THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-000082
Opinion No. 5759 - Filed August 19, 2020

Andrew Young,.....Petitioner,

v.

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

APPENDIX

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Attorneys for Petitioner

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Laurens County
Laurens County Court of Common Pleas
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.

RECORD ON APPEAL

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ATTORNEY FOR APPELLANT

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Columbia, SC 29221-1398

ATTORNEY FOR RESPONDENT

October 15, 2018

INDEX TO RECORD ON APPEAL

ANDREW YOUNG v.

MARK KEEL, CHIEF OF SOUTH CAROLINA LAW ENFORCEMENT DIVISION

APPELLATE CASE NO. 2018-000082

STATE OF SOUTH CAROLINA)
COUNTY OF Laurens)

IN THE COURT OF GENERAL SESSIONS

ORDER FOR DESTRUCTION OF ARREST RECORDS

LAURENS COUNTY
CLERK OF COURT
2017 MAR 15 A 10:24
LYNN W. LANCASTER

THE STATE OF SOUTH CAROLINA)
682-0873 v.)

Race _____ Sex _____ Age _____
DOB _____ SSN 251-13-3210

SID # 1019195

Andrew Young)
Defendant)

Charges were disposed of in the court indicated below:

☐ Magistrate ☐ Municipal ☑ General Sessions
60 East Parker Rd Laurens, 29360

Mary Ann)
AKA)

IT APPEARS that the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed or sealed according to the applicable section of the South Carolina Code of Laws indicated below:

Warrant/GS No. E075260 Date of Arrest 6-21-95 Place of Arrest Laurens County, S.C.

Arrest Charge (CSC w/minor) Lewd Act

☐	§17-1-40. The charge was dismissed, *nolle prossed*, or the defendant was found not guilty on _____.
☐	§22-5-910. The defendant was convicted of a first offense in magistrate, municipal or general sessions court for a crime carrying a penalty of not more than 30 days imprisonment or a fine of $1,000, or both, on _____, that offense did not involve an offense involving the operation of a motor vehicle, and no additional criminal conviction as defined by §22-5-910 has taken place within three years from date of conviction **or** five years from the date of conviction for first offense criminal domestic violence (conduct occurring prior to June 4, 2015) or third degree domestic violence under §16-25-20. (*Summary court judge must attest to eligibility if disposed of in that court.*)
☑	§22-5-920. The defendant was convicted of a first offense as a youthful offender on 10-26-95 that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by §22-5-920 has taken place during a five-year period following completion of his sentence, including probation and parole as a youthful offender.
☐	§34-11-90(e). The defendant was convicted of a first offense misdemeanor under the fraudulent check law on _____ and no additional criminal conviction as defined by §34-11-90(e) has taken place in one year from date of conviction.
☐	§44-53-450(b). The defendant, who has not previously been convicted of any offense under Article 3, Chapter 53, Title 44 or any offense under any state or federal statute relating to marijuana, stimulant, depressant, or hallucinogenic drugs, successfully completed all terms of and received a conditional discharge of possession of a controlled substance under Section 44-53-370(c) and (d), or Section 44-53-375(A).
☐	§56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on _____ and no additional criminal conviction has taken place for three years after completion of the sentence.

SLED verifies the offense listed above is eligible for expungement: ☑ Yes ☐ No SLED [illegible] Date 2-1-17

IT IS ORDERED that all records relating to such arrest and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except as follows:

(1) arrest and booking record, associated bench warrants, mug shots and fingerprints of the defendant shall be retained under seal pursuant to §17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in §17-1-40 (B)(1)(a) and (b); under §17-1-40 (C)(1), this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in §17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to §17-1-40 is not a public information and is exempt from disclosure, except by court order;

(2) probation records retained by S.C. Department of Probation, Pardon, and Parole Services pursuant to §17-1-40 (B)(3) whose charges were dismissed by conditional discharge pursuant to §44-53-450;

(3) nonpublic information retained by S.C. Law Enforcement Division (SLED) pursuant to §22-5-910, §22-5-920, 34-11-90(e), and §44-53-450; and

(4) nonpublic information retained by SLED and S.C. Department of Public Safety/Department of Motor Vehicles pursuant to §56-5-750(F), as well as any nonpublic records retained by S.C. Commission on Prosecution Coordination as required by law.

A TRUE COPY

_____ S.C. Bar No.: _____
Name of Defense Counsel (if represented)

SCCA 223A1 (Revised 5/16)

ROA 1

PAID

To be completed by Summary Court Judge if charge disposed of in that court:

I ATTEST that the defendant is eligible for expungement pursuant to §22-5-910, §34-11-90(e), or §44-53-450(b).

I CERTIFY (check one):

☐ The defendant was fingerprinted and the summary court has coordinated with SLED and confirmed the criminal charge is statutorily appropriate for expungement.

☐ The defendant was not fingerprinted and the summary court has coordinated with the arresting law enforcement agency and confirmed that no fingerprints were taken from the defendant for this charge.

_____
Summary Court Judge

Printed/Typed Name: _____ Signed this ____ day of ____, 20____

To be completed by Solicitor:

Solicitor: ☑ Consents ☐ Declines to Consent ☐ Determined ineligible for expungement

The charge covered by this order was not dismissed or *nolle prossed* because of successful completion of the Pre-Trial Intervention Program, Traffic Education Program, Alcohol Education Program, or any other statutorily authorized diversion program operated by a solicitor's office. The charge covered by this order can legally be expunged.

_____
Circuit Solicitor (DEPUTY)

Printed/Typed Name: DEMETRI ANDREWS Signed this 20 day of FEB, 20 17

IT IS SO ORDERED.

_____, Circuit Court Judge 2459 Judge Code Signed this 2-23-17 day of ____, 20____

For SLED internal use only: Expunged by SLED by:_____ Date: _____

SCCA 223A1 (Revised 5/16)

ROA 2

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS** **EIGHTH JUDICIAL CIRCUIT**
COUNTY OF LAURENS)	**Case No.: 2017-CP-30-338**
Andrew Young,)	
Plaintiff,)	**ORDER DENYING** **DECLARATORY JUDGMENT**
vs.)	
Mark Keel, Chief of the South Carolina Law Enforcement,)	
Defendant.)	

Addy, J.

THIS MATTER CAME BEFORE THE COURT on October 2, 2017 on Motion of Plaintiff Andrew Young, seeking an order granting declaratory judgment in this matter. Plaintiff was present for the hearing represented by Joseph St. Pierre, Esq. Defendant South Carolina Law Enforcement Division was represented by Adam Whitsett, Esq. For the reasons set forth herein, Plaintiff's motion is DENIED.

1. The Plaintiff was sentenced under the Youthful Offender Act on or about October 26, 1995 for lewd act on a minor. As a result of this conviction, Plaintiff was required to register as a sex offender. Plaintiff served his sentence, and he subsequently sought expungement of his conviction pursuant to S.C. Code Ann. §22-5-920. On March 15, 2017, the Court ordered the destruction of the records related to Plaintiff's conviction and sentence. However, because the South Carolina Sex Offender Registry requires mandatory, life-time registration, Plaintiff remains on the sex offender registry. S.C. Code Ann. §23-3-460. Plaintiff essentially argues that the expungement of his conviction should result in his

removal from the Registry, and Plaintiff seeks an order requiring his removal from the Registry.

2. The Sex Offender Registry Act ("SORA") sets forth the available avenues by which an individual may lawfully be removed from the registry. Pursuant to section 23-3-430(e) "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). Pursuant to §23-3-430(F), an offender who receives a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed. S.C. Code Ann. §23-3-430(F). Finally, pursuant to §23-3-430(G) individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial are to be removed. S.C. Code Ann. §23-3-430(F). These are the only statutory avenues by which an individual who is properly placed on the SORA registry can be removed.

3. The answer to the present question requires the Court to ascertain exactly what the legal effect of an expungement is. Depending upon the circumstances under which the charges were brought and resolved, an expungement can have different legal results. For example, an expungement for successfully completing a Pre-trial Intervention program "restore[s] the person, in the contemplation of the law, to the status he occupied before the arrest." S.C. Code Ann. §17-22-150 (a). Furthermore, a PTI participant whose record is expunged may lawfully deny the occurrence of the arrest and charge without fear of committing perjury. S.C. Code Ann. §17-1-40, which addresses expungements where the charges

resulted in a dismissal or acquittal, specifically provides that any retained records must remain under seal and are not subject to public disclosure. In the present case, Plaintiff's expungement is controlled by S.C. Code Ann. §22-5-920(B)(3); therefore, any records of Plaintiff's conviction, including the indictment, warrant, and sentencing sheet, have presumably been destroyed by the Laurens Clerk of Court. As it relates to any records retained by SLED, per S.C. Code Ann. §22-5-920(C), SLED's non-public record of Plaintiff's conviction may only be used to prevent Plaintiff from seeking a second expungement at some future date.[1] Unlike the provisions governing PTI expungements, however, Plaintiff is not free to deny his arrest or conviction.[2]

4. Black's Law Dictionary defines an "expungement of record" as simply "The removal of a conviction from a person's criminal record." *Expungement of Record,* Black's Law Dictionary (10th ed. 2014). Clearly, an expungement is not a pardon or an exoneration. This Court concludes that an expungement is best defined as a means by which a person convicted or charged with a particular offense may ministerially request removal of the arrest or conviction record from their criminal history and seek destruction of any public records associated with their charge and/or conviction. An expungement, however, does not change or rewrite history; it does not operate to vacate or undo a prior adjudication.

[1] The way this statute is configured raises an interesting question. Hypothetically speaking, if someone in Plaintiff's situation were to fail to re-register, and assuming that all records relating to his conviction have been destroyed pursuant to the requirements of the law, how would law enforcement go about prosecuting him for his failure to register? SLED is prohibited from disclosing any record of his conviction except as necessary to prevent Plaintiff from seeking a second expungement, and assuming that the Laurens Clerk of Court has destroyed any and all records of the charge, plea, and sentencing, such a prosecution would appear to be somewhat problematic. Fortunately, this question is not presently before the Court, so the Court need not answer it.

[2] Because participation in a PTI program does not result in a conviction under the law and requires no admission of guilt, an individual whose charges are resolved and expunged via PTI is clearly in a different position than one whose charges are expunged subsequent to a conviction at trial or guilty plea.

Rather, to the extent permitted by law, an expungement merely removes any mention of the charge and/or conviction from the individual's criminal history and the public record.

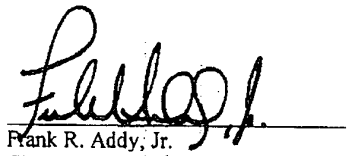
5. The South Carolina Supreme Court has held that a "court's equitable powers must yield in the face of an unambiguously worded statute." *Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). As previously explained, the Registry is extremely specific as to how an individual's name can be removed. Even a gubernatorial pardon, absent a finding of innocence, cannot affect a removal. Essentially, only an exoneration can undo the requirement to register as a sex offender.

6. This Court is fully aware that the final result of Court's reasoning is counter-intuitive and, in many ways, irrational. The very purpose of a YOA expungement is to make allowances for the impulsivity of youth and thereby allow a person, who commits a crime during their developmental years, to escape the inherent stigma of that conviction. A YOA expungement keeps youthful mistakes from following a person to their grave. Simply put, an expungement of a YOA sentence is meant to give a reformed individual a fresh start. To allow for the destruction of every record pertaining to the offense, while in the same breath maintaining Plaintiff's sex offender status for the rest of his life, simply defies logic, reason, and the underlying purpose of a YOA expungement. However, because Plaintiff was convicted, because this Court finds that the expungement of his charge does not operate to vacate or invalidate that conviction, and due to the unambiguous language of the statutes in issue, Plaintiff's requested relief must be denied.

WHEREFORE, for the reasons stated herein, the Court denies Plaintiff's requested relief.

