

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

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

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Vance Eichelberger

Respondent,

v.

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

Appellant.

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RECORD ON APPEAL

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**ATTORNEYS FOR APPELLANT**

**RECEIVED**

**Jan 22 2021**

**SC Court of Appeals**

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**ATTORNEY FOR RESPONDENT**

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

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-23-5360

**ORDER OF REMOVAL  
FROM SEX OFFENDER REGISTRY**

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

**Stipulated Facts**

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

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

### **Legal Analysis**

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

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

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

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

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

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

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

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

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

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

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

#### Conclusion

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

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

**IT IS SO ORDERED.**

---

Robin B. Stilwell  
Circuit Court Judge

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



Greenville Common Pleas

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

**Case Number:** 2019CP2305360

**Type:** Order/Summary Judgment

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2020-07-15 15:26:44 page 7 of 7





Greenville Common Pleas

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

**Case Number:** 2019CP2305360

**Type:** Order/Other

So Ordered

s/ Robin B. Stilwell 2158

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Greenville Common Pleas

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

**Case Number:** 2019CP2305360

**Type:** Order/Amend

So Ordered

s/Alex Kinlaw, Jr., #2763

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Vance Eichelberger, )  
 )  
Plaintiff, )

Case No.: 2019-CP-23-\_\_\_\_\_

vs. )

SUMMONS

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

Defendants. )  
 )  
\_\_\_\_\_ )

**TO: THE DEFENDANTS ABOVE-NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to the said Plaintiff or her attorney, Christopher D. Brough, at 275 E. Henry St., Spartanburg, South Carolina, 29306, within thirty (30) days after the service, thereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief sought in the Complaint.

THE BROUGH LAW FIRM

/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

Dated: 9/10/19

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-\_\_\_\_\_

**COMPLAINT FOR REMOVAL  
 FROM SEX OFFENDER REGISTRY**

**NOW COMES** the Plaintiff above-named, complaining of the defendants herein, and would respectfully show unto this Honorable Court as follows:

1. That the Plaintiff, Vance Eichelberger, is a citizen and resident of the county of Spartanburg, State of South Carolina.
2. That the Defendant Mark Keel is the current Chief of the South Carolina State Law Enforcement Division, an organization designed to enforce the laws of the State of South Carolina.
3. The Defendant State of South Carolina through the Greenville County Solicitor’s Office prosecuted Plaintiff on the charge he was convicted of in 1988.

Factual Allegations

4. That on November 30, 1988, Plaintiff pled guilty in Greenville County to Lewd Act Upon a Child in front of the Honorable Robert L. McFadden.
5. Plaintiff was sentenced to a term of imprisonment of 3 years suspended upon the service of 4 months followed by 5 years of probation with the additional special condition that he comply with the terms of his existing family court order regarding his contact with the victim (see attached – Exhibit 1).

6. Plaintiff successfully completed his suspended sentence prior to July 1, 1994, and was no longer under the supervision of the South Carolina Department of Probation and Parole on July 1, 1994, the date the sex offender registry first became the law of the State of South Carolina.

7. The State of South Carolina enacted the original version of the sex offender registry which became effective on July 1, 1994.

8. Pursuant to S.C. Code Section 23-3-410 the sex offender registry is under the direction and control of the Defendant Keel (hereinafter "Keel"), as Chief of the South Carolina Law Enforcement Division.

9. Under the original version of the sex offender registry pursuant to S.C. Code Section 23-3-440 (4), the offender's information was required to be sent to the South Carolina Law Enforcement Division by the Department of Corrections, the Department of Probation, Pardon and Parole Services, or the Department of the Juvenile Justice, prior to the offender's release from prison or relief of supervision. The offender is also required to be notified before his release from prison or when he is placed on probation of his obligation to register as a sex offender pursuant to S.C. Code Section 23-3-440.

10. Plaintiff was notified on March 14, 2019 pursuant to a letter from Master Deputy Debra Blanton of the Spartanburg County Sherriff's Office (see attached – Exhibit 2) that he was required to register as a sex offender based upon his conviction from November 30, 1988.

11. Since being released from probation, Plaintiff has maintained a good job working at Siemens Energy for over 11 years and has had no additional criminal charges.

12. Plaintiff's job requires him to be able to leave the State of South Carolina in order to travel to different job sites.

13. Since 1994, the sex offender registry laws have undergone several revisions, with the current version of the registry being effective on April 2, 2015.

14. Under the current version of S.C. Code Section 23-3-430, the crime of Lewd Act Upon a Child is not specifically listed as an offense that would qualify someone as being a sex offender.

15. Under the current version of S.C. Code Section 23-3-430 (D), offenses not specifically enumerated can result in registration if the presiding Judge at sentencing orders sex offender registration as a condition of the individual's sentence.

16. The Judge did not require sex offender registration for Plaintiff at the time of Plaintiff's plea in 1988.

17. Plaintiff contends that his name should be removed from the sex offender registry as there is no legal basis for placing his name on the registry under State Law.

First Basis for Removal from Registry

18. All previous paragraphs are re-alleged and incorporated herein.

19. There is no provision under State Law allowing for the Sheriff's Office of any county to notify Plaintiff that he is required to register as a sex offender 26 years after Plaintiff has been released from custody and supervision by the State.

20. While there is a retroactive application for individuals convicted before the enactment of the registry and still under an active sentence at the time of their release, under S.C. Code Section 23-3-440, both as originally enacted in 1994 and as it stands currently, offender's information is required to be forwarded to the South Carolina Law Enforcement Division to be put on the registry before the offender is released from prison or supervision by the listed agencies of the Department of Corrections, the Department of Probation, Parole, and Pardon Services, or the Department of Juvenile Justice.

21. As such, Plaintiff's name being added to the registry by the Spartanburg County Sheriff's Office 26 years after his release from custody and supervision by the State was unlawful

and Plaintiff's name should be removed from the sex offender registry.

Second Basis for Removal from Registry

22. All previous paragraphs are re-alleged and incorporated herein.

23. Pursuant to the current version of S.C. Code Section 23-3-430 (C), the crime that the Plaintiff was convicted of is not listed as an offense requiring sex offender registration.

24. At the time of the Plaintiff sentencing, he was not ordered to register as a sex offender.

25. Plaintiff has never had any additional hearings where he was ordered by the sentencing Judge to register as a sex offender after the enactment of the Sex Offender Registry.

26. As such, Plaintiff is not required to register as a sex offender and his name being added to the registry is unlawful.

27. Plaintiff's name should be removed from the sex offender registry.

**WHEREFORE**, the Plaintiff prays unto this Honorable Court as follows:

- (a) For an order of the Court requiring the Defendants to remove Plaintiff's name from the sex offender registry;
- (b) For Such other and further relief as this Court may deem just and proper.

