

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

NOV 25 2020

SC Court of Appeals

Robin B. Stilwell, Circuit Court Judge

Appellate Case No.: 2020-001297
Trial Court Case No.: 2019-CP-23-05360

Vance Eichelberger.....Respondent,

v.

Mark Keel, in his official Capacity as Chief of the
South Carolina Law Enforcement Division.....Appellant.

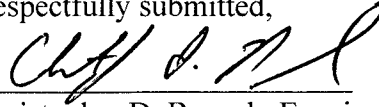
**RESPONDENT'S DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Respondent does not object to the materials designated by Appellant to be included on the Record on Appeal and proposes that the following materials be included in the Record on Appeal in addition to those proposed by Appellant:

1. Memorandum in Opposition to Summary Judgment;
2. Response to Motion Granting Relief to Plaintiff;
3. Email correspondence with Court;

Pursuant to Rule 209, SCACR, I certify that this designation contains no matter that is irrelevant to this appeal.

Respectfully submitted,



Christopher D. Brough, Esquire
275 East Henry Street
Spartanburg, SC 29306
(864) 585-3088
S.C. Bar Number: 71856

ATTORNEY FOR RESPONDENT

November 23, 2020

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

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-23-5360

**MEMORANDUM IN OPPOSITION
 TO SUMMARY JUDGMENT**

Factual Background

Plaintiff pled guilty to lewd act upon a child on November 30, 1988 and received a 3 year sentence suspended upon the service of 4 months or \$400 plus 5 years of probation with 200 hours of community service. (See Exhibit 1 – Affidavit of Vance Eichelberger and Exhibit 2 – Certified Copies of Indictment and Sentencing Sheet). Plaintiff completed all portions of his sentence including being released from probation before the sex offender registry was created (see Exhibit 1 – Affidavit of Vance Eichelberger). The original version of the sex offender registry became effective on July 1, 1994 (see Exhibit 3 – original version of sex offender registry).

The Plaintiff received a letter dated March 14, 2019, that was hand delivered to him at his home by Deputy Mike Gabriel of the Spartanburg County Sheriff’s Office directing him to report to the Sheriff’s Office by March 18, 2019 to register as a sex offender based on his 1988 conviction or he would be arrested (see Exhibit 1 – Affidavit of Vance Eichelberger and Exhibit 4 – Letter from Sheriff’s Office). The Plaintiff ultimately signed the contract to register after being told he could not have an attorney review the contract and that if he did not immediately register he would be arrested (see Exhibit 1 – Affidavit of Vance Eichelberger). Plaintiff has not been convicted of any

sex related offenses since his conviction in 1988 (see Exhibit 1 – Affidavit of Vance Eichelberger). Plaintiff has filed this action seeking injunctive relief requiring that his name be removed from the sex offender registry.

Legal Analysis

The South Carolina Sex Offender Registry was enacted into law in 1994. It has been held to be a retroactive statute that is procedural in nature, meaning that it lays a procedural groundwork for the manner that the law is to be applied. It is instructive to note that the Court has required those convicted of sexual offenses even as early as 1979 to register as a sex offender prior to their release from custody. Hazel v. State, 377 S.C. 60 (2008). In previous cases, the Court has held that the current version of the statute to be controlling in cases where the Defendant was convicted before the enactment of the sex offender registry. Id. The Court has also held repeatedly that the retroactive application of the sex offender registry to individuals convicted before its enactment does not violate constitutional ex post facto principals. State v. Walls, 348 S.C. 26 (2002). However, Plaintiff believes that this is an exceptional and unique case in that Plaintiff has been unable to find any case dealing with an individual being required to register approximately 27 years after being released from supervision.

First Basis for Removal from Registry

The purpose in enacting the sex offender registry can be found in S.C. Code Section 23-3-400. It is to “provide for the public health, welfare, and safety of its citizens’ and ‘provide law enforcement with the tools needed in investigating criminal offenses.” State v. Ross, 423 S.C. 504, 509 (2018). S.C. Code Section 23-3-400 also indicates that “[s]tatistics show that sex offenders often pose a high risk of re-offending.” In this case, Plaintiff completed his entire sentence and was discharged from probation before the enactment of the sex offender registry in 1994. Plaintiff has not been on probation or in the custody of the Department of Corrections

since the enactment of the sex offender registry.