ROA 6

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge

December 19, 2017
Greenwood, South Carolina

ROA 7

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 30- 338

Andrew Young)
Plaintiff(s))

vs.)

Mark Keel, Director, South Carolina Law Enforcement Division)
Defendant(s))

Submitted By: Joseph St.Pierre
Address: P.O. Box 722
Laurens, SC 29360

SC Bar #: 76122
Telephone #: 864-681-5297
Fax #: 864-681-5298
Other:
E-mail: joe@josephstpierre.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

FILED
LAURENS COUNTY
2017 MAY 8 P 4: 29
LYNN W. LANCASTER
CLERK OF COURT

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete**

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☒ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 5-9-17

ROA 8
SCCA / 234 (03/2016)

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA,)
)
COUNTY OF LAURENS)
)
Andrew Young)
Plaintiff,)
)
vs.)
)
Mark Keel, Director, South Carolina Law Enforcement Division)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2017-CP-30-338

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Laurens, South Carolina

Dated: May 9, 2017

Plaintiff/Attorney for Plaintiff

Address: Joseph St.Pierre
Attorney for the Plaintiff
SC Bar # 76122
235 West Laurens St.
P.O. Box 722
Laurens, SC 29360
864-681-5297
joe@josephstpierre.com

LAURENS COUNTY
CLERK OF COURT
2017 MAY -9 P 4: 26
LYNN W. LANCASTER

SCCA 401 (5/02)

ROA 10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	2017-CP-30-338
Andrew Young,	)	
	)	
Plaintiff,	)	
vs.	)	**COMPLAINT**
	)	(Declaratory Judgement)
Mark Keel, Director, South Carolina Law Enforcement Division,	)	
Defendant.	)	

LAURENS COUNTY
CLERK OF COURT
2017 MAY -9 P 4:38
LYNN W. LANCASTER

TO: THE DEFENDANT ABOVE NAMED:

The Plaintiff above named would respectfully show unto the Court the following:

1. The Plaintiff is a citizen and resident of the County of Laurens, State of South Carolina.
2. The Defendant Mark Keel is the Director of the South Carolina Law Enforcement division and is responsible for maintaining the sex offender registry pursuant to South Carolina Code §23-3-410.
3. Upon information and belief, the Plaintiff, formerly known as Mary Ann Young, was convicted as a youthful offender for lewd act on a minor on or about October 26, 1995.
4. That on March 15, 2017, the Circuit Court in Laurens County ordered for the destruction and the expungement of this conviction and all records related to the arrest and conviction.
5. That this expungement was obtained pursuant to South Carolina Code §22-5-920.
6. That after the Plaintiff received the Order of Expungement, he was still required to register as a sex offender with the Laurens County Sheriff's Office, although no underlying conviction exists which would require registration.
7. That the Defendant is maintaining records from the arrest and subsequent discharge without authority to do so and with these records are requiring the Defendant to register as a sex offender.

8. That the Plaintiff continues to suffer the stigma of the conviction, by being required to register as a sex offender and is still labeled as a "sex offender" by the Defendant, even though no conviction now exists.
9. The Plaintiff is informed and believes that he is entitled to a hearing in this matter for determination of whether he is required to register pursuant to South Carolina Code §23-3-430.

WHEREFORE, the Plaintiff prays for an order of this Court directing that the Defendant remove the Plaintiff from the South Carolina Sex Offender Registry and declare that the Plaintiff shall no longer be mandated or required to register as a sex offender in South Carolina.

JOSEPH T. ST. PIERRE

BY: _____

Joseph St.Pierre
Bar # 76122
Attorney for the Plaintiff
Post Office Box 722
Laurens, South Carolina 29360
(864) 681-5297

Laurens, South Carolina
May 8, 2017.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

VERIFICATION

2017-CP-30-338

Andrew Young , being duly sworn, say that they are the Petitioners herein, and have read the foregoing Petition and know the contents thereof, that the same is true of their own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters they believe them to be true.

SWORN to and Subscribed before me)
this 9 day of May , 2017)
Patrice Kirk)
Notary Public for South Carolina)
My Commission expires: 3-8-22)

Signature of Petitioner

LAURENS COUNTY
CLERK OF COURT

2017 MAY -9 P 4:27

LYNN W. LANCASTER

SCCA/403

ROA 13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	Case No.: 2017-CP-30-338
Andrew Young,	)	
	)	
Plaintiff/Petitioner,	)	
	)	
v.	)	**ANSWER**
	)	
Mark Keel, Chief of the South Carolina Law Enforcement,	)	
	)	
Defendant/Respondent	)	

Defendant/Respondent (Defendant) Mark Keel, properly identified as the Chief of the South Carolina Law Enforcement Division (SLED), hereby answers the Complaint of Plaintiff/Petitioner (Plaintiff) as follows:

FOR A FIRST DEFENSE
Failure to State a Claim

The Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
Response to Allegations

1. The Defendant denies each and every allegation of the Plaintiff's Complaint not herein specifically admitted, qualified, explained, or addressed.

2. Paragraph one (1) is admitted upon information and belief.

3. Paragraph two (2) is admitted insofar as it states that the South Carolina Sex Offender Act (SORA) registry is under the direction of Defendant Keel who is the Chief of SLED.

4. Paragraph three (3) is admitted upon information and belief.

5. Paragraph four (4) and five (5) are admitted upon information and belief. However, Defendant would aver that despite Plaintiff obtaining an order for the destruction and expungement

of this conviction and all records related to the arrest and conviction, pursuant to S.C. Code Ann. § 22-5-920, the Plaintiff does not meet any of the statutory criteria for removal from the SORA registry such that he is entitled to be removed from such. *See* S.C. Code Ann. § 23-3-430(E), (F), and (G). Moreover, in accordance with S.C. Code Ann. § 17-1-40(B), SLED and any other

> Law enforcement and prosecution agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, administrative hearings, and to defend the agency and the agency's employees during litigation proceedings. The information must remain under seal [as defined by § 17-1-40(A)]. The information is not a public document and is exempt from disclosure, except by court order.

S.C. Code Ann. § 17-1-40. Given that the statutory purpose of SORA set forth in S.C. Code Ann. § 23-3-400 is to "promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens" and "will provide law enforcement with the tools needed in investigating criminal offenses", SLED avers maintaining the Plaintiff's listing on the SORA registry with the charge of conviction sealed comports all applicable South Carolina laws and jurisprudence.

6. The Defendant is without specific information from which to admit or deny the allegations of paragraph six (6) to the extent they involve conversations between the Plaintiff and the Laurens County Sheriff's Office to which this Defendant was not a party to and would therefore deny the same. However, Defendant would aver that Plaintiff's continued registration is proper pursuant to SORA, which mandates lifetime registration in South Carolina. *See* S.C. Code Ann. § 23-3-460. Further, Defendant would aver that despite Plaintiff obtaining an order for the destruction and expungement of this conviction and all records related to the arrest and conviction, pursuant to S.C. Code Ann. § 22-5-920, the Plaintiff does not meet any of the statutory criteria for removal from the SORA registry such that he is entitled to be removed from such. *See* S.C. Code Ann. §

23-3-430(E), (F), and (G). Moreover, in accordance with S.C. Code Ann. § 17-1-40(B), SLED and any other

> Law enforcement and prosecution agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, administrative hearings, and to defend the agency and the agency's employees during litigation proceedings. The information must remain under seal [as defined by § 17-1-40(A)]. The information is not a public document and is exempt from disclosure, except by court order.

S.C. Code Ann. § 17-1-40. Given that the statutory purpose of SORA set forth in S.C. Code Ann. § 23-3-400 is to "promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens" and "will provide law enforcement with the tools needed in investigating criminal offenses", SLED avers maintaining the Plaintiff's listing on the SORA registry with the charge of conviction sealed comports all applicable South Carolina laws and jurisprudence.

7. Paragraph seven (7) is admitted insofar as it acknowledges that SLED is maintains the Plaintiff's records and that the Plaintiff is required to continue registering pursuant to South Carolina law and jurisprudence. The remaining allegations are denied. Further, Defendant avers SORA mandates lifetime registration for the Plaintiff because the Plaintiff does not meet any of the statutory criteria for removal from the SORA registry. *See* S.C. Code Ann. §§ 23-3-430(E), (F), and (G); 23-3-460. Moreover, in accordance with S.C. Code Ann. § 17-1-40(B), SLED and any other

> Law enforcement and prosecution agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, administrative hearings, and to defend the agency and the agency's employees during litigation proceedings. The information must remain under seal [as defined by § 17-1-40(A)]. The information is not a public document and is exempt from disclosure, except by court order.

S.C. Code Ann. § 17-1-40. Given that the statutory purpose of SORA set forth in S.C. Code Ann. § 23-3-400 is to "promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens" and "will provide law enforcement with the tools needed in investigating criminal offenses", SLED avers maintaining the Plaintiff's documents and requiring the Plaintiff to continue registering comports all applicable South Carolina laws and jurisprudence.

8. Paragraph eight (8) is denied to the extent that Plaintiff's alleged suffering resulting from the alleged "stigma of the conviction", requirement to register as a sex offender, and alleged "label" as a sex offender, does not entitle Plaintiff to relief. Moreover, the Defendant would aver that the SORA registry is not punishment. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002); Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) (finding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."); In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003) (finding that "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated."); In the Interest of Justin B., a Juvenile under the Age of Seventeen, Op. No. 27716 (S.C. Sup. Ct. filed May 3, 2017), 2017WL1717228 (reaffirming the constitutionality of SORA and reaffirming unequivocally that SORA is not punishment). Further, Defendant would aver that the Plaintiff does not meet any of the statutory criteria for removal from the SORA registry such that he is entitled to be removed from such. *See* S.C. Code Ann. § 23-3-430(E), (F), and (G).

9. To the extent paragraph nine (9) states only what the Plaintiff is informed of and believes, no response is required. However, Defendant would aver that the Plaintiff does not meet any of the statutory criteria for removal from the SORA registry such that there is any authority for removal from such. *See* S.C. Code Ann. § 23-3-430(E), (F), and (G).

10. The Defendant denies the requests for relief set forth in the "WHEREFORE" section of the complaint.

FOR A THIRD DEFENSE
Proper Inclusion on the SORA Registry

11. The Defendant would aver that the Plaintiff's continued non-punitive inclusion on the SORA registry is proper, constitutional, and in accordance with clear and unambiguous South Carolina law. Further, the Defendants would aver that the Plaintiff does not meet any of the statutory criteria for removal from the SORA registry such that he is entitled to be removed from such. *See* S.C. Code Ann. § 23-3-430(E), (F), and (G).

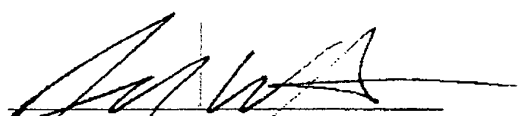
WHEREFORE, having fully answered the Plaintiff's complaint, Defendant prays that this Honorable Court:

A. dismisses the Plaintiff's Complaint entirely;

B. 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.

Respectfully Submitted,



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ATTORNEY FOR SLED

COLUMBIA, SOUTH CAROLINA
JUNE 14, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	Case No.: 2017-CP-30-338
Andrew Young,	)	
	)	
Plaintiff/Petitioner,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
Mark Keel, Chief of the South Carolina Law Enforcement	)	
	)	
Defendants/Respondents.	)	

I hereby certify that I served the **Answer** in the above matter by depositing a copy of the same in the United States mail, postage prepaid, and addressed to:

Joseph St. Pierre, Esquire
Attorney at Law
Post Office Box 722
Laurens, South Carolina 29360

On June 14, 2017 from Columbia, South Carolina.

