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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal From Newberry County
Court of Common Pleas
Honorable Frank R. Addy, Jr., Circuit Court Judge

2010-CP-36-472

ANDREW LONGSHORE,

RESPONDENT,

vs.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

APPELLANTS.

RECORD ON APPEAL

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RECEIVED

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SC Court of Appeals

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
ORDER OF THE HONORABLE FRANK R. ADDY, DATED FEBRUARY 10, 2011	17
ORDER OF PROBATION, DATED FEBRUARY 13, 2003	20
COMPLAINT FILED OCTOBER 1, 2010	23
AMENDED COMPLAINT FILED FEBRUARY 3, 2011	31
CERTIFICATE OF COUNSEL FOR APPELLANT	34

E X H I B I T S

Court's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE #</u>
1	Incident	X		15

1 THE COURT: This is case 10-CP-36-472. This is a
2 declaratory judgment action. Andrew Ray Longshore,
3 plaintiff versus South Carolina Law Enforcement Division.
4 It is my understanding that this is a petition seeking to
5 have the plaintiff removed from the sex offender registry,
6 is that right?

7 MR. O'LEARY: Yes, it is. Your Honor, I have an
8 amended the complaint because I mistakenly put circuit
9 court, it was really from the family court. I have
10 provided a copy to the court.

11 THE COURT: Any objection to the amended complaint
12 from the State?

13 MR. CHAMBERS: I have to take a quick look at it,
14 Your Honor.

15 THE COURT: Sure.

16 MR. O'LEARY: I am sorry, I would have been here
17 earlier but I have a puppy in the car. Hopefully he
18 doesn't eat my seats. He is a 7-month-old lab of mine.
19 Judge, the basis of the amended, I did put the circuit
20 court in there, I forgot it was family court. The whole
21 crux issue is at the time of this incident he was 15, my
22 client was 15 and his sister was, I believe, 11. She is
23 here, she has submitted with that an affidavit. I have
24 made an effort and was advised by the courts that they
25 don't have a transcript from the actual hearing. They

1 don't have to keep them, I guess, six years but there is
2 none available. I was not at the hearing so I can't tell
3 you what occurred. But the statute allows that a person
4 not be put on the registry if in fact the ages fall within
5 the parameters of the statute, 23-3-430. And that is
6 subsection (C)(5). I have a copy of the statute. Judge,
7 that is essentially it. I have submitted the applicable
8 birth certificates that show the age. His birthdate and
9 at the time of the offense he was 15. I have brought his
10 sister here to testify for the Court which is to
11 supplement the affidavit. I wasn't sure she was going to
12 be here to be honest with you, she is expecting a baby and
13 she has had some problems and I wasn't sure she could be
14 here. She is here and available to answer any questions
15 for the Court. Our position is that it fits under (C)(5)
16 and in that it says that provided the defendant is 18
17 years of age or less or consensual sexual conduct between
18 persons under 16 years of age. Our position is that the
19 relationship is improperly, fits within those parameters
20 because of their ages at the time and my client being
21 older than 15.

22 THE COURT: All right. Thank you, Mr. O'Leary.
23 Attorney General, have y'all had the opportunity to review
24 the amended complaint, are you okay with the proceeding at
25 this point and time?

1 MR. CHAMBERS: I am okay with the proceeding at this
2 point and time, yes, Your Honor.

3 THE COURT: I will be happy to hear from you. What
4 is the State's position regarding the petition that has
5 been filed here.

6 MR. CHAMBERS: Our position with the method in which
7 Mr. O'Leary seeks relief for his client is this, the
8 statute specifically reads that, he is correct that the
9 statute reads that children under 16, if it is consensual
10 do not have to comply. But there is a caveat at the
11 beginning of 23-3-430(C)(5) and if evidence is presented
12 in a criminal proceeding and the Court makes the specific
13 finding on the record. The specific finding is actually
14 in the record here, we have the documents from the family
15 court specifically the order of probation, non-status and
16 defenses. And on that the family court Judge specifically
17 wrote, child shall cooperate with the protocol for the
18 sexual offender registry. And so our position on this is
19 that because of that and because what the family court
20 Judge ordered, after Mr. Longshore received the due
21 process on this criminal matter, we are in the position
22 that he should remain on the registry.

