering offenses. Choosing which crime to charge a defendant with is the essence of prosecutorial discretion, not choosing which sentence the court shall impose upon conviction. **Further, we found the matter of sentencing if convicted of a triggering offense to be a matter within the province of the legislature**.

*Jones*, 344 S.C. at 56, 543 S.E.2d at 545 (internal citations omitted) (emphasis added).

Similarly, the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the South Carolina Constitution. *See* S.C. Const. art. I, § 8 ("In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.").

The Plaintiff asserts that he "is entitled to equitable relief in this matter" and that "equity is reserved for situations where there is no adequate remedy at law." Compl. ¶¶12-13. However, the law in South Carolina is clear; the Plaintiff does not meet any of these statutory criteria in § 23-3-430 such that he is entitled to removal. In fact, there is no indication that he have even attempted to avail himself of any of the statutory avenues for removal. Since the Plaintiff does not qualify for removal, he is simply asking this Court to legislate and create a remedy for them that does not exist in the statute. Therefore, this requested relief requires this Court to impermissibly act as a superlegislature and to add language to an unchallenged constitutional and unambiguously worded statute, which would violate the South Carolina Constitution. Essentially the Plaintiff argues that if a statute does not include him, he is entitled to equitable relief to obtain indirectly what he cannot obtain directly.

Since there is no legal basis for the Plaintiff to be removed from the Registry, the Plaintiff is not entitled to removal through equitable relief.

**CONCLUSION**

For the reasons stated above and all those to be advanced at the hearing of this matter, judgment should be granted to the Defendants Chief Keel and the State of South Carolina.

Respectfully submitted,

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ATTORNEYS FOR CHIEF KEEL AND THE STATE OF SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA
MAY 28, 2015

STATE OF SOUTH CAROLINA )
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND ) 2015-CP-40-00818

Demetrice Palmer,
Plaintiff,

vs. ) TRANSCRIPT OF RECORD

SLED and The State of South Carolina,
Defendants.

September 2, 2016
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

A P P E A R A N C E S:

CHARLES T. BROOKS, III, ESQ.
Attorney for the Plaintiff

ADAM L. WHITSETT, ESQ.
Attorney for the Defendants

DEBORAH M. McCURDY, RPR
Official Court Reporter

## INDEX OF WITNESSES

(WHEREUPON, no witnesses were called during these proceedings.)

## EXHIBITS

(WHEREUPON, no exhibits were introduced during these proceedings.)

SEPTEMBER 2, 2015

THE COURT: This the case of 2015-CP-40-818. This is on the non-jury trial roster. And this is the case of Demetrice Palmer v. Mark Keel. Is your client in jail?

MR. BROOKS: No, ma'am.

THE COURT: Oh, he is just not here?

MR. BROOKS: Well, I told him I didn't need him. It is a motion hearing.

THE COURT: Okay.

MR. WHITSETT: I thought we were going to do the motion for summary judgment first.

THE COURT: Yes.

MR. BROOKS: And Adam and I have done a couple of these, we have got a little experience, so --

THE COURT: Okay.

MR. BROOKS: -- I kind of know what he is going to argue and he kind of knows what I'm going to argue.

THE COURT: Okay.

MR. BROOKS: So that might make a little easier for you, Judge.

THE COURT: All right.

MR. WHITSETT: And, Your Honor, with that being said, we have put together some materials, a

memo. I have shared these with Mr. Brooks.

THE COURT: Okay.

MR. WHITSETT: Very similar. And there are some recent court rulings from circuit courts around the state that I did want Your Honor to benefit from.

THE OURT: Okay.

MR. WHITSETT: And I printed out the two cases, the Court of Appeals' opinion and the Supreme Court opinion on the Johnson case.

THE COURT: Yes, we got that one.

MR. WHITSETT: And I will address that very significantly in our motions.

THE COURT: I saw that one yesterday. And then you said there are some cases from?

MR. WHITSETT: As Mr. Brooks said, we have argued this in several different circuits around the state that deal with several of the circuit court opinions. There is two from Judge Newman on two separate cases, one from Judge Russo on a case. All three of those cases are on appeal. I note that in there.

MR. BROOKS: And two of them are mine.

MR. WHITSETT: Two of them were his. There was one with the Third Circuit Public Defender, but

all three of those orders are on appeal. And I don't submit for precedent, but just as authority.

THE COURT: Yes, sir. All right. I will be glad to hear from you.

MR. WHITSETT: Thank you, Your Honor. May it please the Court? Adam Whitsett. I'm general counsel at SLED, arguing on behalf of both Defendants in this case, Chief Keel, as SLED maintains the registry, and the State of South Carolina.

The Attorney General's Office is on this case with me, but, you know, we sort of just divvied up who does what, so I'm arguing the motion for summary judgment.

And we feel this is a fairly straightforward issue and that the Defendants are entitled to judgment as a matter of law because the only relief requested in this action is, in our opinion, unconstitutional. It is contrary to the clear statutes and it is just relief that is simply not available under South Carolina's current statutory scheme.

By way of brief background, the Plaintiff in this matter, Mr. Palmer, was convicted of two counts of criminal sexual conduct with a minor

second degree in November of 1997.

Under our statutory scheme, that is a clear mandatory registry offense. And under our statutory scheme, registration for this type of offense is for life.

And that is set forth in a clear, unambiguous, straightforward, and constitutional statute. And the registry has been held constitutional in virtually every challenge to the registry as a whole. And it is certainly constitutional as it applies in this case. It is clear and unambiguous.

And the statute itself does set forth certain avenues from which individuals can be removed from the registry. They are limited, but they are set very clearly by the legislature.

If your conviction is overturned or vacated or you file a motion for habeas, you are entitled to removal; or if you get a pardon based on a finding of not guilty, you are entitled to removal.

And the Defendant's position is that those are the only lawful avenues from which individuals can be removed. And they simply do not apply to the Plaintiff in this matter. He has not even, as I understand it, sought any of that relief available, but he certainly doesn't qualify for that relief.

And so it is the State's position that as a matter of law he simply is not entitled to come off the registry. And this is something that the legislature has done. It is purely a matter of legislative prerogative. I mean, they drafted the law. They set this up. They provided these avenues. And we feel that it would be unconstitutional for any court to just rewrite this clear and unambiguous statute to provide relief where the statute does not.

It would be sort of the same type equivalent of just changing the statutory range on a statute. I mean, courts can't go below mandatory minimum, courts can't go above mandatory maximum. I mean, some things are just in the legislature's purview and they are purely a matter of legislative prerogative.

And the courts throughout the state have upheld that type of thing. And they said that a court's equitable powers -- which is all that the Plaintiff is seeking for this Court to do -- must yield in the face of a clear and unambiguous statute and that equity follows the law. And in fashioning equitable remedies, you can't simply ignore the statutes and precedence and the law.

And so the State's position is that this is a constitutional application of a constitutional statute and simply does not constitute a wrong for which equity should step in and that equity follows the law and that there is simply no jurisdiction or no equitable power that would authorize this Court to, in essence, rewrite this clear and unambiguous statute.

As Mr. Brooks said, we have been fighting this similar issue across the state, and it is one that was fought fairly recently in the Johnson case. And the Johnson case has somewhat of a fairly interesting procedural history, so I do think it is worth covering.

THE COURT: Yes, I appreciate that.

MR. WHITSETT: The Court of Appeals in Johnson is the actual -- is the only actual appellate court to analyze or look at the merits of this issue.

And what they said was, very clearly and very unequivocally, equity follows the law and that a court's equitable powers must yield in the face of an unambiguously worded statute. I handed it up and highlighted the relevant portions.

The court goes into sort of very specific details, and it is a very similar sort of

procedural case to this. The individual in question had not sought to take advantage of any of the statutory avenues and it sought to solely come off in equity.

And the trial court -- actually it was really sort of even more in the weeds than that. And the challenge actually arose as a constitutional challenge and only a constitutional challenge. And the trial court in that case, Judge Seals, said, Well, this is constitutional.

There is no constitutional challenge here. There is no meritorious fight on the constitutional application of the statute.