By: _____
Paul T. Ahearn
Administrative Assistant
South Carolina Law Enforcement Division

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	2017-CP-30-338
Andrew Young,	)	
	)	
Plaintiff,	)	
vs.	)	**Plaintiff's Brief In Support Of Relief**
	)	
Mark Keel, Director, South Carolina Law Enforcement Division,	)	
Defendant.	)	

The Plaintiff, by and through the undersigned counsel of record, would submit the following arguments in support of the relief sought in his Complaint:

The Plaintiff was sentenced under the Youthful Offender act on or about October 26, 1995 for lewd act on a minor. Pursuant to the sentence, the Plaintiff was required to register as a sex offender for a registry maintained by the Defendant. Because the Defendant was sentenced under the Youthful Offender Act, he was given the opportunity to have all records pertaining to the arrest and sentencing expunged so long as the provisions set forth in §22-5-920 (B)(3) were complied with. On March 15, 2017 this Court Ordered for the destruction of such records. Subsequent to the Order for the Destruction of Records relating to the Youthful Offender sentence, and with no criminal history to speak of, the Defendant still required the Plaintiff to register as a sex offender. Therefore the Plaintiff has brought this action to seek a Declaratory Judgment from this Court forever terminating the requirement that Plaintiff register as a sex offender, without having a criminal conviction for any offense on his record which requires such registry.

ARGUMENT

Although there is limited case law on expungements in South Carolina, the Court of Appeals gives us some insight into what kind of effect an expungement should have. In ***The State v. Marcus Joseph***, 328 S.C. 352, 1998 the Court sets forth the following:

The Act's provisions for expungement and confidentiality of the arrest reflect a legislative policy decision that, under certain circumstances, the interests of justice require that an offender ***be given a fresh start, free from the stigma of criminal conviction.***

Since the expungement Order eliminates not only the conviction but also the arrest, it could also be argued that it effects a noncriminal disposition, similar to offenders who complete the Pre Trial Intervention ("PTI") program. In fact, the same Order for the destruction of official records relating to the arrest is used in both PTI cases as well as youthful offender expungements. §17-22-150 maintains that *"**The effect of the Order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest**. No person as to whom the Order has been entered may be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest in response to any inquiry made of him for any purpose".*

By mandating that the Plaintiff make an affirmative act of registering as a convicted sex offender, every purpose the expungement affords as listed above is violated. To register as a sex offender after expungement certainly does not restore the Plaintiff to the status he enjoyed prior to the arrest. Furthermore, the requirement to register as a sex offender requires the Plaintiff to admit that he is a convicted sex offender when the above statute says he does not even need to acknowledge the arrest, much less the conviction.

The South Carolina Sex Offender Registry Act ("SORA") was enacted to maintain information regarding **convicted** sex offenders to assist in investigations and to provide for the public health, welfare and safety of its citizens, as it pertains to **re-offenders**. The Plaintiff should not be subject to this registry because he simply is not a convicted sex offender, and thus the State would derive no benefit of preventing or investigating a re-offender if the first offense legally never happened.

The Defendant maintains that S.C. Code Ann. §2-3-430(E), (F), and (G) are the only avenues that a person who has been convicted or adjudicated of a sex offense can be removed from the SORA. That certainly may be the case. However, all of the events set forth in these statutes are

criminal dispositions and would still show up on that person's SLED catch "Rap Sheet". The Plaintiff is not subject to these statutes because he is not a **convicted** sex offender and for any State agency to say otherwise would be unlawful. The Plaintiff's background check shows no indicia of criminal history.

The Defendant argues that SORA registration is not a punishment and cites several cases to bolster that argument. However, the Plaintiff is in a distinctly separate position than the prior appellants claiming that SORA is unlawfully punitive. The Plaintiff is not a convicted sex offender. The other appellants are. The Plaintiff does aver that having to admit to committing a sex crime after expungement is punitive. It is certainly punitive to be a registered offender when there is no sex crime to reference it to. It is simply a slander with no legal merit. The purpose of the expungement is to protect [the Plaintiff] against the stigma of the criminal conviction. **State v. Joseph** 328 S.C. 352, at 360. Although the Courts have held that SORA registration is not punitive, it is inarguable that it is a stigma. SORA registration is the prime example of stigma that the expungement is to prevent and protect from.

Finally, the Defendant argues that the Court cannot grant the Plaintiff's requested relief because it would invade the Legislature's province and would run afoul of the separation of powers. While the legislature has made it clear that persons convicted of certain sex related crimes must register with SORA for life, it has not contemplated this issue and is ripe for Judicial interpretation. The SORA statute has listed how persons with criminal dispositions can be removed from the registration requirement. It is on information and belief that there are less than five (5) persons in this State that are in the same situation as the Plaintiff. It is certainly within the Court's province and jurisdiction to declare that the Plaintiff should be free from the requirements of SORA and that any other result would be violative of the unambiguously stated intended effect of the expungement order as set forth in §17-22-150.

CONCLUSION

For the reasons stated above and given during the upcoming hearing, The Plaintiff hereby requests that the Court Order and declare that the Plaintiff is not subject to the South Carolina Sex Offender Registry and shall in not be mandated to register as such.

Respectfully Submitted,

BY: _____

Joseph St.Pierre
Bar # 76122
Attorney for the Plaintiff
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(864) 681-5297

October 1, 2017
Laurens, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	Case No.: 2017-CP-30-338
Andrew Young,	)	
Plaintiff/Petitioner,	)	
v.	)	**TRIAL BRIEF AND MEMORANDUM OF DEFENDANT/RESPONDENT**
Mark Keel, Chief of the South Carolina Law Enforcement,	)	
Defendant/Respondent	)	

Defendant/Respondent (Defendant) Mark Keel, properly identified as the Chief of the South Carolina Law Enforcement Division (SLED), hereby asserts the following in opposition of the relief requested in this matter.

STATUTORY MANDATORY LIFETIME REGISTRATION

The Plaintiff concedes that he was convicted of Lewd Act on a Minor[1] in 1995. Since the earliest inception of South Carolina's Sex Offender Registry Act (SORA) registry, this offense has been a mandatory registry offense. *See* S.C. Code Ann. § 23-3-430(c)(11) (1996 Supp.); 1996 South Carolina Laws Act 444 (S.B. 1286). As such, South Carolina mandates that the Plaintiff register in accordance with SORA and all registration in South Carolina is **for life**. *See* S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute - "for life")(emphasis added).[2]

[1] S.C. Code Ann. § 16-15-140.

[2] The South Carolina Supreme Court has specifically held that SORA does not "violate *ex post facto* clause because 'it is clear the General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes." In Interest of Justin B., 419 S.C. 575, 580, 799 S.E.2d 675, 677–78 (2017)(quoting State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002)).

However, SORA does set forth certain avenues by which an individual can be lawfully removed from the registry. *See* S.C. Code Ann. § 23-3-430(E), (F), (G). Pursuant to § 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). Pursuant to § 23-3-430(F), an offender who receives a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed. S.C. Code Ann. § 23-3-430(F). And finally, pursuant to § 23-3-430(G) individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial are removed. S.C. Code Ann. § 23-3-430(F). These are the only lawful avenues by which an individual who is properly placed on the SORA registry can be removed. However, the ground set forth by the Plaintiff, *i.e.* expungement, is not listed and, as such, there is no evidence of any kind that the Plaintiff meets any of the specific statutory criteria for removal. Accordingly, there is no legal or constitutional basis for the Plaintiff to be removed from SORA registry and his claims must fail.

Put simply, had the South Carolina Legislature intended for an expungement to relieve an individual's SORA registration requirements, the Legislature would have specifically stated such. Because it did not, the canon of statutory construction *expressio unius est exclusion alterius*, which holds that to express or include one thing implies the exclusion of another, is determinative. *See* Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000); Black's Law Dictionary 602 (7th ed. 1999). Moreover, South Carolina courts have noted that this "maxim should be used to accomplish legislative intent [*i.e.* lifetime registration in South Carolina], not defeat it." S.C. Dep't of Consumer Affairs v. Rent-A-Ctr., Inc., 345 S.C. 251, 256, 547 S.E.2d 881, 884 (Ct. App. 2001).

In addition, the South Carolina Supreme Court has also held unequivocally that a "court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)(emphasis added); *see also* Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007)(finding error in fashioning an equitable remedy in the face of an unambiguously worded statute setting forth certain remedies). SORA's lifetime registration requirement is set forth in an unambiguously worded statute, *i.e.* "for life". S.C. Code Ann. § 23-3-460. As such, there is simply no statutory or equitable relief available in this matter.

Furthermore, for a Court to fashion an equitable remedy in the face of an unambiguously worded statue would be a clear violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The South Carolina Constitution specifically provides that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." S.C. Const. art. I, § 8. The duration of sex offender registration is a matter of public policy that is solely in the province of the South Carolina Legislature. As such, any attempt by any court to invade the Legislature's exclusive province is a violation of the separation of powers and is unconstitutional. *Id.* In addition, the South Carolina Supreme Court has specifically held that

> [i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "**it is beyond this Court's power to effect a change in the statutes enacted by the Legislature.**" State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court

does **"not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly"**).

Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675 (2007) (emphasis added). This entire action seeks for this Court to impermissibly and unconstitutionally act as a "superlegislature" and to add language to an unambiguously worded constitutional statute. As such, this request must fail.

EXPUNGEMENT LAW

In addition, a review of the recent expungement law changes in South Carolina is instructive on this issue. In 2014, the South Carolina Legislature amended the expungement laws to require law enforcement entities to maintain expunged records and authorized such records for use in all ongoing and future law enforcement investigations. Act 276 (H.B. 4560), a copy of which is attached hereto as "Attachment 1", became effective law on June 9, 2014, states:

> "Section 17-1-40. (A) **For purposes of this section, 'under seal' means not subject to disclosure other than to a law enforcement or prosecution agency, and attorneys representing a law enforcement or prosecution agency, unless disclosure is allowed by court order.**
>
> (B)(1) If a person's record is expunged pursuant to Article 9, Title 17, Chapter 22, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22-3-330 or another provision of law, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge or associated bench warrants may be retained by any municipal, county, or state agency. **Provided, however, that:**
>
> (a) **Law enforcement and prosecution agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, and to defend the agency and the agency's employees during litigation proceedings. The information must remain under seal. The information is not a public document and is exempt from disclosure, except by court order....**

SC LEGIS 276 (2014), 2014 South Carolina Laws Act 276 (H.B. 4560)(emphasis added).

In 2016, the Legislature expanded the use of expunged records even further and authorized the use of expunged records for "administrative hearings" as well. Act 132 (S.255), which became effective on February 16, 2016 and is attached hereto as "Attachment 2", states:

> Section 17–1–40. (A) **For purposes of this section, "under seal" means not subject to disclosure other than to a law enforcement or prosecution agency, and attorneys representing a law enforcement or prosecution agency, unless disclosure is allowed by court order.**
>
> (B)(1) If a person's record is expunged pursuant to Article 9, Title 17, Chapter 22, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22–3–330 or another provision of law, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge or associated bench warrants may be retained by any municipal, county, or state agency. Provided, however, that:
>
> (a) **Law enforcement and prosecution agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, administrative hearings, and to defend the agency and the agency's employees during litigation proceedings. The information must remain under seal. The information is not a public document and is exempt from disclosure, except by court order.**

SC LEGIS 132 (2016), 2016 South Carolina Laws Act 132 (S.255)(emphasis added).

The stated purpose of the SORA registry is "to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens...." In addition, the South Carolina Legislature specifically pronounced,

> The **sex offender registry will provide law enforcement with the tools needed in investigating criminal offenses.** Statistics show that sex offenders often pose a high risk of re-offending. **Additionally, law enforcement's efforts to protect communities, conduct investigations, and apprehend offenders who commit sex offenses are impaired by the lack of information about these convicted offenders who live within the law enforcement agency's jurisdiction.**

S.C. Code Ann. § 23-3-400(emphasis added). Accordingly, it is inarguable that the South Carolina Legislature intended for law enforcement to utilize expunged SORA mandated offenses and for those offenders to remain listed on the SORA registry. That said, because an expungement order requires the removal of the certain arrest records from public view, SLED has sealed the actual charge or arrest on the Plaintiff's SORA page. As such, SLED is in full compliance with the expungement order and SORA law. Accordingly, the Plaintiff's claims must fail.

