

**THE STATE OF SOUTH CAROLINA**

**In the Court of Appeals**

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
Honorable R. Lawton McIntosh, Circuit Court Judge

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Case No: 2019-001252

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Charles F. Burton.....Appellant  
v.  
Lexington County Solicitor .....Respondent

**RECEIVED**  
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SC Court of Appeals

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**RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

CHARLES F. BURTON,  
Petitioner

) IN THE COURT OF COMMON PLEAS  
) ELEVENTH JUDICIAL CIRCUIT  
)  
)  
)

Civil Action No. 2018-CP-32-00047

) **AMENDED ORDER**  
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)  
)  
)

This matter is before the Court upon the State of South Carolina's Motion for Summary Judgment. Harley C. Kirkland, Esq. of the South Carolina Attorney General's Office appeared on behalf of the State and Charles Brooks, Esq. appeared on behalf of the Petitioner. Counsel for both parties stipulated that there were no facts in controversy and that the issue before the Court is a matter of law suitable for disposition by way of Summary Judgment.

**FACTS**

On February 18, 2005, Petitioner pled guilty under the Youthful Offender Act under S.C. Code 16-15-140 to one count of Lewd Act on a Minor. Petitioner was sentenced by the Honorable William P. Keesley to a suspended sentence not to exceed six (6) years upon five (5) years probation. Petitioner successfully completed his probationary sentence and applied to have his charge expunged. The Eleventh Circuit Solicitor's Office refused to consent to the expungement request. This action followed.

At the time of the Petitioner's plea, he was and is still required to register as a sex offender, however, the version of S.C. Code Ann. 22-5-920 at the time did not bar his ability to have his record expunged.

Subsequent to Petitioner's plea, S.C. Code Ann. 16-15-140 was recodified under S.C. Code Ann. 23-3-430(c)(6) and recognized as Criminal Sexual Conduct With A Minor, Third degree.

S.C. Code Ann. 23-3-430(c)(6) continues to require an offender to register as a sex offender. This offense is now classified as a violent crime under S.C. Code Ann. 16-1-60.

S.C. Code Ann. 22-5-920 was amended with an effective date of December 28, 2018. S.C. Code Ann. 22-5-920 currently provides in relevant part that "...a person who was convicted prior to June 2, 2010, and was a youthful offender as that term is defined in Section 24-19-10(a) is eligible to have his record expunged..."

When the Legislature amended S.C. Code Ann. 22-5-920, it also amended the "Uniform Expungement of Criminal Records Act, specifically S.C. Code Ann. 17-22-910(c), which provides that "the provisions of this section apply retroactively to allow expungement as provided by law to each offense delineated in subsection (A) by persons convicted prior to the enactment of this section or the addition of a specific item contained in S.C. Code Ann. 17-22- 910(c)(A)." The Legislature passed amendments to both statutes at the same time and in the same legislative act.

Under the current statutory scheme, Criminal Sexual Conduct with a Minor, Third Degree, formerly known as Lewd Act Upon a Minor is considered a violent crime. The current version of the Expungement Statute provides that violent crimes are not eligible for expungement under S.C. Code Ann. 22-5-920(b)(2). Additionally, the current version of S.C. Code Ann. 22-5-920(B)(2)(d) makes Petitioner ineligible for expungement because of his continuing sex offender registration requirement.

#### ISSUE

Is Petitioner entitled to have his February 18, 2005 guilty plea to Lewd Act Upon a Minor expunged?

## DISCUSSION

Summary Judgment is appropriate when the pleadings, deposition, affidavits and discovery on file show there is no genuine issue or material fact such that the moving party must prevail as a matter of law. Rule 56, SCRCP, Knight v. Austin, 396 S.C. 518, 521-22, 722 S.E.2d 802, 804 (2012). As referenced above, both the Petitioner and the State stipulate that this is a matter of law and there are no facts in controversy.

“Courts routinely confront ambiguities in legislative drafting and have developed default rules for such occasions. Both federal and South Carolina courts employ a robust presumption against statutory retroactivity. Under this assumption, Courts assume that statutes operate prospectively only, to govern future conduct and claims, and do not operate retroactively, to reach conduct and claims arising before the statute’s enactment.”

Kirven v. Central States Health & Life Co. of Omaha, 409 S.C. 30, 39, 760 S.E.2d 794, 799 (2014).

However, “a Court must first determine whether [the legislature] has expressly proscribed the statute’s proper reach. If so, there is no need to resort to judicial default rules and hence the presumption against retroactivity does not apply.” Ward v. Dixie National Life Ins. Co., 595 F.3d 164 (4th Cir. 2010); Kirven, 409 S.C. at 37, 760 S.E.2d at 798.

In this case, the legislature clearly and unequivocally has provided that the Expungement Act shall operate retroactively. Accordingly, under the current version of the Expungement Act, Petitioner is barred from seeking expungement because of the classification of his charge as being violent and because of his sex offender registration requirement. Accordingly, the State of South Carolina’s Motion for Summary Judgment shall be and is hereby GRANTED.

IT IS SO ORDERED This \_\_\_\_ Day of July, 2019.





Lexington Common Pleas

**Case Caption:** Charles F Burton VS Lexington County Solicitor

**Case Number:** 2018CP3200047

**Type:** Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
CHARLES F. BURTON,	)	
	)	Civil Action 2018-CP-32-00047
Petitioner:	)	
	)	ORDER

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At the time of the Petitioner’s plea, he was and is still required to register as a sex offender, however, the version of S.C. Code Ann. 22-5-920 at the time did not bar his ability to have his record expunged.

Subsequent to Petitioner’s plea, S.C. Code Ann. 16-15-140 was recodified under S.C. Code Ann. 23-3-430(c)(6) and recognized as Criminal Sexual Conduct With A Minor, Third

Degree. S.C. Code Ann. 23-3-430(c)(6) continues to require an offender to register as a sex offender. This offense is now classified as a violent crime under S.C. Code Ann. 16-1-60.

S.C. Code Ann. 22-5-910 was amended with an effective date of December 28, 2019. S.C. Code Ann. 22-5-920 currently provides in relevant part that "...a person who was convicted prior to June 2, 2010, and was a youthful offender as that term is defined in Section 24-19-10(a) is eligible to have his record expunged..."

When the Legislature amended S.C. Code Ann. 22-5-910, it also amended the "Uniform Expungement of Criminal Records Act, specifically S.C. Code Ann. 17-22-910(c), which provides that "the provisions of this section apply retroactively to allow expungement as provided by law to each offense delineated in subsection (A) by persons convicted prior to the enactment of this section or the addition of a specific item contained in S.C. Code Ann. 17-22-910(c)(A)." The Legislature passed amendments to both statutes at the same time and in the same legislative act.

Under the current statutory scheme, Criminal Sexual Conduct with a Minor, Third Degree, formerly known as Lewd Act Upon a Minor is considered a violent crime. The current version of the Expungement Statute provides that violent crimes are not eligible for expungement under S.C. Code Ann. 22-5-920(b)(2). Additionally, the current version of S.C. Code Ann. 22-5-920(B)(2)(d) makes Petitioner ineligible for expungement because of his continuing sex offender registration requirement.

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In this case, the legislature clearly and equivocally has provided that the Expungement Act shall operate retroactively. Accordingly, under the current version of the Expungement Act, Petitioner is barred from seeking expungement because of the classification of his charge as being violent and because of his sex offender registration requirement. Accordingly, the State of South Carolina’s Motion for Summary Judgment shall be and is hereby GRANTED.

IT IS SO ORDERED This \_\_\_\_\_ Day of June, 2019.

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R. LAWTON McINTOSH, JUDGE  
TENTH (10<sup>TH</sup>) JUDICIAL CIRCUIT

\_\_\_\_\_, South Carolina.



Lexington Common Pleas

**Case Caption:** Charles F Burton VS Lexington County Solicitor

**Case Number:** 2018CP3200047

**Type:** Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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Charles F Burton  
PLAINTIFF(S)

Lexington County Solicitor  
DEFENDANT(S)

**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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- 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.