/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

September 10, 2019

EXHIBIT 1

FORM 16 (9/86)

STATE OF SOUTH CAROLINA )  
COUNTY OF \_\_\_\_\_ )

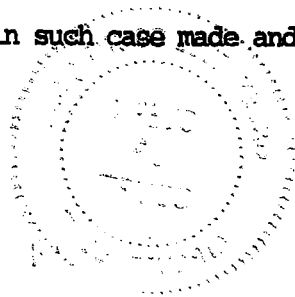
INDICTMENT FOR LEWD ACT UPON CHILD

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 Eichelberger,  
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

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NOW COMES THE DEFENDANT

Vance Edward Eichelberger

Who in open Court pleads guilty to the within indictment:

Waived finding of True Bill by GRAND JURY  
and consents to sentence this 30 day of Nov 1988

ATTEST:

Caroline W. Mattox  
Clerk of Court

Vance Edward Eichelberger

SENTENCE

The defendant Vance 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 4 months/~~years~~ and/or payment of \$ 400<sup>00</sup>, 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, Vance Edward Fichelberger acknowledge that I have pled guilty to the offense of Lewd act upon Child; Indict No. 85# 6400 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/ <sup>terms</sup> presently existing 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 Dec 1 1988

R. [Signature]  
(Witness)

V. Edward Fichelberger  
(Probationer)

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

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**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.**

**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*



*An Accredited Law Enforcement Agency*  
**P.O. BOX 771 • SPARTANBURG, SOUTH CAROLINA 29304 • (864) 503-4500**

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT  
Case No.: 2019-CP-23-05360

Vance Eichelberger, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Mark Keel in his official capacity as Chief )  
of the South Carolina Law Enforcement )  
Division )  
 )  
Defendant. )  
\_\_\_\_\_ )

**ANSWER**

Defendant Mark Keel in his official capacity as Chief of the South Carolina Law Enforcement Division (SLED), hereby answers the Complaint of the 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**  
Improper Venue

The Complaint was improperly filed in Greenville County and should be dismissed pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure. Specifically, the Plaintiff resides in Spartanburg County and registers as a sex offender with the Spartanburg County Sheriff's Office. Further, the South Carolina Law Enforcement Division's Headquarters is in Richland County. As such, venue is improper in Greenville and this Complaint should be dismissed. In the alternative, venue should be changed to an appropriate county with jurisdiction.

**FOR A THIRD DEFENSE**  
Response to Allegations

1. SLED 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 in that Mark Keel is the Chief of the South Carolina Law Enforcement Division, a law enforcement entity that does enforce the laws of the State of South Carolina. Additionally, Defendant would aver that the South Carolina Sex Offender Act (SORA) registry is under the direction of the Chief of SLED.
4. Paragraphs three (3), four (4), and five (5) are admitted upon information and belief.
5. Defendant is without information to admit or deny Paragraph six (6) and would therefore deny the same.
6. Paragraphs seven (7) and eight (8) are admitted upon information and belief.
7. Paragraph nine (9) contains conclusory statements of law to which no response is necessary. However, to the extent a response is required, Defendant craves reference to South Carolina's Sex Offender Registry and all other law applicable in this matter, and Defendant denies any allegation inconsistent therewith. Further, Defendant would aver that S.C. Code Ann. § 23-3-430 is the operative statute regarding the requirement to register in South Carolina and does in fact require registration in this instance.
8. Paragraph ten (10) is admitted on information and belief. Further, the Defendant would aver that the Plaintiff's statutory requirement to register in accordance with S.C. Code Ann. § 23-3-430 arose in 1994 and has existed since that time. This requirement existed statutorily and was merely confirmed when the Plaintiff signed the "statement of conviction" on March 30, 2019, in

which he acknowledged his obligation to register for life as a Sex Offender in the State of South Carolina. *See* Attachment 1.

9. The Defendant is without specific information from which to admit or deny the allegations of Paragraph eleven (11) to the extent they are characterizations of the Plaintiff's job history upon which the Defendant has no knowledge and would therefore deny the same. Moreover, Defendant denies that the Plaintiff has had no additional criminal charges. The Plaintiff alleges in Paragraph six (6) that he completed his suspended sentence and probation prior to July 1, 1994. However, upon information and belief, the Defendant was convicted in Greenville County in 2005 of "Fraudulent Check".

10. The Defendant is without specific information from which to admit or deny the allegations of Paragraph twelve (12) to the extent they are characterizations of the Plaintiff's job history upon which the Defendant has no knowledge and would therefore deny the same. Moreover, Defendant would aver that sex offender registration would not prohibit the Plaintiff from leaving the State of South Carolina to travel to different job sites.

11. To the extent the allegation of Paragraph thirteen (13) is a synopsis of the legislative history of the South Carolina Sex Offender Registry, no response is necessary. However, to the extent a response is required, Defendant craves reference to all law applicable in this matter, and Defendant denies any allegation inconsistent therewith.

12. As to Paragraph fourteen (14), Defendant admits that S.C. Code Ann. § 16-15-140 was repealed by the South Carolina Legislature. However, the Defendant would aver that this provision was repealed and replaced by S.C. Code Ann. § 16-3-655(C) in a general recodification of sex offenses by the General Assembly. As such, pursuant to S.C. Code Ann. § 23-3-430(C), the Crime of Lewd Act Upon a Child is now Criminal Sexual Conduct with a Minor in the Third

Degree. *See State v. Ross*, 423 S.C. 504, 815 S.E.2d 752 (2018). Accordingly, the Plaintiff is lawfully required to register as a sex offender.

13. To the extent the allegations of Paragraph (15) are conclusory statements of law, no response is necessary. However, to the extent a response is required, Defendant craves reference to all law applicable in this matter, and Defendant denies any allegation inconsistent therewith.

14. Paragraph (16) is admitted upon information and belief. Furthermore, the Defendant would aver that the South Carolina Sex Offender Registry did not exist at the time of the Plaintiff's conviction. In addition, Lewd Act Upon a Child was an enumerated mandatory registry offense in accordance with S.C. Code Ann. § 23-3-430 in 1994 and the Plaintiff's statutory requirement to register has existed since that time.

15. Paragraph seventeen (17) is denied.

16. Paragraph eighteen (18) is a statement to which no response is required or necessary. However, Defendant would incorporate all of its responses to the previous paragraphs.

17. Paragraphs nineteen (19), twenty (20), and twenty-one (21) are denied. Furthermore, Defendant craves reference to all applicable South Carolina Law and jurisprudence in this matter.