SORA REGISTRATION IN SOUTH CAROLINA IS NOT PUNISHMENT

In South Carolina, Courts have also consistently and unequivocally held that registration pursuant to SORA is **NOT** punishment. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002); Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) (finding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."); In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003) (finding that "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated."); In the Interest of Justin B., a Juvenile under the Age of Seventeen, 419 S.C. 575, 799 S.E.2d 675 (2017) (reaffirming the constitutionality of SORA and reaffirming unequivocally that SORA is not punishment).

Rather, the South Carolina Legislature has evidenced a clear intent that SORA is "to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens" and to "provide law enforcement with the tools needed in investigating criminal offenses." S.C. Code Ann. § 23-3-400. In State v. Walls, the South Carolina Supreme Court noted the following:

> it is clear the General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes. Hence, the language indicates the

> General Assembly's intention to create a non-punitive act. We find the Act is not so punitive in purpose or effect as to constitute a criminal penalty. Accordingly, the Act does not violate the *ex post facto* clauses of the state or federal constitutions.

348 S.C. 26, 30-31, 558 S.E.2d 524, 525-26 (2002).

The most recent South Carolina Supreme Court opinion in this area, In the Interest of Justin B., a Juvenile under the Age of Seventeen, 419 S.C. 575, 799 S.E.2d 675 (2017), a copy of which is attached hereto as "Attachment 3", is instructive and determinitive. This case involved a challenge by a juvenile offender to mandatory lifetime public registration. *Id.* In denying every challenge to SORA brought before it, the Court, not only provided a comprehensive review of the history of SORA juridprudence, but also stated the following:

> The requirement that adults and juveniles who commit criminal sexual conduct must register as a sex offender and wear an electronic monitor is not a punitive measure, and the requirement bears a rational relationship to the Legislature's purpose in the Sex Offender Registry Act to protect our citizens—including children—from repeat sex offenders. The requirement, therefore, is not unconstitutional. **If the requirement that juvenile sex offenders must register and must wear an electronic monitor is in need of change, that decision is to be made by the Legislature—not the courts.** The decision of the family court to follow the mandatory, statutory requirement to impose lifetime sex offender registration and electronic monitoring on Justin B. is **AFFIRMED.**

Id. at 586–87, 681 (emphasis added).

Similarly, the Defendant would assert that should South Carolina's SORA laws be in need of amendment to include expungement as an available route for removal from the SORA registry, which Defendants certainly do not concede, that is a decision to be made by the South Carolina Legislature. *Id.*; S.C. Const. art. I, § 8; Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119 (1989); Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007). However, in the absence of such legislative change, there is simply no lawful relief on which the Plaintiff's claim can be granted.

CONCLUSION

Accordingly, in accordance with the clear and unambiguous South Carolina law and jurisprudence, for the reasons stated above and all those to be advanced at the hearing of this matter; Defendant would ask that this Court deny any and all relief sought by the Plaintiff in this matter.

Respectfully Submitted,

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Attorney for Chief Mark Keel and SLED

COLUMBIA, SOUTH CAROLINA
SEPTEMBER 27, 2017

State of South Carolina)
) Court of Common Pleas
County of Laurens)

2017-CP-30-00338

Andrew Young)
vs.) Transcript of Record
)
Mark Keel, Chief of the South)
Carolina Law Enforcement)
Division)
)
Defendant)

October 2, 2017
Laurens, South Carolina

B E F O R E:

Honorable Frank R. Addy, Judge

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

Joe St. Pierre, Esq.
Attorney for the Plaintiff

Adam L. Whitsett, General Counsel
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

ROA 32

THE COURT: Are you ready on Keel?

MR. WHITSETT: Yes, Your Honor. Judge, may we approach?

THE COURT: Come on up.

(Whereupon, a bench conference was held.)

THE COURT: It is my understanding that we are going on the record in the case of Young versus Mark Keel as Director of SLED, 17-338. This, I believe, is the Plaintiff's motion requesting removal from the sex offender registry. This is your, anything before we--

MR. WHITSETT: Just a housekeeping, I apologize. Just as a matter of clarification for the record, can we change the caption, he is the Chief of SLED. It is kind of a source of pride for him.

THE COURT: Chief of SLED?

MR. WHITSETT: Yes, Your Honor.

THE COURT: We will be amending the caption, it is now Mark Keel as Chief of SLED. I will take care of that.

MR. WHITSETT: Thank you, Your Honor.

THE COURT: Mr. St. Pierre, you have got the floor.

MR. ST. PIERRE: Thank you, Your Honor, if it pleases the Court. My client, back in 1996, was sentenced under the Youthful Offender Act for a lewd act on a minor. Subsequent to that, recently he found out that he could of had this sentence expunged and he went ahead and had it

expunged because he has no prior arrests within five years after getting off of the sentence and has no other arrests to speak of anyways. But, Judge, after the sentence was expunged and he is still required, he has been told by the local Sheriff's Office that he still has to register as a sex offender and we brought this action seeking an order from the Court that no longer requires him and terminates the requirement of him registering as a sex offender. And in looking at this, we, I am trying to examine what an expungement actually means and it seems like there are two statutes that are kind of butting heads. But in order, you know, I am looking at, distinguishing the requirements in the Sex Offender Registry Act which lists out avenues as the Defendant put in his brief of getting your name removed off of the Registry. Now, as I listed in my brief, those were for criminal dispositions that would show up on a background check. And there is no criminal disposition that would show up in my client's background check because there is no conviction. I am hanging my hat on that, in order to be on the Sex Offender Registry it has to be a convicted sex offender, and that, my client, is not. There is some case law in the State verses Marcus Joseph that goes into what an expungement should mean, that an offender be given a fresh start free from the stigma of criminal conviction. Also in statute 17-22-150

there is text that says the effect of the order representing the order of the destruction of arrest records is to restore the person in the contemplation of the law to the status he occupied before the arrest. Further goes on to say, he could never be held, convicted of perjury if he denied knowledge of the arrest. I think, when he is forced to register as a sex offender he is being forced to admit the conviction and admit the arrest which is, you know, in direct contrast with the purpose of the order for the destruction of the arrest records and the expungement.

THE COURT: You raised the issue of PTI. If he went to PTI he wouldn't have to register, correct?

MR. ST. PIERRE: That's correct. The reason I brought up PTI is because when someone has completed PTI they use the same form order as the Youthful Offender expungement. And that brings me to another, there is only a few things in this State that can be expunged. PTI, successful completion of PTI; Magistrate 30 day offenses; failure to stop for a blue light, if my memory serves me right; and young people such as my client when he was 17 years old who showed the State that after a period of probation or a YOA sentence that they could comply with the law as a grown adult.

THE COURT: He entered the plea and received a Y

when he was 17?

MR. ST. PIERRE: 17 or 18.

THE COURT: Okay.

MR. ST. PIERRE: I have attached to the back of the memo printouts from the SLED Sex Offender Registry website. And on the second page, this is the frequently asked questions section, who is required to register. Any person who has been convicted of an offense described below, et cetera. On the following page, on the second paragraph, this is under the terms and conditions of use, individuals included within the Registry are included solely by virtue of their conviction record in State law. And on the following page on the last sentence it references these people as those who have violated our Nation's laws. Now, my contention is, if the conviction is expunged then SLED is still continuing to maintain that this person, my client, is a convicted sex offender. And the only thing that they have done is redacted the offenses on the bottom of the first page. However, everything else on the website indicates that my client is a convicted sex offender. The crux of my case and my argument is, he is not convicted and the State is prohibited from saying that he is due to your order expunging this record. Now, you know, we understand the Expungement Act allows them to keep certain classified

records to help assist in further criminal investigations. But, you know, that is classified, it is not, it is strictly not for public use or it is not even available under FOIA. So, if that is not even available under FOIA then how can this be available to Joe St. Pierre on a Sunday evening looking up the SLED Sex Offender Registry where, just because they took away the offense that got him on this Registry in the first place, it doesn't solve and it doesn't affect the intent of the expungement.

THE COURT: All right, I know that they are going to make the argument that this is a civil ramification and I really don't need you to address that. But one of the things that I am looking at, who has to register, people who are adjudicated, juveniles who are adjudicated delinquent for an offense that would require a Registry would also have to register under South Carolina law, juvenile records are confidential. You are not suppose to be able to access those, they are not even suppose to appear on rap sheets, sometimes unfortunately they do. To what extent could a adjudication of delinquency kind of parallel what your client is having to deal with here. Because obviously if you are adjudicated delinquent for a sex offense as a minor, somebody runs a criminal history on you, in a perfect world it shouldn't appear anywhere on that criminal history. The fact that you are an

adjudicated delinquent should simply be in some file over in DJJ's office that has never really entered into any kind of, well at least when I used to do it, was just stuck in a file and never entered into any kind of data base or put on a rap sheet. How is a juvenile adjudication perhaps different from your client's situation?

MR. ST. PIERRE: I would think legally, if my client was being questioned under oath he could deny ever being convicted.

THE COURT: That is a valid point. What is the State's position on this?

MR. WHITSETT: Your Honor, I think that is and actually a pretty good parallel on what we are talking about. I think the Justin B. case that I handed up deals so specifically with juvenile records, it is the third attachment that I handed and it is actually the Supreme Court's most recent sort of ruling on Sex Offender Registry issues and they go into great detail on saying, we understand the Legislature put a lot of, sort of protection in for juvenile records. But the Sex Offender Registry, because it is not punitive, because it is regulatory it is absolutely still available and still appropriate to list even those juveniles on the public facing websites for those offenses, you know, that mandate

registration. So I do think it is an interesting parallel and a act parallel because and the Court has said, those are absolutely appropriate for inclusion on the Registry, even a public Registry even though you are absolutely correct, there would be no way for any member of the general public to access those otherwise. The Legislature has carved that out and specifically said that is appropriate and it is constitutional and there is no issue whatsoever with that.

MR. ST. PIERRE: If I may jump in before I forget my thought.

THE COURT: Go ahead, please.

MR. ST. PIERRE: Also I believe there is a basis, the juveniles and adjudication is a basis for having to register. I think now, after the expungement, there is no basis, no conviction, no legal conviction to require my client to register.

THE COURT: Let me just doublecheck. Substantively, even if the Sex Offender Act changed between the time of your client's conviction in '98 and now, well let me, they have revised the Sex Offender Act several times. I think kidnapping is kind of the one, there was a love/hate affair with kidnapping in Sex Offender Registry.

MR. WHITSETT: There have been several additions and changes to it subsequent and sort of, there has been many

years where it has changed. But the Courts have held routinely and unequivocally that there is no ex post facto in that, all subsequent changes apply to all offenders, even those who were convicted prior to the inception of it because it is civil, because it is regulatory, because it is not punitive. There is no ex post facto. So any subsequent change applies to all current offenders.

THE COURT: Correct and that is the law and that brings up kind of my point. Let's assume that you have someone who is in the Plaintiff's situation, they entered a plea, for whatever reason it was subsequently expunged. The Sex Offender Act changes in such a way as to require them to register. It would seem to me that, because we have had that happen several times. You know, you had pre, before the Sex Offender Act was ever even passed you had individuals who had been previously convicted and then they had to register as soon as the Sex Offender Act was passed. And then there was that body of law saying, well, it is not a criminal penalty, it is a civil consequence of being convicted of a sex offense. By your logic, if the Sex Offender Act were to change to just to say, for purposes of argument, that anyone convicted of assault and battery, high and aggravated nature under the old law, under the common law misdemeanor ABHAN, ten year misdemeanor under the old law, they have to register as a

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sex offender. I am sure that there is a lot of people that probably received Y's under the old ABHAN. Many of them probably successfully completed the Y, had that expunged. To what extent, if they haven't had themselves restored to the point that they were, prior to that conviction for the ABHAN under the Y, how is the law suppose to or how is the State suppose to basically boomerang back and pull those people in.