But he said, Well, on this particular case I just don't think it is right. I'm going to exercise equitable jurisdiction.

That was never even sought as relief on that case, but that is what he did. And I assert that he did that based on a Court of Appeals' opinion that has since been reversed. And I'll touch on that in a moment.

Unfortunately, the trial court -- or the trial counsel at the time didn't argue that he had no equitable power or that he had no equitable jurisdiction. It just wasn't argued in front of

the trial court.

When it got to the Court of Appeals, that was the focus of the argument. And that is what the Court of Appeals really analyzed and ultimately ruled on, is that there is just no equitable jurisdiction here, that this statute is clear, it is unambiguous, and that the trial court should not have exercised any equitable power because it would fly in the face of its clear statutory scheme. And ultimately said that, you know, the General Assembly enacted an unambiguously worded statute that sets forth the legal remedies available to an individual on the registry. Because the sex offender registry statute provides an adequate remedy, it was error for the circuit court to fashion an equitable remedy, even though they didn't apply to that individual because he hadn't tried to take advantage of them. And we assert that is the only legal analysis that was done.

Now, unfortunately, when the case got to the Supreme Court, they noted that that had never been argued before the trial court and so they did overturn the Court of Appeals' decision, but they did so based solely on issue preservation. And they were very, very clear in their order, Because

the State failed to argue that Petitioner was not entitled to equitable relief until it reached to the Court of Appeals, the issue was not preserved for appellate review. We therefore reverse the Court of Appeals on preservation grounds.

And so we submit that that was not a meritorious decision, that was not an authority, that the trial court's decision was correct, it was simply an acknowledgment that the meritorious issue wasn't properly preserved, and so therefore they reversed the Court of Appeals.

I still submit that the Court of Appeals' legal analysis is in accordance with the law and ultimately I think the analysis that applies in this case and that should win the day in this case. I don't assert it is binding authority by any stretch of the imagination because it was reversed, but their legal analysis was not overturned by the Supreme Court. It was solely an issue of preservation issue.

That said, the Johnson trial court is not authority. And it is my position that in that case the lawyer for Mr. Johnson and I believe the trial court relied on the Key Corporate Capital Court of Appeals' case that is cited in the Petitioner's

return to our motion. And that case was overturned by the Supreme Court in the Key Corporate Capital decision that I cite, in which case the court said, Equity follows the law and a court's equitable powers must yield in the face -- I quoted it in the memo, I believe it was also quoted in the motion -- and which said, It is beyond this court's power to effect change in the statute enacted by the legislature. And they cite Kettering versus Easley, a case in which case they quote, This court does not sit as a super legislature to second-guess the wisdom or the following of the decisions of the General Assembly.

So -- and I submit that the Key Corporate Capital Court of Appeals' decision was reversed on the specific issue for which it was cited in the Johnson case and I believe for which it is being cited in this case.

And so, you know, we feel that there is certainly -- that that is not authoritative. That is exactly what we argued in all of the previous cases that have been decided this year and that is ultimately what those courts upheld in the decisions that I have handed up to Your Honor.

Again, those are not binding authority, those

are all on appeal. But we think the legal analysis is very straightforward and very simple. And we think the legal analysis has sort of the roadmap put forth by the Court of Appeals in Johnson is that equity follows the law and that while equitable relief is generally available when there is no adequate remedy at law, an adequate remedy may be provided by the statute.

And in this case that doesn't mean that everyone subject to the statute can take advantage of it. It just means that it is there, it is available, and that it exists.

And that is exactly what the Court of Appeals held in Johnson, and we believe that there is just simply no equitable jurisdiction, that -- I mean, it is purely a matter for the South Carolina legislature to address and it would be error for this Court to simply rewrite this statute as the Plaintiff is asking this Court to do. I mean, they are really just asking this Court to add a section in the law that doesn't exist and that the legislature could have put in but chose specifically not to do. And that is a matter solely for the legislature. I candidly anticipate they will and will continue to address the registry

statutorily as they have done throughout the history. It is a statute that has been amended many times since its inception, and I anticipate it will probably be amended many times moving forward. But as it applies in this case, it is a clear, unambiguous constitutional statute that the Plaintiff is seeking to have this Court rewrite.

And we just believe that, you know, the constitutional mandates for the separation of powers, the legislature writes the laws, and that the jurisprudence of this state and the court's equitable powers must yield in the face of unambiguously worded statutes such as this, that there is simply no relief available to the Plaintiff in this action and the Defendants are entitled to judgment as a matter of law on it.

Again, it is a clear statutory scheme. I mean, the words in the statute are registry for life. There is no -- you know, it is a clear, unambiguous constitutional statute that is being constitutionally applied.

And to further address -- and it has been held time and time again not to constitute punishment. Legally, it is not a punishment, it is an administrative regulatory function. And the

court -- and the Supreme Court in this case has held that on numerous occasions time and time again it is a non-communicative constitutional statute that is being constitutionally applied. So we don't think there is any authority or any need for the Court to step in and rewrite this statute.

So we would ask that the Defendants be granted judgment as a matter of law on this issue.

Thank you.

THE COURT: Thank you. Yes, sir, Mr. Brooks?

MR. BROOKS: May it please the Court, Judge?

THE COURT: Yes, sir.

MR. BROOKS: I will start off and respond. I did file a return to the motion. I think you may have that in the file.

THE COURT: Yes, sir.

MR. BROOKS: Okay. But I'll start off responding to counsel's argument by going back through what I see in the Johnson case. And I think that will illustrate the Plaintiff's perspective.

In the Johnson case, procedurally, as Mr. Whitsett said, trial counsel rendered an order using equity fairly to take Mr. Johnson off of the registry.

The case went to the Court of Appeals. The Court of Appeals does give an analysis touching on all these points. Then the Supreme Court, sometime after that, they reversed it.

Now, we can't put ourselves and begin to be as arrogant to know that this is what the Supreme Court said and what was going through their heads and whether or not they took in consideration all of these points brought out by the Court of Appeals. All we have is we have an order from the Supreme Court that talks about equity not being dealt with, and therefore overturned Court of Appeals, which means the Court of Appeals case is no longer law.

THE COURT: Let me ask a quick question, because I read the Johnson case yesterday, and it is -- trying to figure out the procedural part of it was a little confusing, so we read it a couple of times on yesterday. But it appears that the Supreme Court reversed it. And you can correct me if I'm wrong because this is, like I said, my interpretation after reading it yesterday. The Supreme Court reversed the Court of Appeals because their position was that the Court of Appeals could not deal with the issue on equitable jurisdiction

because it was not argued or dealt with below. Is that --

MR. BROOKS: I wouldn't say they could not. They did not. But I wouldn't say they could not deal with the equitable issue below. They didn't.

THE COURT: Well, that is exactly -- and for that reason, the Supreme Court says that the Court of Appeals, it was improper for them to consider that. Is that correct?

MR. BROOKS: Right.

THE COURT: Okay.

MR. BROOKS: And our position is, Well, if the Supreme Court felt that equity was an issue that the Court of Appeals never addressed, then obviously they are implicitly saying that equity is a particular issue that a potential litigator could raise. Otherwise, there would be no reason to overturn the Court of Appeals' decision at all, if equity wasn't a valid issue.

So what I'm saying is, by virtue of the Supreme Court saying, You never addressed the equity issue, by them saying that, they are implicitly saying, It is an issue that needed to be addressed. Since it wasn't addressed, Court of Appeals, your ruling is bad, we are overturning it.

So now we don't have any law on this issue which the Supreme Court, by overturning it, basically says that Judge Seals' order, trial court's order, was law in the case. Hence, Mr. Johnson, who was on the registry, is no longer on the registry. He does not have to register anymore. Okay?

So now why shouldn't other litigants be able to utilize that same situation and perhaps use equity?

Now, they made a motion for summary judgment. Our position is we should be entitled to have a hearing.

So in order to go one step further for you, Judge, we took the opportunity to have my client evaluated by a forensic expert, which should be in the file, Dr. Thomas Martin -- and I'm sure you are familiar with Dr. Martin -- who does an analysis and evaluates Mr. Palmer. And we got him to look at him on a specific basis as to whether or not this guy should be on the registry.

