

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DILLON)

FOURTH JUDICIAL CIRCUIT

Vontray Sellers #368022,)

RECEIVED

Apr 06 2020

2017-CP-17-00481

v.)

SC Court of Appeals

South Carolina Law Enforcement Division,)

ORDER FOR DECLARATORY JUDGMENT

Defendant.)

This matter comes before the Court by Petition for Declaratory Judgment by the Petitioner, Vontray Sellers. On February 17, 2020, a hearing was held where petitioner requested the court to clarify whether his conviction for two counts of Sexual Exploitation of a Minor, Third Degree, required registration as a sex offender in South Carolina.

The Court denies Petitioner's motions on the following grounds:

Before argument from counsel, the Court requested clarification that a declaratory judgment in Common Pleas court was the appropriate way to approach this issue, and not a post-conviction relief (PCR) matter or an appeal of the sentence. In *State v. Nation*, 408 S.C. 474, the South Carolina Supreme Court found that the sex offender registry is not a criminal punishment, as it is a civil collateral consequence. The Court then found that a declaratory judgment is the appropriate method to address this issue, and not through PCR, which is intended for constitutional violations relating to ineffective assistance of counsel. In *State v. Thompson*, 415 S.C. 560, the Court found that a declaratory judgment in relation to issues involving the sex offender registry was appropriate instead of only argument in criminal proceedings. The Court stated that the petitioner "needed a meaningful opportunity to be heard" and that they could not "imagine the General Assembly intended to allow a criminal defendant affected by section 23-3-430 the opportunity to be heard only during his criminal proceedings" as "the civil consequences follow immediately after conviction, and not merely upon

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his release from prison.” *Id.* Therefore, Petitioner has filed an appropriate Petition for Declaratory Judgment with this matter, and the Court shall consider Petitioner’s argument.

Petitioner argues he is not required to register as a sex offender as Sexual Exploitation of a Minor, Third Degree, is not specifically listed in the offenses requiring mandatory Sex Offender Registration. Further, Petitioner argues that as no notation of sex offender registry was made on either sentencing sheet under 23-3-430(D) (which gives judicial discretion as to the sex offender registry), he is not required to register as a sex offender.

The Court disagrees with Petitioner, as although Sexual Exploitation of a Minor, Third Degree, is not specifically mentioned, § 23-3-430(C)(13) does require that a person shall register as a sex offender who has pled guilty to an offense that is a violation of Article 3, Chapter 15, Title 16 involving a minor. Sexual Exploitation of a Minor, Third Degree, § 16-15-410 does fall under Article 3, Chapter 15, Title 16 and does involve a minor, as it involves visual representations of minors engaged in sexual activity. At the plea hearing, the State described that the files relating to the underlying charges depicted prepubescent children engaging in vaginal and oral intercourse with adult males.

As offense of Sexual Exploitation of a Minor, Third Degree, falls under Article 3, Chapter 15, Title 16 and clearly involves minor children, the Court is not persuaded by Petitioner’s arguments. As this falls under an unambiguous section requiring that offenders register as sex offenders, Petitioner is required to register as a sex offender.

Now, therefore, based on the foregoing, it is ORDERED, ADJUDGED and DECREED that Petitioner is required to register as a sex offender as required by South Carolina law.

The Honorable Michael G. Nettles
Presiding Judge
Fourth Judicial Circuit

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Dillon Common Pleas

Case Caption: Vontray Sellers VS South Carolina Law Enforcement Division

Case Number: 2017CP1700481

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

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