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

The defendant's motion for summary judgment is denied. The record should be allowed to develop since this appears to be a novel issue of law.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/03/2019 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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Lexington Common Pleas

**Case Caption:** Charles F Burton VS Lexington County Solicitor  
**Case Number:** 2018CP3200047  
**Type:** Order/Electronic Form 4

Circuit Judge (Code #2050)

s/ William P. Keesley

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
Charles F. Burton, )  
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Petitioner. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2018-CP-32-00047

**AMENDED ORDER**

**THIS MATTER** comes before the court upon the filling of the Summons and Petition for Destruction of Arrest Records (Expungement) by Petitioner (Mr. Burton) and the subsequent motion for summary judgment filed by the Solicitor of the Eleventh Circuit and the State of South Carolina’s (collectively the “State”). Mr. Burton seeks an expungement of his conviction of a lewd act on a minor pursuant to the terms and provisions of S.C. Code Ann. § 22-5-920 (2017) and the Judge William R. Byars Youthful Offender Act (hereinafter “YOA”). S.C. Code Ann. § 24-19-5, *et seq.* (2017). The State seeks to preclude the Petitioner from expungement of his records on the basis that the crime of a lewd act on a minor has been repealed and replaced with a new crime that may not be expunged. In the alternative, the State requests that this court exercise its discretion and deny Mr. Burton of the relief he seeks.

This matter came on for hearing on November 15, 2018. Present at the hearing were Petitioner’s counsel, Charles T. Brooks, III, and counsel for the State, Wesley Vorberger and Harley L. Kirkland. Based on the documents on file and the arguments heard, the court makes the following findings of fact and conclusions of law:

**Background:**

Mr. Burton, at the age of seventeen (17), plead guilty on February 18, 2005, to lewd act on a minor, then codified as S.C. Code Ann. § 16-15-140. At the time of his conviction, the crime for which he was sentenced was classified as a non-violent offense, which rendered him eligible to be sentenced under the YOA. Mr. Burton was committed pursuant to the terms and provisions

of the YOA to five (5) years of probation. State's Mem. Supp. Summ. J. at 1. Mr. Burton successfully completed his probationary sentence and has not reoffended. Petition at 1. The crime of lewd act on a minor was still classified as a non-violent offense when Mr. Burton completed his probationary sentence in 2010. See S.C. Code Ann. § 16-15-140 (2010). However, after his sentence was completed, the crime of lewd act on a minor was reclassified as a violent crime. 2010 S.C. Act 289 (H.B. 4202). Subsequently, the General Assembly again amended the applicable law repealing and replacing the crime of lewd act on a minor to a crime of criminal sexual conduct with a minor—third degree ("CSC—Third"). 2012 S.C. Act 255 (H.B. 3667) (repealing and replacing S.C. Code Ann. § 16-15-140 with S.C. Code Ann. § 16-3-655(C)). The elements of lewd act on a minor and CSC—Third are essentially the same. *Compare* S.C. Code Ann. § 16-15-140 (2012) *with* S.C. Code Ann. § 16-3-655(C) (2017). CSC—Third is considered a violent offense. S.C. Code Ann. § 16-1-60 (2017). Persons convicted of violent offenses are ineligible for expungement under the YOA. S.C. Code Ann. §§ 22-5-920(B)(2)(b) and 24-19-10(d) (2017).

In 2016, Mr. Burton applied to have his conviction expunged pursuant to the terms and provisions under the YOA, but the State declined to consent. State's Mem. Supp. Summ. J. at 1. At the hearing, the State took the position that lewd act on a minor should be considered a violent crime, precluding expungement under S.C. Code Ann. § 22-5-920(B)(2)(b) (2017) because of the logical connection between Mr. Burton's prior conviction and the current statutory classification of the crime as violent. Also at the hearing, the State acknowledged that in 2005, Mr. Burton plead guilty to and was convicted of an offense codified as non-violent. The State further acknowledged that when Mr. Burton completed his probationary sentence in 2010, the offense was still codified as non-violent. Nonetheless, the State asserts that Mr. Burton is not entitled to an expungement as

a matter of law, or in the alternative, that this court should exercise its discretion and deny the request for expungement. Although the State makes logical arguments, the court disagrees.

**Standard of Review:**

“Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Rule 56, SCRPC; Knight v. Austin, 396 S.C. 518, 521–22, 722 S.E.2d 802, 804 (2012). In determining whether summary judgment is appropriate, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

**Analysis:**

- 1. Should Mr. Burton’s underlying offense not be considered a “violent crime”; thus, inhibiting him from petitioning the court for expungement of his conviction as a youthful offender?**

First, the court must determine whether Mr. Burton’s conviction as a youthful offender precludes him from expungement.

A “youthful offender” may apply to have his or her record expunged if he or she has no other convictions during the five-year period following completion of his or her sentence<sup>1</sup>. S.C. Code Ann. § 22-5-920(B)(1) (2017).<sup>2</sup> The YOA defines a youthful offender and qualifies the offender for a YOA sentence only if the offender is within the age range at the time of conviction

<sup>1</sup> The court notes that at the time Mr. Burton was sentenced in 2005, he would only be eligible for expungement if he had no other convictions during the fifteen-year period following completion of his sentence; however, when Mr. Burton completed his sentence in 2010, S.C. Code Ann. § 22-5-920 was amended to allow Mr. Burton to seek expungement upon a successful five-year period upon the completion of his sentence. S.C. Code Ann. § 22-5-920(B) explicitly provides that “[a] person may have his record expunged even though the conviction occurred before the effective date of this section.”

<sup>2</sup> See also SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, OFFICE OF THE DEPUTY DIRECTOR FOR OPERATIONS DIVISION OF YOUNG OFFENDER PAROLE & REENTRY SERVICES, <http://www.doc.sc.gov/programs/yoprs.html> (stating that the mission of the Operations Division of Young Offender Parole & Reentry Services (YOPRS) is to “reduce recidivism of youthful offenders by utilizing evidence-based principles/practices that teach accountability, enhance skill development, and promote public safety.”).

or plea (usually between seventeen (17) and twenty-four (24) years of age), if the offender has not received a YOA sentence before, and if the offense is *non-violent*. S.C. Code Ann. §24-19-10(d) (2017) (emphasis added). Only those offenders who satisfy the definition of a “youthful offender” under S.C. Code Ann. § 24-19-10(d) may be sentenced under the YOA. Id.

It is undisputed that Mr. Burton was eligible for the YOA sentence at the time of his sentencing in 2005. It is well known that many offenders sentenced as youthful offenders often fail to satisfy the conditions of their sentences and forfeit the benefits intended under the YOA. Here, Mr. Burton was given an opportunity under the YOA. He completed five (5) years of probation and the associated conditions and requirements assigned by the sentencing judge. From the date of his conviction to the date of his completion of probation, his offense remained eligible for the terms and conditions of the YOA, including eligibility for expungement of his conviction. In addition, he has not reoffended in any way to forfeit his eligibility to seek an expungement as provided for in the Act. The court reasons that the sentencing judge would not have committed Mr. Burton under the YOA if that court did not desire him to have the opportunity to seek expungement of the offense from his record in the event that he could complete the program. See also Gay v. Ariail, 381 S.C. 341, 346, 673 S.E. 2d 418, 420 (2009) (providing that eligibility for expungement “requires only that one be convicted as a youthful offender.”). Therefore, the court finds that Mr. Burton’s conviction as a youthful offender entitles him to petition the court for consideration in expunging his conviction.

## **2. Would denying summary judgment thwart public policy?**

The court agrees with the State in that the circuit court is in no way obligated to issue an order expunging records and that the law is clear that the circuit court has discretion when determining whether to grant an expungement. See S.C. Code Ann. § 22-5-920(3) (2017).