23 THE COURT: All right. I am aware that the
24 provisions in the sex offender registry have been amended
25 several times over the last couple of years to include and

1 exclude various offenses and I know that kidnapping is one
2 that seems like depends on when you were convicted and
3 what the circumstances were as to whether or not someone
4 should be placed on the registry for that. At the time of
5 the conviction was subsection (C)(5), I have the code in
6 front of me but was (C)(5) in its current form or was that
7 added subsequent--

8 MR. O'LEARY: Your Honor, I know that (C)(5) was done
9 before 2005. And the reason for that is because 16-3-655
10 part (3) is referenced in there. That is the criminal
11 sexual conduct with a minor statute. And that was amended
12 in 2005 and that link to that statute on the ages no
13 longer makes sense and you have to go back to the old
14 statute, the old criminal sexual conduct statute. I do
15 not know for a fact that it was the same.

16 THE COURT: And the reason I ask obviously, the
17 family court Judge was without any discretion whatsoever
18 at the time of the conviction then we have got a Hazel
19 situation, I think.

20 MR. O'LEARY: I know it was the same as of 2005. And
21 I want to say that it was changed in, the prior change to
22 that part of it was '96 but I can't say that for sure. We
23 need to look that up.

24 MR. CHAMBERS: I honestly don't know the dates, I do
25 have the case law here. And I wasn't there at the time of

1 the original issue or anything.

2 THE COURT: Solicitor, how does this differ from
3 Hazel v. State where I believe there was a change in the
4 statute, assuming that there was a change in the statute.
5 Hold on a second. Do you have the documentation from the
6 family court Judge, the sentencing.

7 MR. CHAMBERS: Yes, Your Honor.

8 MR. O'LEARY: Judge, I wasn't able to get that
9 particular document. I tried to get the transcript to see
10 if there was a factual basis.

11 MR. CHAMBERS: Your Honor, if I may approach?

12 THE COURT: Please. It looks like at least in 1999
13 the law read the same way as it does today at subsection
14 (C) (5). That would be the situation. It appears that
15 (C) (5) at least had been in existence at the time that the
16 Court adjudicated the delinquent.

17 MR. O'LEARY: Your Honor, the only thing I can say to
18 that, it is my understanding they are asking for factual
19 cases for any decision of placing on the registry. On the
20 cases that the Court just referenced were brought up in
21 the Shaquille case. Overall, I don't necessarily think
22 that the face of this order of probation gives a factual
23 basis for placing him on the registry.

24 THE COURT: Say that last part one more time.

25 MR. O'LEARY: This order and this is the first I have

1 seen this order, I don't think it gives a factual basis
2 for why the decision was made, if it was made by the
3 family court, to place him on as a sexual offender. It is
4 my understanding that the cases that came out dealt with
5 this, required that that be placed on the record on the
6 face of the order.. I don't think it complies with that.

7 THE COURT: What is your response to that, Attorney
8 General?

9 MR. CHAMBERS: Our normal form sentencing sheet, if a
10 member of the bench checks the box that that person should
11 go on the sex offender registry, that is enough for us to
12 assume that that person, that the Judge hearing that case
13 wanted that person on the registry. Here the Judge went
14 further than that, he actually wrote it out and it is an
15 order and that is what we have in that. We do not have
16 the normal sentencing sheet that we use in adult criminal
17 trials. In family court it is a different procedure and a
18 different set of forms.

19 MR. O'LEARY: Judge, the Stewart case, the Court of
20 Appeals of South Carolina, Your Honor. That is in '08
21 references the fact that a person who is placed on the
22 registry for indecent exposure and the court basically
23 said that they had to place, the Court had to make a
24 specific finding on the record based upon the
25 circumstances of the case and why they should be placed

1 there as a sex offender. That was 665 SE 2nd 187.

2 MR. CHAMBERS: But, Your Honor, I believe we are
3 dealing with specific offenses. And in certain offenses
4 such as assault and battery of a high and aggravated
5 nature that it goes one way or the other. And in other
6 situations especially the ones that are enumerated in sex
7 offender statute which criminal sexual conduct with a
8 minor second is and in those cases it is, there is no
9 finding on the record necessary.

10 MR. O'LEARY: My reading of that statute, 23-3-430,
11 because of the ages of the participants in this case, that
12 is a critical issue. This order is considered an order
13 specific or not. Despite the fact that the age of the
14 defendant being 15 and the victim in this case being 12
15 ordered to be placed upon the registry, it doesn't say
16 that. That is sort of an extenuating situation because
17 no where else does it say that you don't have to be
18 required to put on the particular registry.