In determining whether Plaintiff should be required to register as a sex offender for a crime that was committed before the enactment of the registry, the Courts should look to the plain language of the statute that refers to how the registration process is to occur. S.C. Code Section 23-3-440 (4) provides that “The Department of Corrections, the Department of Probation, Parole and Pardon Services, and the Department of Juvenile Justice shall provide to SLED the initial registry information regarding the offender prior to his release from imprisonment or relief of supervision.” This language has not changed from the original version of the statute that was enacted in 1994 (see Exhibit 3). Plaintiff takes the position that this language evinces the Legislature’s intent that while the registry was to be applied retroactively, it was only to be applied retroactively to those individuals currently under supervision subject to being released for concerns about re-offending. There is no provision allowing any State actor to require a person to register as a sex offender approximately 27 years after being released from supervision. As such, Plaintiff contends that he was unlawfully required to register.

Second Basis for Removal from Registry

Plaintiff contends that if the version of the sex offender registry used to evaluate his case was the one in place at the time of his release from supervision, he would not be required to register as the sex offender registry did not exist until 1994. If the Court were to apply the current version of the registry in place at the time Plaintiff was notified of his requirement to register, the crime of Lewd Act Upon a Child is not listed as an offense requiring registration (having been deleted in the 2012 amendment to the Statute) pursuant to S.C. Code Section 23-3-430 (C) requiring sex offender registration. However, there is a provision under S.C. Code Section 23-3-430 (D) that indicates an offense not listed could require registration if a finding is made by the Judge at the time of sentencing. In this case, no such finding was made by the

sentencing Judge (see Exhibit 2). As such, Plaintiff contends that his conviction is not one that requires registration.

Conclusion

Summary Judgment is a drastic remedy that should be cautiously invoked so that no person will be improperly deprived of a trial of disputed factual issues and is not appropriate where further inquiry of the facts is desirable to clarify the application of the law. McNair v. Rainsford, 330 S.C. 332, 341-342 (Ct. App. 1998). All ambiguities, conclusions, and inferences arising from the evidence must be strictly construed against the nonmoving party. Staubes v. City of Folly Beach, 331 S.C. 192, 197 (Ct. App. 1998). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences that can be drawn from them, summary judgment should be denied. Id. As such, given the disputed law and factual analysis in this case, Plaintiff asks the Court to deny the Defendant's motion for Summary Judgment.

/s/ Christopher D. Brough
CHRISTOPHER D. BROUGH
Attorney for the Plaintiff
S.C. Bar No.: 71856
275 East Henry Street
Spartanburg, SC 29306
(864) 585-3088

May 31, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Vance Eichelberger,)
)
Plaintiff,)

Case No.: 2019-CP-23-05360

vs.)

AFFIDAVIT OF VANCE EICHELBERGER

Mark Keel in his official)
)
Capacity as Chief of the South)
)
Carolina Law Enforcement)
)
Division, and State of South Carolina,)
)
Defendants.)
)

I, Vance Edward Eichelberger, was arrested on April 22, 1988 and charged with criminal sexual conduct. I pled guilty on November 30, 1988 to lewd act, commit or attempt and received 3 years suspended to 4 months or \$400 with probation for 5 years. I was also required to complete around 200 hours of community service. I was not required to register as a sex offender. I completed the community service requirement and was released from probation supervision before the sex offender registry was created.

I received a letter dated March 14, 2019 that was hand delivered to me at my home by Deputy Mike Gabriel of the Spartanburg County Sheriff's Office. The letter stated that I was required to report by March 18, 2019 and failure to report would require a warrant to be issued for my arrest. I made Deputy Gabriel aware that I was recovering from cancer surgery and I had a drainage tube and bag as well as a catheter with a bag that I had to wear.

My wife, Susan, and I went to the Spartanburg County Sheriff's Office and met with Deputy Victoria L. Horton. I was told that I must register with the Spartanburg County Sheriff's Office to be placed on the Sex Offenders Registry in South Carolina. I was required to sign a contract that had many requirements. I asked Deputy Horton if I could have an attorney to review the contract with me before I signed it. Deputy Horton told me that was not allowed. She further stated that I needed to sign the contract immediately or a warrant would be issued for my arrest. I was physically and mentally under duress as I could not believe I was being forced to sign a contract that would place me on the Sex Offenders Registry. As of March 20, 2019, I was placed on the SC Sex Offenders Registry listing me as a Tier III Dangerous Repeat Offender, 31 years

after pleading guilty to a misdemeanor offense in 1988 and being released from probation supervision before the sex offenders registry was even created.