The State contends that public policy would suffer if Mr. Burton were to be granted expungement because it would remove the conviction from the Sex Offender Registry (SOR), whereas the public would only be able to see that he is on the SOR and not the underlying conviction. The State argues that the legislature created the SOR “to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes.” State’s Mem. Supp. Summ. J. at 6 (citing State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524 526 (2002)).

In its brief, the State notes “to expunge Petitioner’s conviction would deprive the Sex Offender Registry of his conviction information and thwart the foundational public policy goals of the Registry.” State’s Mem. Supp. Summ. J. at 6. Regardless of an expungement of the conviction, Mr. Burton’s name would remain on the SOR indefinitely. As such, the court does see not how an expungement would hinder public policy. To the contrary, public policy would not be thwarted, and any person who wishes to search the SOR would still see Mr. Burton’s name on the SOR.

Further, while the SOR certainly codifies public policy, the YOA codifies public policy as well. The court does not find either of the policies to be mutually exclusive or of heavier weight than the other. It is clear these codified public policies may coexist, but the court will not back date or retroactively enforce public policies codified years subsequent to a guilty plea, and sentencing pursuant to the terms and provisions of the YOA, when the guilty plea occurred in 2005 and a sentence was completed in 2010. See also Steinke v. S.C. Dep’t of Labor, Licensing & Regulation, 336 S.C. 373, 399, 520 S.E.2d 142, 155 (1999) (citing to S.C. Const. Art. 1, §8, and concluding that an existing judicial interpretation of a statute prior to amendment is “determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retrospectively.”).

**THEREFORE, IT IS HEREBY ORDERED THAT** the State's Motion for Summary Judgment is **DENIED**.

**IT IS SO ORDERED.**

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

**Case Caption:** Charles F Burton VS Lexington County Solicitor  
**Case Number:** 2018CP3200047  
**Type:** Order/Other

So Ordered

s/Walton J. McLeod, 2765

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STATE OF SOUTH CAROLINA )  
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COUNTY OF LEXINGTON )  
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Charles F. Burton, )  
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A “youthful offender” may apply to have his or her record expunged if he or she has no other convictions during the five-year period following completion of his or her sentence<sup>1</sup>. S.C. Code Ann. § 22-5-920(B)(1) (2017).<sup>2</sup> The YOA defines a youthful offender and qualifies the offender for a YOA sentence only if the offender is within the age range at the time of conviction

<sup>1</sup> The court notes that at the time Mr. Burton was sentenced in 2005, he would only be eligible for expungement if he had no other convictions during the fifteen-year period following completion of his sentence; however, when Mr. Burton completed his sentence in 2010, S.C. Code Ann. § 22-5-920 was amended to allow Mr. Burton to seek expungement upon a successful five-year period upon the completion of his sentence. S.C. Code Ann. § 22-5-920(B) explicitly provides that “[a] person may have his record expunged even though the conviction occurred before the effective date of this section.”

<sup>2</sup> See also SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, OFFICE OF THE DEPUTY DIRECTOR FOR OPERATIONS DIVISION OF YOUNG OFFENDER PAROLE & REENTRY SERVICES, <http://www.doc.sc.gov/programs/yoprs.html> (stating that the mission of the Operations Division of Young Offender Parole & Reentry Services (YOPRS) is to “reduce recidivism of youthful offenders by utilizing evidence-based principles/practices that teach accountability, enhance skill development, and promote public safety.”).

or plea (usually between seventeen (17) and twenty-four (24) years of age), if the offender has not received a YOA sentence before, and if the offense is *non-violent*. S.C. Code Ann. §24-19-10(d) (2017) (emphasis added). Only those offenders who satisfy the definition of a “youthful offender” under S.C. Code Ann. § 24-19-10(d) may be sentenced under the YOA. Id.

It is undisputed that Mr. Burton was eligible for the YOA sentence at the time of his sentencing in 2005. It is well known that many offenders sentenced as youthful offenders often fail to satisfy the conditions of their sentences and forfeit the benefits intended under the YOA. Here, Mr. Burton was given an opportunity under the YOA. He completed five (5) years of probation and the associated conditions and requirements assigned by the sentencing judge. From the date of his conviction to the date of his completion of probation, his offense remained eligible for the terms and conditions of the YOA, including eligibility for expungement of his conviction. In addition, he has not reoffended in any way to forfeit his eligibility to seek an expungement as provided for in the Act. The court reasons that the sentencing judge would not have committed Mr. Burton under the YOA if that court did not desire him to have the opportunity to seek expungement of the offense from his record in the event that he could complete the program. See also Gay v. Ariail, 381 S.C. 341, 346, 673 S.E. 2d 418, 420 (2009) (providing that eligibility for expungement “requires only that one be convicted as a youthful offender.”). Therefore, the court finds that Mr. Burton’s conviction as a youthful offender entitles him to petition the court for consideration in expunging his conviction.

## **2. Would denying summary judgment thwart public policy?**

The court agrees with the State in that the circuit court is in no way obligated to issue an order expunging records and that the law is clear that the circuit court has discretion when determining whether to grant an expungement. See S.C. Code Ann. § 22-5-920(3) (2017).

The State contends that public policy would suffer if Mr. Burton were to be granted expungement because it would remove the conviction from the Sex Offender Registry (SOR), whereas the public would only be able to see that he is on the SOR and not the underlying conviction. The State argues that the legislature created the SOR “to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes.” State’s Mem. Supp. Summ. J. at 6 (citing State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524 526 (2002)).

In its brief, the State notes “to expunge Petitioner’s conviction would deprive the Sex Offender Registry of his conviction information and thwart the foundational public policy goals of the Registry.” State’s Mem. Supp. Summ. J. at 6. Regardless of an expungement of the conviction, Mr. Burton’s name would remain on the SOR indefinitely. As such, the court does see not how an expungement would hinder public policy. To the contrary, public policy would not be thwarted, and any person who wishes to search the SOR would still see Mr. Burton’s name on the SOR.

Further, while the SOR certainly codifies public policy, the YOA codifies public policy as well. The court does not find either of the policies to be mutually exclusive or of heavier weight than the other. It is clear these codified public policies may coexist, but the court will not back date or retroactively enforce public policies codified years subsequent to a guilty plea, and sentencing pursuant to the terms and provisions of the YOA, when the guilty plea occurred in 2005 and a sentence was completed in 2010. See also Steinke v. S.C. Dep’t of Labor, Licensing & Regulation, 336 S.C. 373, 399, 520 S.E.2d 142, 155 (1999) (citing to S.C. Const. Art. 1, §8, and concluding that an existing judicial interpretation of a statute prior to amendment is “determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retrospectively.”).

**THEREFORE, IT IS HEREBY ORDERED THAT** the State's Motion for Summary Judgment is **DENIED**.

**IT IS SO ORDERED.**

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

**Case Caption:** Charles F Burton VS Lexington County Solicitor  
**Case Number:** 2018CP3200047  
**Type:** Order/Other

So Ordered

s/Walton J. McLeod, 2765

Electronically signed on 2018-12-11 11:04:46 page 7 of 7

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
CHARLES F. BURTON, )  
PETITIONER )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

SUMMONS

\*\*\*\*\*

TO THE LEXINGTON COUNTY SOLICITOR:

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, as copy of which is herewith served upon you, and to serve a copy of your Answer to the said Petition on the Plaintiff's attorney, Charles T. Brooks, III, Esquire, at his office, 309 Broad Street, Sumter, South Carolina, 29150, within thirty (30) days after the service hereof, exclusive of such service, and if you fail to Answer, appear or defend, judgment by default will be rendered against you for relief demanded in the Petition.