18. Paragraph (22) is a statement to which no response is required or necessary.

19. As to Paragraph twenty-three (23), Defendant admits that S.C. Code Ann. § 16-15-140 was repealed by the South Carolina Legislature. However, the Defendant would aver that this provision was repealed and replaced by S.C. Code Ann. § 16-3-655(C) in a general recodification of sex offenses by the General Assembly. As such, pursuant to S.C. Code Ann. § 23-3-430(C), the Crime of Lewd Act Upon a Child is now Criminal Sexual Conduct with a Minor in the Third Degree. *See State v. Ross*, 423 S.C. 504, 815 S.E.2d 752 (2018). Accordingly, the Plaintiff is lawfully required to register as a sex offender.

20. Paragraph twenty-four (24) and twenty-five (25) are admitted upon information and belief.

21. Paragraph twenty-six (26) and twenty-seven (27) are denied. Moreover, it is particularly noteworthy that the only grounds for removal from the South Carolina Sex Offender Registry are found in S.C. Code Ann. § 23-3-430 (E), (F), and (G), and the Plaintiff has not met any of the aforementioned criteria for removal.

**FOR A FOURTH DEFENSE**  
Proper Inclusion on the Registry

22. The Defendant would aver that the Plaintiff's inclusion on the South Carolina Sex Offender Registry is proper, constitutional, and in accordance with South Carolina law. Accordingly, the Defendant is informed and believes that this action should be dismissed.

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,

s/ Paul T. Ahearn III  
Paul T. Ahearn, III, Esquire  
Litigation Counsel  
South Carolina Law Enforcement Division  
Post Office Box 21398  
Columbia, South Carolina 29221-1398  
Phone: (803) 896-4395  
Email: pahearn@sled.sc.gov  
S.C. Bar Number: 103321

ATTORNEY FOR MARK KEEL, CHIEF, AND THE  
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

COLUMBIA, SOUTH CAROLINA  
NOVEMBER 18, 2019



# SPARTANBURG COUNTY SHERIFF'S OFFICE

CHUCK WRIGHT, Sheriff

## STATEMENT OF CONVICTION

I Vance Eichelberger acknowledge that on Nov. 30, 1988 in Greenville County, SC I was convicted of or entered a plea to Lewd Act upon a child.

I also acknowledge that having been convicted of or having entered a plea to Lewd Act Upon a Child that I am required to register with the South Carolina Sex Offender Registry for life. All terms and requirements of this conviction or plea, to include penalties for failure to comply, which requires that I register as a sex offender have been explained to me to my satisfaction.

V E Eichelberger Registrant's Signature

Victoria Hart Sex Offender Registry Unit SCSO

Date: 3-20-19



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT  
Case No.: 2019-CP-23-05360

Vance Eichelberger, )  
 )  
Plaintiff, )

v. )

**MOTION FOR SUMMARY  
JUDGMENT**

Mark Keel in his official capacity as )  
Chief of the South Carolina Law )  
Enforcement Division )

Defendants. )

TO: CRISTOPHER BROUGH, ESQUIRE

PLEASE NOTE THAT the Defendants move for summary judgment, pursuant to Rule 56(a), SCRCF, as there is no genuine issue of material fact in dispute in this matter. Further, there is no factual dispute requiring the services of a fact finder. Accordingly, Defendants are entitled to judgment as a matter of law. See George v. Fabri, 345 S.C 440, 452, 548 S.E.2d 868, 872 (2001); Rule 56(c). The Plaintiff petitioned this court for removal from the South Carolina Sex Offender Registry. South Carolina’s Sex Offender Registry statutes make it clear that the Plaintiff is required to register and does not meet any of the statutory mechanisms or avenues for removal from the Sex Offender Registry. See S.C. Code Ann. § 23-3-410, *et seq.* The Defendants will submit a memorandum in support of this motion near the date of the hearing.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

/s/ Paul T. Ahearn III

PAUL T. AHEARN III

Litigation Counsel

South Carolina Law Enforcement Division

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S.C. Bar Number: 74888

**ATTORNEYS FOR MARK KEEL, CHIEF,  
SOUTH CAROLINA LAW ENFORCEMENT  
DIVISION**

FEBRUARY 10, 2020

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT  
 Case No.: 2019-CP-23-05360

Vance Eichelberger, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Mark Keel, Chief, )  
 State Law Enforcement Division, )  
 )  
 )  
 )  
 Defendant. )

**MEMORANDUM IN SUPPORT OF  
 SUMMARY JUDGMENT**

PLEASE TAKE NOTICE THAT the Defendant South Carolina Law Enforcement Division by and through Chief Mark Keel (hereinafter “SLED”), by and through its undersigned attorneys, hereby move this Honorable Court for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure in this matter. The grounds for this motion and arguments in support thereof are as follows:

**STANDARD OF REVIEW**

A motion for summary judgment shall be granted “if the pleadings... show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) *citing* Rule 56(c), SCRCP (emphasis in original).

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976).

## FACTUAL BACKGROUND

The Plaintiff was arrested for Criminal Sexual Conduct with a minor in the second Degree on April 22, 1988. The arrest report reads:

Affiant has a formal written statement which was given by a thirteen year old female that implicates the defendant. In the statement the victim indicated the defendant did perform digital vaginal intercourse on her against her will. The victim identified the defendant to be her stepfather and stated this occurred at her residence which is [omitted].

A copy of this arrest warrant is attached hereto and identified as “Attachment 1 (Arrest Warrant)”. Thereafter, on November 30, 1988, the Plaintiff pled guilty to Lewd Act Upon a Minor. The sentencing sheet for this plea is attached hereto and identified as “Attachment 2 (Sentencing Sheet)”.

At the time of the above mentioned conviction, the South Carolina Sex Offender Registry (SORA) was not yet law. However, it is particularly noteworthy that SORA has been upheld to apply retroactively by the South Carolina Supreme Court and this is well established precedent in this state. Accordingly and properly, the plaintiff acknowledged his obligation to register as a sex offender and began doing so in March of 2019.

In addition, upon information and belief, the Plaintiff did not appeal his 2009 conviction or sentence. Moreover, the Plaintiff did not apply for post-conviction relief challenging the sufficiency of the legal representation for his criminal matter or any other matter that could be challenged through post-conviction relief. The Plaintiff has not sought a pardon for his conviction. The Plaintiff has not filed a petition for a writ of habeas corpus or a motion for new trial pursuant to Rule 29(b), South Carolina Rules of Criminal Procedure. Accordingly, the Plaintiff’s conviction has not been reversed, overturned or vacated on appeal. As such, the Plaintiff does not meet any of the statutory criteria for removal set forth in South Carolina law.