I have not been charged with any additional related offenses since this charge in 1988 and I want my name removed from the South Carolina Sex Offenders Registry.

Dated: 5/13/2020

V. Ed Eichelberger
Vance Edward Eichelberger

Sworn to before me this 13 day of
May, 2020.

Kings Brown
Notary Public for South Carolina

My Commission expires: 1/28/29

WITNESSES

T.M. Stroud
Sheriff's Dept
4-22-88

DOCKET NO. **88-GS-23** 6460

THE STATE OF SOUTH CAROLINA

COUNTY OF _____

ENTERED
COMPUTER

COURT OF GENERAL SESSIONS

TERM _____

THE STATE

VS.

HEAD GUILTY

Vance Edward Fichtelberger w/m

[REDACTED]

ARREST WARRANT NO. B828397

ACTION OF GRAND JURY

Michael Hallman, attorney
Laney

103

INDICIMENT FOR
LEWD ACT UPON CHILD

FOREMAN OF GRAND JURY

VERDICT

ENTERED
ACCT.

FOREMAN OF PETIT JURY

DATE:

A Certified Copy
Pa. D. B. W. M. M. M.
Clerk of Court S.P. & G.S.
Greenville County, SC
Date: 5-16-19

FORM 16 (9/86)

STATE OF SOUTH CAROLINA

INDICTMENT FOR LEWD ACT UPON CHILD

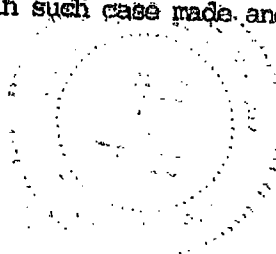
COUNTY OF _____

At a Court of General Sessions, convened on _____
the Grand Jurors of _____ County present upon their oath:

COUNT ONE - LEWD ACT UPON CHILD

That Vance Edward Eichberger
being over the age of fourteen years, did in Greenville
about April 12, 1988, wilfully and lewdly
commit a lewd and lascivious act upon or with the body of one
SE a child under the age of fourteen
the intent of arousing, appealing to, and gratifying the lust,
passions, and sexual desires of himself or such child.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.



Joseph J. Watson
SOLICITOR

88-GS-23 6460

NOW COMES THE DEFENDANT

Yance Edward Eichelberger

Who in open Court pleads guilty to the within indictment:

waived findings of True Bill by GRAND JURY
and consents to sentence this 30 day of Nov 1988

ATTEST:

Caroline W. Mattox
Clerk of Court

Yance Edward Eichelberger

SENTENCE

The defendant Yance Edward Eichelberger is
committed to the State Dept. of Corrections/County for a term of 3
months/years and/or to pay a fine \$ _____; provided upon the service of
7 months/years and/or payment of \$ 400⁰⁰, plus pay/waive
costs and assessments as applicable*, the balance suspended with probation for
5 months/years

Restitution For physical injury \$ _____
Yes / No Property damage \$ _____
to be paid _____

to clerk for _____ **

Other conditions Comply with terms of presently existing family court order
regarding the defendant and victim

Date NOV 30 1988

Presiding Judge

(See Probation Sentence)

* Costs and Assessments
Non-waivable \$ _____
Not waived \$ _____
Total \$ _____

Clerk of Court

* Pay to Victim's Compensation Fund if subrogated.

ACKNOWLEDGEMENT OF SENTENCE AND NOTICE TO REPORT

I, Nance Edward Fischelberger acknowledge that I have pled guilty to the offense of Lewd act upon child; indict No. 887-8400

and have received a sentence of 3 years and/or pay fine of _____ suspended upon service of 4 mos

years and/or pay fine of 400 and placed on probation for 5 years. Special Conditions:

Comply w/ terms of Family Ct order regarding def & vic
Pay @ 100 per mo

In Greenville County General Sessions Court before Judge Robert L. McFadden

I further understand that I must report to the South Carolina Probation and Parole Office located at 301 East North Street, Court House Annex, Greenville, South Carolina by _____

9:30 am/pm Dec 1 1988

[Signature]
(Witness)

[Signature]
(Probationer)

Assessments Waived Yes No
Pay in full within _____ days.
Defendant Screened Yes No

TO AMEND CHAPTER 3, TITLE 23 OF THE 1976 CODE, RELATING TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION, BY ADDING ARTICLE 7 SO AS TO CREATE A **SEX OFFENDER REGISTRY** WHICH REQUIRES STATE RESIDENTS WHO HAVE BEEN CONVICTED OF CERTAIN **SEX** OR OTHER OFFENSES TO REGISTER WITH THE SHERIFF OF THE COUNTY IN WHICH THEY RESIDE.