BY: /s/Charles T. Brooks, III  
Charles T. Brooks III  
SC Bar ID# 11762  
309 Broad Street  
Post Office Box 3512  
Sumter, SC 29151  
(803) 418-5708

ATTORNEY FOR THE PETITIONER

Sumter, South Carolina  
December 11, 2017

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

CHARLES F. BURTON, )  
 )  
PETITIONER )

PETITION FOR DESTRUCTION OF ARREST  
RECORDS (EXPUNGEMENT)

\*\*\*\*\*

Now comes the Petitioner, by and through his counsel, and presents the following statements of facts:

1. That the Petitioner is a citizen and resident of the County of Calhoun, State of South Carolina and has been so for more than one (1) year prior to the institution of this action.
2. That in the County of Lexington, the Petitioner was charged with Lewd Act on a Minor and subsequently entered a guilty plea before the Honorable William P. Keesley in the Lexington County Court of General Sessions on February 18, 2005, and was sentenced by the Court to a term of six (6) years suspended to five (5) years probation.
3. That the Petitioner was further sentenced as aforementioned by the Court under the terms and provisions of the Youthful Offender Act. The Petitioner attaches a copy of the disposition from that hearing as "Exhibit" to this Petition.
4. That the Petitioner has strictly complied with the terms of the sentencing imposed upon the Petitioner and has refrained from any additional criminal activity since that date, including his probation as a youthful offender.
5. That the Petitioner is informed and believes that he is entitled to an Expungement and an Order for the Destruction of Arrest Records pursuant to the Code of Law of South Carolina, Section 22-5-920.

6. That the Petitioner is informed and believes that his conviction was not as a result of an offense outlined in the exceptions of Section 22-5-920, South Carolina Code of Laws.
7. That the Petitioner is informed and believes that his prepared Order for Destruction of Arrest Records (Expungement) was properly sent to the Lexington County Solicitor's Offices on or about June 16, 2016 for processing with their offices and the Courts.
8. That the Petitioner is informed and believes that the Petitioner's counsel informed on October 30, 2017 that the Lexington County Solicitor's Offices declined to consent to the Petitioner's "Expungement request" and provided no basis or reasoning at all for their refusal.
9. The Petitioner is informed and believes that he is therefore entitled to the relief prescribed and afforded under the law.

**WHEREFORE**, the Petitioner now prays for the following relief:

- A. For an ORDER expunging and/or to Destroy the Arrest Records of the Petitioner's conviction pursuant to the Code of Laws for South Carolina, Section 22-5-920; and
- B. For any other relief the Court deems just and proper.

/s/Charles T Brooks, III  
CHARLES T. BROOKS, III, Esquire  
Attorney for the Petitioner  
SC Bar ID#11762  
Post Office Box 3512  
309 Broad Street  
Sumter, South Carolina 29151  
(803) 418-5708

Sumter, South Carolina

December 11, 2017

1618922

STATE OF SOUTH CAROLINA

COUNTY OF Lexington  
STATE vs  
Charles Burton, III  
AKA:  
Race: W Sex: M Age: 17  
DOB: 7/28/1987 SS#: \_\_\_\_\_  
Address: 128 Firebranch St.  
City, State, Zip: Columbia, SC 29212  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS

2005 -GS- 33 INDICTMENT/CASE#: 220  
AW#: STRAIGHT INDICTMENT  
Date of Offense: BIT 1/11/04 4/20/04  
S.C. Code §: 16-15-140  
CDR Code #: 2 1 9 1 6 1 8  
 CASE RESTORED  
SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
To: Lead Act on a minor  
in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2 1 9 1 6 1 8  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury,   
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
ATTEST: [Signature] Solicitor, [Signature] Defendant, [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of \_\_\_\_\_ days/months/years or  under the Youthful Offender Act not to exceed 6 years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_ plus costs and assessments as applicable; the balance is suspended with probation for 5  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,  
which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.

RESTITUTION:  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 set by SCDPPPS

SPECIAL CONDITIONS:

PTUP  
100 days/hours Public Service Employment  
Obtain GED  
Attend Voc. Rehab. or Job Corp.  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing   
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: DEF. MUST CONTINUE IN COUNSELING FOR  
DEVANT SERIAL BEHAVIOR & FULLY COMPLY W/  
TREATMENT PLAN; DEF. MUST REMAIN IN SCHOOL THROUGH  
PROBATION & MAKE SUITABLE PROGRESS TOWARD OBTAINING  
DEGREE (UNLESS HE ENTERS FULL-TIME MILITARY SERVICE);  
 Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.  
DEF. IS NOT PERMITTED TO HAVE CONTACT W/ THE VICTIM  
EXCEPT WHEN IN THE PRESENCE OF A RESPONSIBLE ADULT &  
PRESIDING JUDGE William P. Husley  
Judge Code: 1 2 15 90  
Sentence Date: FEB. 18 2005  
IN COMPLIANCE W/ THE TREATMENT PLAN DEVELOPED &  
BY COUNSELORS; ~~ONCE~~ THE TREATMENT PLAN REACHES THE  
POINT THAT THE VICTIM & DEF. ARE RECOMMENDED TO BE  
REUNITED AS A FAMILY LIVING TOGETHER, THE DEF. CANNOT  
DO SO UNLESS THE SCCA/217 (7/2003)  
PROBATION AUTHORITY'S ~~ORDER~~ COURT ORDER

Recipient: \_\_\_\_\_  
\*Fine: \_\_\_\_\_  
\$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_  
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 1000  
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
\$56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
§ 35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ \_\_\_\_\_  
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_  
\$50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
3% to County (if paid in installments) \$ \_\_\_\_\_  
TOTAL \$ 1259

[Signature] Clerk of Court/ Deputy Clerk  
Court Reporter: [Signature]

DEC 2-18-05

White - Clerk Green - Corrections Canary - Probation

ELECTRONICALLY FILED - 2018 Jan 05 11:53 AM - LEXINGTON COMMON PLEAS CASE#2018CP3200047



10. Paragraph nine (9) is denied. Again, pursuant to S.C Code Ann. §22-5-920 the Petitioner is not “entitled” to an expungement as expungements are discretionary in this state.

WHEREFORE, having fully answered the Petitioner’s petition, the Respondents pray that this Honorable Court:

- A. 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.

[Signature block is on the next page.]

Respectfully Submitted,

ALAN WILSON  
Attorney General

JEFFREY W. YOUNG  
Chief Deputy Attorney General

KEVIN DESMOND MARONEY  
Assistant Attorney General

HARLEY L. KIRKLAND  
Assistant Attorney General

BY: Harley L. Kirkland  
Harley L. Kirkland  
Assistant Attorney General  
S.C. Bar Number: 100382  
Post Office Box 11549  
Columbia, South Carolina 29211  
Phone: 803.734.0406  
Fax: 803.734.3677  
Email: hkirkland@scag.gov

ATTORNEYS FOR ELEVENTH CIRCUIT SOLICITOR AND  
THE STATE OF SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA  
FEBRUARY 9, 2018

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State of South Carolina ) Court of General Sessions  
County of Lexington ) Eleventh Judicial Circuit  
)  
)  
Charles F. Burton, ) Transcript of Record  
)  
Petitioner, ) 2018-CP-32-00047  
)  

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June 18, 2019  
Lexington, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge

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

Charles T. Brooks, III, Esquire  
On behalf of the Plaintiff

Harley L. Kirkland, Assistant Attorney General  
On behalf of the Eleventh Circuit Solicitor

Stacy S. Johnson  
Circuit Court Reporter

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E X H I B I T S

\*\*NO EXHIBITS WERE INTRODUCED\*\*

1 (The following proceedings were held June 18, 2019,  
2 beginning at 9:31 AM.)

3 BAILIFF: All rise. Court is now in session. The  
4 Honorable Judge Lawton McIntosh presiding.

5 THE COURT: Good morning. Please be seated.

6 All right. This is the Burton case?

7 MS. KIRKLAND: Yes, Your Honor.

8 THE COURT: I'll be glad to hear from you.

9 MR. BROOKS: Judge, I think they have some motions  
10 they want to take up.

11 THE COURT: So this is your summary judgment motion?

12 MS. KIRKLAND: It is.

13 THE COURT: Okay. I read your brief. Go ahead.

14 MS. KIRKLAND: I'll be --

15 THE COURT: I'm sorry.

16 MS. KIRKLAND: No, I was gonna say if you've already  
17 read it, I'll try to be short about it.

18 THE COURT: You just do all you want. We don't have  
19 a whole lot on the docket today, so I'm glad for you to  
20 go as long as you want.