## ARGUMENTS

Based on the following, there is no genuine issue of material fact in dispute in this matter. Further, there is no factual dispute requiring the services of a fact finder. Accordingly, Defendants are entitled to a judgment as a matter of law. *See* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Rule 56(c), SCRPC.

### **LEWD ACT ON A MINOR IS A MANDATORY REGISTRATION OFFENSE THAT REQUIRES MR. EICHELBERGER TO REGISTER AS A SEX OFFENDER**

Plaintiff's sex offense, formerly called Lewd Act on a Minor and now recognized as Criminal Sexual Conduct with a Minor – Third Degree (“CSCM-Third”), requires him to register as a sex offender. *See* S.C. Code Ann. § 23-3-430(C)(6). *Compare* S.C. Code Ann. § 16-15-140 (repealed) *with* S.C. Code Ann. § 16-3-655(C).<sup>1</sup>

Legislative history confirms this logical conclusion. When Lewd Act on a Minor was repealed, the legislature made clear that CSCM – Third was replacing it in nearly every respect:

AN ACT TO AMEND SECTION 16-3-655, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CRIMINAL SEXUAL CONDUCT WITH A MINOR OFFENSES, SO AS TO CREATE THE OFFENSE OF CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE WHEN THE ACTOR IS OVER THE AGE OF FOURTEEN AND COMMITS CERTAIN ACTS WITH A CHILD UNDER THE AGE OF SIXTEEN,... **TO AMEND SECTION 23-3-430, AS AMENDED, RELATING TO THE SEX OFFENDER REGISTRY**, TO AMEND SECTION 23-3-490, AS AMENDED, RELATING TO PUBLIC INSPECTION OF THE SEX OFFENDER REGISTRY, TO AMEND SECTION 23-3-540, AS AMENDED, RELATING TO ELECTRONIC MONITORING OF PERSONS CONVICTED OF CERTAIN CRIMINAL SEXUAL CONDUCT WITH A MINOR OFFENSES, ...AND TO AMEND SECTION 63-7-2360, RELATING TO PLACEMENT OF MINOR SEX OFFENDERS PURSUANT TO THE CHILDREN'S CODE, ALL SO AS TO

<sup>1</sup> “It shall be unlawful for any person over the age of fourteen years to wilfully and lewdly commit or attempt any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child . . . .” *State v. Hardee*, 279 S.C. 409, 412, 308 S.E.2d 521, 524 (1983) (quoting S.C. Code Ann. § 16-15-140).

MAKE CONFORMING AMENDMENTS TO REFERENCE APPROPRIATE CRIMINAL SEXUAL CONDUCT WITH A MINOR OFFENSES AND TO DELETE REFERENCES TO THE FORMER LEWD ACT UPON A CHILD UNDER THE AGE OF SIXTEEN; AND TO REPEAL SECTION 16-15-140 RELATING TO COMMITTING OR ATTEMPTING TO COMMIT A LEWD ACT UPON A CHILD UNDER THE AGE OF SIXTEEN.

South Carolina Bill History, 2012 Reg. Sess. H.B. 3667 (emphasis added).

Additionally, the South Carolina Supreme Court has repeatedly acknowledged the equivalency of the former lewd act on a minor and CSCM-Third in appeals concerning the sex offender registry. *See State v. Nation*, 408 S.C. 474, 477, 759 S.E.2d 428, 430 (2014), *abrogated on other grounds by State v. Ross*, 423 S.C. 504, 815 S.E.2d 754 (2018) (“At the time of Appellant’s indictment, section 16–15–140 codified the crime of ‘lewd act upon a child under sixteen.’ S.C. Code Ann. § 16–15–140 (1996). However, the General Assembly later renamed this crime CSCM–Third and re-codified it in S.C. Code Ann. § 16–3–655(C) (Supp. 2010). For ease of reference, we refer to ‘lewd act upon a child under sixteen’ as CSCM–Third.”); *See also State v. Ross*, *Id.* (“His conviction for lewd act—which is now reclassified as criminal sexual conduct (CSC) with a minor in the third degree<sup>1</sup>—is the only sexual offense of which Ross has been convicted....In 1979, the crime of lewd act upon a child was codified in section 16-15-140 of the South Carolina Code (1976) (repealed 2012). CSC with a minor in the third degree is codified in subsection 16-3-655(C) of the South Carolina Code (2015)”.)

Mr. Eichelberger’s complaint attempts to draw a distinction between SORA as it was originally passed in 1994, and SORA as it currently exists, after numerous amendments. While the current provisions of the sex offender registry act control, at all times and through all iterations, Mr. Eichlberger’s conviction required him to register as a sex offender. In 1994, S.C Code Ann. § 23-3-430(12) provided that a conviction for committing or attempting lewd act upon child under fourteen (Section 16-15-140) was a mandatory registrable offense. *See* 1994 South Carolina Laws

Act 497 (H.B. 4820). There is no factual dispute that Lewd Act on a Minor is the offense that the plaintiff pled guilty to in 1988. *See* Attachment 2. As discussed above, the current version of the Sex Offender Registry also requires Mr. Eichelberger to register. *See* S.C. Code Ann. § 23-3-430(C)(6).

Plaintiff's sex offense, committing a Lewd Act on a Minor, is, for all intents and purposes, the same thing as CSCM–Third, and is a mandatory registration offense. Not only has such equivalency been recognized by the South Carolina Supreme Court, but it was also the clear intent of the General Assembly to replace § 16-15-140 with § 16-3-655(C). Since the inception of the registry, this crime has been a mandatory registry offense, and continues to be so to this day. Stated plainly, Plaintiff must register as a sex offender for this offense and his obligation. His obligation to do so was lawfully triggered upon the passage of this law in 1994, and continues today.

### **THE SOUTH CAROLINA SEX OFFENDER REGISTRY APPLIES RETROACTIVELY AND REGISTRATION IS FOR LIFE**

The Plaintiff's contentions in this matter rest on the flawed premise that the registry cannot be applied retroactively applied to individuals after their sentence and supervision have ended, and that the only avenue of notice to provide a convicted person of their obligation to register exists in S.C. Code Ann. § 23-3-440. This argument is flawed and without legal merit. The binding precedent of this State can be found in State v. Walls, which is a South Carolina Supreme Court decision largely analogous to the action brought by the plaintiff in this matter. 348 S.C. 26, 558 S.E.2d 524 (2002). The Supreme Court in Walls held that an individual who committed a sexual offense in offense in 1973, prior to the enactment of the sex offender registry, was lawfully required to register as a sex offender. Specifically, the court stated that

Pursuant to S.C. Code Ann. § 23–3–480(B) (Supp.2000), a person convicted of an offense provided in S.C. Code Ann. § 23–3–430 (Supp.2000) prior to July 1, 1994, and who was released from custody prior to that date will not suffer the penalties enumerated in section 23–3–470 for failing to register. However, if that person has been served notice of the duty to register, then section 23–3–470 does apply. Accordingly, because appellant was given notice of the duty to register, he was required to register.

