

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable DeAndrea G. Benjamin, Circuit Court Judge

Case No: 2019-000088

Edward L. Green.....Appellant

v.

**Mark Keel, Director of the South Carolina Law Enforcement Division and the State of
South CarolinaRespondent**

FINAL BRIEF OF APPELLANT

**Charles T. Brooks, III
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TABLE OF AUTHORITIES

Black's Law Dictionary, 6th Ed (1999)

STATEMENT OF ISSUES ON APPEAL

1. **DID THE TRIAL COURT ERR BY GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BECAUSE A GENUINE ISSUE EXISTS AS TO THE MATERIAL FACT REGARDING VIABLE REMEDIES AVAILABLE FOR THIS APPELLANT FOR REMOVAL FROM THE SOUTH CAROLINA SEX OFFENDER REGISTRY?**
2. **DID THE TRIAL COURT ERR BY GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT DETERMINING THE APPELLANT'S ACTION WAS BARRED BY *RES JUDICATA*?**

STATEMENT OF THE CASE

This case was initiated by Appellant filing on January 12, 2018, a Summons and a Petition for Declaratory Judgment (ROA pp 23-29) for equitable relief for removal from the registry requirements under "Megan's Law", mandating registration with the South Carolina Sex Offender Registry. The Appellant's Petition was based in part on the issued Order for Destruction of Arrest Records (ROA p. 1) as filed with the Richland County Clerk of Court's Office on March 20, 2016.

The Appellant, Edward Green, was convicted under the Youth Offender Act in 2005 of Lewd Act Upon a Minor. Under the terms of his conviction the Appellant applied for relief under the Youth Offender Act to the Solicitor's offices in 2015. The Appellant's Order Authorizing the Destruction of Arrest Records was issued in March 2016 (ROA p 1). The Appellant believes that the granted expungment erases the arrest and conviction of the Appellant and this now expunged

matter was the sole reason for the Appellant's inclusion on the South Carolina Sex Offender Registry.

The Respondents filed an Answer (ROA pp 30-44) with the Court on March 22, 2018, generally denying the allegations in Appellant's Petition and asserting a defense of *Res Judicata*. Respondents then filed a Motion for Summary Judgment (ROA pp 44-46) on August 21, 2018, asserting that the Appellant has no genuine issue of fact in dispute in this matter and were not entitled to equitable relief because the statute governing removal from the Registry provides an adequate remedy at law for removal from the Sex Offender Registry.

A hearing was held on October 1, 2018, on the Respondents'/Defendants' Motion for Summary Judgment before the Honorable DeAndrea G. Benjamin. The Court entered judgment in favor of the Respondent/Defendant's Motion concluding that the Appellant was not entitled to any equitable remedy and that no equitable jurisdiction applied to the relief the Appellant sought. This appeal follows.

ARGUMENT

An expungment is a process by which record of criminal conviction is destroyed or sealed from the State and/or Federal repository (Black's Law Dictionary, p. 582, 6th Ed. 1999). When an expungment is granted, the person whose record is expunged may treat the event as if it never occurred. It is undisputed that the Appellant was granted an expungment by the Court in March 2016 for the offense in 2005. The destruction of these records and the conviction means

that it no longer exists and therefore the Appellant has no conviction for which to continue to register with the South Carolina Sex Offender Registry.

The Appellant filed a previous action in 2015 seeking relief and removal from the South Carolina Sex Offender Registry. At the time of the filing of the initial action of the Appellant filed in 2015, the Appellant had not yet been granted an expungement by the Court. The Appellant was granted an expungement until during the pendency of the appeal of the 2015 matter and as such the Appellant was not able to present arguments regarding the expungement of his conviction under the already pending appeal.

1. THE TRIAL COURT ERRED BY GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BECAUSE A GENUINE ISSUE EXISTS AS TO THE MATERIAL FACT REGARDING VIABLE REMEDIES AVAILABLE FOR THIS APPELLANT FOR REMOVAL FROM THE SOUTH CAROLINA SEX OFFENDER REGISTRY?

The statutory provisions specify removal is possible in limited situations such as the reversal of a conviction, a specific pardon of not guilty, or exoneration through a new trial or a writ of habeas corpus; none of which apply to Appellant's situation. The Appellant's expungement should equate to a reversal of his conviction as it constitutes the destruction of his arrest records thereby extinguishing the necessity to further be included on the Registry, as the Appellant has no longer been convicted of any crime of a sexual nature.

After considering the arguments of the parties, the Trial Court concluded that there was no genuine issue of material fact to suggest that Appellant/Plaintiff meets any of the statutory grounds for removal from South Carolina's Sex Offender Registry law, which mandates lifetime

registration. Accordingly, the Trial Court concluded that the Respondents/Defendants were entitled to judgment as a matter of law. The Trial Court erred in granting the Respondents' Motion because the issue here, specifically as it relates to the motion, is the fact that Appellant does have a genuine issue raised in his Petition and as evidenced by his Order for expungement and does not have an adequate or complete remedy at law for removal from the Registry because the statutory provisions are not a complete and adequate remedy at law, especially when the statutory provision do not include any review mechanisms for lifelong registration, therefore equitable relief in this matter, would be appropriate.

**2. THE TRIAL COURT ERRED BY GRANTING
RESPONDENT'S MOTION FOR SUMMARY
JUDGMENT DETERMINING THE APPELLANT'S
ACTION WAS BARRED BY *RES JUDICATA*?**

The trial Court erred in a finding of *Res Judicata* in this matter. The Appellant filed a previous action in 2015 seeking relief and removal from the South Carolina Sex Offender Registry. At the time of the filing of the initial action of the Appellant filed in 2015, the Appellant had not yet been granted an expungement by the Court. The Appellant was granted an expungement until during the pendency of the appeal of the 2015 matter and as such the Appellant was not able to present arguments regarding the expungement of his conviction under the already pending appeal.

CONCLUSION

For all of the foregoing reasons, the Order Granting Judgment on the Pleadings of the Trial Court should be reversed and/or remanded for a full hearing on the disputed issues, and for the granting of any other remedy that is just and proper in this case.

RESPECTFULLY SUBMITTED,



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