21 MS. KIRKLAND: Thank you, Your Honor.

22 I don't believe the facts of this case are in  
23 dispute, so I think a motion for summary judgment would  
24 be appropriate. Back in February of 2005, Mr. Burton  
25 was convicted of lewd act on a minor. I've attached the

1 indictment to my motion. Essentially, the facts are  
2 that he performed fellatio on the victim and the victim  
3 performed fellatio on him in violation of the law. He  
4 pled guilty, and I've also got the sentencing sheet  
5 attached to the motion, and I don't believe any of that  
6 is in dispute.

7 He then submitted an order for destruction of arrest  
8 records to the solicitor's office, the solicitor declined  
9 to consent, and now we're here on his petition for this  
10 Court to exercise its discretion and grant him an  
11 expungement. We don't believe we ever get to that point  
12 where the Court may grant the expungement because we don't  
13 believe he meets the statutory criteria for expungement.

14 I have a copy of the law.

15 THE COURT: Okay.

16 MS. KIRKLAND: I've already shared that with  
17 Mr. Brooks. And that's just the current expungement law.  
18 It went into effect at the end of last year and it laid  
19 out two different things that will preclude you from being  
20 able to have an expungement, and Mr. Burton's crime meets  
21 two of those criteria. It is a violent crime. So lewd act  
22 has since been re-codified as criminal sexual conduct with  
23 a minor third, that is a violent crime, and this offense is  
24 a crime for which he has to register as a sex offender.  
25 Meeting either one of those would preclude him from being

1 eligible for an expungement. He meets two of the reasons  
2 that you can't get an expungement for a youthful offender  
3 conviction.

4 THE COURT: And according to your memo, it was a  
5 violent crime back when he pled or was found guilty?

6 MS. KIRKLAND: It was not a violent crime at the time  
7 that he pled guilty. It became a violent crime later.

8 THE COURT: Oh, it did?

9 MS. KIRKLAND: I have the case law. Not the case law,  
10 Your Honor, I have the sequential statutes if you'd like to  
11 see kind of the history on it.

12 THE COURT: Sure.

13 MS. KIRKLAND: But at the time he was convicted --  
14 that's why I think he was allowed to have a youthful  
15 offender sentence because it wasn't a violent crime at the  
16 time.

17 THE COURT: I got you. But under the amendment in  
18 2019, doesn't it specifically state that it is applied  
19 retroactively?

20 MS. KIRKLAND: It does I believe in two different  
21 places. In the Youthful Offender section, it states that  
22 it will apply to convictions before 2010 and then in that  
23 second section -- both were amended at the same time.  
24 The 17-22-910 section at the back -- on the back of that  
25 page, it says provisions of this section shall apply

1 retroactively such that a person convicted prior to  
2 enactment of this section can have an expungement pursuant  
3 to this section. The two acts were passed in the same --  
4 the amendments to both of these sections were in the same  
5 legislative act and so taking them in pari matrimonia or  
6 whatever the Latin specifically is for that.

7 THE COURT: Pari materia?

8 MS. KIRKLAND: Yes, sir. Taking them together. Then  
9 I think it's clear that this section applies retroactively  
10 and he doesn't meet the eligibility requirements for  
11 expungement.

12 THE COURT: All right. Very good.

13 Counsel, I'll be glad to hear from you.

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

15 THE COURT: Yes, sir.

16 MR. BROOKS: I have the unenviable task of going up  
17 against the State of South Carolina and all of their  
18 resources, but I've got my client, Mr. Burton, who I  
19 think is a good young man.

20 Judge, in response -- in response to opposing counsel,  
21 I don't think there is really much as far as facts that are  
22 in dispute. I can agree with her in that respect.

23 Basically, Judge, here we've got a situation where my  
24 client -- and if you desire to take testimony, I can tell  
25 you what he's gonna testify to. He was sixteen. He plead

1 guilty to lewd act on a minor at seventeen. He had  
 2 conditions under the YOA. The YOA was not a violent crime  
 3 -- I mean, lewd act was not a violent crime then, and he  
 4 fulfilled the conditions that Judge Keesley gave him. He  
 5 did probation, did everything. Under the YOA statute, a  
 6 person is entitled to have an expungement done provided  
 7 they do the things that they're supposed to do on probation  
 8 and don't get in any other trouble. There's no dispute  
 9 about that.

10 Mr. Burton -- and I'm sure, Judge, you've seen this  
 11 oftentimes, you tell people you have conditions on  
 12 probation, and how many times do they follow them? Well,  
 13 in this case, Mr. Burton did. The first judge that heard  
 14 the motion for summary judgment took note of that. He did  
 15 everything he was supposed to do. He actually got off  
 16 probation prior to lewd act being reclassified as a violent  
 17 crime, so he had done all his stuff before it even became a  
 18 violent crime and we -- he decided that he wanted to have  
 19 -- exercise his rights under the Youthful Offender Statute  
 20 and ask for an expungement.

21 We asked for expungement more than a year prior to the  
 22 statute that the attorney general is now trying to rely on  
 23 and when that was rejected by the solicitor's office, we  
 24 then filed a petition that was filed in January of last  
 25 year. As noted, the statute went into effect in December.

1           Basically, Judge, we were already in the middle of  
2 litigation. We've had two summary judgment motions, both  
3 of them denied, both filed by the State, and basically my  
4 client's gonna say I did what I was supposed to do.

5           We think it's inherently unfair and inherently  
6 unconstitutional when the State has made a deal with  
7 Mr. Burton. Mr. Burton, unlike many other people you've  
8 seen in general sessions, he did what he was supposed to  
9 do as a young man, cleaned himself up, did what he was  
10 supposed to do on probation, has not gotten in any trouble  
11 at all, and now he's asking for the State to do its part  
12 of the bargain under the YOA Statute that I pled to in  
13 2005, and now the State in the middle of litigation is now  
14 asking for this new law to be applied retroactively to him.

15           THE COURT: Well, let me ask you this. Doesn't the  
16 plain language of the statute say that it is to be applied  
17 retroactively?

18           MR. BROOKS: It says that, but our position is that  
19 -- and obviously we're the first ones -- probably one of  
20 the first ones touching on this issue --

21           THE COURT: Right.

22           MR. BROOKS: -- since the statute went into effect  
23 that it is now inherently unconstitutional to change it as  
24 it relates to him for something that he had pled to nearly  
25 fifteen years ago and has been off probation for it and did

1 the conditions of probation nearly ten years ago and the  
2 statute goes into effect in litigation. It is not as if  
3 the statute went into effect in December and then he  
4 requested in January of '19 for the expungement. He had  
5 asked for the expungement prior to the statute being  
6 enacted. We could make the argument that the State  
7 basically slow-walks his expungement knowing that the law  
8 is going to change and inevitably did change in the middle  
9 of litigation.

10 THE COURT: I don't know how you could know the  
11 law's gonna change because that's up to the Legislature.

12 MR. BROOKS: Well, I mean, if you follow -- if you  
13 follow the -- when the bill's filed and when it's tracking  
14 and all of that because -- and I have a little bit of an  
15 inside view on this because I have tried to ask -- submit  
16 cases to try to get people off the registry. I had one  
17 particular gentleman who we had filed a petition to get  
18 off the registry and it was in -- in the appeal status and  
19 this particular gentleman submitted his application for  
20 expungement -- while it was a CSC third, he submitted his  
21 expungement in Richland County. It was granted. He  
22 brings it to me, a signed order, never been appealed, and  
23 I throw the attorney general who was handling -- it was  
24 actually SLED general counsel who was handling, and it was  
25 our position at that point that when individuals like

1 Mr. Burton the word got all out to the solicitor's office  
2 don't grant these expungements because we are asking for  
3 the statute to be changed, and that's the response that I  
4 got from the solicitor's office last year and that's what  
5 prompted us to file our petition in January of last year.