19 THE COURT: What I am struggling with here,
20 Gentlemen, is that clearly the laws that existed at the
21 time that the plaintiff was convicted obviously have the
22 option for the Judge to rule that there was a consensual
23 situation. All indications are here that subsection
24 (C)(5) should apply. The affidavit from the complaining
25 witness states that it was consensual. It is obvious that

1 they were both under the age of 16. And I am aware of how
2 offenses like ABHAN and indecent exposure and perhaps
3 kidnapping, there needs to be a specific factual finding
4 on those offenses for the person to be placed on or taken
5 off a record. Sorry, placed on or taken off the registry.
6 I can only presume that Judge McGowan was aware of the
7 opportunity to have a finding made that he was engaged in
8 consensual activity. Where is my authority to go back and
9 reopen the record and kind of undue what Judge McGowan
10 specifically ordered?

11 MR. O'LEARY: Judge, I don't think we can assume that
12 issue was consensual or not. The standard, we don't have
13 that. It was a general handwritten statement on that
14 order. I don't think we can even say it was even
15 considered by the Court that day. Again, I was not there,
16 the record is not available but I think on its face that
17 order is not specific enough to say I considered the issue
18 of their ages and despite of the statute I will order that
19 the defenadnt in this case be placed or be required to
20 register. I think they can easily have done that had it
21 occurred. But I don't know if it occurred and I don't
22 think counsel for the Attorney General does either.

23 THE COURT: And just so the record is clear I am
24 looking at the incident report. I reviewed the order for
25 probation non-status offenses, the juvenile petition and

1 nothing in any of that indicates that this was anything
2 other than consensual. It appears that the State at all
3 points and time rested their case or built their case on
4 the age difference between the plaintiff and the minor
5 involved. Do you have something to add?

6 MR. O'LEARY: That sums up what I was going to say,
7 it is not something where this is any type of forceable
8 rape. Our understanding of this from the file is that it
9 was something that happened between the brother and sister
10 and the case was based upon that age.

11 THE COURT: All right.. Anything else?

12 MR. CHAMBERS: Nothing, Your Honor.

13 MR. O'LEARY: Judge, the only point I would put--

14 THE COURT: Please.

15 MR. O'LEARY: I read the order that was provided to
16 me. There is no reference on there, it is criminal sexual
17 conduct with a minor and I know the victim was a minor.
18 There is no specific age criteria that was set forth in
19 that statute nor is there reference specifically as to the
20 age of the defendant in this case at the time. He was 15
21 years old and it was below, 16 is the statute.

22 THE COURT: Right.

23 MR. O'LEARY: And I think that is significant. I
24 don't think that we can just assume that that was taken
25 into consideration, his age too.

1 THE COURT: Attorney General, you don't feel the
2 testimony from the victim in this case is necessary? Is
3 the affidavit sufficient?

4 MR. CHAMBERS: Your Honor, the affidavit is
5 sufficient with me.

6 THE COURT: All right, again what I am working here
7 and what I am working through in my mind is the
8 requirements of Hazel that when the Court clearly said
9 that the registry in effect, the law in effect at the time
10 of Mr. Hazel's release in prison, that version of 23-3-430
11 in fact at the time of Hazel in prison is what was
12 applied. Obviously in Hazel we have got a situation where
13 there apparently was not an option for the trial Judge to
14 find kidnapping not involved a sexual component. So the
15 time in Hazel and Hazel was initially convicted. The
16 version of the law of a sexual defendant and kidnapping
17 and to be placed on the offender registry that was just
18 not involved. I still have an issue with what I am trying
19 to reconcile in my mind that obviously that his conviction
20 took place, his adjudication took place, the law reads
21 then as it does today. On the other hand there is no
22 indication from anything that I have seen that there is
23 anything other than, it is quite clear to me that (C)(5)
24 should apply. The declaratory judgment problem remedied
25 in this situation, Gentlemen. I realize that PCR you

1 can't file a direct appeal and Hazel would tend to
2 indicate that a declaratory judgment action would be
3 proper. But I am still dealing with the conviction that
4 is seven years old.

5 MR. O'LEARY: Judge, in O'Neal, it was filed on
6 October the 12th of '09 and basically on page two it says
7 that Hazel Defendant filed a declaratory judgment action
8 in the Court of Common Please questioning that if you, the
9 State argued that in Common Pleas didn't have the
10 jurisdiction to make a determination, such a finding could
11 be made only by the Court of General Sessions. We held
12 that the Court of Common Pleas has the jurisdiction to
13 rule on that certain matter. And based upon the fact this
14 Court is the proper Court for that remedy.