*See Id.* The Supreme Court in Walls makes clear that the registry applies retroactively to people released from custody prior to the enactment of the registry, like Mr. Eichelberger. They further explain that lack of notice does not excuse someone from the requirement to register, but only provides that they cannot be criminally charged for failure to register. They go on to state that if a person convicted before the registry went into effect is served notice of the duty to register, he is required to register. Therefore, even though Mr. Eichelberger was released from custody before the sex offender registry act became effective, the act still applies to him and because he has been served with notice of the duty to register, he must register.

Furthermore, while S.C. Code Ann. § 23-3-440 does set forth notification procedures for individuals who are being released from incarceration, it does not contain an exclusive list of the avenues by which a convicted person may be notified of their obligation to register. A closer examination of S.C. Code Ann. § 23–3–480 is instructive.

(A) **An arrest on charges of failure to register**, service of an information or 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.

(B) Section 23-3-470 shall not apply to a person convicted of an offense provided in Section 23-3-430 prior to July 1, 1994, and who was released from custody prior to July 1, 1994, unless the **person has been served notice of the duty to register**

**by the sheriff of the county in which the person resides.** This person shall register within ten days of the notification of the duty to register.

S.C. Code Ann. § 23-3-480 (emphasis added). Mr. Eichelberger's argument that that S.C. Code Ann. § 23-3-440 provides the only mechanisms for notification to a convicted person of their obligation to register is unsustainable after reading State v Walls and S.C. Code Ann. § 23-3-480. S.C. Code Ann. § 23-3-480(A) clearly provides for actual notice when an individual is charged with or arrested for failure to register. Additionally, S.C. Code Ann. § 23-3-480(B) provides that notice of the duty to register may be also be sent by the sheriff of the county in which the person resides. Obviously, in Mr. Eichelberger's case, he was not charged with failure to register, but he was provided notice by the Sheriff's department, in accordance with S.C. Code Ann. § 23-3-480(B)

The sole reason the plaintiff has not been on the registry since 1994 is because law enforcement was not made aware of his conviction until March of 2019. As soon as it was brought to the Spartanburg County Sheriff's Office's attention, law enforcement appropriately provided the plaintiff notice of his obligation to register as a sex offender, and the plaintiff fully complied with such requirements. A copy of this registration paperwork in which the plaintiff acknowledged such is attached hereto and identified as "Attachment #3 (Spartanburg County Registration Documentation)". Accordingly, the plaintiff has now been given proper notice of his duty to register and is required to register as a sex offender. As discussed in more detail below, his obligation to register is for life.

**PLAINTIFF DOES NOT MEET ANY OF THE ENUMERATED AVENUES FOR  
REMOVAL FROM THE REGISTRY**

Despite the above mentioned and well established precedent of this state, the plaintiff nonetheless contends that he is entitled to removal from the registry. South Carolina law clearly specifies lifetime registration for all persons required to register pursuant to S.C. Code Ann. §§ 23-3-430 and 23-3-460. South Carolina's Sex Offender Registry statutes, S.C. Code § 23-3-400 *et seq.*, list the only mechanisms and avenues by which an individual can be removed from the Sex Offender Registry.<sup>2</sup> *See* S.C. Code Ann. § 23-3-430(E), (F), (G). South Carolina law is clear that these are only lawful and permissible avenues by which an individual placed on the Registry can be removed. However, there is no genuine issue of material fact to suggest that Plaintiff meets any of these statutory criteria. Rather, the Plaintiff was convicted of Lewd Act Upon a Minor in 1988, and this conviction mandates lifetime registration. *See* S.C. Code Ann. §23-3-430; S.C. Code Ann. § 23-3-460 (setting forth lifetime registration in South Carolina in an unambiguously worded statute - "for life"). Accordingly, there is no legal or constitutional basis for the Plaintiff to be removed from South Carolina's Sex Offender Registry and the Defendants are entitled to judgment as a matter of law. *See* S.C. Code Ann. § 23-3-460 (mandating lifetime registration in South Carolina); S.C. Code Ann. § 23-3-430 (setting forth the only avenues for removal).

**CONCLUSION**

Mr. Eichelberger was convicted of a mandatory registration offense, given proper notice by the Spartanburg County Sheriff's Department that he was required to register, is properly registering, and does not meet any of the specifically enumerated avenues for removal. Disregarding Supreme Court precedent or any binding precedent is legal error. *See State v.*

<sup>2</sup> In fact, the mechanisms for both placement on and removal from the South Carolina sex offender registry are provided by this same code section. *See* S.C. Code § 23-3-430.

Phillips, 416 S.C. 184, 194, 785 S.E.2d 448, 453 (2016) (“[I]t is incumbent upon the court of appeals to apply this Court’s precedent.”); S.C. Const. art. V, § 9 (“The decisions of the Supreme Court shall bind the Court of Appeals as precedents.”) As such, the binding precedent of this State as set forth above is determinative in this matter.

Accordingly, for the reasons stated above, any to be set forth in any subsequent memorandum of law, and all those advanced at any hearing on this matter; judgment as a matter of law on all issues should be granted to the Defendants.

Respectfully Submitted,

s/ Paul T. Ahearn, III  
Paul T. Ahearn III, Esquire  
Litigation Counsel  
South Carolina Law Enforcement Division  
Post Office Box 21398  
Columbia, South Carolina 29221-1398  
S.C. Bar Number: 103321

Adam L. Whitsett, Esquire  
General Counsel  
South Carolina Law Enforcement Division  
S.C. Bar Number: 74888

**ATTORNEYS FOR CHIEF KEEL AND SLED**

COLUMBIA, SOUTH CAROLINA  
MAY 31, 2020

AFFIDAVIT

Personally appeared before me, Judge of the Court, one Inv. T. M. Stroud who being duly sworn, deposes and says that Vance Edward Eichelberger (name of defendant) did within this County and State on 04-13- 1988, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of \_\_\_\_\_] in the following particulars:

DESCRIPTION OF OFFENSE

Criminal Sexual Conduct with a Minor Second Degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts: Affiant has a formal written statement which was given by a thirteen year old female that implicates the defendant. In the statement the victim indicated the defendant did perform digital vaginal intercourse on her against her will. The victim identified the defendant to be her stepfather and stated this incident occurred at her residence which is [redacted] Greenville, South Carolina.