A. Chapter 3, Title 23 of the 1976 Code is amended by adding:

"Article 7

Sex Offender Registry

Section 23-3-400. The intent of this article is to promote the State's fundamental right to provide for public health, welfare and safety of its citizens. Notwithstanding this legitimate state purpose, these provisions are not intended to violate the guaranteed constitutional rights of those who have violated our nation's laws.

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.

Section 23-3-410. The **registry** is under the direction of the chief of the State Law Enforcement Division (SLED) and may be organized and structured in a manner as the chief considers appropriate to ensure the availability of information regarding the location of persons convicted of certain offenses. SLED shall develop and operate the **registry** to collect, analyze, and maintain information, to make information available to every enforcement agency in this State and in other states, and to establish a security system to ensure that only authorized personnel may gain access to information gathered under this article.

Section 23-3-420. The State Law Enforcement Division shall promulgate regulations prescribing:

- (1) procedures for accepting and disseminating information maintained;
- (2) the confidentiality of the data and information maintained in the **registry**;
- (3) the proper disposition of all obsolete data;
- (4) forms necessary for the efficient and proper operation of the **registry**.

Section 23-3-430. Any person, regardless of age, residing in the State of South Carolina who has been convicted in this State, or who has been convicted in any comparable court in the United States, or who has been convicted in the United States federal courts, of the offenses described below or of similar offenses in other jurisdictions shall be required to register pursuant to the provisions of this Article. For purposes of this article, a person convicted of any of these offenses shall be referred to as **offender**.

- (1) criminal sexual conduct in the first degree (Section 16-3-652)

- (2) criminal sexual conduct in the second degree (Section 16-3-653)
- (3) criminal sexual conduct in the third degree (Section 16-3-654)
- (4) criminal sexual conduct with minors (Section 16-3-655)
- (5) engaging a child for sexual performance (Section 16-3-810)
- (6) producing, directing or promoting sexual performance by a child (Section 16-3-820)
- (7) criminal sexual conduct: assaults with intent to commit (Section 16-3-656)
- (8) kidnapping (Section 16-3-910)
- (9) incest (Section 16-15-20)
- (10) buggery (Section 16-15-120)
- (11) indecent exposure (Section 16-15-130)
- (12) committing or attempting lewd act upon child under fourteen (Section 16-15-140)
- (13) eavesdropping or peeping (Section 16-17-470)
- (14) conspiracy to kidnap (Section 16-3-920)
- (15) violations of Article 3, Chapter 15 of Title 16 involving a minor which violations are felonies.

Section 23-3-440. (1) **Prior** to an **offender**'s release from the Department of Corrections after completion of the term of imprisonment, or being placed on parole, the Department of Corrections or the Department of Probation, Parole and Pardon Services, as applicable, shall notify the sheriff of the county where the **offender** intends to reside and SLED that the **offender** is being released and has provided an address within the jurisdiction of the sheriff for that county. The Department of Corrections shall provide verbal and written notification to the **offender** that he must register with the sheriff of the county in which he intends to reside within twenty-four hours of his release. Further, the Department of Corrections shall obtain descriptive information of the **offender**, including a current photograph **prior** to release.

(2) The Department of Probation, Parole and Pardon Services shall notify SLED and the sheriff of the county where an **offender** is residing when the **offender** is sentenced to probation or is a new resident of the State who must be supervised by the department. The Department of Probation, Parole and Pardon Services also shall provide verbal and written notification to the **offender** that he must register with the sheriff of the county in which he intends to reside. An **offender** who is sentenced to probation must register within ten days of sentencing. Further, the Department of Probation, Parole and Pardon Services shall obtain descriptive information of the **offender**, including a current photograph that is to be updated annually **prior** expiration of the probation sentence.

(3) The Department of Juvenile Justice shall notify SLED and the sheriff of the county where an **offender** is residing when the **offender** is released from a Department of Juvenile Justice facility or when the Department of Juvenile Justice is required to supervise the actions of the juvenile. The

Department of Juvenile Justice must provide verbal and written notification to the juvenile and his parent, legal guardian, or custodian that the juvenile must register with the sheriff of the county in which the juvenile resides. The juvenile must register within twenty-four hours of his release or within ten days if he was not confined to a Department of Juvenile Justice's facility.

