

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

RECEIVED
MAY 17 2019
SC Court of Appeals

Case No: 2019-000088

Edward L. Green.....Appellant

v.

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

INITIAL BRIEF OF APPELLANT

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SLED
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STATEMENT OF ISSUES ON APPEAL

1. **DID THE TRIAL COURT ERR BY GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BECAUSE A GENUINE ISSUE EXISTS AS TO THE MATERIAL FACT REGARDING VIABLE REMEDIES AVAILABLE FOR THIS APPELLANT FOR REMOVAL FROM THE SOUTH CAROLINA SEX OFFENDER REGISTRY?**
2. **DID THE TRIAL COURT ERR BY GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT DETERMINING THE APPELLANT'S ACTION WAS BARRED BY *RES JUDICATA*?**

STATEMENT OF THE CASE

This case was initiated by Appellant filing on January 12, 2018, a Summons and a Petition for Declaratory Judgment for equitable relief for removal from the registry requirements under "Megan's Law", mandating registration with the South Carolina Sex Offender Registry. The Appellant's Petition was based in part on the issued Order for Destruction of Arrest Records as filed with the Richland County Clerk of Court's Office on March 20, 2016.

The Appellant, Edward Green, was convicted under the Youth Offender Act in 2005 of Lewd Act Upon a Minor. Under the terms of his conviction the Appellant applied for relief under the Youth Offender Act to the Solicitor's offices in 2015. The Appellant's Order Authorizing the Destruction of Arrest Records was issued in March 2016. The Appellant believes that the granted expungement erases the arrest and conviction of the Appellant and this now expunged matter was the sole reason for the Appellant's inclusion on the South Carolina Sex Offender Registry.

The Respondents filed an Answer with the Court on March 22, 2018, generally denying the allegations in Appellant's Petition and asserting a defense of *Res Judicata*. Respondents then filed a Motion for Summary Judgment on August 21, 2018, asserting that the Appellant has no genuine issue of fact in dispute in this matter and were not entitled to equitable relief because the statute governing removal from the Registry provides an adequate remedy at law for removal from the Sex Offender Registry.

A hearing was held on October 1, 2018, on the Respondents'/Defendants' Motion for Summary Judgment before the Honorable DeAndrea G. Benjamin. The Court entered judgment in favor of the Respondent/Defendant's Motion concluding that the Appellant was not entitled to any equitable remedy and that no equitable jurisdiction applied to the relief the Appellant sought. This appeal follows.

ARGUMENT

An expungement is a process by which record of criminal conviction is destroyed or sealed from the State and/or Federal repository (Black's Law Dictionary, p. 582, 6th Ed. 1999). When an expungement is granted, the person whose record is expunged may treat the event as if it never occurred. It is undisputed that the Appellant was granted an expungement by the Court in March 2016 for the offense in 2005. The destruction of these records and the conviction means that it no longer exists and therefore the Appellant has no conviction for which to continue to register with the South Carolina Sex Offender Registry.

The Appellant filed a previous action in 2015 seeking relief and removal from the South Carolina Sex Offender Registry. At the time of the filing of the initial action of the Appellant filed in 2015, the Appellant had not yet been granted an expungement by the Court. The Appellant was granted an expungement until during the pendency of the appeal of the 2015 matter and as such the Appellant was not able to present arguments regarding the expungement of his conviction under the already pending appeal.

1. THE TRIAL COURT ERRED BY GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BECAUSE A GENUINE ISSUE EXISTS AS TO THE MATERIAL FACT REGARDING VIABLE REMEDIES AVAILABLE FOR THIS APPELLANT FOR REMOVAL FROM THE SOUTH CAROLINA SEX OFFENDER REGISTRY?

The statutory provisions specify removal is possible in limited situations such as the reversal of a conviction, a specific pardon of not guilty, or exoneration through a new trial or a writ of habeas corpus; none of which apply to Appellant's situation. The Appellant's expungement should equate to a reversal of his conviction as it constitutes the destruction of his arrest records thereby extinguishing the necessity to further be included on the Registry, as the Appellant has no longer been convicted of any crime of a sexual nature.