6 So this has been kind of slow-walking in order to  
7 get the statute changed, so I wanted to -- now I wanted  
8 to put that out there --

9 THE COURT: Right.

10 MR. BROOKS: -- but it's our position that this is  
11 inherently unfair because it's not as if Mr. Burton can  
12 go back and say okay, State, you-all made a deal with me,  
13 I did my end of the bargain and now I'm waiting for you  
14 to do the end of the bargain; now if you're gonna change,  
15 can I go back and change my plea back in '05 and maybe I  
16 would have gone to trial if I would have known that here  
17 I am in 2019 and now I can't get the expungement. He  
18 didn't have the benefit of the crystal ball to know  
19 fourteen, fifteen years later when I went to get my  
20 expungement and now the State's gonna say we've got this  
21 new statute in place and we've got this amendment that  
22 now says it's all gonna apply retroactively, so sorry,  
23 Mr. Burton, we're gonna apply this to you and you're not  
24 able to get your expungement even though he pled in '05  
25 under the Youthful Offender Statute that said you do X, Y

1 and Z, you're entitled to get your expungement. We just  
2 think that's inherently unfair and it's unconstitutional.

3 THE COURT: Well, let me ask you this from the  
4 constitutionality, what would be the standard that it  
5 has to be viewed under -- as far as ex post facto or  
6 what would it -- what would be the standard from a  
7 constitutional standpoint that I have to look at it based  
8 on your argument?

9 MR. BROOKS: I would -- I would submit to you, Judge,  
10 ex post facto, and I would just basically say that -- and  
11 we would also look at equal protection because you've got  
12 other people who may have non-sexual cases or non-sexual  
13 convictions that are getting expungements all the time  
14 through the solicitor's office all over the State who pled  
15 or were found guilty under the Youthful Offender Statute.

16 THE COURT: Well, but they would apply to -- equally  
17 across the board for all the people in the same status as  
18 your client, so equal protection would not necessarily be  
19 applicable to him, would it?

20 MR. BROOKS: Not necessarily if -- if you already have  
21 one person granted an expungement who had a sexual offense.

22 THE COURT: Well, let me ask you this. It seems to me  
23 as well that you're trying to cherry-pick somewhat in that  
24 you're seeking the expungement at five years under the  
25 amended statute, whereas under the statute that applied at

1 the time your client pled he had to wait fifteen years, so  
2 you're cherry picking certain aspects of the statute that  
3 you like, while trying to ignore other aspects that you  
4 don't like, i.e., the retroactivity provision of the  
5 statutes that would apply to his case.

6 MR. BROOKS: Judge, I don't necessarily -- I don't  
7 necessarily agree with that.

8 THE COURT: I know you don't.

9 MR. BROOKS: And I'm saying -- and obviously for  
10 the Court to say we're cherry-picking, I think you can  
11 obviously make the same argument if you're gonna stick with  
12 the cherry-picking in terms of what the State is doing.

13 THE COURT: In which regard, please?

14 MR. BROOKS: Here's a guy who's now asking for an  
15 expungement. He asked for it prior to you changing the law  
16 and now you want to change the law -- because this is not  
17 the first summary judgment motion, this is actually the  
18 third summary judgment motion.

19 THE COURT: Okay.

20 MR. BROOKS: So, you know, take it for what it is  
21 and it is what it is.

22 THE COURT: All right, sir. Thank you.

23 MS. KIRKLAND: Briefly, Your Honor. I completely  
24 agree that the plain language of the statute precludes  
25 this from happening. I don't believe it's ex post facto,

1 this isn't criminal matter, we're in civil court.

2 THE COURT: True.

3 MS. KIRKLAND: Just because one person might have  
4 gotten an expungement for a sex crime before the law was  
5 changed doesn't make this an equal protection issue for  
6 Mr. Burton.

7 THE COURT: Yeah, I don't see an equal protection  
8 issue quite frankly.

9 MS. KIRKLAND: And the instigation of this  
10 litigation doesn't somehow stall the implementation of  
11 properly passed legislation, so I think just the plain  
12 language of the statute, I don't see any reason why this  
13 shouldn't apply. And Mr. Brooks is correct. This is  
14 the third time we've argued for summary judgment, and I  
15 have those prior orders if you would like them, but a  
16 denial of summary judgment is not appealable. In order  
17 to be able to appeal --

18 THE COURT: That's not relevant to me in this case  
19 at all.

20 MS. KIRKLAND: Okay. I did want to be upfront about  
21 that. Like I was not trying to hide that because --

22 THE COURT: I didn't think you were.

23 MS. KIRKLAND: And also like I just -- he never filed  
24 a motion for summary judgment. Like there was never a  
25 cross motion for summary judgment here, so we haven't done

1 anything improper or unethical by continuing on the case.

2 THE COURT: I don't think he's -- I don't think he's  
3 maintaining you-all did anything unethical, he's just  
4 saying hey, this is the third time we've been here.

5 MS. KIRKLAND: And it is.

6 THE COURT: Well, how do you address --

7 MS. KIRKLAND: It wasn't slow-walked. Like we weren't  
8 intentionally slow-walking like --

9 THE COURT: Well, how do you address the point raised  
10 by counsel that, you know, back when he pled, you know, he  
11 did have a scheme where he could have gotten this expunged  
12 as long as he did what he was supposed to do?

13 MS. KIRKLAND: Right --

14 THE COURT: And also the rules change.

15 MS. KIRKLAND: -- but his fifteen years hasn't -- so  
16 if we go back to the time he pled and we apply that law,  
17 even though I don't think it should be applied since the  
18 new laws have passed that are retroactive --

19 THE COURT: Say that again, please.

20 MS. KIRKLAND: If we go back to when he plead guilty  
21 and we apply that law, it's got the fifteen-year time  
22 period that he has to wait, which we haven't met, so I  
23 don't think that that's the right way to go about it  
24 given the other law.

25 THE COURT: I don't think it is either.

1 MS. KIRKLAND: And it did become a violent crime  
2 before he petitioned for removal.

3 THE COURT: Are there cases that you're aware of that  
4 reclassify crimes that -- that they have found to be, well,  
5 appropriate to apply them retroactively; people who pled  
6 when they weren't violent crimes, there weren't sexual  
7 registry obligations at the time of the plea?

8 MS. KIRKLAND: So at least with the registry that  
9 would -- you can -- the registry has been found to be not  
10 ex post facto in that it's civil by the consequence. So  
11 if you pled in the seventies before the enactment of the  
12 registry to a sex crime and then you're released from jail,  
13 you still have to register even though --

14 THE COURT: Say that again, please.

15 MS. KIRKLAND: You would still have to register.

16 THE COURT: He had to register back in --

17 MS. KIRKLAND: I'm sorry. He's always had to  
18 register. That was part of his plea negotiations, if  
19 I'm not mistaken; that he was going to have to register.

20 THE COURT: Okay. So he had to register in 2005,  
21 but at that point in time the statute didn't preclude  
22 expungement just because you were sex offender registry?

23 MS. KIRKLAND: Right. That only recently happened,  
24 but at the time he asked for this it would have precluded  
25 expungement as being a violent crime, so there might have

1 -- I think there was a window of time where this was not  
2 considered a violent crime and he had a YOA sentence and  
3 he would have been eligible for expungement, but he didn't  
4 ask for it then. He waited to ask for it until it was a  
5 violent crime and this case has lingered long enough such  
6 that the law has changed and the courts are obligated to  
7 apply the current law in effect absent severe prejudice  
8 or --

9 THE COURT: Are you aware of any cases that say that  
10 I'm required to apply the current law in effect to prior  
11 pleas?

12 MS. KIRKLAND: In a way, and it's an older Supreme  
13 Court case --

14 THE COURT: I mean, I'm not disagreeing with you.  
15 I just don't know.

16 MS. KIRKLAND: -- and I'll get the exact language  
17 out of it for Your Honor.

18 THE COURT: Okay.

19 MS. KIRKLAND: And I honestly didn't find this exact  
20 same language in South Carolina, but it is a U.S. Supreme  
21 Court case. I think it would apply here. It is Bradley  
22 v. School Board, and it says we link our holding in this  
23 case on the principle that the Court is to apply the law  
24 in effect at the time it renders a decision unless doing so  
25 would result in a manifest injustice or either statutory

1 direction or legislative history to the contrary. I don't  
2 believe it's a manifest injustice.

