

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Nov 09 2020

SC Court of Appeals

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

Appellate Case No. 2018-000082
Published Op. No. 5759
Submitted June 1, 2020, Filed August 19, 2020

Andrew Young.....Petitioner,

Versus

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

PETITION FOR WRIT OF CERTIORARI

Scarlet B. Moore, #72534
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November 9, 2020
Greenville, S.C.

CERTIFICATION OF COUNSEL

Undersigned counsel certifies that the Petitioner submitted a Petition for Rehearing to the S.C. Court of Appeals on September 1, 2020 (Appendix pp. 95-98), which Petition was denied by the S.C. Court of Appeals on October 8, 2020. (Appendix, p. 100.)

QUESTION PRESENTED FOR REVIEW

Did the trial court err in finding that the Petitioner Andrew Young should be registered as a sex offender in the State of South Carolina, despite the fact that the Petitioner'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 Petitioner had no further convictions in the statutory five (5)-year time frame?

STATEMENT OF THE CASE

The facts of this case are not in dispute. On or about October 26, 1995, the Petitioner 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. Mr. Young 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. (Appendix, pp. 3-4.) 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. (Appendix pp. 10-15.) 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. (Appendix pp. 5-9.) This appeal was filed timely on January 17, 2018. In a published opinion, the S.C. Court of Appeals affirmed the order of Judge Addy. (Appendix pp. 89-94.) The Petitioner filed a timely Petition for Rehearing on September 1, 2020, which petition was denied by the S.C. Court of Appeals on October 8, 2020. (Appendix pp. 95-100.)

ARGUMENT IN SUPPORT OF PETITION

The trial court erred in finding that the Petitioner 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 Petitioner 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. Therefore, although 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 Petitioner 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 Petitioner. 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. (Appendix, p. 8.) The spirited argument in this case represented a clash of statutory interpretation and application by both sides. (Appendix, pp. 34 - 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. (Appendix, p. 8.) 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 Petitioner agrees.

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. 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, the Court of Appeals reached 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 Petitioner Andrew Young must register as a sex offender for the rest of his life as the Court of Appeals has concluded, 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 Honorable Court should grant the Petitioner’s Writ of Certiorari, reverse the opinion of the S.C. Court of Appeals, and reverse the trial court’s order requiring the Petitioner to register as a sex offender.

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 Petitioner in should not be entered into the public sex offender registry.

WHEREFORE, the Petitioner respectfully prays that this Honorable Court would grant his Petition for Writ of Certiorari, review this matter, and reverse the ruling of Honorable Judge Frank R. Addy, Jr., in this matter.

Respectfully Submitted,

s/Scarlet B. Moore

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Versus

Mark Keel, Chief of the South Carolina
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CERTIFICATE OF SERVICE

I certify that on this date, November 9, 2020, I served a copy of the Petitioner Andrew Young’s Petition for Writ of Certiorari, the Appendix, and this certificate on opposing counsel to their respective **E-MAIL** addresses, pursuant to the Order of the Supreme Court Appellate Case No. 2020-000447(g)(3).

Adam Whitsett – awhitsett@sled.sc.gov
Joseph St. Pierre – joe@josephstpierre.com

Respectfully Submitted,

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VIA ONEDRIVE UPLOAD:

Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

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SC Court of Appeals

RE: Young v. Keel, Appellate Case No. 2018-000082

Dear Madam Clerk,

Enclosed please find the Appellant Andrew Young's Petition for Writ of Certiorari regarding the above titled matter, which is filed in the S.C. Supreme Court today.

Please let me know if you have questions regarding the enclosed. With kind regards, I remain

Very Truly Yours,

s/Scarlet B. Moore

Scarlet B. Moore, Esq.
Counsel for Appellant

SBM/s

Cc: **Via Email:**
Adam L. Whitsett, Esq.
Joseph T. St. Pierre, Esq.
Clerk, S.C. Supreme Court (via OneDrive Upload)