(4) The Department of Corrections, the Department of Probation, Parole and Pardon Services, and the Department of Juvenile Justice shall provide to SLED the initial **registry** information regarding the **offender prior** to his release from imprisonment or relief of supervision. This information shall be collected in the event the **offender** fails to register with his county sheriff.

Section 23-3-450. The **offender** shall register with the sheriff of the county in which he resides. To register, the **offender** must provide information as prescribed by the SLED. The county sheriff shall then forward to SLED the **registry** information and any updated information regarding the **offender**. A copy of this information must be kept by the sheriff's department.

Section 23-3-460. Any person required to register under this article shall be required to register annually for a period of life. The **offender** shall register at the sheriff's department in the county where he resides.

If any person required to register under this article changes his address within the same county, that person must send written notice of the change of address to the county sheriff within ten days of establishing the new residence.

If any person required to register under this section changes his address into another county in South Carolina, the person must register with the county sheriff in the new county within ten days of establishing the new residence. The person must also provide written notice within ten days of the change of address in the previous county to the county sheriff with whom the person last registered.

If any person required to register under this article moves outside of South Carolina, the person must provide written notice within ten days of the change of address to a new state to the county sheriff with whom the person last registered. If any person required to register under this article moves to South Carolina from another state and is not under the jurisdiction of the State Department of Corrections, the State Probation and Parole Services, or the Department of Juvenile Justice at the time of moving to South Carolina, must register within sixty days of establishing residence, or re-establishing residence, if the person is a former South Carolina resident.

The South Carolina Department of Motor Vehicles shall inform in writing to any new resident who applies for a drivers license, a chauffeur's license, vehicle tag or a state identification card the obligation of those **offenders** to register.

Section 23-3-470. It is the duty of the **offender** to contact the sheriff in order to register. The failure of an **offender** to register as required by this article is a felony and, upon **conviction**, the **offender** must be:

(1) fined one thousand dollars and sentenced to a mandatory ninety days in jail for a first or second offense. In no event does the court have the power to absolve a person who willfully violates this section; and

(2) sentenced to a mandatory one year not to exceed five years imprisonment and may be fined one thousand dollars for a third or subsequent offense. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of serving at least one year of imprisonment.

Section 23-3-480. An arrest on charges of failure to register, service of an information, or a complaint for failure to register, or arraignment on charges of failure to register, constitutes actual notice of the duty to register. A person charged with the crime of failure to register who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice through arrest, service, or arraignment. Failure to register after notice as required by this article constitutes grounds for filing another charge of failure to register. Registering following arrest, service, or arraignment on charges does not relieve the **offender** from the criminal penalty for failure to register before the filing of the original charge.

Section 23-3-490. Information collected for the **offender registry** shall not be open to inspection by the public. The information shall be made available only to law enforcement, investigative agencies and those authorized by the court."

B. This section takes effect July 1, 1994.



SPARTANBURG COUNTY SHERIFF'S OFFICE

CHUCK WRIGHT, *Sheriff*

14 March 2019

Mr. Vance Edward Eichelberger,

Sir, it has been brought to our attention that you were convicted of Lewd Act Upon Child in Greenville County, SC on 11/30/1988. South Carolina is a life time registry state and there is no grandfather clause.

You will need to report to our office to register no later than 0700 18 March 2019. You will need to bring your SC drivers license and vehicle registration to all vehicles that you drive.

Failure to report to our office to register is an offense that would require a warrant to be issued for your arrest.

A handwritten signature in black ink, appearing to read "Debra Blanton".

**Master Deputy Debra Blanton
Sex Offender Registry Coordinator
Spartanburg County Sheriff's Office
8045 Howard Street
Spartanburg, SC 29303**

(office) 864-503-4643

*MIKE
GABRIEL
809-9294*



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

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-23-5360

**RESPONSE TO MOTION
 GRANTING RELIEF TO PLAINTIFF**

The Defendant’s motion essentially asserts that the Defendant did not have proper notice that a final ruling on this case would be considered by the Court and that it did not have proper notice. The Defendant’s motion then goes on to assert the same legal reasoning that it relied upon during the hearing as to why the Court should rule in the Defendant’s favor.