Our position is that equity is a valid issue. The Supreme Court said it was a valid issue. Hence, they overturned the Court of Appeals. So we should be allowed to have a hearing to explore that

and determine whether or not it is truly fair for this individual, Mr. Palmer, to remain on the registry.

Here is a guy that, you know, specifically with him he was indicted November of 1997. I believe he pled November 1997, was released in 1998. Judge, we are talking about 16, 17, 18 years, some-odd years ago. The guy is on the registry, presume he has been doing everything that he is supposed to do in order to comply with registry.

Now, is it fair for him to remain on the registry? Well, what we are asking, Judge, in light of the Supreme Court's order, which says the Court of Appeals implicitly, their well-thought-out, reasoned argument in the Johnson case from the Court of Appeals is no longer the law in this case. And, therefore, we should be allowed, like Mr. Johnson, to have a hearing to determine whether or not it is equitable and fair for him to remain on the registry.

Now, in regards to the statute -- the statute -- we don't say that this sentence or that sentence is ambiguous. What we're saying is there needs to be another remedy. Because in this

situation, if you go looking at the statute, it basically says that the only way an individual can get off from this lifelong albatross around their neck is that they would have to go and file a PCR -- a post-conviction relief -- and try to have their conviction overturned that way.

Well, the problem there is a person's conviction is from the 90s, the second they file a post-conviction relief -- and, Judge, I'm sure you very well know this -- the Attorney General's Office will be in here screaming, statute of limitations, you only got one year to do it. So that remedy is not available.

He can get a pardon, but it can't be just a general pardon, it has got to be a pardon that says he wasn't even guilty. You can't just get a pardon for the sake of getting a pardon. If he just gets what we consider to be a regular pardon, he has still got to register. So that is not necessarily available to him.

So, you know, there is really not a remedy available to an individual such as Mr. Palmer. So when we have that situation, we're asking for the Court to look at it from a matter of equity and fairness.

In the Johnson case, Judge Seals did that. That is the law in that case. That went up on appeal. The Court of Appeals touched on all these issues. We don't know what is in those judges' minds. We can only presume based on what the outcome is from the Supreme Court that they failed or they forgot to deal with the issue of equity, which was the root of Judge Seals' order in the trial court below.

Well, the Supreme Court touched on it and they said they overturned it. Our position is it is a valid issue, it is a valid potential remedy because if it wasn't there would be no need for the Supreme Court to even address it. They could have just left it intact. And therefore Mr. Johnson, along with everybody else, would still be on the registry.

And we just think that at this point of the process, that we think that Mr. Palmer should have his hearing, could have him testify, we can have Dr. Martin come in and testify or produce his affidavit to show that this individual, it is not fair and equitable for him to remain on the registry.

THE COURT: All right. Thank you.

MR. WHITSETT: Thank you, Your Honor. May it please the Court? Just briefly. I mean, obviously the State's position -- I mean, there is no sort of genuine issue of material fact that affects the outcome. I mean, the outcome of this case is based solely on the operation of the law. And the law is very clear and very straightforward.

The law in this case, specifically, you know, 23-3-430, which is both the statute that places individuals on the registry and also the statute that sets forth the only lawful remedies or lawful avenues from which an individual can be removed from the registry, is very clear. And it is unambiguous and that it would be an error of law for any court to fashion a remedy as requested by the Plaintiff that does not exist in the statute. And so it is a matter that I believe summary judgment is suited for.

And to quote from the memo, The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder, and we believe this is one of those cases. This is purely a legal matter for the Court to decide because the remedy requested is simply not available under the South Carolina current

statutory scheme, and any change to that statutory scheme must come from the legislature. And the legislature writes the laws, right, wrong, or indifferent. They are what they are. And this is what applies in this case, as in all cases.

And we just feel that the case law in South Carolina, the Santee Cooper case, the Key Corporate Capital Supreme Court decision specifically addressed that the court's equitable powers must yield in the face of an unambiguously worded statute and a clear statute and that equity must follow the law on that. And there are certain matters that are just solely in the legislative prerogative.

To accept that this Court has the ability to just rewrite this statute would suggest and the same analysis would be used that this Court could rewrite the statutory sentencing on any case and say, Well, this is an armed robbery that has a mandatory minimum or a mandatory maximum, but I just don't think it is right, I think this individual deserves more time or less time, so I am just going to give him a sentence outside the statutory range. That is just something that is -- that we don't believe that the laws of this state

or the constitution of this state allows or affords. And that when there is a clear, unambiguous statute setting forth the only remedies, if they do not apply, then there is -- then the Defendants are entitled to judgment as a matter of law on a case like this. It is the same type argument. If you believe that you can assert that the constitutional application of a constitutional non-punitive statute is somehow wrong, which we don't believe exists, the same argument would apply that you could just rewrite a sentencing statute any time that, you know, you felt a particular Defendant may need to go outside of that. And the law just does not afford that ability and is fairly straightforward on the issue, that when even considering equitable remedies, courts cannot ignore statutes ruled with precedent and that equitable power must yield in the face of certain clear and unambiguous and constitutional statutes.

And so, you know, we do feel that this is a case that is a case for summary judgment in that there is no genuine issue of material fact that could affect the legal outcome of this case or whether the law affords the relief provided on this

type of case.

And so, you know, we would assert the Defendants are entitled to judgment as a matter of law in that this is just purely legal issue on whether the remedy requested is even available as a matter of law, which we believe the constitution, the case law, the precedent of this state says no.

So we would ask, you know, for judgment as a matter of law in this case.

THE COURT: Let me ask Mr. Brooks one question, and you can respond.

On your equity issue, of course equity follows the law, you would agree? We all learned that in law school; right?

MR. BROOKS: I would agree with that, Judge.

THE COURT: All right. How is it that your client -- you are making the argument regarding equity, but your client -- I don't want to say he waived any equitable argument, but he did not exercise -- there were remedies at law and he did not -- the PCR, the appeal at the time, and he did not pursue those, is that is some sense -- I don't want to say --

MR. BROOKS: Estopped?

THE COURT: Yes.

MR. BROOKS: Judge, and I think I would say that is a question of -- I'm not saying that, you know -- that all may be well and good, but that was before August 23rd, 2014, when the Supreme Court did exactly what Adam said that the courts shouldn't do.

And they basically said, No, equity is an issue. They said that implicitly. Because the root effect, the net effect is Mr. Johnson is no longer on the registry. He is in the same category as Mr. Palmer. He was on the registry, he had a lifelong obligation. PCR had been exhausted. You know, the same arguments that --

THE COURT: I can't remember, did he file a PCR or appeal?

MR. WHITSETT: No, Your Honor.

MR. BROOKS: I don't know if he did, but as far as -- are you talking about Mr. Johnson?

THE COURT: Yes.

MR. WHITSETT: And the Court of Appeals actually notes that he didn't -- sort of the same procedure -- he didn't even attempt any of those. Sort of similarly to this.

MR. BROOKS: Same boat. Same situation. So I would probably be more in a pickle in regard to

your question prior to April 2014, but as a result of April 2014, the Supreme Court clearly could have said, you know, We are not going to render an opinion. The Court of Appeals, their decision is their decision. They highlighted -- they could have rationalized it, but they didn't. By basically saying the Court of Appeals didn't address the equity issue, they are in effect saying it is an issue that needed to be addressed. Otherwise, they wouldn't have done what they did, which is actually -- they did exactly what Adam is saying that the court shouldn't do, shouldn't jump into the place of the legislature.

And our position when it comes to the statute is that the statute is incomplete. They don't address the class of individuals of Mr. Johnson and Mr. Palmer. That is what we're saying.

And Adam and I, we have talked about this several times. And he was saying, Hey, this is the domain of the legislature, they need to address that, and the court shouldn't touch it. Well, they did.

And obviously the five wise people, justices that dealt with this issue, they knew what was going to happen when they did what they did, which

was now Mr. Johnson is no longer on the registry. He is the same individual, same circumstances, didn't file a PCR, didn't deal with all those issues.