15 MR. CHAMBERS: Your Honor, we see the sex offender
16 registry as a procedural statute. And if there is a
17 change in the requirements of that registry it should
18 affect backwards. And so if tomorrow the legislature
19 takes a certain criminal offense off of that registry then
20 I would say that the people who are currently registered
21 for that criminal offense no longer have to register. And
22 so when there is a change in this I think at that point we
23 have a duty to go back and look at the due process or
24 review the due process that was received by Mr. Longshore
25 back in 2003. And in 2003 he received due process on this

1 issue and it was specifically found by the family court
2 Judge who heard the matter that he should register. If
3 there is a change in the, if there is a change in the
4 registry in the future that would affect that then I
5 believe that Mr. Longshore is entitled to a hearing on
6 that.

7 THE COURT: And procedurally I don't disagree with
8 you. What I am struggling with again is the flip-side of
9 my argument that everything here indicates that it was a
10 consensual situation, incident report which I would ask to
11 be made a part of the record if there is no objection. I
12 would ask that it be marked as a Court exhibit along with
13 the petition for adjudication of delinquency and the order
14 from Judge McGowan. All indications are is that this was
15 a consensual scenario. Intuitively I feel like the
16 defendant should have the benefit of Hazel and the other
17 cases and I don't see any purpose quite honestly in him
18 remaining on the registry when all indications are by
19 virtue of the affidavit as well as the evidence that was
20 available at the time of his conviction, all indications
21 are he was, that this was a consensual situation. I wish
22 we had a transcript but obviously we do not.

23 MR. CHAMBERS: Your Honor, I don't think that we can
24 get a transcript because of the five year requirement.

25 THE COURT: Right.

1 MR. CHAMBERS: And that greatly burdens us because
2 now we have to reopen the investigation and recover ground
3 that the State has already done eight years ago.

4 THE COURT: I understand. I don't think y'all have
5 much in the way of burden, I think the burden is on them
6 as far as transcripts and things of that nature to prove
7 their case. I would very much like to have the
8 transcript. I will think about it. I do know the court
9 reporter that was involved in this and of course she is
10 still an active court reporter. I am assuming that her
11 records were destroyed pursuant to the guidelines of court
12 administration. Good to see y'all. Thank you very much.

13 (Whereupon, Court's Exhibit 1 was marked for
14 identification only)

15 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

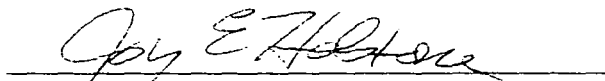
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State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing 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 Newberry County, South Carolina on February 3, 2011.

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

April 9, 2011



Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Andrew Ray Longshore,

Plaintiff,

v.

South Carolina Law Enforcement
Division,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-36-00472

**ORDER GRANTING
DECLARATORY JUDGMENT**

FILED
2011 FEB 10 P 4:42
CLERK OF COURT

On February 3, 2011, a hearing was held before the Honorable Frank R. Addy, presiding.

Present at the hearing were the Plaintiff, Andrew Ray Longshore, and his counsel, John A.

O'Leary. Appearing as counsel for the Defendant, South Carolina Law Enforcement Division,

was Geoffrey K. Chambers. Also present and available for testimony was Plaintiff's sister and

victim, . Testimony was waived by both the Plaintiff and the State

(Defendant); however, Affidavits and certified documents were admitted upon consent of both

parties.

FACTUAL AND PROCEDURAL BACKGROUND

On August 15, 2002 a Petition was filed in the Family Court of Newberry County charging that the Plaintiff did commit the offense of Criminal Sexual Conduct with a Minor 2nd Degree, a violation of the Code of Laws of South Carolina. Records reflect that an adjudicatory hearing was held on December 12, 2002 where the Plaintiff was adjudicated delinquent for the Criminal Sexual Conduct with a Minor 2nd Degree as charged. On February 13, 2003, a dispositional hearing was held before the Honorable Joseph W. McGowon, who found that



Plaintiff should be placed on probation for a period of one year with numerous conditions, including to follow the protocol of the sex offender registry and no contact with the victim. At the time of his conviction on or about December 12, 2002, Plaintiff was 15 years old and the victim, at the time of the violation, was age 12.

Plaintiff filed a Petition for Declaratory Judgment on October 1, 2010 with an Amended Complaint filed on February 3, 2011. Plaintiff brought this action to remove his name from the Sex Offender Registry. At the February 3, 2011 hearing, this Court reviewed all exhibits including certified copies of Birth Certificates for both the Plaintiff and the victim along with Affidavits (submitted with the consent of the State (Defendant) stating that the sexual relationship between the Plaintiff and the victim was consensual and, at that time, both the Plaintiff and victim were minors and brother and sister. No transcripts of the 2002 proceedings exist as there is only a requirement to maintain such tapes for six years. Counsel for Plaintiff proffered to the Court that he attempted to secure such transcript.