“As a general rule, a party must establish prejudice as the result of another's failure to comply with Rule 7(b)(1), SCRCP. See M&M Group, Inc. v. Holmes, 379 S.C. 468, 474, 666 S.E.2d 262, 265 (Ct. App. 2008) (subjecting Rule 7, SCRCP, to a prejudice analysis). To demonstrate prejudice in a matter involving allegedly insufficient notice, an appellant must establish if he or she had received appropriate notice, he or she would have done something different, thereby affecting the decision of the trial court and advancing his or her case. Gardner, 353 S.C. at 14, 577 S.E.2d at 197.” Chastain v. Hiltabidle, 381 S.C. 508 (Ct. App. 2009).

The Defendant’s motion fails to meet this test. In Defendant’s motion, the Defendant articulates a number of legal grounds in which it disagrees with the Court, however, it has not alleged that it would have argued any different facts were this case presented at a trial. In fact,

Defendant's attorney stated the following during the hearing: "I did just have a brief conversation with plaintiff's counsel in the hallway, and in large part, we're in agreement that there really aren't any factual issues in this matter that are up in the air or for dispute."

Transcript p. 3, lines 20-24. Defendant's attorney further stated that "... we really do agree that this one is properly determined by the Court as a matter of law." Transcript p. 4, lines 1-2. As such, Plaintiff respectfully requests that the Defendant's motion to set aside the Court's Order Removing Plaintiff from the Sex Offender Registry be denied.

/s/ Christopher D. Brough
CHRISTOPHER D. BROUGH
Attorney for the Plaintiff
S.C. Bar No.: 71856
275 East Henry Street
Spartanburg, SC 29306
(864) 585-3088

August 4, 2020

Christopher Brough

From: Stilwell, Robin B. <rstilwellj@sccourts.org>
Sent: Tuesday, September 1, 2020 11:50 PM
To: Ahearn, Paul; Christopher Brough
Cc: Stilwell, Robin B. Law Clerk ()
Subject: Re: [EXTERNAL] RE: Eichelberger v. Keel (Case No. 2019-CP-23-05360)

Thanks for clarifying. I have just executed the Amended Order on Reconsideration removing the 59(g) grounds. Have a great day.

Robin B. Stilwell
Judge, Thirteenth Judicial Circuit
305 East North St., Suite 315
Greenville, SC 29601
(864) 467-8406

From: Ahearn, Paul <pahearn@sled.sc.gov>
Sent: Tuesday, September 1, 2020 5:12:21 PM
To: Christopher Brough; Stilwell, Robin B.
Cc: Stilwell, Robin B. Law Clerk ()
Subject: RE: [EXTERNAL] RE: Eichelberger v. Keel (Case No. 2019-CP-23-05360)

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Stilwell,

I agree with Attorney Brough and think that the record demonstrates that we were all in agreement that there were no facts in controversy at the hearing (summary judgment would not have been appropriate otherwise). That said, I don't believe this issue was ever actually addressed or raised during this hearing, which is why we included that argument in our motion for reconsideration.

However, having fully considered the matter, it is SLED's position that there is no need for all parties to get together to re-litigate this issue or this matter and we would simply prefer to drop that argument and proceed on the merits on appeal in the interests of judicial economy.

Regards,
Paul

Paul T. Ahearn, III
Deputy General Counsel
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221-1398
Office: (803) 896-4395
Cell: (803) 638-1645

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

-----Original Message-----

From: Christopher Brough <christopherbrough@broughlaw.com>  
Sent: Tuesday, September 1, 2020 1:07 PM  
To: Stilwell, Robin B. <rstilwellj@sccourts.org>; Ahearn, Paul <pahearn@sled.sc.gov>  
Cc: Stilwell, Robin B. Law Clerk () <rstilwellc@sccourts.org>  
Subject: [EXTERNAL] RE: Eichelberger v. Keel (Case No. 2019-CP-23-05360)

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Judge Stilwell,

That was my understanding, as there were no facts in controversy.