MR. WHITSETT: And I think that is the fundamental issue and not to get too far, I was going to address that square on. I think that, I think we have gotten a little off kilter on what an expungement actually does. An expungement does not remove the conviction. It does not get rid of the conviction, it is absolutely still available to law enforcement and it is absolutely still available for any and all future ongoing. That is a misconception of expungements. And those are some of the recent enactments. And that is why I went ahead and attached both of them, the 2014 and the 2015 amendment to the expungement laws. And I think it is important to know that both of those came down after this, the case that was cited by the plaintiff, the Marcus Joseph case. And I don't think that language that he pulled from the PTI statute applies whatsoever. I think we are not talking about the situation where you are in the same position as

you never were before. Even the order itself acknowledges very specifically that it is sealed but it is still absolutely available to any and all law enforcement or any and all ongoing future investigations or any and all administrative hearings which is the most recent ad-on to that. So, I think it is an understanding that expungements and expunge records aren't gone, they are only not available to the general public but they are absolutely still available to law enforcement for any and all purposes or any and all future investigations and any and all future prosecutions.

THE COURT: How would you deal with this situation. Let's assume, I have got a veteran's court that I am running in Greenwood. Let's assume that we put somebody in veteran's court. It is suppose to plead procedure, where the person pleads in, normally they would have to register as a sex offender but the sentence is held in abeyance pending successful completion of veteran's court. But we have taken the plea, okay. The way we run it in Greenwood and in the Eighth Circuit, you complete veteran's court or drug court, the charge is dismissed and the matter is expunged. So in that case you have a person who is actually appearing in front of a Judge and pleading guilty, participating in a program. The guilty plea, by your argument, what triggers the requirement to register

as a sex offender but ultimately the charge is dismissed when they complete the program. How is that not different from this.

MR. WHITSETT: I think that would fit pretty neatly under 23-3-430(e), which is a specific statutory lawful ground to come up, if your charge is overturned, vacated or reversed. If it is reversed, overturned or vacated on appeal, I think that would be very different. And expungement is simply not that. That just removes the record, I mean that removes, the conviction itself is gone whereas an expungement does not do that. An expungement simply seals it as opposed to completely reversing it or overturning it, whereas your drug court, similar to a PTI. There was never a conviction in the first place but if it was reversed or overturned or vacated on appeal then that changes the characterization of it and those are the acceptable grounds to come off, those are the statutorily recognized grounds. But, frankly an expungement is not that, it is very different from that. I would argue that, a charge that is still available for any and all future, you know, law enforcement or prosecutions or any and all administrative hearing or any and all actions against an agency or an agency's employee is very different than vacated or overturned. So that is, I think, the fundamental difference that we are talking about when you

are talking about a drug court because that is a true reversal as opposed to an expungement which is not. It is still available, it is still there, it is still completely accessible by SLED or any and all law enforcement or prosecutors, it is just not available for the general public.

THE COURT: Well, is there any way, because the very purpose of the YOA Act and the five year provision is to let a person be sentenced under the Youthful Offender Act, if they successfully rehabilitate themselves the idea, central idea behind it is, okay, nobody gets to know about this hiccup that you had in your youth. All right. That is the basic concept behind it. The Sex Offender Registry, I understand the law that says that it is just a civil consequence of a conviction. But at the same time that is probably one of the most, for lack of a better word, brutal civil consequences. I know people who would much rather do time in prison and come out and not have to be on the Sex Offender Registry than avoid prison, I mean I have handled those pleas myself, they much rather do some time in prison and not be a registered sex offender than get probation and be a registered sex offender or get time served and be a registered sex offender. I mean it is a pretty significant consequence and if the concept behind a YOA sentence is to restore this person, as Mr.

St. Pierre argues, to the point they were prior to the conviction then aren't we basically at least violating the intent of the YOA?

MR. WHITSETT: And I will say, Your Honor, I don't believe that that language about restoring appears in the YOA, that was the PTI. And so this is not PTI, it is a very different thing. And frankly, Your Honor, I think that would be something that the Legislature is the only body that could address that type of issue, should it be an issue, or that is one that should have been addressed at the time of the initial plea. So, you know, those are the considerations that go into what offenses or what's going to be the resolution on the front end. And, frankly, a collateral consequence, you know, as recognized by the Courts in the Williams case on the back end. So, I mean, if that is an issue that needs to be addressed, I believe it can only be addressed by our Legislature. And I think there would have to be a rewrite of the law to do it because the law as currently constructed simply doesn't allow it. And I think the same argument would be whole and the same argument was certainly made with respect to the juvenile records. That was the central argument in that Justin B. case. Look, you know, these folks, we promised them and Justin B. was a case where the conviction happened before the Registry came into to be.

So that person was sitting there arguing, I was guaranteed privacy. I was guaranteed that my record would never be made public and through subsequent act of the Legislature it was. That is just not right, that's not fair, that's not the intent and our Courts said, unfortunately that is solely in the province of the Legislature. They have drafted this, they carved it out and, you know, to quote, I quoted it in the brief. I mean, if it is a problem that's one that the Legislature has to fix. I mean this would be, this argument in my opinion, needs to be at the State House.

THE COURT: There is really no law on this particular issue without an expungement, is there?

MR. WHITSETT: There is not any appellate jurisprudence on this whatsoever. I mean, I would argue--

THE COURT: How about in other States. Forget South Carolina, we don't have any law really that you can rely on. Have y'all been able to find anything?

MR. WHITSETT: Have not, Your Honor. I would assert that, our statute limiting it to overturn, reversal or vacated is very specific, clear and unambiguous law. And since an expungement is not that, you know, I think it is clear.

THE COURT: I understand but even a pardon from the Governor wouldn't be able to get him off the Sex Offender

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Registry.

MR. WHITSETT: That's correct, Your Honor. It has got to be very specific type of pardon. And this is just what our Legislature has done. Again, I mean Courts have taken great pains and have said time and time again, I mean, you can't second guess the wisdom or the folly of the General Assembly. Those are matters that are just, you know, we are not talking about an unconstitutional statute. That's when Courts, I think, can step in and have a little bit, you know, when you got an unconstitutional statute. But again, we do not, it is not even, the Constitution is not even, the constitutionality of the statute is not even an issue before this Court nor do I think it properly could be because our Courts have spoken on that, you know, time and time again and as recently as May of this year in the Justin B. case. So, I mean, just frankly, I think the way the law is constructed is very clear. And I think we are constrained to follow what the law says and if there is to be a change in the law I think it has to come from the Legislature and I do not believe it is appropriate to come from any Court.

THE COURT: All right. Mr. St. Pierre.

MR. ST. PIERRE: Thank you, Judge. I don't even think my client would be eligible to apply for a pardon. I mean, there is nothing to pardon. And I think, the

approach that I am taking, that I am asking Your Honor to take is, number one, is the Plaintiff a convicted sex offender. And SLED is not allowed to publicly say, yes, he is. They can keep their internal records and sit at the desk and talk to each other about it, that he is. But they cannot publicly say my client is a registered or is a convicted, has been convicted of an offense that requires Registry. And, number two, my client can legally deny that he has ever been convicted of such an offense. And, number three, if SLED can't publicly say, and my client will never be forced to admit that he was, then how can they publicly place him on their Sex Offender Registry, online as an adult tier three offender that has to register four times a year.

THE COURT: Let me let you address that. If he can legally deny that he is a sex offender, if he can legally deny that he was convicted of any sex offender crime what is preventing him from simply saying, I am not going to register and try to force me.

MR. WHITSETT: Your Honor, the expunge charges will absolutely be available for any ongoing, you know, and future prosecution as spelled out and specifically authorized in the statute. I mean, may not be able to be charged for perjury but he can absolutely be charged for failure to register because the expunged charge is

absolutely still available from any and all ongoing or future, not only investigation but prosecution. That is specifically set forth in the statute similar to the administrative hearing. So I would say that he could, I think you could use the expunged charge in the administrative pardon action as well if you were to try and pursue that route. But I think your plea would somewhat make it difficult to get a pardon based on finding him not guilty since you admitted the conduct that constitutes the crime. I think that is also part of the issue here. We are talking about an offense that's concededly a mandatory registry offense. We are talking about an offense that was required to be registered. So we have got to separate what we are talking about. There is no question the initial registration was proper, was constitutional and was in accordance. So now we are talking about solely what are the lawful avenues to seek removal from the Registry. And I submit to you, because our Legislature has mandated we have a lifetime Registry. So we have, if your registration on the front end is proper it is for life unless you meet the very specifically defined statutory avenues for relief. Like I say, you know, the two just have no, you are talking habeas, you are talking new trial. That just doesn't apply. The same thing with the pardon, it is out. So the

only one that is even arguable would be that, would be 23-3-430(e). Like I said, reversed, overturned or vacated on appeal and quite frankly this just does not fit that scenario whatsoever because it is still absolutely available for prosecution. It is still absolutely available for that. So I mean, I think you are talking sort of, a distinction without a difference. I mean he could absolutely still be prosecuted for failure to register because the expunged charges are absolutely still available to the law enforcement, to the prosecutor and could be, at that point, I think shared with anyone because, you know, it is now in a litigation posture. So it is available for future and ongoing prosecutions or investigations.

MR. ST. PIERRE: The statute that he is referring to, the SORNA Act deals with convicted sex offenders. And by requiring my client to register, is SLED making a public statement outside of the walls of law enforcement, making a public statement that he is a convicted sex offender which is violative of the expungement. I mean, what good is the expungement if SLED is going to continue to publicly assert that my client is a convicted sex offender. The purpose of the SORNA Act, you know, I am having trouble understanding how useful these private records are going to be in future prosecutions. What

information do they have that can assist. But I think I am getting off track, I am getting off track.

MR. WHITSETT: And, Judge, I will be happy to answer, we keep them all. We keep everything and actually by the statute we are required to maintain them all. So we are not even talking about, this was less than a year ago. All law enforcement agencies that have any records all, every agency or every office that ever had a record related to this is, as we sit here today, required to maintain that, required to keep that and required to make it available for any and all future investigatory purposes.

THE COURT: It is under lock and key.

MR. WHITSETT: We are in the confines of the statute but I think, you know, by saying it is available for future prosecutions, I think it is clearly a sort of, the Legislature is authorizing its use in open court or in public for the circumstances that that is appropriate to do it. So I do think this is a little bit different. I mean, it is under a quasi lock and key similar to juvenile records but there are certain, absolutely statutorily permissible uses of it. And just like the Supreme Court said in Justin B., if the prosecution can use it publicly for a prosecution, obviously then that is, you know, an acceptable use and that would be then changing and

allowing, like I said, quasi lock and key. That is an acceptable use so it is available for that stated purpose per the statute. And that is the intent of the Legislature when they put those and changed those expungement laws. That was for that stated purpose so that expunged charges could absolutely be used, you know, in situations that they were needed moving forward.

