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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Laurens County
The Honorable Frank R Addy, Jr., Circuit Court Judge, Presiding

Appellate Case No. 2018-000082

Andrew Young.....Appellant,

Versus

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

PETITION FOR REHEARING

s/Scarlet B. Moore

Scarlet B. Moore, #72534
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September 1, 2020.

NOW INTO COURT, comes the Appellant Andrew Young, who respectfully submits the following Petition for Rehearing, pursuant to Rule 221 of the S.C. Rules of Appellate Practice, for the following reasons, to wit:

The Court of Appeals in its published opinion No. 5759 of August 19, 2020, respectfully overlooked and/or misapprehended the clear language of the expungement statute, and the restrictions placed upon the South Carolina Law Enforcement Division (SLED) following a successful completion of the requirements of the Youthful Offender Act. The Court of Appeals overlooked the clear provisions of S.C. Code Ann. § 22-5-920(C), which require the South Carolina Law Enforcement Division (SLED) to keep a *non-public* record of the offense and the date of the expungement to ensure that no person takes advantage of the rights permitted by this section more than once. (Emphasis added.) This *non-public* record is not subject to release under Section 34-11-95 (applicable to reports of drawing and uttering fraudulent checks, drafts, or other written orders), the Freedom of Information Act (FOIA), *or another provision of the law*, except to those authorized law enforcement or court officials who need this information in order to prevent the rights afforded by this section from being taken advantage of more than once. (Emphasis added.) The Court of Appeals completely overlooked this provision forbidding SLED from releasing information regarding the conviction pursuant to “another provision of the law,” which clearly includes the public sex offender registry maintained also by SLED. In fact, there can be no more public record of the Appellant’s conviction than the record maintained on the sex offender registry. The language of the statute evinces a clear legislative intent for the YOA conviction not to be of public record, whatsoever, and the Court of Appeals has overlooked the clear language of the expungement statute.

Ironically, the Court of Appeals did not overlook 2018 Act No. 254 which purported to amend § 22-5-920 to provide it no longer allows expungement of “an offense for which the individual is required to register in accordance with the South Carolina Sex Offender Registry Act,” § 22-5-920(B)(2)(d). However, this Honorable Court reaches the erroneous conclusion that the amendment “throws no light on the legislative intent underlying § 22-5-920 at the time Young’s conviction was expunged.” This subsequent 2018 Act of the legislature evinces a clear acknowledgement that a conviction for lewd act with a minor pursuant to a YOA sentence prior to 2018 requires strict non-public treatment of the conviction. Otherwise, if it were so clear that Appellant Andrew Young must register as a sex offender for the rest of his life as this Court concludes, the law should require no amendment. It is clear that the restriction placed upon SLED barring the agency from releasing the record of the conviction pursuant to “another provision of the law” requires no interpretation and is clear in its application to include disclosure on the sex offender registry. Therefore, this Court should grant the Appellant’s Petition for Rehearing, reverse its opinion in this matter, and reverse the trial court’s order requiring the Appellant to register as a sex offender.

CONCLUSION

The Appellant respectfully prays that this Honorable Appellate Court will grant the Appellant's Petition for Rehearing, and reverse the Order of the Trial Court, Honorable Frank R. Addy, Jr., presiding, finding that the Appellant Andrew Young must register as a sex offender.

Respectfully submitted,

s/Scarlet B. Moore

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CERTIFICATE OF SERVICE

I certify that on this date, September 1, 2020, I served a copy of the **Appellant’s Petition for Rehearing** on opposing counsel to their respective **E-MAIL** addresses, pursuant to the Order of the Supreme Court Appellate Case No. 2020-000447(g)(3).

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