In his Petition, Plaintiff references S. C. Code Ann. §23-3-430(c)(5) which states,

"criminal sexual conduct with minors (2nd Degree), if evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16-3-655(3) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article."

LEGAL DISCUSSION & TESTIMONY

The Court recognizes authority of the Common Pleas Court and its jurisdiction to make a determination in a case such as is currently before this Court, Hazel v. State, 377 S.C. 60, 659 S.E. 2d 137 (2008). The evidence before this Court shows beyond any doubt that, at the time of



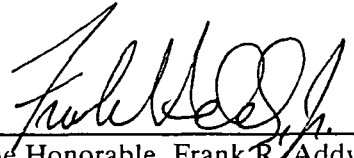
the assault, both parties were under the age of sixteen, falling within the parameters set forth in S.C. Code Ann. §23-3-430(c)(5). Documentation of the adjudication of the 2002 charge does not reflect any reference to the sex between the parties being consensual; however, records and documents now before this Court show clearly that it was in fact consensual. S.C. Code Ann. §23-3-430(c)(5) states that, with consensual sexual relations between parties under the age of sixteen, the convicted person is not required to register pursuant to the provisions of this Article.

CONCLUSION

NOW, THEREFORE, it is the determination of this Court that Plaintiff's removal from the Sex Offender Registry is the proper remedy as referenced in Hazel (supra). The Court hereby finds that the sexual offense was in fact consensual and that the parties fall within the parameters of the Statute and registration is not required.

Further, Plaintiff's Petition for Declaratory Judgment is hereby granted and Plaintiff shall be removed from the Sex Offender Registry effective the date of this Order.

AND IT IS SO ORDERED.


The Honorable Frank R. Addy, Jr.

February 10, 2011

Newberry, SC

COUNTY OF NEWBERRY

IN THE INTEREST OF

Andrew R. Longshore (DOB) 01/31/1987
A Juvenile

IN THE FAMILY COURT
EIGHTH JUDICIAL CIRCUIT
02JU36-181

ORDER OF PROBATION
NON-STATUS OFFENSES

DATE OF DISPOSITIONAL HEARING: February 13, 2003 ATTORNEY FOR SOLICITOR: Elizabeth Smithdeal

JUDGE: Joseph W. McGowan ATTORNEY FOR JUVENILE: Devona Spriggs

COURT REPORTER: S. Nichols GUARDIAN AD LITEM: _____

On August 15, 2002, a verified petition was filed in the Court by W. Townes Jones IV,
Solicitor, alleging that the above named minor was a delinquent child in that (he)/(she) on between January 1 and 23, 2002 in
Newberry County, S. C. did commit the offense(s) of: Criminal Sexual Conduct With a Minor, 2nd Degree

in violation of Section (s) _____ Code of Laws of South Carolina (1976).

An **ADJUDICATORY HEARING** was held on December 12, 2002 The minor (☒ admitted guilt
to) / (___ was adjudicated delinquent for), having: Criminal Sexual conduct with A Minor, 2nd Degree

In violation of Section(s) _____ Code of Laws of South Carolina (1976).

A **DISPOSITIONAL HEARING** was held on February 13, 2003, and as a result

THIS COURT FINDS AND CONCLUDES AS FOLLOWS:

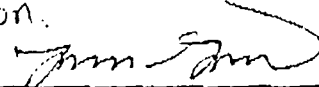
- A. That this Court has jurisdiction over the parties and subject matter of this action
- B. That this minor is a suitable candidate to be placed on probation and to be supervised on probation by the
Department of Juvenile Justice for a period of one year
- C. Other: That it is in the best interest of this minor that (he)(she) be committed to The South Carolina
Department of Juvenile Justice, suspended upon compliance with terms of probation.