THE COURT: I would agree. You arrest somebody for murder, decide you don't have the evidence, the Solicitor dismisses the charges, the Defendant gets his record expunged, five years later the firearm that was used in the murder is discovered in the Defendant's possession buried out back with a note saying, yes, I am so happy I killed the dead person. Okay. Yeah, I agree that you can then bring those records back and charge that person with a homicide even though his record was expunged due to a nolle pros and lack of evidence. In this case I don't see where the Plaintiff though could potentially be subject to any sort of future prosecution. It is, he plead guilty, it is double jeopardy, it is over, it is done. There is no enhancement if he were to again, you know, commit I guess what is now a CSC with a minor third as opposed to a lewd act. There is no enhancement for it. I don't think that the Court would even, perhaps be able to access that information for purposes of sentencing, taking that into

account, maybe they could. But, you know, the point is, what I am struggling with is the idea that SLED is permitted to make, as Mr. St. Pierre puts it, a public statement that this man is a convicted sex offender when all evidence of that conviction, with the exemption of what is suppose to be kept confidential and internal, all evidence has otherwise been destroyed or removed from public view. If we look at the Clerk's office down the hall, I assume that the indictment is now in some super secret file that they keep just like the one that they keep in Greenwood that nobody is allowed to access because it was ordered expunged. That is what I am struggling with. I understand your point but it really just seems so illogical to me.

MR. WHITSETT: I mean, I think this is just one of those situations where the Legislature may want to take a look at this but I think that is only in a logical situation that our Legislature could fix if they were to perceive it as such. I think, there is also a situation where in today's society, I know people have taken issue time and time again. Expungements only deal with government records. So if anyone else ever had any records related to this; i.e. the media; i.e. anywhere; if this made the news; that would still be there. And so, I mean there is always this concern about well, what does my

expungement do. Well, if it made it into the newspaper, it made to the media, if there was a record of a conviction, anybody else had it, the victims had it, they could go and put a billboard up if they really wanted to. There would be nothing prohibiting them from doing that. So, I mean it is just a recognition of, this is, expungements only deal with government records, if there is any other record that anyone has in their possession they would be absolutely free to use that as they deem appropriate, I don't think you could ever pursue.

THE COURT: I don't disagree with that but the, the imprimatur of government record has collateral consequences for anybody who is looking for employment. And then there is, just to go back to my original point, there is that general principle of law that statues should be interpreted in a way so it does not achieve absurd result. And not that this result is necessarily absurd, not that it isn't absurd but, you want a last word on this, Mr. St. Pierre?

MR. ST. PIERRE: I think I have--

THE COURT: Laid out your point?

MR. ST. PIERRE: I have tried to.

MR. WHITSETT: Judge, I would like to just hand up one more addition--

THE COURT: Please.

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MR. WHITSETT: The Williams case that I referenced, it is the case where our Supreme Court, it may have been a Court of Appeals case and you can see I highlighted some stuff on the second or third page. It is a case that is specifically addresses the collateral nature of registration and sort of specifically takes it out of the punishment, out of the criminal realm. And so I would argue, you know, one, of course, this is just a subsequent case, this is not punishment. But, two, I mean it is a recognition that we are talking about, a collateral regulatory, you know, this record is going to be maintained for that collateral, it is completely separate from punishment, it is completely separate from the criminal, you know, which would have been addressed through the expungement. And, you know, the stated purpose of the Registry is to, A., law enforcement and this expunged record that is sealed and is still available to law enforcement fits very neatly and very specifically within that purpose. So and I do think this is just--

THE COURT: I understand your point and I realize how the Supreme Court has ruled. I have always taken a little bit of an issue with the idea that this is non-punitive. You have got places in Georgia where sex offenders are having to live under a bridge because of proximity prohibitions to a sex offender living close to a

school or close to a church. I mean, there are, to say it is non-punitive is a little bit of a stretch. I know that is how the Supreme Court has ruled. I know that we are stuck with that. Perhaps that is for the Court to better define. The last question, I will ask it again. There is no law from any other State on this that y'all can find, expungement, sex offender?

MR. WHITSETT: Not in this specific context that we have ever been able, I have never seen. This is the first one in this posture going up as well. And that is why, I told him on the front end, frankly there probably should be. I mean, at some point--

THE COURT: So my Clerk and I get to write absolutely new law that will be challenged and at least clarified hopefully.

MR. ST. PIERRE: Judge, prior to filing suit he was very, Counsel was very candid with me in saying that there are three people in this State that can bring this suit.

THE COURT: And he is one of them.

MR. ST. PIERRE: And he is one of them.

THE COURT: Well, perhaps at some future point and time we will get to find out exactly what an expungement means. I will take it under advisement. I may very well just contact, when I, because this is an either or situation. I may, once I have decided I might just

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contact one of y'all and ask you to go ahead and do me a formal order. Okay.

MR. WHITSETT: For purposes of preserving the record, I would like to incorporate just all the arguments that we set forth in the brief.

THE COURT: Certainly.

MR. ST. PIERRE: Judge, I would like to as well.

THE COURT: Both of you are covered. I will read your briefs. I have read the one that was sent to me previously. So we are in good shape, all records or all arguments have been made and will be addressed. Thank you both.

MR. WHITSETT: Thank you, Judge.

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

CERTIFICATE OF REPORTER

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 the County of Laurens, South Carolina on the 2nd day of October, 2017.

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

February 17, 2018

Joy Holston

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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Appellate Case No. 2018-000082

Andrew Young.....Appellant,

Versus

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

CERTIFICATE OF COUNSEL

I certify that the Record On Appeal complies with Rule 210(g).

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October 15, 2018

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THE STATE OF SOUTH CAROLINA
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Laurens County Court of Common Pleas
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Law Enforcement Division.....Respondent.

APPELLANT'S FINAL BRIEF

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October 15, 2018.

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STATEMENT OF ISSUE ON APPEAL

I. Did the trial court err in finding that the Appellant Andrew Young should be registered as a sex offender in the state of South Carolina, despite the fact that the Appellant's criminal conviction of lewd act on a minor was entered pursuant to a guilty plea and sentencing under the Youthful Offender's Act, and expunged due to the fact that the Appellant had no further convictions in the statutory five (5)-year time frame?

STATEMENT OF THE CASE AND FACTS

The facts of this case are not in dispute. On or about October 26, 1995, the Appellant Andrew Young entered a plea of guilty to the crime of lewd act on a minor. His guilty plea was accepted by the court, and he was sentenced pursuant to the Judge William R. Byars Youthful Offender's Act (YOA), Title 24, Chapter 19, et seq, of the S.C. Code of Laws. Of note is that the crime of lewd act on a minor is *eligible* for YOA. However, pursuant to his conviction he was required to register as a sex offender pursuant to S.C. Code Ann. § 23-3-430(C), et seq. He successfully completed probation, and did not have further convictions for any crime in the five (5) years following the termination of his probation pursuant to the YOA. He became aware on or about late 2017 that he would be eligible to have the conviction expunged from his record, due to the fact that he successfully completed the requirements of the YOA. He sought and received a court order for expungement of his conviction pursuant to S.C. Code Ann. § 2-5-920. (R. p.1.) Subsequently, he was notified that he would have to continue to register as a sex offender in the State of South Carolina, despite the expungement and successful completion of the YOA. Trial counsel for Mr. Young filed an action for declaratory judgment, seeking an order declaring that Mr. Young would not have to register as a sex offender, given the stated facts above. The matter came before Honorable Judge Frank R. Addy, Jr., on October 2, 2017. Judge Addy ruled that Mr. Young would have to continue to be registered as a sex offender. This appeal was filed timely on January 17, 2018.

ARGUMENT

I. The trial court erred in finding that the Appellant is required to register as a sex offender, despite the fact that his conviction was expunged pursuant to the S.C. Youthful Offender's Act, which only permits non-public records of the conviction to be maintained by the South Carolina Law Enforcement Division.

Andrew Young should not have to be registered as a sex offender in the State of South Carolina. This matter is clearly controlled by S.C. Code Ann. § 22-5-920, which is applicable to expungements of convictions pursuant to the YOA. As stated, the facts of this case are not in dispute, and the Appellant Andrew Young had no other convictions during the five (5)-year period following the completion of his sentence, including probation and parole. S.C. Code Ann. § 22-5-920. Young's conviction pursuant to YOA was ordered to be expunged because he met the requirements of the expungement statute as cited above. Pursuant to S.C. Code Ann. § 22-5-920(C), after the expungement is granted, the South Carolina Law Enforcement Division (SLED) is required 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 language of the statute evinces a clear legislative intent for the YOA conviction not to be of public record. And, in our society today there is no record more public than a sex offender registry. The reference to "or another provision of the law" in the statute is clearly applicable to the sex offender registry.

Of note is that the sex offender registry as described in S.C. Code Ann. § 23-3-410, et seq, is under the direction of the Chief of SLED – the exact same entity referenced in the expungement statute. It is the responsibility of SLED to develop and operate the sex offender registry to collect, analyze and maintain information, make information available to every enforcement agency in this State and other states, and establish a security system to ensure that only authorized persons may gain access to information gathered under the article. S.C. Code Ann. § 23-3-410(A). However, SLED is specifically barred from *releasing* information regarding expunged convictions including a YOA-eligible sex offense – even pursuant to a FOIA request, which is an all-encompassing request in our open information society. The trial court in this matter ultimately found that Mr. Young is required to *register* as a sex offender pursuant to S.C. Code Ann. § 23-3-400, et seq

Even if this Honorable Court were to accept the argument that Mr. Young has to register as a sex offender with SLED pursuant to his conviction for lewd act on a minor, which the Appellant rejects, the clear language of the YOA expungement statute specifically forbids SLED from *releasing* this collected registry information to the public. There can be no other rational interpretation of these statutes, as read *in para materia.*

In his order, Honorable Judge Frank R. Addy, Jr. seems to agree with the argument of the Appellant. Judge Addy acknowledged that in finding Mr. Young should register as a sex offender, he is fully aware that the final result of the Court's reasoning is counter-intuitive and, in many ways irrational. (R. p. 6.) The spirited argument in this case represented a clash of statutory interpretation and application by both sides. (R., pp. 32-57.) Judge Addy further found that the very purpose of a YOA expungement is to make allowances for the impulsivity of youth and thereby allow a person who commits a crime during their developmental years to escape the

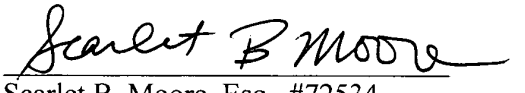
inherent stigma of that conviction. (R., p. 6) A YOA expungement, Judge Addy found, keeps youthful mistakes from following a person to their grave. Simply put, an expungement of a YOA sentence is meant to give a reformed individual a fresh start. Judge Addy concluded by stating that to allow for the destruction of every record pertaining to the offense, while in the same breath maintaining (Mr. Young's) sex offender status for the rest of his life, simply defies logic, reason, and the underlying purpose of a YOA expungement. Clearly, the Appellant agrees.

Regarding the merits of Mr. Young's specific request to be relieved of being registered as a sex offender, it is notable that his conviction occurred in 1995 – over twenty-three (23) years ago. Not only did he not have any arrests for sex offenses in the five-year statutory period as described above (nor any other crimes), he has not had any subsequent arrests nor convictions for sex offenses. He is not a recidivist sex offender who should be stigmatized by sex offender registry. The law simply should not be applied as Judge Addy applied the law in his Order. The clear statutory language and intent of the legislature is that YOA expungements shall not be part of the public record. Therefore, this Honorable Court should reverse the Order of Honorable Judge Frank R. Addy, Jr., and find that the Appellant in should not be entered into the public sex offender registry.

CONCLUSION

The Appellant Andrew Young respectfully prays that this Honorable Appellate Court will reverse the Order of Honorable Judge Frank R. Addy, Jr., presiding, and find that the Appellant should not be registered by SLED on the sex offender registry due to the expungement of his criminal conviction for lewd act on a minor, and for any other such relief as the Court deems appropriate and necessary.

Respectfully Submitted,



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October 15, 2018.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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Appellate Case No. 2018-000082

Andrew Young.....Appellant,

Versus

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

CERTIFICATE OF COUNSEL

I certify that the Final Brief of Appellant complies with Rule 210(g).

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October 15, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable Frank R. Addy
Circuit Court Judge

Appellant Case No.: 2018-000087

Andrew Young, ... Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable Frank R. Addy
Circuit Court Judge

Appellant Case No.: 2018-000082

Andrew Young, ... Appellant,

v.