So now what we're saying is, Hey, the Supreme Court is basically saying equity is an issue. It was an issue worth them saying needed to be addressed. Since it wasn't addressed, we overturn the brilliant analysis done by the Court of Appeals and that is no longer the law in the case.

So obviously what Mr. Palmer is saying is, Hey, what is good for the goose is good for me. Hey, I want to have a hearing in regards to whether or not it is equitable or fair because of what the Supreme Court did with Mr. Johnson and the fact that he is off the registry, let me have my hearing to deal with that issue.

So I understand, you know, counsel's arguments about, you know, the cou t shouldn't jump into the domain of the legislature, equity should follow the law.

Well, the Supreme Court said otherwise in their decision. So -- and that is what we're -- that is what I put forth to the Court.

THE COURT: All right. Thank you.

MR. WHITSETT: Very briefly, Your Honor. I do think the Supreme Court's opinion, I mean, I don't think they said that the Court of Appeals failed to analyze the equity issue. I think they said it was not properly preserved and it wasn't properly argued where it had to have been argued for the matter to go up on appeal, which is the trial court.

THE COURT: Well, that is what --

MR. WHITSETT: And it was not --

THE COURT: -- I was asking earlier.

MR. WHITSETT: -- argued at the trial court, because the trial court -- that case was a constitutional challenge, so there was no -- and if you look at, sort of interestingly, in the Court of Appeals opinion the first part of it deals with the constitutionality because Johnson was a constitutional challenge for which equity was never sought, pled, or addressed.

And, unfortunately, what the Supreme Court said is the State filed a Rule 59 motion to alter or amend, but didn't raise the issue, but didn't address the equity -- the court's lack of equitable jurisdiction or lack of equitable authority, so it was error for -- I mean, that issue just was not

preserved.

I don't think that you can read this Supreme Court opinion as an implicit authorization that this is an available remedy. They said very specifically, We therefore reverse the Court of Appeals' opinion on preservation grounds. I don't think I'm reading into or trying to sort of use a crystal ball to think what they were saying, I'm just looking at what they actually said is, This is an issue -- a preservation issue. This issue that won the day at the Court of Appeals wasn't properly preserved for the Court of Appeals to rule on it. But that is not implicit or tacit authority that the trial court was correct. It is only that the State didn't properly challenge it.

And so we submit that the law in this case and the analysis in this case and the analysis done by the Court of Appeals is still the only analysis of the law that applies to any of these cases.

And, like I said, I'm not asserting that it is binding authority, because it is not. But it is certainly persuasive in that it is the only appellate court to analyze the issue. And I think it would be -- I just don't think that you can read the Supreme Court opinion as an implicit -- as any

type of holding as to the merits of the case because they specifically said, We're not going to address the merits of the case.

And so, you know, I believe that the law in this state is very clear and that this is a case where summary judgment is appropriate, that there is simply no implicit -- or there is no authority to rewrite the statute for the Court and that is a matter solely for the legislature.

Thank you.

THE COURT: Thank you. I will have you all give me proposed orders, both sides. How much time do you think you need?

MR. WHITSETT: I'm going on vacation next week. I don't know if I can get it this week, but --

THE COURT: Oh, no, well, that's fine. I'm going too. But I'll be back next week.

MR. WHITSETT: Thirty days?

MR. BROOKS: That's fine with me.

THE COURT: That's fine.

MR. WHITSETT: And send it electronically or what is your --

THE COURT: Electronically will be fine.

MR. BROOKS: That's fine.

THE COURT: And if you can send it as a Word document.

MR. BROOKS: Okay.

THE COURT: All right. Thank you.

MR. WHITSETT: All right.

MR. BROOKS: Thank you, Judge.

(WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )
)
COUNTY OF RICHLAND )

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the for going is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 2nd day of September, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 23, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FIFTH JUDICIAL CIRCUIT |
| COUNTY OF RICHLAND | ) | C/A NO.: 2015-CP-40-00818 |
| | ) | |
| DEMETRIUS PALMER, | ) | |
| | ) | |
| PETITIONER, | ) | |
| | ) | |
| VS. | ) | Affidavit of Thomas V. Martin, M.D. |
| | ) | |
| MARK KEEL, | ) | |
| DIRECTOR, SOUTH CAROLINA | ) | |
| LAW ENFORCEMENT DIVISION (SLED), | ) | |
| AND THE STATE OF SOUTH CAROLINA, | ) | |
| | ) | |
| RESPONDENT. | ) | |



I, Thomas V. Martin, M.D., am a licensed physician (psychiatrist) in the state of South Carolina. I am Board Certified in General and Forensic Psychiatry by the American Board of Psychiatry and Neurology and the American Board of Forensic Psychiatry. My practice is located at 1330 Richland Street, Columbia, SC. My practice includes the care and treatment of patients from childhood to geriatrics. I have been qualified to testify in numerous counties in South Carolina as well as the United States Federal Courts. My practice of twenty five years includes the assessment and treatment of many sexual offenders from all counties in South Carolina.

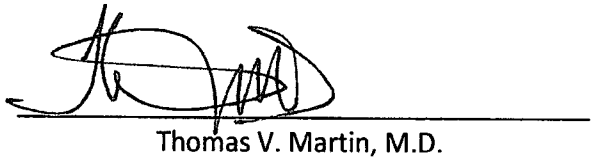
Being duly sworn I do swear and affirm the following:

1) Mr. Demetrius Lewis Palmer, Jr. is a 57 year old single African American male residing in Columbia, South Carolina. Mr. Palmer was indicted on November 5, 1997 for criminal Sexual Conduct (CSC) 2nd degree with a minor, was sentenced to 15 years suspended to four years followed by four years of probation. He served 18 months in Richland County Detention Center and eight months in the South Carolina Department of Corrections (SCDC). Mr. Palmer was released in 1998 from SCDC and completed his probation in 2002 without violations. Mr. Palmer was required by the state to register with the SC Sex Offender Registry for life. He is now petitioning to have this requirement removed and that he be taken off the lifetime Registry.
2) This Examiner's assessment of Mr. Palmer's case and petition included a two and a half hour interview with Mr. Palmer and a consultation with his attorney. In addition, a review was completed of the Indictment & Sentencing document dated November 5, 1997, Richland County Case Details record, Richland County Sex Offender Registry Details, and a 2014 notarized statement of the alleged victim recanting her previous allegations.
3) Mr. Palmer was diagnosed with Schizophrenia, a chronic psychotic mental illness, in young adulthood, and has been awarded disability since 1975. Mr. Palmer offered a mental health history consistent with this diagnosis. He was eventually stabilized with psychiatric medication and supportive therapeutic measures. He has since fathered six children that includes a son who also reportedly suffers from a chronic psychotic illness and is currently hospitalized at the local state mental facility. Mr. Palmer's alleged victim was his daughter,

age 12 years in 1993 after a family disagreement and ultimate family break-up. Mr. Palmer has since been in regular contact with his family and has offered financial support when able. Despite his chronic mental illness, Mr. Palmer has no other allegations or even suggestions by others that he has been inappropriate with children. The young girl's allegation of sexual abuse was a shock to Mr. Palmer and he consistently denied the crime levied against him. In 2014, this same alleged victim submitted a notarized letter recanting her abuse allegation.