IT IS ORDERED:

1. That this minor be committed to The South Carolina Department of Juvenile Justice, for an indeterminate period not to exceed (his) (her) twenty-first birthday, unless sooner released by proper authority, suspended upon compliance with terms of probation.
2. That the minor shall comply with the following terms of probation:
 - a. You shall report to your Probation Counselor as often as you are told to.
 - b. You shall keep all appointments with other agencies to which you may be sent by the Court or by your Probation Counselor.
 - c. You shall have no unexcused absences from school, obey the rules of your school and do your school work to the best of your ability.
 - d. You shall cooperate with your parents and obey their rules or the rules of the home in which you live.
 - e. You shall cooperate with your Probation Counselor.
 - f. You shall be home by a certain hour every night. The hour you are to be home shall be set by the Court, 10:00 P. M. Weekdays 10:00 P. M. Weekends. Parent(s)/ Guardian(s) are made a party to this Order.
 - g. You shall not be with any person who is committing a crime or breaking the law.
 - h. You shall not commit any crimes or break any laws.
 - i. You shall not use any type of illegal drugs or drink any form of alcoholic beverages.
 - j. You shall not have in your possession any type of weapon which could be used to hurt another person.
 - k. If deem necessary, you are to cooperate with Alternative Placement (Marine Institute/Group Home) and abide by All Rules and Regulations.
 - l. Other conditions: child shall cooperate with the protocol for the Sexual Offender Registry; the child shall continue to attend sexual offender counseling; the family shall pay for any/all costs of counseling; there shall be no ^{unsupervised} contact between the juvenile and his sister; the Court shall reserve jurisdiction of the case for any
3. Other: violations of probation.

AND IT IS SO ORDERED.

Feb 13, 2003



FAMILY COURT JUDGE

Newberry Lowrens, s.c.

SCCA/494b (9/93)

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE INTEREST OF:

ANDREW R. LONGSHORE

DOB: 1-31-1987

IN THE FAMILY COURT
EIGHTH JUDICIAL CIRCUIT

FILED
NEWBERRY COUNTY JUVENILE PETITION

2002 AUG 15 02JU36-181
CRIMINAL SEXUAL CONDUCT WITH A MINOR
(SECOND DEGREE)

JACKIE S. BOWERS

W. Townes Jones, IV, Solicitor, Petitioner, having sufficient knowledge or information to believe that a case has arisen which invokes the juvenile jurisdiction of the Court, alleges:

1. That the above-named Minor is less than seventeen years of age and resides in the County at the address shown above, or was found in the County alleged herein.
2. That the names and the addresses of the minor's parents or guardian or custodian are as follows:

Daryl Longshore, parent/guardian, (same as juvenile)

3. That ANDREW R. LONGSHORE did in NEWBERRY County, State aforesaid between the 1st day of January, 2002, and the 23rd day of January, 2002, being older than the victim, wilfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but less than the age of fourteen (14) years, to wit: one in violation of Section 16-3-655 of the South Carolina Code of Laws, 1976, as amended

Against the Peace and Dignity of the State, or contrary to the Statute in such case made and provided.

WHEREFORE, Petitioner prays that the Court set this matter for hearing to determine whether the allegations are true and whether the child is in need of the care, protection or discipline of the State.

June 11, 2002

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

W. Townes Jones
Solicitor

VERIFICATION

W. Townes Jones, IV, being duly sworn, says that he is the Petitioner herein, and that he has read the foregoing Petition and knows the contents hereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief; and as to the matters he believes them to be true.

SWORN AND SUBSCRIBED BEFORE ME THIS

11th day of June, 2002.
W. Townes Jones (L.S.)

Notary Public for South Carolina

My Commission Expires: 10-14-2006

W. Townes Jones
Solicitor

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	EIGHTH JUDICIAL CIRCUIT
	)	
Andrew Ray Longshore,	)	C.A. No.: 2010-CP-36-
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	DECLARATORY JUDGMENT
	)	(NON-JURY)
South Carolina Law Enforcement	)	
Division.	)	
	)	
Defendant.	)	
	)	

Plaintiff, pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and S.C. Code Ann. §§15-53-10 through 15-53-140, would respectfully show unto the Court that:

1. Plaintiff Andrew Ray Longshore (hereinafter referred to as "Plaintiff") is a citizen and resident of Newberry County, State of South Carolina.
2. Defendant South Carolina Law Enforcement Division (hereinafter referred to as "Defendant") is a state government agency existing under and subject to the laws of the State of South Carolina.
3. On August 21, 2002, Plaintiff was convicted of Criminal Sexual Conduct with a Minor (11 - 14 years of age, inclusive) 2nd Degree in General Sessions Court, Newberry County, SC, S. C. Code Ann. §23-3-430(C)(5). Plaintiff was 15 years old at the time of this conviction. As evidence to his age, a copy of his Birth Certificate is attached as Exhibit A.
4. As a condition of his conviction, Plaintiff was registered as a convicted sex offender on the Sex Offender Registry.
5. The victim involved is Plaintiff's sister, who was 12

years old at this time, as evidence by a copy of her Birth Certificate attached hereto as Exhibit B.