Mark Keel, Chief of the South Carolina
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STATEMENT OF ISSUES ON APPEAL

I. **The trial court did not err in denying the Appellant's request for removal from the South Carolina Sex Offender Registry Act (SORA) registry because the Appellant does not meet any of the statutory criteria for removal set forth in SORA.**

STATEMENT OF THE CASE

The Appellant pled guilty to the offense of Lewd Act on a Minor in violation of § 16-15-140 of the South Carolina Code of Laws in 1995. (Tr. p. 2)(R. p. 33).[1] The Appellant concedes that this conviction required the Appellant to register as a sex offender pursuant to the South Carolina Sex Offender Registry Act, § 23-3-400 *et seq.* ("SORA") and that the Appellant did in fact so register. (Appellant's Initial Brief p. 5). Subsequently, because the Appellant was sentenced pursuant to the Judge William R. Byars Youthful Offender Act (YOA), § 24-19-5 *et seq.*, the Appellant sought and received an expungement for this offense (Tr. pp. 2-3)(R. pp. 33-34). Nevertheless, the Appellant does not meet any of the statutory criteria for removal set forth in the plain language of SORA. *See* S.C. Code Ann. § 23-3-430(E), (F), (G). (Tr. p. 3)(R. p. 34). Accordingly, the Appellant was notified by the local Sheriff's Office that the Appellant is required to continue registering pursuant to SORA. *Id.*

The Appellant filed a declaratory judgment action on or about May 17, 2017 seeking an order removing the Appellant from the SORA registry. The Honorable Frank R. Addy heard this action on October 2, 2017 and denied the Appellant's request for a declaratory judgment in an order filed on December 19, 2017. This appeal follows.

[1] The offense of Lewd Act was repealed and recodified as Criminal Sexual Conduct with a Minor in the third degree (S.C. Code Ann. § 16-3-655(C)) in 2012. *See* 2012 Act 255.

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. An issue essentially one at law will not be transformed into one in equity simply because declaratory relief is sought." Felts v. Richland Cty., 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991).

"Whether an individual must be placed on the sex offender registry is a question of law." Lozada v. South Carolina Law Enforcement Div., 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Id.*

When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. WDW Properties v. City of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000).

ARGUMENT

I. The trial court did not err in denying the Appellant's request for removal from the South Carolina Sex Offender Registry Act (SORA) registry because the Appellant does not meet any of the statutory criteria for removal set forth in SORA.

Based on the following, Respondent avers that the trial court correctly denied the Appellant's request for removal from the SORA registry and that the trial court's decision should be affirmed.

STATUTORY AVENUES FOR REMOVAL FROM SORA

The Appellant concedes that he was convicted of Lewd Act on a Minor (formerly S.C. Code Ann. § 16-15-140) in 1995. Since the earliest inception of South Carolina's Sex Offender Registry Act (SORA) registry, this offense has been a mandatory SORA registry offense. *See* S.C. Code Ann. § 23-3-430(c)(11) (1996 Supp.); 1996 South Carolina Laws Act 444 (S.B. 1286). As such, South Carolina law mandates that Appellant register in accordance with SORA.[2] Further, all SORA registration in South Carolina is **for life**. *See* S.C. Code Ann. § 23-3-460 (setting forth SORA's lifetime registration requirement in an unambiguously worded statute – to wit: "for life") (emphasis added). Accordingly, regardless of the Appellant's expungement, he is required to continue registering in accordance with SORA for life unless he meets one of the statutorily enumerated grounds for removal. *See* S.C. Code Ann. § 23-3-430(E), (F), (G). However, Appellant concedes he does not. (Tr. p. 3)(R. p. 34).

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[2] South Carolina's SORA applies retroactively. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (holding South Carolina's registry constitutional and specifically finding that "the Act does not violate the *ex post facto* clauses of the state or federal constitutions.").

The plain and unambiguous language of SORA sets forth avenues by which an individual's lifetime registration requirement can be removed. *See* S.C. Code Ann. § 23-3-430(E), (F), (G). As noted by the trial court, these are the **only** lawful avenues under which a lifetime registration requirement can be lifted. *See also* Johnson v. Lloyd, 399 S.C. 470, 476–77, 732 S.E.2d 198, 201 (Ct. App. 2012), *overruled on other grounds by* Johnson v. Lloyd, 407 S.C. 610, 757 S.E.2d 705 (2014) ("The General Assembly enacted an unambiguously worded statute that sets forth the legal remedies available to an individual on the [SORA] registry. Because the sex offender registry statute provides an adequate remedy..., it was error for the circuit court to fashion an equitable remedy in this case."). Pursuant to § 23-3-430(E), "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). Pursuant to § 23-3-430(F), an offender who receives a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed. S.C. Code Ann. § 23-3-430(F). And finally, pursuant to § 23-3-430(G) individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial are removed. S.C. Code Ann. § 23-3-430(F). However, unfortunately for the Appellant, **none of these avenues apply to him**. (Tr. p. 3)(R. p. 34). Simply put, an expungement is not an enumerated ground for removal of an individual's lifetime registration requirement recognized in SORA. As such, the trial court's decision should be affirmed.

It is inarguable that if South Carolina Legislature had intended for an expungement to relieve an individual's SORA registration requirement, the Legislature would have specifically stated such in statute. However, because the Legislature did not, the canon of statutory construction *expressio unius est exclusion alterius*, which holds that to express or include one thing implies the exclusion of another, is determinative. *See* Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000); Black's Law Dictionary 602 (7th ed. 1999). South Carolina courts have noted that this "maxim should be used to accomplish legislative intent [*i.e.* lifetime registration in South Carolina], not defeat it." S.C. Dep't of Consumer Affairs v. Rent-A-Ctr., Inc., 345 S.C. 251, 256, 547 S.E.2d 881, 884 (Ct. App. 2001).

Moreover, YOA expungements came into existence in 2003. *See* 2003 Act No. 1. Since that time, SORA has been amended seven (7) times, including one amendment to the statutory criteria for removal.[3] However, despite these numerous opportunities, not once has the Legislature ever included YOA expungements, or any expungement for that matter, in the list of statutory avenues for removal from lifetime SORA registration. *See* S.C Code Ann. § 23-3-430(E), (F), (G). As such, the legislative intent that a YOA expungement does not relieve an individual's SORA registration requirement is clear and unequivocal. *See* Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003) (acknowledging that the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent.) Accordingly, the trial court was correct.

[3] These amendments are: 2004 Act No. 208, § 14; 2005 Act No. 141, § 2; 2008 Act No. 335, § 16, eff June 16, 2008 (amending the criteria for removal set forth in S.C. Code Ann. § 23-3-430(F)); 2010 Act No. 212, § 3, eff June 7, 2010; 2010 Act No. 289, § 8, eff June 11, 2010; 2012 Act No. 255, § 5, eff June 18, 2012; 2015 Act No. 7 (S.196), § 6.D, eff April 2, 2015.

In addition, the South Carolina Supreme Court has also held explicitly that a "court's equitable powers **must yield** in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)(emphasis added); *see also* Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007) (finding error in fashioning an equitable remedy in the face of an unambiguously worded statute). SORA's lifetime registration requirement is set forth in an unambiguously worded statute, *i.e.* "for life". S.C. Code Ann. § 23-3-460. As such, there is simply no statutory or equitable relief available in this matter, and the trial court's decision must stand.

Furthermore, for any court to fashion an equitable remedy in the face of an unambiguously worded statue would be a clear violation of the South Carolina Constitution's mandate for the separation of powers. *See* S.C. Const. art. I, § 8. The South Carolina Constitution specifically provides that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." S.C. Const. art. I, § 8. The duration of sex offender registration is a matter of public policy that is solely in the province of the South Carolina Legislature. As such, any attempt by any court to invade the Legislature's exclusive province is a violation of the separation of powers and is unconstitutional. *Id.* In addition, the South Carolina Supreme Court has specifically held that

> [i]f a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or

> expand the statute's operation. *Id.* Moreover, **"it is beyond this Court's power to effect a change in the statutes enacted by the Legislature."** State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "**not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly**").

Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675 (2007) (emphasis added). This entire action seeks for this Court to impermissibly and unconstitutionally act as a "superlegislature" and to add language to an unambiguously worded constitutional statute. This is not permitted by South Carolina law. *Id.* As such, the trial court was correct to reject this attempt and should be affirmed.

APPLICATION OF S.C. CODE ANN. § 22-5-920

In addition, Appellant's reliance on S.C. Code Ann. § 22-5-920 is misplaced. An expungement pursuant to this section does not operate as a reversal, overturn, or vacation of the Appellant's conviction on appeal and does not affect the Appellant's overall SORA registration requirement. As correctly noted by the trial court, the Appellant's expungement "does not change or rewrite history; it does not operate to vacate or undo a prior adjudication." (Order Denying Declaratory Judgment p. 3)(R. p. 34). Moreover, § 22-5-920 deals only with the publication of certain arrest and conviction records - nothing more - and certainly not overall SORA registration.

It is axiomatic that actual SORA in-person registration and the publication of SORA conviction information on a website are separate and distinct matters governed by separate and distinct statutes. To that end, S.C. Code Ann. § 23-3-450 mandates that offenders "register with the sheriff", and specify that registration entails providing "information as prescribed by SLED." This is SORA registration and is completely unaffected by S.C. Code Ann. § 22-5-920. Separately, S.C. Code Ann. § 23-3-490 speaks

to the public accessibility of and the publication of SORA information. To that end, § 23-3-490 states that all "information collected for the offender registry is open to public inspection" and specifically authorizes the use of "computerized or electronic transmission of data or other electronic or similar means" *i.e.* the internet, to accomplish such publication. Accordingly, even assuming *arguendo* that § 22-5-920 could be read to limit the public's access to **all** of the SORA registry information related to the Appellant, which it does not, there is simply no possible way to read § 22-5-920 to authorize the removal the Appellant's separate and distinct lifetime SORA registration requirement. Rather, the only lawful avenues to remove this mandatory lifetime SORA registration requirement are set forth in SORA itself. *See* S.C Code Ann. § 23-3-430(E), (F), (G). However, unfortunately for the Appellant, as the trial court correctly found, none of these avenues are available to the Appellant. *See above*. Accordingly, the Appellant's claims must fail.

Moreover, the proper application of § 22-5-920, which speaks only to the publication of certain arrest and conviction records, requires only that Respondent seal from the public view the actual charge of conviction on the Appellant's publically accessible SORA website entry. Respondent has done such. Accordingly, Respondent is informed and believes that it is in full compliance with both § 22-5-920 and with SORA. However, there is simply no reading of § 22-5-920, a statute dealing only with the publication of records, that can evidence a Legislative intent to remove an individual's overall SORA registration requirement. *See* Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003) (acknowledging that the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent.) Accordingly, the Appellant's argument was correctly rejected by the trial court.

SORA REGISTRATION IN SOUTH CAROLINA IS NOT PUNISHMENT

In South Carolina, Courts have also consistently and unequivocally held that registration pursuant to SORA is **NOT** punishment. *See* State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002); Hendrix v. Taylor, 353 S.C. 542, 552, 579 S.E.2d 320, 325 (2003) (finding that "the length of time one must be listed on the sex offender registry is non-punitive, and it cannot constitute a deprivation of a constitutionally protected liberty interest."); In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003) (finding that "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated."); In the Interest of Justin B., a Juvenile under the Age of Seventeen, 419 S.C. 575, 799 S.E.2d 675 (2017) (reaffirming the constitutionality of SORA and reaffirming unequivocally that SORA is not punishment).

Rather, the South Carolina Legislature has evidenced a clear intent that SORA is "to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens" and to "provide law enforcement with the tools needed in investigating criminal offenses." S.C. Code Ann. § 23-3-400. In State v. Walls, the South Carolina Supreme Court noted the following:

> it is clear the General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes. Hence, the language indicates the General Assembly's intention to create a non-punitive act. We find the Act is not so punitive in purpose or effect as to constitute a criminal penalty. Accordingly, the Act does not violate the *ex post facto* clauses of the state or federal constitutions.