Sworn to and Subscribed before me,

This 21st day of April, 19 88.

H. V. Lollar  
Signature of Issuing Judge

(L.S.)

Address 4 McGee Street  
Greenville, SC 29601  
Phone: \_\_\_\_\_

T. M. Stroud  
Signature of Affiant

Address 4 McGee Street  
Greenville, SC 29601  
Phone: 271-5243

STATE OF SOUTH CAROLINA ARREST WARRANT

COUNTY OF Greenville

[or MUNICIPALITY OF \_\_\_\_\_]

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that Vance Edward Eichelberger (name of defendant) did on 04-13 19 88, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of \_\_\_\_\_] as set forth below:

DESCRIPTION OF OFFENSE

Criminal Sexual Conduct with a Minor Second Degree

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Greenville, S.C.  
on 04-21-, 19 88.

H. V. Lollar  
Signature of Judge

(L.S.)

ELECTRONICALLY FILED - 2020 May 31 10:37 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2305360 B 828397

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF \_\_\_\_\_ )

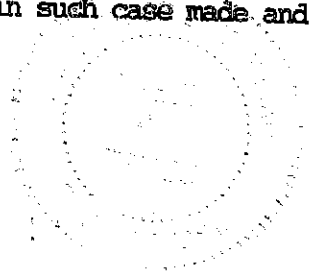
INDICIMENT FOR LEWD ACT UPON CHILD

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 Eichelberger  
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  
S.E. 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

NOW COMES THE DEFENDANT

Vance Edward Eichelberger

Who in open Court pleads guilty to the within indictment:

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

ATTEST: \_\_\_\_\_

Caroline W. Mattoz  
Clerk of Court

Vance Edward Eichelberger

SENTENCE

The defendant Vance 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 4 months/years and/or payment of \$ 400<sup>00</sup>, 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, Vance Edward Eichelberger acknowledge that I have pled guilty to the offense of Lewd act upon Child; Indict No. 88# 6460

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/ <sup>terms</sup> presently existing 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

R. [Signature]  
(Witness)

V. E. Eichelberger  
(Probationer)

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

WITNESSES

*T.M. Strand*  
*Sheriff's Dept*  
*4-22-88*

ARREST WARRANT NO. *B8818397*

ACTION OF GRAND JURY

FOREMAN OF GRAND JURY

VERDICT

FOREMAN OF PETIT JURY

DATE:

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

*4460*

THE STATE OF SOUTH CAROLINA

COUNTY OF \_\_\_\_\_

COURT OF GENERAL SESSIONS

**RECORDED**  
**COMPUTER**

TERM \_\_\_\_\_

THE STATE

VS.

**PLEAD GUILTY**

*Vanee Edwards Foster Bennett w/m*

*Greenville, SC. 29611*



*Michael Hallman, attorney*

*Kenny*

*103*

INDICTMENT FOR

LEWD ACT UPON CHILD

**ENTERED**  
**ACCT.**

A Certified Copy  
*Paul B. Wiedeman*  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Dated *5-16-19*

STATE

-VS-

VANCE EDWARD EICHELBERGER  
Defendant

PROBATION ORDER

No. 88-GS-23-6460

OFFENSE LEWD ACT UPON A CHILD

The sentence of the Court is that the defendant, Vance Edward Eichelberger, shall be in the custody of the Board of Corrections of the State of South Carolina for a term of three (3) years ~~and/or pay xxxxxxxx \$XXXXXXXXXXXXXXXXXX~~; provided that upon the service of four (4) months ~~(and/or)~~ payment of \$400+cost (\$515.25) that the balance of the aforesaid sentence be and the same is hereby suspended and that the said defendant is hereby placed on probation for a period of five (5) years under the supervision of the South Carolina Board of Probation, Parole, and Pardon Services and its agents, subject to the provisions of the laws of this State and the rules and orders of the Board and its agents, with leave that the suspended sentence may be revoked at any time during the period of probation.

THAT AS CONDITIONS OF PROBATION THE AFORESAID SHALL:

1. Report in person within 48 hours after arrival at his destination to the Supervising Agent.
2. Restrict his activities as directed by his Supervising Agent and agree to future modifications by duly authorized representatives of the Court.
3. Refrain from changing his residence or employment without first procuring the consent of his supervising agent.
4. Make a complete and truthful report to his Supervising Agent each month and whenever instructed to by his Supervising Agent until his final release.
5. Not use a controlled substances, except when properly prescribed by a licensed physician.
6. Not consume alcoholic beverages to excess or visit establishments whose primary business is the dispensation and consumption of alcoholic beverages.
7. Avoid injurious habits and shall associate only with law-abiding persons.
8. In all respects, conduct himself honorably, work diligently at a lawful occupation, and support his dependents, if any, to the best of his ability.
9. Refrain from the violation of any Federal, State, or local penal law, and shall contact his supervising agent immediately if arrested or questioned by a law enforcement official.
10. Not leave the State without authorization and shall waive all extradition rights and process and agree to return to South Carolina when directed to by the Court or pursuant to a warrant.
11. Not possess or purchase a weapon.
12. Promptly and truthfully answer all inquiries from the Court or Supervising Agent and allow the Agent to visit at any time in his home, at his employment site or elsewhere, and carry out all instructions given by the Agent.
13. Pay any restitution, fines, or other payments which have been ordered as a part of this order.
14. Immediately notify his supervising agent in case of unemployment and/or absenteeism from work and in case of illness or injury.
15. Submit to urinalysis test and/or a blood test when requested by his Supervising Agent and agree that the test results may be used as evidence that he did nor did not violate these conditions.
16. Pay a supervision fee to the South Carolina Department of Probation, Parole, and Pardon Services of \$10 per week while under intensive supervision and \$240 per year while under any other level of supervision during conditional release.

Additional Conditions ordered by the Court: Comply with the terms of presently existing Family Court Order regarding defendant and victim. Pay fine at the rate of \$100.00 per month as ordered by the Court beginning 1-19-89 *EC*

IT IS FURTHER ORDERED: that the Sheriff or other law enforcement officers who have the custody of the defendant is hereby ordered to deliver said defendant to the Probation Office of this district, or if defendant is under bond, then such bond shall remain in full force until said defendant reports to the Probation Office. The conditions of probation begin (today/after service of required portion of suspended sentence). It is further ordered that the Clerk of Court in his office and that he forthwith forward a copy (certified) of this order to the Probation Office or the South Carolina Department of Probation, Parole, and Pardon Services.

This 30th day of November,  
19 88, Greenville, SC.