3 THE COURT: You don't think it's a manifest injustice  
4 that a gentleman although a pretty heinous crime that he  
5 pled to, I agree, but under a scheme that says, okay, you do  
6 what you're supposed to do and then you'll be allowed to  
7 have your record expunged and now he can't have it expunged  
8 under the current version of the law? That's a pretty big  
9 difference don't you think?

10 MS. KIRKLAND: I understand how it would feel like a  
11 big difference to him, but he waited a significant amount  
12 of time to ask for it.

13 THE COURT: According to counsel when he filed this  
14 that the law then in effect was the law that would allow  
15 expungement I guess except for the waiting period.

16 MS. KIRKLAND: Right. Well, so he did have the  
17 fifteen years if he was gonna wait, but that law changed  
18 at some point along the line and became five years and at  
19 that point he may have been able to petition --

20 THE COURT: When did it come five years, do you know?

21 MS. KIRKLAND: Not off the top of my head.

22 MR. BROOKS: I don't know, Judge. I --

23 THE COURT: Was that last year or --

24 MS. KIRKLAND: I think it's in the history that --  
25 2009, but I think it's in that history --

1 THE COURT: 2009, so it was five years at the time  
2 you had filed your petition?

3 MR. BROOKS: That's correct.

4 THE COURT: All right.

5 MR. BROOKS: That's correct.

6 THE COURT: Well, it's an interesting case.

7 MS. KIRKLAND: It is, Your Honor.

8 MR. BROOKS: Yeah.

9 THE COURT: I'll be honest with both of you. When I  
10 first looked at it, I didn't think that you had much of a  
11 chance at all to succeed on your case. I'm not sure that  
12 you still do, but I see that there's -- you know, from  
13 my perspective, you know, I have to apply the law as is  
14 written and have to presume that it's constitutional and  
15 in clear, unambiguous language of the current version of  
16 the statute, you lose. On the other hand, I can see that  
17 it is somehow inherently unfair that you're allowed to  
18 plead under a scheme where you can get an expungement;  
19 however, after the fact they change the rules on you  
20 based on the new current version of the statute.

21 MR. BROOKS: And not only change the rule, but  
22 change the rule after he's asking for the expungement.

23 THE COURT: Right. I mean, I hear that. Do you  
24 have any cases out there that would say that that's  
25 somehow unconstitutional by changing? Because these --

1 the registration, I agree with counsel, is not criminal,  
2 it's civil.

3 MR. BROOKS: And, Judge, I was going to -- the  
4 reason I stood up -- you know you said you we're gonna  
5 come back to me?

6 THE COURT: Yes, sir. Sure.

7 MR. BROOKS: We're not here for the registration,  
8 we're here for the expungement. The gentleman that I  
9 talked about that actually had the expungement, he's still  
10 on the registry and when we came --

11 THE COURT: So even if I expunge it, he still has to  
12 register?

13 MR. BROOKS: Exactly. As a matter of fact, that issue  
14 was brought up at the first summary motion when the judge  
15 asked is this gonna have any effect on the registry and the  
16 State said no, we made arrangements for that particular  
17 individual where he's still on the registry, but he's got  
18 the expungement. And all my client is now asking in front  
19 of you, not anybody else, but in front of you --

20 THE COURT: I got that.

21 MR. BROOKS: -- is to have this matter expunged  
22 based on the law that he pled to.

23 THE COURT: I saw you stand up. What --

24 MS. KIRKLAND: Yes, Your Honor.

25 So in the previous case, the expungement removes

1 the crime from the registry and that individual is still  
2 registering.

3 THE COURT: Say that again, please.

4 MS. KIRKLAND: It removes -- so when you look someone  
5 up on the registry, it tells you what their crime is at  
6 the bottom and so if Mr. Burton were to get an expungement  
7 his crime would be removed from public view and we think  
8 that would violate public policy and is not -- is not a  
9 great result for people not to be able to see what he did,  
10 but for him to still be on the registry. But also they are  
11 actually asking in Calhoun County for that expungement to  
12 remove him from the registry, so we're going to continue to  
13 argue -- the State and SLED would continue to argue that  
14 he's not entitled to come off of the registry just because  
15 he got an expungement. They are actually asking that, just  
16 not of Your Honor today. They're getting the first part  
17 from you so they can take it to Calhoun County.

18 THE COURT: I got you.

19 All right. She says that you're trying to pull the  
20 wool over my eyes.

21 MR. BROOKS: Judge, I'm a poor, struggling lawyer.  
22 I've got a poor, struggling client.

23 THE COURT: I'm not buying that.

24 MR. BROOKS: Our position is they have made  
25 arrangements for that other individual that we talked

1 about. They acknowledge that. There's no reason why  
2 they can't make the same arrangements for Mr. Burton and  
3 granting him the expungement. Now what he may do in  
4 Calhoun County or Lexington County on another day before  
5 another court, that's not here before you, but we're here  
6 on the expungement pursuant to the Youthful Offender Act  
7 of what Mr. Burton had pled to and we agree that it is  
8 inherently unfair because he can't go back now and say  
9 well, State, you're changing the rules on me, I want to  
10 change my plea.

11 THE COURT: I got that.

12 MR. BROOKS: And he can't do that. If he files a  
13 post-conviction relief, then I have another set of members  
14 of the attorney general's office talking about statute of  
15 limitations and that's inherently unfair and under the  
16 rules you've got to dismiss that and 99.9 percent of the  
17 judges here -- I dare not say guarantees because there  
18 are no guarantees in life, but 99.9 percent of the judges  
19 would routinely just dismiss it. So it's not like he can  
20 go back and say okay, you changed the rules on me, I'm  
21 gonna change the rules on my plea from back in '05, and  
22 that's what we think is just inherently unfair and  
23 unconstitutional. And, Judge, we just -- you know,  
24 obviously this is new and I don't have a bunch of cases  
25 up my sleeve on this because we had -- the statute had

1 just changed in December. And like Ms. Kirkland said,  
2 there's not a whole lot of facts that we dispute -- or  
3 we agree on, Your Honor.

4 THE COURT: Does anybody agree for the record that  
5 this is actually just a question of law that I need to  
6 decide because the factual components of this are not in  
7 dispute by either side that I can see? Do you agree with  
8 that, Counsel?

9 MR. BROOKS: I agree with that and I think  
10 Mr. Burton and I don't have any problem with the facts.

11 THE COURT: Do you agree with that? Since you filed  
12 the summary motion, I assume that you do.

13 MR. BROOKS: If you agree with my summary judgment  
14 motion. I believe it's --

15 THE COURT: It's not contingent. It's not  
16 contingent. I'm sorry.

17 MR. BROOKS: -- I believe it's bifurcated, so if you  
18 find that he's not eligible for it, then we don't need to  
19 have a trial. If you find that he is eligible for it,  
20 then it would be in your discretion.

21 THE COURT: No, that's not what I'm asking.

22 MS. KIRKLAND: Okay.

23 THE COURT: What I'm asking is this. Does everybody  
24 agree -- and if there's factual issues to be resolved,  
25 then summary judgment is inappropriate.

1 MS. KIRKLAND: Right.

2 THE COURT: But if you agree that the facts are the  
3 facts and there's no dispute as to those facts and it's  
4 just a matter of law for me to decide, then summary  
5 judgment would be appropriate.

6 MS. KIRKLAND: Yes, sir.

7 THE COURT: Do you agree with that proposition?

8 MS. KIRKLAND: I do.

9 THE COURT: Okay. And you agree with that  
10 proposition?

11 MR. BROOKS: I agree. I kind of -- I basically  
12 summarized what my client is gonna testify to if  
13 Your Honor did want to take testimony.