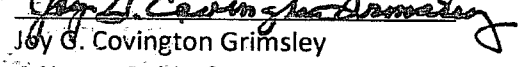
4) Since his release from incarceration, Mr. Palmer renewed his disability income, has cared for himself appropriately, holds a valid SC driver's license, and has been granted primary custody and responsibility for his disabled son, who also suffers from a psychotic illness. Mr. Palmer remains in contact with and is supportive of his other biological children. He bought his own home in 2006, maintains the mortgage payments, and works part-time in his own business of selling perfume oils.
5) Throughout the consultation with this Examiner, Mr. Palmer appeared genuine and honest. He was well dressed in a suit and tie with cufflinks and expressed himself articulately. He gave no indication of disingenuous behavior or deceit. Mr. Palmer's mood was good, he presented with a full range of expression and demonstrated no evidence of psychotic thinking. His insight, judgment and impulse control were intact. Mr. Palmer gave no evidence of suicidal or homicidal ideations, plans, or intent.
6) Mr. Palmer's placement on the SC Sex Offender Registry has posed repeated problems for him with his family, friends, and in the community. On two occasions, he was discovered on the Registry and was subsequently assaulted. His family and friends have been emotionally distant and he has had difficulty securing simple part-time employment. These circumstances have only proven to be detrimental to Mr. Palmer's sense of integrity, his ability to participate in neighborhood and church-related activities, and to lead an otherwise, normal life.
7) It is the opinion of this Examiner with a reasonable degree of medical and psychiatric certainty that Mr. Palmer poses a very low risk to sexually offend. He has consistently demonstrated admirable and laudable behavior in his community and with his family. His annual re-registry as a sexual offender has only proven to be detrimental to his healthy pursuit of life. Mr. Palmer feels haunted by the fact that his name remains on the registry and when friends have incidentally seen his name, they are deterred. Mr. Palmer does not need a deterrent to prevent him from sexual acting-out behavior. The SC Sex Offender Registry serves to assist law enforcement and the community in monitoring those dangerous individuals who do not manage their aberrant sexual behaviors and fail to follow our social and community mores. Mr. Palmer does not meet these criteria.

Further affiant sayeth not.



Thomas V. Martin, M.D.

Sworn to before me this 19th day of May 2015



Joy G. Covington Grimsley
A Notary Public for South Carolina
My Commission Expires: 12-15-2017

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FIFTH JUDICIAL CIRCUIT |
| COUNTY OF RICHLAND | ) | Case No.: 2015-CP-40-00818 |
| Demetrius Palmer, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | **DEFENDANTS' MEMORANDUM** |
| v. | ) | **IN SUPPORT OF SUMMARY** |
| | ) | **JUDGMENT** |
| Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina, | ) | |
| | ) | |
| Defendants. | ) | |

In support of the Motion for Summary Judgment previously filed in this matter, the Defendants would submit the following:

**STANDARD OF REVIEW**

A motion for summary judgment shall be granted "if the pleadings... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) *citing* Rule 56(c), SCRCP (emphasis in original).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976).

**ARGUMENT**

Based on the following, there is no genuine issue of material fact in dispute in this matter. Further, there is no factual dispute requiring the services of a fact finder. Accordingly, Defendants are entitled to a judgment as a matter of law. *See* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRCP.

South Carolina's Sex Offender Registry statutes, S.C. Code § 23-3-400 *et seq.*, list the only mechanisms and avenues by which an individual can be removed from the Sex Offender Registry.[1] *See* S.C. Code Ann. § 23-3-430(E), (F), (G). As such, these are the only lawful and permissible avenues by which an individual who is properly placed on the Registry can be removed. However, there is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria. Rather, the Plaintiff was convicted of two counts of Criminal Sexual Conduct 2nd Degree, and these convictions mandate lifetime registration. *See* S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute - "for life"). Accordingly, there is no legal or constitutional basis for the Plaintiff to be removed from South Carolina's Sex Offender Registry and the Defendants are entitled to judgment as a matter of law. *See* S.C. Code Ann. § 23-3-460 (mandating lifetime registration in South Carolina); S.C. Code Ann. § 23-3-430 (setting forth the only avenues for removal).

The Plaintiff's entire argument in this matter is that his constitutional registration requirement is still somehow a "wrong" in need of an equitable remedy. This argument is without merit. The constitutional application of a non-punitive statute is not a "wrong" cognizable in the law. Further, it is well-known that "equity follows the law". *See* Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011). Moreover, South Carolina law is clear: "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. South Carolina Law Enforcement 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).

[1] In fact, the mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by this same code section. *See* S.C. Code § 23-3-430.

The South Carolina Supreme Court has also held unequivocally that "the 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)(emphasis added); *see also* Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007) (finding error in fashioning an equitable remedy in the face of an unambiguously worded statute setting forth certain remedies).

Furthermore, for a Court to fashion an equitable remedy in the face of an unambiguously worded statue would be a clear violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The South Carolina Constitution specifically provides that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." S.C. Const. art. I, § 8. The duration of sex offender registration is a matter of public policy that is solely in the province of the South Carolina Legislature. As such, any attempt by any court to invade the Legislature's exclusive province is a violation of the separation of powers and is unconstitutional. *Id.* In addition, the South Carolina Supreme Court has specifically held that

> [i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "**it is beyond this Court's power to effect a change in the statutes enacted by the Legislature.**" State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "**not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly**").



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Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675 (2007) (emphasis added). This entire action seeks for this Court to impermissibly and unconstitutionally act as a "superlegislature" and to add language to an unambiguously worded constitutional statute. As such, this request must fail and the Defendants are entitled to summary judgment in this matter.

This situation is comparable to legislatively mandated minimum sentences for criminal offenses. With regard to sentencing for an offense that has a mandatory minimum sentence, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals below the statutorily set amounts. However, these statutory minimums are, and have been consistently upheld as being, lawful. *See* State v. De La Cruz, 302 S.C. 13, 393 S.E.2d 184 (1990); State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001); State v. Johnson, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). In fact, the South Carolina Supreme Court conclusively resolved this issue in *State v. De La Cruz* indicating

> [w]e have held in the past that "[t]he penalty assessed for a particular offense is, except in the rarest of cases, "**purely a matter of legislative prerogative**," and the legislature's judgment will not be disturbed." State v. Smith, 275 S.C. 164, 167, 268 S.E.2d 276, 277 (1980) (*quoting* Rummel v. Estelle, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980)). Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restriction. *See* Mistretta v. United States, 488 U.S. 361, ----, 109 S.Ct. 647, 650, 102 L.Ed.2d 714, 725-726 (1989), wherein the United States Supreme Court noted, *16 "Congress, of course, has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control." (*Citing* United States v. Wiltberger, 18 U.S. (5 Wheat) 76, 5 L.Ed. 37 (1820); Ex Parte United States, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916)).

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).[2] Similarly, the duration of an individual's sex offender registration is **purely a matter of legislative prerogative** and there is no judicial discretion over this duration without violating the South Carolina Constitution and South Carolina law. S.C. Const. art. I, § 8; S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute).

Furthermore, the purely equitable relief sought by the Plaintiff in this matter is simply not available as a matter of law. The South Carolina Supreme Court has noted that "[e]quitable relief is generally available **only** where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) *citing* 27 *Am.Jur.* 2d, *Equity,* § 94 (1966) (emphasis added). The *Santee Cooper* Court further noted that an "'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.* This does not however mean that the person seeking relief must be eligible for the relief set forth in the statute. Rather, it means only that some certain definitive statutory relief exists. Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Ultimately, the Court in *Santee Cooper* noted that "the 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)(emphasis added). Similarly, the Defendants respectfully assert that this Court's equitable powers must yield in the face of South Carolina's unambiguously worded Sex Offender Registry laws, which set forth lifetime registration.

[2] It is noteworthy that sex offender registration has been consistently held not to be "punitive in purpose or effect as to constitute a criminal penalty." State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

## OTHER CIRCUIT COURT RULINGS

While not binding authority in this action, the Defendants wish to notify this Court of several recent circuit court rulings on the issue at bar.[3]

On May 1, 2015, The Honorable Clifton Newman ruled that "there is no equitable remedy or equitable jurisdiction applicable to this matter" in a case involving identical arguments to those being set forth in this case. Order of The Honorable Clifton Newman, Kenneth W. Signor v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, Civil Action No(s).: 2014-CP-43-00968, May 1, 2015, pg. 7 (unpublished). A copy of this order is attached hereto, incorporated by reference herein, and identified as Attachment 1.