6. [redacted] is now an adult. She has executed an Affidavit stating that she and Plaintiff had consensual sex at that time while they were minors. See Affidavit of [redacted] attached hereto as Exhibit C.

7. Plaintiff, through his undersigned counsel, contacted the court reporter for Plaintiff's plea and sentencing hearings. The court reporter advised that the transcript tapes do not exist any longer as court reporters are only required to maintain the tapes for six years.

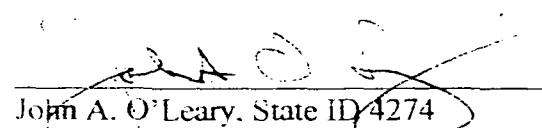
8. Plaintiff is informed and believes that at the time of conviction, the Court was aware that he and his sister [redacted] had consensual sex.

9. S. C. Code Ann. §23-3-430(C)(5) reads if evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16-3-655(3) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article.

10. The Plaintiff is informed and believed that under S.C. Code Ann. §23-3-430(C)(5) he should not have been required to register as a sex offender.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grants him this petition for Declaratory Judgment and removes his name from the sex registry and for just and other remedies as the Court may grant.

Respectfully Submitted.



John A. O'Leary, State ID 4274
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olearylawn@yahoo.com

September 28, 2010
Columbia, SC

BIRTH CERTIFICATION

STATE FILE NUMBER :

NAME OF REGISTRANT : *ANDREW RAY LONGSHORE*

DATE OF BIRTH : JAN 31 1987

SEX : MALE

PLACE OF BIRTH : NEWBERRY COUNTY, SOUTH CAROLINA

FATHER'S NAME : DARYL LEE LONGSHORE

MOTHER'S MAIDEN NAME : NANCY LAUREL OSBORNE

DATE RECORD FILED : FEB 09 1987

DATE ISSUED : JAN 18 2008

A

CERTIFICATION OF VITAL RECORD

BIRTH CERTIFICATION

STATE FILE NUMBER :

NAME OF REGISTRANT :

DATE OF BIRTH : MAR 10 1990

SEX : FEMALE

PLACE OF BIRTH : RICHLAND COUNTY, SOUTH CAROLINA

FATHER'S NAME : DARYL LEE LONGSHORE

MOTHER'S MAIDEN NAME : NANCY LAUREL OSBORNE

DATE RECORD FILED : MAR 14 1990

DATE ISSUED : APR 08 2009

SC 00430916

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

C. Earl Hunter

Guang Zhao

R

Advanced Private Investigations, LLC

Victim Statement

The time is now 4:07 PM on Monday, May 17, 2010. This will be a sworn statement of Brittney Laurel Longshore, who resides at _____ This statement is being taken by myself, Jimmy Powers, a criminal defense investigator on behalf of the Law Offices of O'Leary & Associates. This statement is being taken in the Wal-Mart parking lot in Newberry, South Carolina, in regards to the state of South Carolina Vs. Andrew Ray Longshore.

Powers: When did this incident occur?

_____ The sexual abuse began when I was eight years old.

Powers: How did it begin?

_____ By hanging around with my brother, Andrew Longshore, and his friend, Nick _____ and watching pornography on the computer.

Powers: Where did this happen?

_____ At my Grandparents residence, _____ in Newberry, South Carolina.

Powers: Why were you at your Grandparents house?

_____ We stayed there while our mother and stepfather worked.

Powers: Who approached you about having sexual intercourse with them first?

_____ Nick

Powers: How did this happen?

_____ Nick _____, Andrew Longshore, and I were in the upstairs bedroom of my Grandparent's house watching pornography on the computer, and Nick forced me to have sexual intercourse with him. My brother, Andrew Longshore, just sat and watched while Nick made me have sex with him.

Powers: How often did this happen?

_____ It happened frequently over the next two years.

Powers: Did you have sexual intercourse with Andrew Longshore?

Yes.

Powers: When did this happen?

Approximately two years after Nick began forcing me to have sexual intercourse with him. Nick had stopped coming around. Andrew and I were discussing sexual intercourse and we agreed to experiment with sexual intercourse. We did have consensual sexual intercourse in the upstairs bedroom of my Grandparent's house at in Newberry, South Carolina.

Powers: Did this ever happen again?

Yes. We had consensual sexual intercourse on several occasions over the next year.

Powers: Did you ever tell anybody about this?

Yes. I told my mother's fiancé at the time, Mark Alton Daniels.

Powers: What did he say?