Sincerely,

Christopher D. Brough, Esq.  
The Brough Law Firm  
275 East Henry Street  
Spartanburg, SC 29306  
Ph: (864) 585-3088  
Fax: (864) 585-3058

Attorney Profile for Christopher Brough

-----Original Message-----

From: Stilwell, Robin B. <rstilwellj@sccourts.org>  
Sent: Tuesday, September 1, 2020 1:03 PM  
To: Ahearn, Paul <pahearn@sled.sc.gov>; Christopher Brough <christopherbrough@broughlaw.com>  
Cc: Stilwell, Robin B. Law Clerk () <rstilwellc@sccourts.org>  
Subject: Re: Eichelberger v. Keel (Case No. 2019-CP-23-05360)

Gentlemen:

I have drafted an Amended Order denying the Motion for Reconsideration. In doing so, I re-read your respective submissions. (As you may know, I am not in optimal circumstances as I am deployed to Kuwait currently.) I was under the impression at the hearing that both parties wanted me to make a dispositive ruling. After reading the motion and

response, it occurs to me that perhaps I was mistaken. I agree with the State that if all that was before the Court was a motion for Summary Judgment by the Defendant, the appropriate adjudication would simply be a denial of the same based upon the applicable Summary Judgment standard. Honestly, I thought both parties were asking for a dispositive ruling.

Please advise if I am mistaken. If so, I will amend the order to a standard denial and the parties can continue proceedings in the Circuit Court.

Robin B. Stilwell  
Judge, Thirteenth Judicial Circuit  
305 East North St., Suite 315  
Greenville, SC 29601  
(864) 467-8406

---

From: Ahearn, Paul <pahearn@sled.sc.gov>  
Sent: Friday, August 28, 2020 2:56:07 PM  
To: Stilwell, Robin B.  
Cc: Stilwell, Robin B. Law Clerk (); Christopher Brough  
Subject: Eichelberger v. Keel (Case No. 2019-CP-23-05360)

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\* Judge Stilwell,

I hope this email finds you well. In regards to your second ground for denying SLED's Motion to Alter or Amend the Grant of Relief to Plaintiff in Eichelberger v. Keel (Case No. 2019-CP-23-05360), please know that I reviewed my hard copy case file in this matter and located a copy of the letter that was mailed to your office on July 29, 2020 to satisfy the requirement of Rule 59(g). I have attached the same to this email.

Regards,  
Paul

Paul T. Ahearn, III  
Deputy General Counsel  
South Carolina Law Enforcement Division  
Post Office Box 21398  
Columbia, South Carolina 29221-1398  
Office: (803) 896-4395  
[sled photo]

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

NOV 25 2020

SC Court of Appeals

Robin B. Stilwell, Circuit Court Judge

Appellate Case No.: 2020-001297
Trial Court Case No.: 2019-CP-23-05360

Vance Eichelberger.....Respondent,

v.

Mark Keel, in his official Capacity as Chief of the
South Carolina Law Enforcement Division.....Appellant.

PROOF OF SERVICE

I hereby certify that I served the **Initial Brief of Respondent** and **Respondent's Designation of Matter to be Included in the Record of Appeal** on the Appellant by depositing a copy of the same in the United States mail, postage prepaid, and addressed to counsel of record as follows:

Paul T. Ahearn, III
Post Office Box 21398
Columbia, SC 29211-1398

On November 23, 2020, from Spartanburg, South Carolina.

By:



Christopher D. Brough, Esquire
275 East Henry Street
Spartanburg, SC 29306
(864) 585-3088
S.C. Bar Number: 71856



November 23, 2020

RECEIVED

NOV 25 2020

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629

Re: Vance Eichelberger v. Mark Keel, et al.
Appellate Case No.: 2020-001297

Dear Madam Clerk:

In accordance with SCACR Rules 208 and 209, enclosed for filing is the **Initial Brief of Respondent** and **Respondent's Designation of Matter to be Included in the Record on Appeal**. I have also enclosed the original **Proof of Service** for the same.

If you should have any questions or concerns, please feel free to contact me at (864) 585-3088 or via email at christopherbrough@broughlaw.com.

Sincerely,

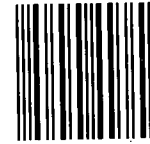
Christopher D. Brough
The Brough Law Firm

Enclosures - listed in text

Cc: Paul T. Ahearn, III, Esquire



1000

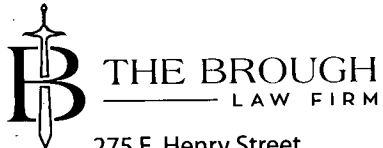


29211

U.S. POSTAGE PAID
FCM LG ENV
SPARTANBURG, SC
29306
NOV 23, 20
AMOUNT

\$2.20

R2305H126896-3



THE BROUGH
LAW FIRM

275 E. Henry Street
Spartanburg, SC 29306

RECEIVED

NOV 25 2020

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629