

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Vance Eichelberger, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Mark Keel in his official )  
 )  
Capacity as Chief of the South )  
 )  
Carolina Law Enforcement )  
 )  
Division, and State of South Carolina, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-23-5360

**ORDER OF REMOVAL  
FROM SEX OFFENDER REGISTRY**

**RECEIVED**

SEP 22 2020

**SC Court of Appeals**

This matter came originally before the Court on the Defendant’s Motion for Summary Judgment. The Plaintiff Vance Eichelberger was represented by Attorney Christopher Brough and the Defendant South Carolina Law Enforcement Division was represented by Attorney Paul Ahern. At the call of the case the parties indicated that they stipulated and agreed on what the underlying fact of the case were but disagreed as to how to apply the law to the facts. The parties jointly asked the Court to decide the final outcome of the case based on the stipulated facts and their respective legal arguments.

**Stipulated Facts**

Plaintiff Eichelberger was arrested for Criminal Sexual Conduct with a minor in the second degree on April 22, 1988. Plaintiff ultimately pled guilty on November 30, 1988 to the lesser offense of Lewd Act Upon a Minor. Plaintiff received a 3 year sentence suspended upon the service of 4 months or \$400 plus 5 years of probation with 200 hours of community service. Plaintiff completed his sentence and was discharged from supervision prior to the enactment of the sex offender registry in 1994. Plaintiff has not been charged with any additional offenses since being

released from supervision. On March 18, 2019, Plaintiff was personally served a letter from the Spartanburg County Sheriff's Office directing him to register as a sex offender based on his November 30, 1988 conviction for Lewd Act Upon a Minor or face being arrested. Plaintiff registered and avoided arrested and now brings this action seeking removal from the Sex Offender Registry.

### Legal Analysis

Plaintiff seeks removal from the registry based on two contentions: 1) that the State is in violation of S.C. Code Ann. § 23-3-440; and 2) that Plaintiff's conviction for Lewd Act Upon a Minor is not an offense requiring registration under the current version of S.C. Code Ann. § 23-3-430. The Defendant contends that Plaintiff's conviction requires registration, that the sex offender registry applies retroactively, and that Plaintiff does not meet any of the avenues for removal from the registry. In assessing the stipulated facts and having heard the arguments of the parties, the Court finds that the question of whether or not Plaintiff should be removed from the registry is not based on whether or not Plaintiff meets one of the enumerated criteria for removal from the registry under S.C. Code Ann. § 23-3-430(E), (F), or (G), but whether or not requiring Plaintiff to register was unlawful at the time he was asked to register in March of 2019.

The Court notes that the Sex Offender Registry was enacted in 1994. The purpose of the registry was to provide for the public health, welfare, and safety of its citizens and to provide law enforcement with the tools necessary for investigating criminal offenses. State v. Ross, 423 S.C. 504, 509 (2018). The Court finds that the legislature intended for the sex offender registry to be retroactive and indeed the Courts of this State have applied the registry retroactively to require individuals convicted of sexual offenses as early as in the 1970s to register as a sex offender prior to their release from custody. Hazel v. State, 377 S.C. 60 (2008). However, this Court also finds that

the legislature knew that the Sex Offender Registry would be applied retroactively and laid out a framework for how that retroactive application would take place under S.C. Code Ann. § 23-3-440. Certainly, the legislature could have left the implementation of registration to the discretion of the State Law Enforcement Division as to when and how registration would occur. However, the legislature chose not to do so.

In interpreting any statute, the court must give that statute its plain and ordinary meaning and must not render language from the statute invalid or ignore provisions included by the legislature. As such, this Court finds the language in S.C. Code Ann. § 23-3-440 (4) instructive in that “The Department of Corrections, the Department of Probation, Parole and Pardon Services, and the Department of Juvenile Justice shall provide to SLED the initial registry information regarding the offender prior to his release from imprisonment or relief of supervision.” The Court must look at all provisions under the sex offender registry and cannot ignore this provision or render it meaningless. The Court cannot find any statutory or other authority allowing for the State to require an individual to register as a sex offender more than 26 years after being released from supervision. The Court notes that other decisions applying the registry retroactively to individuals from convictions before the registry took place when those individuals were still incarcerated or under supervision. The Court also has concerns about the public policy implications of applying a statute retroactively to someone more than a quarter century after his release from all supervision where the statute did not exist at the time of sentencing and the Plaintiff has not been convicted of any additional offenses. The Court does not believe that requiring Plaintiff to register would help promote the safety of the citizens of the State nor would it help law enforcement solve additional crimes. This Court finds that S.C. Code Ann. § 23-3-440 lays out a timeline of when sex offender registration should occur and that if it occurs outside this timeline, then it is unlawful.