Similarly, on May 20, 2015, The Honorable Thomas A. Russo granted a Judgment on the Pleadings to these same Defendants in a case that is identical to this case.[4] Specifically, Judge Russo ruled that "there is simply no equitable remedy or equitable jurisdiction application to this matter and the Defendants are entitled to judgment on the pleadings. Furthermore, I find and conclude that for this court to act as a 'superlegislature' and to unilaterally add language to an unchallenged, unambiguously worded statute would violate South Carolina law and the South Carolina Constitution." Melvin T. Roberts v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, Civil Action No(s).: 2014-CP-21-01973, May 20, 2015, pg. 7 (unpublished). A copy of this order is attached hereto, incorporated by reference herein, and identified as Attachment 2.

[3] Upon information and belief, all of these orders have been appealed and are currently at the South Carolina Court of Appeals.

[4] Judge Russo signed this Order on April 16, 2015; however, it was not filed until May 20, 2015.

Finally, on June 16, 2015, The Honorable Clifton Newman ruled again that there was no equitable jurisdiction applicable to remove an individual from South Carolina's Sex Offender Registry. Marty Lee Barnes v. Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina, Civil Action No(s).: 2012-CP-43-00535, June 16, 2015 (unpublished). A copy of this order is attached hereto, incorporated by reference herein, and identified as Attachment 3.

**CONCLUSION**

Accordingly, for the reasons stated above and all those to be advanced at the hearing of this matter, summary judgment should be granted to the Defendants.

Respectfully Submitted,

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ATTORNEYS FOR THE DEFENDANTS

COLUMBIA, SOUTH CAROLINA
AUGUST 31, 2015

# ATTACHMENT 1

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STATE OF SOUTH CAROLINA )
RECORDED
2015 MAY -1 PM 2:35
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
COUNTY OF SUMTER )

Kenneth W. Signor,

Plaintiff,

vs.

Mark Keel, Chief of the South Carolina Law Enforcement Division, and the State of South Carolina,

Defendants.

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Civil Action No: 2014-CP-43-00968

OF ORIGINAL FILE
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

**ORDER GRANTING JUDGMENT ON THE PLEADINGS**

This matter came before me on February 9, 2015 for a motion hearing on the Defendants' Motion for Judgment on the Pleadings. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division and Assistant Attorney General Courtney Lowell.[1] The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Judgment on the Pleadings in this matter.

## BACKGROUND

In or about 1987, Plaintiff was convicted of Criminal Sexual Conduct with a Minor 2nd Degree and Lewd Act with a Minor on or about the year 1987 and was sentenced to fifteen (15) years of incarceration for to the Criminal Sexual Conduct conviction and a term of five (5) years for the Lewd Act conviction. The Plaintiff was released from incarceration on or about April 1, 1994.

[1] The Defendants are additionally represented by Assistant Attorney General Marcie Greene.

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During Plaintiff's incarceration, the South Carolina Sex Offender Registry Act[2] was passed requiring Plaintiff to register as a sex offender. The Plaintiff has registered since that time. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's sex offender registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions").

The Plaintiff filed this action based solely on equitable grounds, seeking a declaratory judgment and requesting that this Court remove the Plaintiff from the South Carolina Sex Offender Registry. *See* Complaint. The Plaintiff concedes that he does not meet any of the statutory criteria for removal as set forth in S.C. Code § 23-3-430, and that he has not sought to avail himself to any of these statutory avenues for removal. *Id.* The Defendants filed this Motion for Judgment on the Pleadings asserting that South Carolina law prohibits the relief sought by the Plaintiff.

**STANDARD OF REVIEW**

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12, SCRCP.

"Where the pleadings are fatally deficient in substance or fail to state a good cause of action in favor of the plaintiff and against the defendant, judgment on the pleadings is proper. Whereas here the pleadings disclose all facts necessary or where the pleadings present no issue of fact the Court may exercise its discretion." Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982). The grant of a judgment on the pleadings is within the discretion of the trial court. *Id.*

A "motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or

[2] S.C. Code § 23-3-400 *et seq.*

present merely an immaterial issue." Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982).

**DISCUSSION**

South Carolina's Sex Offender Registry statutes, S.C. Code Ann. § 23-3-400 *et seq.*, provide the only lawful mechanisms and avenues by which an individual who is properly placed on the registry can be removed.[3] Pursuant to § 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). 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 removed. S.C. Code Ann. § 23-3-430(F).

The pleadings demonstrate that the Plaintiff does not contend that he meets any of the statutory criteria that entitle him to removal from the registry and he did not argue any statutory entitlement to relief. However, Plaintiff contends that he is entitled to relief based upon equity.

The statute providing for lifetime registration is unambiguously worded. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually **for life**." (emphasis added))[4]. The South Carolina Supreme Court has specifically held that

[3] In fact, I note that the mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by the same code section, to wit: S.C. Code Ann. § 23-3-430.

[4] However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

> [i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly").

Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007). It is also well-known that "equity follows the law." *See* Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 319-20, 659 S.E.2d 263, 267 (Ct. App. 2008). Moreover, 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.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (emphasis added)).

South Carolina law provides that "[w]hen providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). Furthermore, the South Carolina Supreme Court has held that "[e]quitable relief is generally available only where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) *citing* 27 *Am.Jur.* 2d, *Equity*, § 94 (1966). The Supreme Court has noted that an "'adequate remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its

administration as the remedy in equity." *Id.* South Carolina's Sex Offender Registry provides an adequate remedy to the Plaintiff in that there are several statutory methods through which the Plaintiff could be legally removed from the registry. It appears that he simply does not qualify for them.

The issues presented in this case are analogous to legislatively mandated minimum sentences for criminal offenses. *See* S.C. Code Ann. § 16-11-330 (10 years); S.C. Code Ann. § 44-53-370 (various mandatory minimums for distribution or trafficking illegal drugs); S.C. Code Ann. § 16-3-30 (30 years). Following convictions of these offenses, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals below the statutorily set amounts.[5] However, these statutory minimums are, and have been consistently upheld as being, lawful. *See* State v. De La Cruz, 302 S.C. 13, 393 S.E.2d 184 (1990); State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001); State v. Johnson, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). In fact, the South Carolina Supreme Court conclusively resolved this issue in *State v. De La Cruz* indicating

> [w]e have held in the past that "[t]he penalty assessed for a particular offense is, except in the rarest of cases, '**purely a matter of legislative prerogative**,' and the legislature's judgment will not be disturbed." State v. Smith, 275 S.C. 164, 167, 268 S.E.2d 276, 277 (1980) (*quoting* Rummel v. Estelle, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980)). Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restriction. *See* Mistretta v. United States, 488 U.S. 361, ----, 109 S.Ct. 647, 650, 102 L.Ed.2d 714, 725-726 (1989), wherein the United States Supreme Court noted, "Congress, of course, has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control." (*Citing* United States v. Wiltberger, 18 U.S. (5 Wheat) 76, 5 L.Ed. 37 (1820); Ex Parte United States, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916)).

[5] In the same way, legislatively enacted maximum sentences also apply.

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).[6] In addition, the Supreme Court has also noted that

> [u]nder the mandatory sentencing guidelines, the prosecutor can still choose not to pursue the triggering offenses or to plea the charges down to non-triggering offenses. Choosing which crime to charge a defendant with is the essence of prosecutorial discretion, not choosing which sentence the court shall impose upon conviction. Further, we found the matter of sentencing if convicted of a triggering offense to be a matter within the province of the legislature. *Id.*

State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001). The duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated by the South Carolina Constitution. *See* S.C. Const. art. I, § 8 ("In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."). Furthermore, South Carolina law is clear, "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. S.C. Law Enforcement 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) ("Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law.").

**CONCLUSION**

Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. For this Court to act as a "superlegislature" and to unilaterally

[6] It is noteworthy that sex offender registration has been consistently held not to be "punitive in purpose or effect as to constitute a criminal penalty." State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

deviate from an unchallenged and unambiguously worded statute would be contrary to South Carolina law and the South Carolina Constitution.

It is therefore ORDERED that the Defendants' Motion for Judgment on the Pleadings is hereby GRANTED.