*Robert L. McFadden*  
Robert L. McFadden  
Presiding Judge  
Thirteenth Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years.

You shall be subject to arrest, upon order of the Court, or without order, by the Probation Agent. At any time within the period of your probation, the Court may, if it sees fit, impose the judgment and sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me the Order of Probation and the Conditions set out therein. I agree to comply with such conditions during the period of my probation. I have received a copy of this court order.

Witnessed by: *Elizabeth A. Cooke*

Signed: *Vance Edward Eichelberger*  
Probationer

Signed this 1st day of December, 19 88, at Greenville, SC.





# SPARTANBURG COUNTY SHERIFF'S OFFICE

CHUCK WRIGHT, *Sheriff*

## STATEMENT OF CONVICTION

I Vance Eichelberger acknowledge that on Nov. 30, 1988 in Greenville County, SC

I was convicted of or entered a plea to Lewd Act upon a child.

I also acknowledge that having been convicted of or having entered a plea to Lewd Act Upon a Child that I am required to register

with the South Carolina Sex Offender Registry for life. All terms and requirements of this conviction or plea, to include penalties for failure to comply, which requires that I register as a sex offender have been explained to me to my satisfaction.

V E Eichelberger

Registrant's Signature

Victor H. Holt

Sex Offender Registry Unit SCSO

Date: 3-20-19



An Accredited Law Enforcement Agency

P.O. BOX 771 • SPARTANBURG, SOUTH CAROLINA 29304 • (864) 503-4500



**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.**

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

(office) 864-503-4643

864-529-2502  
SSSAW

864-388-2309



*An Accredited Law Enforcement Agency*

**P.O. BOX 771 • SPARTANBURG, SOUTH CAROLINA 29304 • (864) 503-4500**

**State of South Carolina  
SEX OFFENDER REGISTRATION  
Offender Information Form**


**AGENCY INFORMATION**

<b>Agency Name:</b>	Spartanburg County SC Sheriff's Office		
<b>Agency Address:</b>	8045 Howard Street Spartanburg SC 29303		
<b>Agency Phone:</b>	(864)503-4500	<b>Agency Fax:</b>	(864)503-4561
<b>Agency Email:</b>	dblanton@spartanburgcounty.org		

**OFFENDER INFORMATION**

<b>Name:</b>	VANCE EDWARD EICHELBERGER	<b>Registration #:</b>	2303489
<b>Birthplace:</b>	ALTOONA, PA, United States	<b>Alt Reg#:</b>	
<b>DOB:</b>	[REDACTED]	<b>SSN:</b>	[REDACTED]
<b>Age:</b>	[REDACTED]	<b>FBI:</b>	270128JA7
<b>DL# and state:</b>	[REDACTED]	<b>DOC:</b>	
<b>State ID:</b>	[REDACTED]	<b>NCIC:</b>	
<b>Nationality:</b>	USA	<b>Religion:</b>	
<b>Marital Status:</b>	Married	<b>Sexual Preference:</b>	Female

**PHYSICAL DESCRIPTION**

<b>Sex:</b>	Male	<b>Eye Color:</b>	Blue	
<b>Build:</b>	Pot Belly	<b>Wears Glasses:</b>	No	
<b>Height:</b>	5'7"	<b>Hair Color:</b>	Gray	
<b>Weight:</b>	235	<b>Hair Length:</b>	Short/Collar	
<b>Race:</b>	White	<b>Handedness:</b>	Right	
<b>Skin Tone:</b>	Medium			
<b>Facial Hair:</b>				
<b>Name of Gang:</b>				
<b>Risk Level: Adult Tier III Offender</b>				

**SCARS MARKS TATTOOS**

SCAR on abdomen CANCER SURGERY INCISIONS

**MEDICAL INFORMATION**

<b>Blood Type:</b>	[REDACTED]	<b>DNA Available:</b>	No	<b>Fingerprint on File:</b>	Yes
		<b>DNA ID/Loc:</b>		<b>Fingerprint ID:</b>	[REDACTED]

Medical Conditions:

**REGISTRATION INFORMATION**

<b>Compliance:</b>	COMPLIANT	<b>Registration Start Date:</b>	03/20/2019
<b>Status:</b>	Active	<b>Registration End Date:</b>	
<b>Verification Frequency:</b>		<b>Last Verification Date:</b>	03/20/2019
<b><u>LIFETIME REGISTRANT</u></b>		<b>Next Verification Date:</b>	06/19/2019

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

**State of South Carolina  
SEX OFFENDER REGISTRATION  
Offender Information Form**

ALIAS				
Alias Name:	Alias DOB:	Alias DL #:	Alias SSN:	Alias FBI#:
ED EICHELBERGER				
EDWARD EICHELBERGER				
VANCE EICHELBERGER				
VANCE E EICHELBERGER				
VANCE EDWARD EICELBERGER				
VANCE EDWARD ETCHEL BERGER				
ADDRESSES				
<b>CURRENT ADDRESS(ES)</b>				
Home: [REDACTED] LYMAN, SC 29365				
PHONE NUMBERS				
PHONE#:		DESCRIPTION:		
Primary [REDACTED]				
EMPLOYMENT				
Business Name:	Position:	Employment Address:	Phone:	
SIEMENS ENERGY		1001 TECHNOLOGY DR MT PLEASANT, PA		
PROFESSIONAL LICENSES				
License Date:	Authority:	Number:	Description:	
		NONE		
SCHOOL				
School Name:		School Address:		
NONE REPORTED				
VOLUNTEER				
Organization:		Organization Address:		
NONE REPORTED				
ASSOCIATES				
Associate Name	Associates Address & Phone#	Relationship to Offender	Age	Lives w/ Offender
SUSAN EICHELBERGER	Ph# [REDACTED]	Wife	0	Yes
VEHICLES				
Vehicle type: AU - Automobile	Make: Chevrolet	Model: C/K 3500	Color: Blue	Year: 2015
Style: TK - Truck	License: [REDACTED]	State: SC	Plate Category:	Plate Type: PC - Passenger Car
VIN: [REDACTED]	Comments:			