14 THE COURT: Right. But the question, again, is do  
15 you agree that there's no factual dispute such that this  
16 is only question of law for me to decide today based on  
17 their motion?

18 MR. BROOKS: That's correct.

19 THE COURT: Okay. Absolutely good.

20 All right. Thank you, guys. Did you file any  
21 memoranda?

22 MR. BROOKS: I did not. I think I filed some  
23 before and then they filed another one. I did not, Judge.

24 THE COURT: Do you have anything you want me to at  
25 before I make this decision?

1 MR. BROOKS: I don't, Judge, other than the arguments  
2 we've put forward to the Court.

3 THE COURT: All right. I appreciate your  
4 presentations. I'm gonna look at it. It's an interesting  
5 case.

6 MS. KIRKLAND: It is.

7 THE COURT: I, quite frankly, think that probably --  
8 not probably, that I -- you know, the standard that I look  
9 at is you have to presume that the law was constitutional  
10 and that I look at the plain, unambiguous language of the  
11 statute and apply it as written. It's a well written  
12 statute and that's likely the standard I'm gonna look at.  
13 But I'm not ruling it out. I'm gonna look up and see the  
14 changing of the rules in the middle of the game and see if  
15 that applies in this civil context. You agree it's a civil  
16 context, right?

17 MR. BROOKS: Yes, sir.

18 THE COURT: Okay. Thank you, gentlemen. And ladies.

19 MS. KIRKLAND: Thank you, Your Honor. I appreciate  
20 your time.

21 THE COURT: Yes, ma'am. Take care.

22 MR. BROOKS: Thank you, Judge.

23 (The following proceedings were concluded at  
24 10:01 AM.)

25

C E R T I F I C A T E

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I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 18th day of June, 2019.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

September 4, 2019

  
STACY S. JOHNSON  
CIRCUIT COURT REPORTER

1618922

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS. Charles Burton, III
AKA:
Race: W Sex: M Age: 17
DOB: 7/28/87 SS#:
Address: 128 Firebranch St.
City, State, Zip: Columbia, SC 29212
DL# SID#

2005 INDICTMENT/CASE#: 228
- GS- 53
A/W#: STRAIGHT INDICTMENT
Date of Offense: 1/11/04 & 4/20/04
S.C. Code §: 16-15-140
CDR Code #: 2191618
[ ] CASE RESTORED SENTENCE
[X] PLEA [ ] TRIAL

In disposition of the said indictment comes now the Defendant who was [ ] CONVICTED OF or [X] PLEADS TO: Lewd Act on a minor in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2191618 [X] NON-VIOLENT [ ] VIOLENT [ ] SERIOUS [ ] MOST SERIOUS [ ] 17-25-45

The charge is: [X] As Indicted, [ ] Lesser Included Offense, [X] Defendant Waives Presentment to Grand Jury. The plea is: [X] Without Negotiations or Recommendation, [ ] Negotiated Sentence, [ ] Recommendation by the State. ATTEST: [Signature] Solicitor, [Signature] Defendant, [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [ ] County Detention Center, for a determinate term of \_\_\_ days/months/years or [X] under the Youthful Offender Act not to exceed 6 years and/or to pay a fine of \$ \_\_\_; provided that upon the service of \_\_\_ days/months/years and/or payment of \$ \_\_\_ plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. [ ] CONCURRENT or [ ] CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS: [ ] RESTITUTION: [ ] Heard, [ ] Waived, [ ] Ordered Total: \$ \_\_\_ plus 20% fee: \$ \_\_\_ Payment Terms: [ ] set by SCDPPPS

PTUP 100 days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing [X] Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_ beginning \$ \_\_\_ paid to Public Defender Fund Other: DEF. MUST CONTINUE IN COUNSELING FEE

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, § 35.13 (Public Def/Prob) \$500, §73.3, 1B TP (Law Enforce. Funding) \$25, §33.7, 1B TP (Drug Court Surcharge) \$100, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$, TOTAL \$125.9

DEVIANT SEXUAL BEHAVIOR & FULLY COMPLY W/ TREATMENT PLAN; DEF. MUST REMAIN IN SCHOOL THROUGH PROBATION & FINANCE SUITABLE PROGRESS TOWARD OBTAINING DEGREE (UNLESS IT'S ENTERS FULL-TIME MILITARY SERVICE); [ ] Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation. DEF. IS NOT PERMITTED TO HAVE CONTACT W/ THE VICTIM EXCEPT WHEN IN THE PRESENCE OF A RESPONSIBLE ADULT R.

[Signature] Beth A. Carnie Clerk of Court/ Deputy Clerk Court Reporter: [Signature]

PRESIDING JUDGE [Signature] Judge Code: 101510 Sentence Date: FEB. 18, 2005 IN COMPLIANCE W/ THE TREATMENT PLAN DEVELOPED & BY COUNSELORS; IF THE TREATMENT PLAN REVEALS THE POINT THAT THE VICTIM & DEF. ARE RECOMMENDED TO BE REUNITED AS A FAMILY LIVING TOGETHER, THE DEF. CANNOT DO SO UNLESS THE SCCA/217 (7/2003) PROBATION AUTHORITY'S COURT ORDER.

DEC 2-18-05

White - Clerk Green - Corrections Canary - Probation

60

# STATE OF SOUTH CAROLINA



**S.R. HUBBARD III**

SOLICITOR, ELEVENTH JUDICIAL CIRCUIT  
Edgefield • Lexington • McCormick • Saluda

TO: Charles T. Brooks, Esq.

FROM: Davant C. Keenan *DCK*  
Expungement Services, Eleventh Judicial Circuit

DATE: October 30, 2017

RE: Expungement Request for Charles Floyd Burton

Upon reviewing the information received on the Expungement request for Charles Floyd Burton, the Eleventh Circuit Solicitor's Office has declined to consent to your request for expungement of the Lewd Act on a Minor (2005-GS-32-228).

Therefore, I am returning the check from The Law Offices of Charles T. Brooks made out to the Clerk of Court that was submitted to this office. (10693)

Should you have any questions, please do not hesitate to contact me at (803) 785-8037.

# The Brooks Law Office, LLC

**CHARLES T. BROOKS, III, ATTORNEY AT LAW**  
**IRMA R. BROOKS, ATTORNEY AT LAW**

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Email: [cbrooks@ctbrooks.com](mailto:cbrooks@ctbrooks.com)

June 16, 2016

Office of the Solicitor  
205 East Main Street  
Lexington, South Carolina, 29072

RE: State of South Carolina v Charles F Burton  
2005-GS-32-228

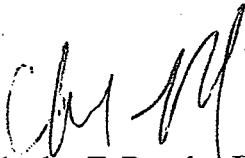
Dear Sir or Madam:

Please find enclosed the prepared Order for Destruction of Arrest Records with reference to the above matter in which the Defendant was sentenced under the Youthful Offender Act. In addition I have provided the necessary fees for this process as appropriate. Please forward a copy of the filed Order upon its issuance from the Clerk of Court's offices in the provided self-addressed stamped envelope.

If you have any questions, please do not hesitate to contact me at the number listed above.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III  
CTB, III/jlm  
Enclosed as stated  
cc: Charles F Burton

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

Honorable R. Lawton McIntosh, Circuit Court Judge

---

Case No: 2019-001252

---

Charles F. Burton.....Appellant

v.

Lexington County Solicitor .....Respondent

**RECEIVED**  
MAR 09 2020  
SC Court of Appeals

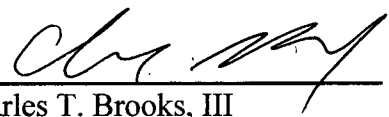
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RECORD ON APPEAL

CERTIFICATE OF COUNSEL

---

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



---

Charles T. Brooks, III  
The Brooks Law Offices, LLC  
Post Office Box 3512  
Sumter, South Carolina 29150  
803-418-5708  
Attorney for Appellant

Sumter, South Carolina