348 S.C. 26, 30-31, 558 S.E.2d 524, 525-26 (2002).

The most recent South Carolina Supreme Court opinion in this area, In the Interest of Justin B., a Juvenile under the Age of Seventeen, 419 S.C. 575, 799 S.E.2d 675 (2017),

is instructive and determinitive. This case involved a challenge by a juvenile offender to mandatory lifetime public registration. *Id.* In denying every challenge to SORA brought before it, the Court, not only provided a comprehensive review of the history of SORA jurisprudence, but also stated the following:

> The requirement that adults and juveniles who commit criminal sexual conduct must register as a sex offender and wear an electronic monitor is not a punitive measure, and the requirement bears a rational relationship to the Legislature's purpose in the Sex Offender Registry Act to protect our citizens—including children—from repeat sex offenders. The requirement, therefore, is not unconstitutional. **If the requirement that juvenile sex offenders must register and must wear an electronic monitor is in need of change, that decision is to be made by the Legislature—not the courts.** The decision of the family court to follow the mandatory, statutory requirement to impose lifetime sex offender registration and electronic monitoring on Justin B. is **AFFIRMED**.

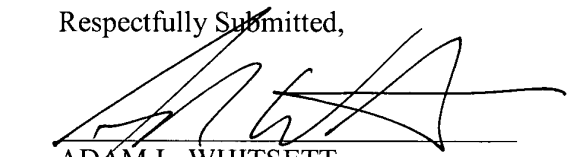
Id. at 586–87, 681 (emphasis added).

Similarly, the Respondent would assert that should South Carolina's SORA laws be in need of amendment to include expungement as an available route for removal from the SORA registry, which Respondent certainly does not concede, that is a decision that can **only** be made by the South Carolina Legislature. *Id.*; S.C. Const. art. I, § 8; Santee Cooper Resort, Inc. v. S. Carolina Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119 (1989); Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007). However, in the absence of such legislative change, there is simply no lawful relief on which the Appellant's claim can be granted. Accordingly, the trial court was correct in denying Appellant's claim, and the trial court's decision should be affirmed and upheld in its entirety.

CONCLUSION

In conclusion, based on the foregoing and the applicable laws and jurisprudence of the State of South Carolina, this Court should uphold and affirm the trial court's decision in its entirety.

Respectfully Submitted,



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October 23, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

The Honorable Frank R. Addy
Circuit Court Judge

Appellant Case No.: 2018-000082

Andrew Young, ... Appellant,

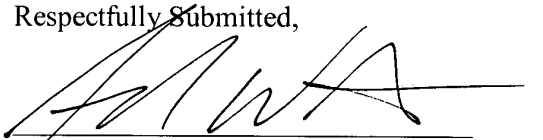
v.

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

RULE 211(b) CERTIFICATION

I hereby certify that the Final Brief of Respondents complies with Rule 211(b), SCACR and the August 13, 2007 Supreme Court Order regarding personal identifiers.

Respectfully Submitted,



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October 23, 2018

The South Carolina Court of Appeals

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August 19, 2020

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Re: Andrew Young v. Mark Keel
Appellate Case No. 2018-000082

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

CLERK

cc: The Honorable Frank R. Addy, Jr.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Andrew Young, Appellant,

v.

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

Appellate Case No. 2018-000082

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

Opinion No. 5759
Submitted June 1, 2020 – Filed August 19, 2020

AFFIRMED

Joseph T. St. Pierre, of Laurens, and Scarlet Bell Moore, of Greenville, both for Appellant.

Adam L. Whitsett, of the South Carolina Law Enforcement Division, of Columbia, for Respondent.

HILL, J.: In this declaratory judgment action appeal, we must decide whether the expungement of Andrew Young's conviction for Lewd Act with a minor relieves him of the requirement to register as a sex offender. We conclude it does not.

I.

Young was convicted in 1995 pursuant to the Youthful Offender Act (YOA) of Lewd Act with a minor, an offense now codified as Criminal Sexual Conduct with

a minor, S.C. Code Ann. § 16-3-655(C) (2015). The Sex Offender Registry Act (SORA) became law in 1994, requiring persons convicted of Lewd Act with a minor and certain other sex offenses to register as sex offenders for the remainder of their lives. S.C. Code Ann. §§ 23-3-400 *et seq.* (2007 & Supp. 2019). In 2017, Young applied for and received an order expunging his conviction, a remedy authorized at the time by § 22-5-920 of the South Carolina Code (2018), which became law in 2003. Young then brought this action, requesting an order declaring the expungement excuses him from SORA's registration requirement. The circuit court denied Young's request, ruling the expungement did not remove Young's obligation to register. Young now appeals.

II.

This appeal turns on statutory interpretation, a task we begin afresh, unconstrained by the findings of the circuit court. *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 6, 809 S.E.2d 223, 226 (2018). Young argues a § 22-5-920 expungement relieves him from the duty to register as a sex offender. Young's argument arises from the intersection of two statutes: § 22-5-920 and § 23-3-430. Neither references the other. Young does not dispute he received the explicit benefits an expungement under § 22-5-920 confers: destruction of his arrest and conviction records, except for the "nonpublic record of the offense and the date of its expungement" SLED is required to keep to ensure that no person takes advantage of the expungement right "more than once." § 22-5-920(C).

Section 22-5-920 is silent though, on the question Young brings before us: whether one convicted of an offense requiring sex offender registration must continue to register after his conviction has been expunged. Section 23-3-430 of SORA lists three classes of persons who are entitled to removal from the registry: (1) a person whose conviction has been reversed, overturned, or vacated on appeal and a final judgment entered; (2) a person who has received a pardon for the offense requiring registration and "the pardon is based on a finding of not guilty specifically stated in the pardon"; and (3) a person who has been granted a new trial after filing "a petition for a writ of habeas corpus or a motion for a new trial based on newly discovered evidence" and "a verdict of acquittal is returned at the new trial or entered with the state's consent." § 23-3-430(E) to (G).

Although § 23-3-430 lists only three instances when a person convicted of a qualifying offense may be removed from the registry, Young contends the legislature intended for a § 22-5-920 expungement to remove all records related to his conviction and scrub away any stain of it, including any that lingers due to SORA's

registry requirement. Young's argument relies on the interpretive canon *in pari materia* ("in a like matter"), whereby a court may view several statutes relating to the same subject matter (or the same class of persons or things) as one law. *See, e.g.*, *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000); 1 W. Blackstone, *Commentaries on the Laws of England* *60 n.54 (14th ed. 1803) ("It is an established rule of construction that statutes *in pari materia*, or upon the same subject, must be construed with reference to each other."). The canon rests on the fiction that when the legislature passes a new statute it is presumed to be aware of existing statutes dealing with the same topic and intends for the statutes to be read together as a seamless, cohesive system. *See generally* 2B *Sutherland Statutory Construction* § 51:2 (7th ed.); *Harrison v. Casey*, 3 S.C.L. (1 Brev.) 390, 391 (1804). According to Young, treating § 22-5-920 *in pari materia* with SORA means that § 22-5-920 exempts a fourth class of persons (offenders whose convictions have been expunged) from the registry requirement.

Like many interpretive canons, *in pari materia* is a tool courts may turn to only when the statutory ground is uncertain. *Rabon v. S.C. State Highway Dep't*, 258 S.C. 154, 157, 187 S.E.2d 652, 654 (1972) (rule of *in pari materia* "may be applied where there is an ambiguity to be resolved and not where, as in this case, the meaning of the statute is clear and unambiguous"). While the text of SORA does not speak to the effect an expungement has on the registry requirement, the text is not unclear or ambiguous. We are mindful that "statutory interpretation begins (and often ends) with the text of the statute in question. Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning." *Smith v. Tiffany*, 419 S.C. 548, 555–56, 799 S.E.2d 479, 483 (2017) (citations omitted). The text of § 23-3-430 plainly lists only three exceptions to the registry requirement, and we hold § 22-5-920 does not, by statutory osmosis, create a fourth for expungement.

Besides, we are not convinced SORA and § 22-5-920 are *in pari materia*. Section 22-5-920 deals with expungements of criminal convictions for YOA first-time offenders, and the scope of the expungement is limited to the destruction of public records of the arrest and conviction and ensuring the confidentiality of the nonpublic records. The scope does not extend to undoing all collateral consequences of the conviction. The focus of SORA, on the other hand, is on a specific collateral consequence directed towards a certain class of sex offenders. It is significant that the registry requirement has been deemed to be a civil, non-punitive public safety regulation and not an additional criminal punishment of the offender. *State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002); *In Interest of Justin B.*, 419 S.C. 575, 580, 799 S.E.2d 675, 677–78 (2017). It is even more significant that the legislature

memorialized the purpose of SORA in the opening section of the Act: "The intent of this article is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens. . . . The sex offender registry will provide law enforcement with the tools needed in investigating criminal offenses." § 23-3-400. We distill from this that SORA and § 22-5-920 advance different purposes concerning quite different subjects.

In essence, Young is asking us to hold that § 22-5-920 implicitly repealed SORA's registration requirement as to offenders whose convictions have been expunged. The doctrine of repeal by implication is disfavored, used only as a last resort when two statutes on the same subject matter cannot be rationally reconciled. *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 141, 628 S.E.2d 38, 41 (2006). Unless the contradiction is plain and insoluble, courts must construe both statutes in a manner that allows both to stand. *Id.* at 141–42, 628 S.E.2d at 41. As with its cousin *in pari materia*, the rare remedy of implied repeal is unavailable if, as here, the two statutes at issue do not relate to the same topic. *McCollum v. Snipes*, 213 S.C. 254, 268, 49 S.E.2d 12, 17–18 (1948) ("[T]o effect an implied repeal of one statute by another, they must both relate to the same subject, and cover the same situations, since one statute is not repugnant to another unless there is such relation.") quoting 50 Am. Jur. § 554)). We note further that SORA, a comprehensive statute addressing the specific subject of sex offender registration, was not implicitly repealed in part by the later passage of § 22-5-920, a statute directed to the more general subject of expungement and which does not mention or allude to SORA. *Sharpe v. S.C. Dep't of Mental Health*, 281 S.C. 242, 245, 315 S.E.2d 112, 113 (1984) ("It is well established that statutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to do so is explicitly implied therein."). Though it does not affect our decision or Young's expungement, we point out 2018 Act No. 254 amended § 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). This amendment changed rather than clarified § 22-5-920 and, consequently, throws no light on the legislative intent underlying § 22-5-920 at the time Young's conviction was expunged. *Edwards v. State Law Enforcement Div.*, 395 S.C. 571, 577, 720 S.E.2d 462, 465 (2011) (explaining amendment to § 23-3-430 of SORA related to effect of pardon on registration requirement changed rather than clarified existing law, and therefore court could not use amendment to interpret legislative intent of original version of statute).

We therefore hold the expungement of Young's Lewd Act with a minor conviction does not affect his registration responsibilities under SORA. We decide this case without oral argument pursuant to Rule 215, SCACR. The ruling of the circuit court is

AFFIRMED.

WILLIAMS and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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Appellate Case No. 2018-000082

Andrew Young…….....….....Appellant,

Versus

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

PETITION FOR REHEARING

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s/Scarlet B. Moore

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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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September 1, 2020.

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Andrew Young…….....….....Appellant,

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Law Enforcement Division ..... Respondent.

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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Greenville, South Carolina
September 1, 2020.

The South Carolina Court of Appeals

Andrew Young, Appellant,

v.

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

Appellate Case No. 2018-000082

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

FILED
Oct 08 2020

cc:
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Joseph T. St. Pierre, Esquire
The Honorable Frank R. Addy, Jr.