**AND IT IS SO ORDERED.**

Clifton Newman
Presiding Judge

Columbia, South Carolina
April___, 2015

# ATTACHMENT 2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-21-01973

Melvin T. Roberts

2015 MAY 20 PM 1:58

CORNIE [illegible]
CCOP & GS
FLORENCE [illegible]

PLAINTIFF(S)

Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina

DEFENDANT(S)

| Submitted by: Adam L. Whitsett, Esquire | Attorney for : ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant |
|---|---|

**DISPOSITION TYPE (CHECK ONE)**

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

CERTIFIED A TRUE COPY
Connie Rae Spain
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

**ORDER INFORMATION**

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

**INFORMATION FOR THE JUDGMENT INDEX**

**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|---|---|---|
| | | $ |
| | | $ |
| | | $ |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**Circuit Court Judge** **Judge Code** **Date**

## For Clerk of Court Office Use Only

This judgment was entered on the 20 day of May, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of May, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

C. T. Brooks III
P.O. Box 3512
Sumter, S.C. 29151
ATTORNEY(S) FOR THE PLAINTIFF(S)

A. L. Whitsett
P.O. Box 21398
Columbia, SC 29221-1398
ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin
CLERK OF COURT
C.E. Lowell, P.O. Box 11549
Columbia, SC 29211

**Court Reporter:**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | TWELFTH JUDICIAL CIRCUIT |
| COUNTY OF FLORENCE | ) | Civil Action No. 2014-CP-21-01973 |

Melvin T. Roberts,

Plaintiff/Petitioner,

vs.

Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina,

Defendants/Respondents.

**ORDER GRANTING JUDGMENT ON THE PLEADINGS**



This matter came before me on March 19, 2015, for a motion hearing on the Defendants' Motion for Judgment on the Pleadings. The Defendants were represented at the hearing by Adam L. Whitsett, Esquire, General Counsel to the South Carolina Law Enforcement Division.[1] The Plaintiff was represented by Charles T. Brooks, III, Esquire, of The Brooks Law Office, LLC. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion for Judgment on the Pleadings in this matter.

## BACKGROUND

By way of background, the Plaintiff was convicted of Rape on or about the year 1975 and was sentenced to forty (40) years of incarceration for this conviction. The Plaintiff was released from incarceration on or about February 8, 1989. Upon the inception of the South Carolina Sex Offender Registry,[2] the Plaintiff was required to register as a sex offender. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's sex offender registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"). The Plaintiff has registered since that time.

[1] The Defendants are additionally represented by Assistant Attorneys General Courtney Lowell and Marcie Greene.
[2] S.C. Code § 23-3-400 *et seq.*

The Plaintiff filed this action seeking a declaratory judgment and requesting that this Court remove the Plaintiff from the South Carolina Sex Offender Registry based solely on equitable grounds. *See* Complaint. However, the Plaintiff concedes that he does not meet any of the statutory criteria for removal set forth in S.C. Code § 23-3-430, and that he has not sought to avail himself to any of these statutory avenues for removal. *Id.* Accordingly, the Defendants filed this Motion for Judgment on the Pleadings asserting that South Carolina law prohibits such equitable relief in this matter.

## STANDARD OF REVIEW

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12, SCRCP.

"Where the pleadings are fatally deficient in substance or fail to state a good cause of action in favor of the plaintiff and against the defendant, judgment on the pleadings is proper. Whereas here the pleadings disclose all facts necessary or where the pleadings present no issue of fact the Court may exercise its discretion." Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982). The grant of a judgment on the pleadings is within the discretion of the trial court. *Id.*

A "motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue." Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982) *citing* Wooten v. Std. Life and Casualty Ins. Co., 239 S.C. 243, 122 S.E.2d 637 (1961).

## LAW / ANALYSIS

I find and conclude that the Defendants are entitled to a Judgment on the Pleadings because the pleadings demonstrate that there is no cause of action in favor of the plaintiff in this matter. South Carolina's Sex Offender Registry statutes, S.C. Code Ann. § 23-3-400 *et seq.*, provide the only lawful mechanisms and avenues by which an individual who is properly placed on the registry can be removed.[3] Pursuant to § 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). And 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 removed. S.C. Code Ann. § 23-3-430(G). I find and conclude that these are the only lawful avenues by which an individual who is properly placed on the Registry can be removed. However, as noted above, the pleadings demonstrate that the Plaintiff does not meet any of these statutory criteria such that the Plaintiff is lawfully entitled to removal from the Registry. Accordingly, I find that there is no legal or constitutional basis on which this Court could grant the relief requested by the Plaintiff and judgment on the pleadings is proper. *See* S.C. Code Ann. § 23-3-460 (mandating lifetime registration in South Carolina); S.C. Code Ann. § 23-3-430 (setting forth the only avenues for removal); Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638 (1982).

[3] In fact, I note that the mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by the same code section, to wit: S.C. Code Ann. § 23-3-430.



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As a threshold matter, it is noteworthy that South Carolina Carolina's Sex Offender Registry is constitutional and the constitutionality of the Registry was not challenged in this action. *See* Complaint; State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"); *see also* In re Justin B., 405 S.C. 391, 747 S.E.2d 774 (2013) *cert. denied sub nom.* Justin B. v. S. Carolina, 134 S. Ct. 1496 (2014) (finding South Carolina's lifetime electronic monitoring program constitutional). Moreover, I find and conclude that South Carolina's statutory lifetime registration requirement is set forth in an unambiguously worded statute. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually **for life**." (emphasis added)).[4] As such, South Carolina law mandates that there is no equitable jurisdiction in this matter. The South Carolina Supreme Court has specifically held that

> [i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly").

Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007). It is also well-known that "equity follows the law." *See* Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 319-20, 659 S.E.2d 263, 267 (Ct. App. 2008). Moreover, the South Carolina Supreme Court has

[4] However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

held that a "court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (emphasis added). Accordingly, I find that equity must follow the law in this matter and that this Court's equitable powers must yield in the face of South Carolina's unambiguously worded Sex Offender Registry law, which mandates lifetime registration.

South Carolina jurisprudence also provides that "[w]hen providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). Furthermore, the South Carolina Supreme Court has held that "[e]quitable relief is generally available only where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) *citing* 27 *Am.Jur.* 2d, *Equity,* § 94 (1966). The Supreme Court has also noted that an "'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.* I find and conclude that this does not however mean that the person seeking relief must be eligible for the relief set forth in the statute; rather, "adequate relief" means only that some certain definitive statutory relief exists. Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119 (1989). Accordingly, I find and conclude that South Carolina's Sex Offender Registry provides an adequate remedy to the Plaintiff in this matter because there are several statutory methods in which the Plaintiff can be legally removed from the registry, he simply does not qualify for them. Therefore, judgment on the pleadings is proper.

This situation is analogous to legislatively mandated minimum sentences for criminal offenses. *See* S.C. Code Ann. § 16-11-330 (10 years); S.C. Code Ann. § 44-53-370 (various mandatory minimums for distribution or trafficking illegal drugs); S.C. Code Ann. § 16-3-30 (30 years). Following convictions of these offenses, the South Carolina Legislature has unilaterally prohibited judges from sentencing individuals below the statutorily set amounts.[5] However, these statutory minimums are, and have been consistently upheld as being, lawful. *See* State v. De La Cruz, 302 S.C. 13, 393 S.E.2d 184 (1990); State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001); State v. Johnson, 350 S.C. 543, 567 S.E.2d 486 (Ct. App. 2002). In fact, the South Carolina Supreme Court conclusively resolved this issue in *State v. De La Cruz* indicating

> [w]e have held in the past that "[t]he penalty assessed for a particular offense is, except in the rarest of cases, '**purely a matter of legislative prerogative**,' and the legislature's judgment will not be disturbed." State v. Smith, 275 S.C. 164, 167, 268 S.E.2d 276, 277 (1980) (*quoting* Rummel v. Estelle, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980)). Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restriction. *See* Mistretta v. United States, 488 U.S. 361, ----, 109 S.Ct. 647, 650, 102 L.Ed.2d 714, 725-726 (1989), wherein the United States Supreme Court noted, "Congress, of course, has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control." (*Citing* United States v. Wiltberger, 18 U.S. (5 Wheat) 76, 5 L.Ed. 37 (1820); Ex Parte United States, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916)).