He said that was perfectly normal, children experiment with things like this occasionally.

Powers: Did you have sexual intercourse with anybody else other than Nick and your brother?

Not sexual intercourse. I told Mark Daniels about me having sexual intercourse with my brother. On July 4, 2001, when I was eleven years old, Mark Daniels began fondling me inappropriately.

Powers: What did he do to gain your trust and gain access to you?

He would allow me to drink alcohol and smoke marijuana, which he provided me with.

Powers: Did you ever tell your mother?

No. She appeared to be happy with her marriage, and I did not want to hurt her. I kept it a secret for a couple of years. My biological father and I got into an argument, and I told him that Mark had been fondling me inappropriately.

Powers: What happened then?

He reported it to Law Enforcement.

Powers: Then what happened?

____ They conducted an investigation and started talking to us.

Powers: Did anybody get charged?

____ Yes. Mark Daniels and Andrew Longshore.

____ Powers: As a result of these charges were they placed on the Sex Offender's list?

____ Yes, both Mark Daniels and Andrew Longshore.

____ Powers: Did your brother, ever at any time, force you to have sexual intercourse with him?

____ : No. Each and every act of sexual intercourse with my brother, Andrew Ray Longshore, was consensual.

____ Powers: Do you want your brother removed from the Sex Offender's list

____ : Yes.

By signing this statement I,
the truth to the best of my knowledge.

____, solemnly swear that the statement I have given is

This 20th day of May, 2010,)

Stephanie P
Notary Public of South Carolina)

My Commission expires 01-14-2019)

This 20th day of May, 2010)

Stephanie P
Notary Public of South Carolina)

My Commission expires 01-14-2019)

Jim Powers
Witness

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Andrew Ray Longshore,

Plaintiff,

v.

South Carolina Law Enforcement
Division,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-36-00472

**AMENDED COMPLAINT
DECLARATORY JUDGMENT
(NON-JURY)**

FILED
NEWBERRY COUNTY
2011 FEB - 3 P 2:56
CLERK OF COURT

Plaintiff, pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and S.C. Code Ann. §§15-53-10 through 15-53-140, would respectfully show unto the Court that:

1. Plaintiff Andrew Ray Longshore (hereinafter referred to as "Plaintiff") is a citizen and resident of Newberry County, State of South Carolina.
2. Defendant South Carolina Law Enforcement Division (hereinafter referred to as "Defendant") is a state government agency existing under and subject to the laws of the State of South Carolina.
3. On August 21, 2002, Plaintiff was convicted of Criminal Sexual Conduct with a Minor (11 - 14 years of age, inclusive) 2nd Degree in Family Court, Newberry County, SC, S. C. Code Ann. §23-3-430(C)(5). Plaintiff was 15 years old at the time of this conviction. As evidence to his age, a copy of his Birth Certificate is attached as Exhibit A.
4. Following his conviction, Plaintiff was registered as a convicted sex offender on the Sex Offender Registry.
5. The victim involved is Plaintiff's sister, _____ who was 12

years old at this time, as evidence by a copy of her Birth Certificate attached hereto as Exhibit B.

6. _____ is now an adult. She has executed an Affidavit stating that she and Plaintiff had consensual sex at that time while they were minors. See Affidavit of _____ attached hereto as Exhibit C.

7. Plaintiff, through his undersigned counsel, contacted the court reporter for Plaintiff's plea and sentencing hearings. The court reporter advised that the transcript tapes do not exist any longer as court reporters are only required to maintain the tapes for six years.

8. Plaintiff is informed and believes that at the time of conviction, the Court was aware that he and his sister _____ had consensual sex.

9. S. C. Code Ann. §23-3-430(C)(5) reads if evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16-3-655(3) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article.

10. The Plaintiff is informed and believed that under S.C. Code Ann. §23-3-430(C)(5) he should not have been required to register as a sex offender.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grants him this petition for Declaratory Judgment and removes his name from the sex registry and for just and other remedies as the Court may grant.

Respectfully Submitted,



John A. O'Leary, State ID 4274

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(803) 252-7151 Facsimile

olearyl@yaho.com

February 3, 2011
Columbia, SC

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



David Spencer
Senior Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

September 8, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Newberry County
Frank R. Addy, Jr., Circuit Court Judge

ANDREW LONGSHORE,

RESPONDENT,

vs.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION,

APPELLANTS.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within **Record on Appeal** on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

John A. O'Leary, Esquire
714 Calhoun St.
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.

This 8th day of September, 2011.


Norma Bigbee
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211