After considering the arguments of the parties, the Trial Court concluded that there was no genuine issue of material fact to suggest that Appellant/Plaintiff meets any of the statutory grounds for removal from South Carolina's Sex Offender Registry law, which mandates lifetime registration. Accordingly, the Trial Court concluded that the Respondents/Defendants were entitled to judgment as a matter of law. The Trial Court erred in granting the Respondents'

Motion because the issue here, specifically as it relates to the motion, is the fact that Appellant does have a genuine issue raised in his Petition and as evidenced by his Order for expungment and does not have an adequate or complete remedy at law for removal from the Registry because the statutory provisions are not a complete and adequate remedy at law, especially when the statutory provision do not include any review mechanisms for lifelong registration, therefore equitable relief in this matter, would be appropriate.

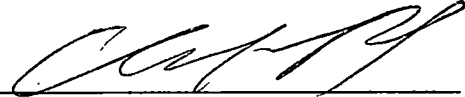
**2. THE TRIAL COURT ERRED BY GRANTING
RESPONDENT'S MOTION FOR SUMMARY
JUDGMENT DETERMINING THE APPELLANT'S
ACTION WAS BARRED BY *RES JUDICATA*?**

The trial Court erred in a finding of *Res Judicata* in this matter. The Appellant filed a previous action in 2015 seeking relief and removal from the South Carolina Sex Offender Registry. At the time of the filing of the initial action of the Appellant filed in 2015, the Appellant had not yet been granted an expungement by the Court. The Appellant was granted an expungment until during the pendency of the appeal of the 2015 matter and as such the Appellant was not able to present arguments regarding the expungment of his conviction under the already pending appeal.

CONCLUSION

For all of the foregoing reasons, the Order Granting Judgment on the Pleadings of the Trial Court should be reversed and/or remanded for a full hearing on the disputed issues, and for the granting of any other remedy that is just and proper in this case.

RESPECTFULLY SUBMITTED,



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May 14, 2019

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2019-000088

Edward L. Green,

Appellant,

v.

Mark Keel, Director South
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Division (SLED) and the State
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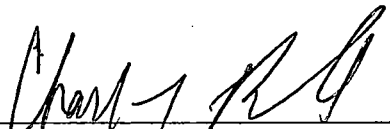
Respondent.

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal, on Mark Keel, Director South Carolina Law Enforcement Division (SLED) by depositing a copy of it in the United States Mail, postage prepaid, on May 15, 2019, addressed to their attorneys of record, Adam L. Whitsett, Post Office Box 21398, Columbia, South Carolina 29221 and that I have served The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on April 16, 2019, addressed to their attorneys of record, Harley Kirkland, Post Office Box 11549, Columbia, South Carolina 29211.

May 15, 2019



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May 15, 2019

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South Carolina Court of Appeals
ATTN: Clerk
Post Office Box 11629
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RE: Edward L. Green vs. Mark Keel, Director for South Carolina Law Enforcement Division
(SLED) and the State of South Carolina
Appellate Case No.: 2019-000088

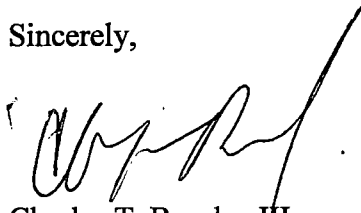
Dear Sir or Madam:

Enclosed herewith please find the Initial Brief of the Appellant as well as the Designation of Matter to be Included in the Record on Appeal as they relate to the above matter. Additionally, I am enclosing the Proof of Service for these pleadings.

If there are any questions, please feel free to give me a call.

With kind regards,

Sincerely,



Charles T. Brooks, III
CTB,III/jlm

cc: Harley Kirkland, SCAG Office
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