302 S.C. 13, 15-16, 393 S.E.2d 184, 186 (1990) (emphasis added).[6] In addition, the Supreme Court has also noted that

> [u]nder the mandatory sentencing guidelines, the prosecutor can still choose not to pursue the triggering offenses or to plea the charges down to non-triggering offenses. Choosing which crime to charge a defendant with is the essence of prosecutorial discretion, not choosing which sentence the court shall impose upon conviction. Further, we found the matter of sentencing if convicted of a triggering offense to be a matter within the province of the legislature. *Id.*

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[5] In the same way, legislatively enacted maximum sentences also apply.

[6] It is noteworthy that sex offender registration has been consistently held not to be "punitive in purpose or effect as to constitute a criminal penalty." State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). However, the same sentiment would apply to an administrative requirement like registration in terms of the legislative prerogative.

State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001). Similarly, I find and conclude that the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated by the South Carolina Constitution. *See* S.C. Const. art. I, § 8 ("In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."). Furthermore, South Carolina law is clear, "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. S.C. Law Enforcement 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) ("Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law.").

## CONCLUSION

Based on the foregoing and all applicable South Carolina law, I find and conclude there is simply no equitable remedy or equitable jurisdiction applicable to this matter and the Defendants are entitled to a judgment on the pleadings. Furthermore, I find and conclude that for this court to act as a "superlegislature" and to unilaterally add language to an unchallenged, unambiguously worded statute would violate South Carolina law and the South Carolina Constitution. *See* Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989); S.C. Const. art. I, § 8.

Therefore, it is hereby ORDERED, DECREED, and ADJUDGED that the Defendants' Motion for Judgment on the Pleadings is GRANTED.



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**AND IT IS SO ORDERED.**

Thomas A. Russo
Presiding Judge
Court of Common Pleas
12th Judicial Circuit

Lexington, South Carolina
4-16. 2015

FILED
2015 MAY 20 PM 1:53
CONNIE RICHARDSON
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.



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# ATTACHMENT 3

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
COUNTY OF SUMTER ) Civil Action No. 2012-CP-43-00535

RECORDED
2015 JUN 16 PM 12:44
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C

Marty Lee Barnes,

Petitioner,

vs.

The State of South Carolina,

Respondent.

**ORDER GRANTING MOTION TO SET ASIDE JUDGMENT**

CERTIFIED TRUE COPY
OF ORIGINAL FILED
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter came before me on a Motion to Set Aside Judgment filed on behalf of the State of South Carolina. The Defendants were represented at the hearing by Adam L. Whitsett, General Counsel to the South Carolina Law Enforcement Division and Assistant Attorney General Courtney Lowell.[1] The Petitioner was represented by Jack D. Howle, Jr., Esquire, of the Third Circuit Chief Public Defender. Based upon the arguments presented at the hearing and the applicable South Carolina law, I hereby GRANT the Defendants' Motion to Set Aside Judgment in this matter.

**BACKGROUND**

In or about 1986, the Petitioner was tried in absentia in the General Sessions Court of Sumter County and was convicted of two counts of kidnapping.[2] As a result of the Petitioner's kidnapping convictions, the Petitioner was sentenced to imprisonment for the balance of his natural life. One of these convictions was for the kidnapping of a person under the age of eighteen who was not the Petitioner's child. The other involved the kidnapping of an adult.

[1] The Defendant is additionally represented in this action by Assistant Attorney General Marcie Greene.
[2] The Petitioner was also convicted of Assault and Battery with Intent to Kill, Assault and Battery with Intent to Kill 2nd, and Carrying a Concealed Weapon at that time, but those convictions do not bear on this action.

cw
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During the Petitioner's incarceration, the South Carolina Sex Offender Registry Act[3] was passed. In or about 2002, the Petitioner was paroled and released from incarceration and was required to register as a sex offender at that time. *See* S.C. Code Ann. § 23-3-430(C)(16) (Supp. 2000). The Petitioner's parole was revoked in 2008 and the Petitioner was returned to incarceration where he currently remains.

In or about February of 2011, the Petitioner filed a Motion of Sentence Clarification seeking removal from the registry. The matter was heard on April 2, 2012, subsequently this Court issued an order dated April 16, 2012 removing the Petitioner from the South Carolina Sex Offender Registry based on equitable grounds. The State of South Carolina filed a Motion to Set Aside Judgment pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.

**DISCUSSION**

The Petitioner was properly registered as a sex offender upon being released from incarceration in 2002. S.C. Code Ann. § 23-3-430(C)(16) (Supp. 2000); *see also* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's sex offender registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions"). The Petitioner's conviction involved the kidnapping of a person under the age of 18 who was not the Petitioner's child. As such, the plain language of § 23-3-430(C)(16), requires the Petitioner to register as a sex offender regardless of whether his kidnapping involved any criminal sexual offense or attempted criminal sexual offense. *Id.*[4]

[3] S.C. Code § 23-3-400 *et seq.*,

[4] There is a different code section with different criteria that applies to individuals convicted of kidnapping adults. *See* S.C. Code Ann. § 23-3-430(C)(15) (registration is required unless a "court makes a finding on the record that the offense did not involve criminal sexual offense or attempted criminal sexual offense").

South Carolina's Sex Offender Registry statutes, S.C. Code § 23-3-400 *et seq.*, provide the only lawful mechanisms and avenues by which an individual who is properly placed on the registry can be removed.[5] Pursuant to § 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). 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 removed. S.C. Code Ann. § 23-3-430(F).

In this case the Petitioner does not contend that he meets any of the statutory criteria that entitle the Petitioner to removal from the registry.

The statute providing for lifetime registration in South Carolina is unambiguously worded. *See* S.C. Code Ann. § 23-3-460 ("A person required to register pursuant to this article is required to register biannually **for life**.").[6] The South Carolina Supreme Court has held that

> [i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly").

[5] In fact, I note that the mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by this same code section. *See* S.C. Code § 23-3-430.

[6] However, certain offenders must register every ninety days. S.C. Code Ann. § 23-3-460(B).

Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007). It is also well-known that "equity follows the law." *See* Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 319-20, 659 S.E.2d 263, 267 (Ct. App. 2008). Moreover, 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.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (emphasis added).

South Carolina law provides that "[w]hen providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011) *citing* Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). Furthermore, the South Carolina Supreme Court has held that "[e]quitable relief is generally available only where there is no adequate remedy at law" and that an "adequate legal remedy may be provided by statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) *citing* 27 *Am.Jur.* 2d, *Equity,* § 94 (1966). The Supreme Court has also noted that an "'adequate remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Id.*

South Carolina's Sex Offender Registry provides an adequate remedy to the Petitioner in that there are several statutory methods through which the Petitioner could be legally removed from the registry, if he so qualifies.

The duration of an individual's sex offender registration is purely a matter of legislative prerogative and there exists no judicial discretion without violating the separation of powers

mandated by the South Carolina Constitution. South Carolina law is clear, "[w]hether an individual must be placed on the sex offender registry is a question of law." Lozada v. S.C. Law Enforcement 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) ("Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law.").

**CONCLUSION**

Based on the foregoing and all applicable South Carolina law, there is no equitable remedy or equitable jurisdiction applicable to this matter and this Court's previous order should be set aside and vacated pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.

For this court to act as a "superlegislature" and to unilaterally add language to an unambiguously worded statute would violate South Carolina law and the South Carolina Constitution. *See* Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989); S.C. Const. art. I, § 8.

It is therefore ordered that the Defendants' Motion to Set Aside Judgment is GRANTED and the Order of this Court entered on April 16, 2014 is hereby vacated.

**AND IT IS SO ORDERED.**

Clifton Newman
Presiding Judge

Columbia, South Carolina
June 8, 2015



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**THE STATE OF SOUTH CAROLINA**

**In the Court of Appeals**

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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable DeAndrea G. Benjamin , Circuit Court Judge

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Case No: 2016-000180

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Demetrius Palmer.....Appellant

v.

Mark Keel, Chief of the South Carolina Law Enforcement Division and the State of South Carolina .....Respondent

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RECORD ON APPEAL

CERTIFICATE OF COUNSEL

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I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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