The Court must also consider whether or not the Plaintiff's conviction of Lewd Act Upon a Minor is a qualifying offense requiring registration under the sex offender registry. In determining whether or not it is a qualifying offense, the Court must first determine which version of the sex offender registry is applicable in this case as the registry has undergone several amendments and revisions since its enactment in 1994. The Court notes that under the original version of the registry in 1994 that Plaintiff's conviction would be a qualifying offense. However, under the current version of sex offender registry, the offense is not specifically enumerated under S.C Code Ann. § 23-3-430 as an offense requiring sex offender registration. The Court notes that an offense not specifically listed under S.C. Code Ann. § 23-3-430 could require registration if the sentencing Judge makes such a finding at the time of sentencing. Given that Plaintiff was convicted in 1988 before the enactment of the registry that exception would not be applicable.

In determining when to apply the provisions of the sex offender registry to a conviction, Courts now generally apply the S.C. Code Ann. § 23-3-430 at the time of sentencing of the individual. Given that the registry was not yet in existence at the time of Plaintiff's sentencing, this would not be possible in this case. In situations where the Courts have applied sex offender registry requirements retroactively, such as in Hazel v. State, 377 S.C. 60 (2008) and State v. Walls, 348 S.C. 26 (2002), the Court has applied the provisions of the sex offender registry that existed while the individual was still either incarcerated or under supervision at the time that the State exercised its right to have the individual register as a sex offender. (The Court also notes that in the Walls case, the Court applied the 1998 version of the sex offender registry to Walls which included the provision for Lewd Act Upon a Minor and that Walls was still incarcerated at the time he was required to register). The Court notes that at this case is unique in that Plaintiff had discharged all aspects of his sentence before the sex offender registry was created. As such,

the Court finds that the most appropriate time to apply the provisions of S.C. Code Ann. § 23-3-430 is the time at which the State asserted its right to have Plaintiff register by serving him with its notice to register on March 18, 2019.

While the Court is mindful that the legislature changed the statutory framework for certain sex crimes in 2012, the Court is also mindful at the time of that change and in the same bill, the legislature also amended the provisions of S.C. Code Ann. § 23-3-430. That Amendment removed the offense of Lewd Act Upon a Child as being a specifically enumerated offense requiring registry pursuant to S.C. Code Ann. § 23-3-430 and listed the current statutory framework for different degrees of criminal sexual conduct with a minor. The Court notes that the legislature could have introduced language into S.C. Code Ann. § 23-3-430 indicating that a person previously convicted of S.C. Code Ann. § 16-15-140 would still have to register, but it declined to do so. The Court also notes that S.C. Code Ann. § 16-15-140 has been repealed by the legislature.

This Court finds that it is bound by the current provisions of S.C. Code Ann. § 23-3-430 in determining whether or not the State's mandate to Plaintiff to register in 2019 was lawful. As the statute Plaintiff was convicted of under S.C. Code Ann. § 16-15-140 is not listed as an enumerated offense requiring registration, he cannot be required to register. As such, this Court finds the State's requirement that Plaintiff is to register to be unlawful.

This Court has further reviewed the Supreme Court ruling in State v. Ross, 423 S.C. 504 (2018). Although the State does not seek to impose registration pursuant to 23-3-540(E) as in *Ross*, the ruling is nonetheless instructive. In order for registration in this unique set of circumstances to pass constitutional muster, there should be a determination by the Court as to

whether “electronic monitoring would ... be an unreasonable search based on the totality of the circumstances presented in [this] individual case.” *Id.* at 515. Given the State’s failure to strictly comply with the statute, the substantial length of time between satisfaction of the sentence and imposition of the registration requirement, and the Plaintiff’s lack of record in the interim, the Court is obliged, under notions of fundamental fairness, to conduct a review to determine whether the registration requirement is reasonable under the circumstances.<sup>1</sup> In that hearing, the Court may find it dubious that registration in this case meets the statutory intent of protecting the public and preventing further crime. Further, the Court should determine whether unilateral imposition of a registration requirement roughly a quarter of a century after the fact is an appropriate, or arbitrary, exercise of power by the Executive Branch.

#### Conclusion

For the foregoing reasons, this Court finds that the State’s mandate to Plaintiff to register as a sex offender on March 18, 2019 was unlawful and that Plaintiff’s name shall be removed from the sex offender registry.

**IT IS HEREBY ORDERED THAT THE DEFENDANT SHALL REMOVE  
PLAINTIFF FROM THE SEX OFFENDER REGISTRY.**

**IT IS SO ORDERED.**

---

Robin B. Stilwell  
Circuit Court Judge

---

<sup>1</sup> This Court is wary of prescribing the process through which a hearing would be conducted. However, the Court of General Sessions would seem to be the appropriate forum to make a determination of whether the imposition of registration is appropriate under the circumstances. That hearing would most probably be brought before the Court on motion of the State. To the extent that this is the method or process employed, this Order is without prejudice to any ultimate finding of the Court of General Sessions.



Greenville Common Pleas

**Case Caption:** Vance Eichelberger vs. Mark Keel , defendant, et al

**Case Number:** 2019CP2305360

**Type:** Order/Summary Judgment

So Ordered

s/ Robin B. Stilwell 2158