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

**State of South Carolina**  
**SEX OFFENDER REGISTRATION**  
**Offender Information Form**

<b>Vehicle type:</b> AU - Automobile	<b>Make:</b> Chevrolet	<b>Model:</b> C20	<b>Color:</b> Red	<b>Year:</b> 1972
<b>Style:</b> TK - Truck	<b>License:</b> [REDACTED]	<b>State:</b> SC	<b>Plate Category:</b>	<b>Plate Type:</b> PC - Passenger Car
<b>VIN:</b> [REDACTED]	<b>Comments:</b> CUSTOM MADE VEHICLE MODEL IS ACTUALLY C34			
<b>Vehicle type:</b> AU - Automobile	<b>Make:</b> Chevrolet	<b>Model:</b> Camaro	<b>Color:</b> Maroon	<b>Year:</b> 1969
<b>Style:</b> 2D - Hardtop, 2 Door	<b>License:</b> [REDACTED]	<b>State:</b> SC	<b>Plate Category:</b>	<b>Plate Type:</b> PC - Passenger Car
<b>VIN:</b> [REDACTED]	<b>Comments:</b> CUSTOM MADE VEHICLE; DOES NOT DRIVE ANYMORE			
<b>Vehicle type:</b> AU - Automobile	<b>Make:</b> Chevrolet	<b>Model:</b> Camaro	<b>Color:</b> White	<b>Year:</b> 1968
<b>Style:</b> 2D - Hardtop, 2 Door	<b>License:</b> [REDACTED]	<b>State:</b> SC	<b>Plate Category:</b>	<b>Plate Type:</b> PC - Passenger Car
<b>VIN:</b> [REDACTED]	<b>Comments:</b> CUSTOM MADE VEHICLE			
<b>Vehicle type:</b> AU - Automobile	<b>Make:</b> Chevrolet	<b>Model:</b> TRAVERSE	<b>Color:</b> Burgundy	<b>Year:</b> 2019
<b>Style:</b> LL - Sport Utility Vehicle	<b>License:</b> [REDACTED]	<b>State:</b> SC	<b>Plate Category:</b>	<b>Plate Type:</b> PC - Passenger Car
<b>VIN:</b> [REDACTED]	<b>Comments:</b>			

**OFFENSES**

**PRIMARY OFFENSE**

**South Carolina Offense**

Offense: 16-3-655(C) CRIM SEX CONDUCT W/MINOR 3RD, LEWD ACT VIC<16 ACTOR>14

<b>Offense City:</b>		<b>Offense County:</b>	Greenville
<b>Case Number:</b>		<b>Date Committed:</b>	
<b>NCIC Number:</b>	3699	<b>Date Convicted:</b>	11/30/1988
<b>Sentence:</b>	3YRS SUSP; 4 MO CONFINEMENT; 5YRS PROB;\$400 FINE		<b>Date Released:</b>
<b>General Info:</b>			
<b>VICTIM(s):</b>	<b>Age:</b>	<b>Gender:</b>	<b>Relationship to Offender:</b>
	14	FEMALE	Daughter
<b>Race:</b>	White		
<b>Crime Info:</b>			
<b>WEAPON:</b>	<b>Weapon Type:</b>	<b>Weapon Make:</b>	<b>Weapon Info:</b>

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

**State of South Carolina**  
**SEX OFFENDER REGISTRATION**  
**Offender Information Form**

INTERNET			
<b>Type:</b>	<b>Name:</b>	<b>Address:</b>	<b>Password:</b>
Email		carnut01@msn.com	
	ED EICHELBERGER		

COMMENTS

PROBATION INFORMATION
-----------------------

Probation Status:			
Probation Period: -			
<b>Probation County:</b>		<b>Probation Court:</b>	
<b>Probation Officer:</b>		<b>Probation Court Type:</b>	
<b>Probation Officer Phone#:</b>		<b>Probation Judge:</b>	
<b>Probation Condition:</b>			

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

**State of South Carolina**  
**SEX OFFENDER REGISTRATION**  
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NOTICE OF SEX OFFENDER REGISTRY FORM

Pursuant to S.C. Code Ann. §23-3-430, "Any person, regardless of age, residing in the State of South Carolina, who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense described below, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in any comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of a similar offense, or who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register pursuant to the provisions of this article. In addition, upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere of a person of an offense not listed in this article, the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the solicitor."

**All offenders must register bi-annually or quarterly for life depending upon his/her classification as a Tier II or Tier III offender (See Attachment "A").**

I understand that I am required to register and I MUST:

VEE Present myself in person to register and re-register at the sheriff's office of the my primary county of registration and provide information on any and all county or state locations where I reside, own real property, am employed, or attend, am enrolled, volunteer, intern, or carry on a vocation at any public or private school including but not limited to a secondary school, adult education school, college or university and any vocational, technical or occupational school within the prescribed time frames as set forth below:

- An offender being released from DOC or DJJ at the completion of their sentence, to an early release program, to extended work release, or upon parole or release to the custody of a parent, custodian, or guardian MUST register within one (1) business day of his/her release.
- An offender sentenced to probation or new resident of the state that are to be supervised by PPP MUST register within one (1) business day of his/her sentencing or establishing residency.
- An offender who is not under the jurisdiction of the DOC, PPP, or DJJ at the time of moving into the State of South Carolina MUST register within three (3) business days of establishing residency.

VEE Provide all information, as prescribed by SLED, in order to be considered registered. (For a complete list of information required see Attachment "B")

VEE Provide written notification in person within three (3) business days of establishing a new residence, or acquiring real property in the *same county*, to the sheriff's office of the offender's primary county of registration (S.C. Code Ann. §23-3-460(C));

VEE Provide written notification in person within three (3) business days of the change of his/her permanent or temporary address to a *new county* with the county sheriff in the new county and in person to the county sheriff in the previous county with whom he/she last registered. (S.C. Code Ann. §23-3-460(D))

VEE Provide written notification in person within three (3) business days of change of address to a *new jurisdiction* to the county sheriff with whom the person last registered. (S.C. Code Ann. §23-3-460(F))

VEE The offender must comply with the new jurisdiction's registration requirements; Note: Under the Adam Walsh Child Protection and Safety Act of 2006, 18 United States Code 2250, if you travel to another jurisdiction and fail to

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

**State of South Carolina**  
**SEX OFFENDER REGISTRATION**  
**Offender Information Form**

register as required, you are also subject to federal prosecution that carries penalties of a fine and/or imprisonment up to ten years;

VEE Provide written notification in person within three (3) business days to the sheriff of the county where he/she is employed, or attends, is enrolled, volunteers, interns, or carries on a vocation of *each change in attendance, enrollment, volunteer status, intern status, employment or vocation status at any public or private school*, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and any vocational, technical, or occupational school. (S.C. Code Ann. §23-3-460(E));

VEE Provide written notice in person of termination of employment or school affiliation within three (3) business days to the sheriff office in the offender's primary county of registration; this includes residents, non-resident school affiliation, and non-resident employment;

VEE I understand that I may be required to register in any jurisdiction where I am employed, carry on a vocation, am a student, or temporarily visit. It is MY responsibility to check with the local law enforcement about registration requirements in that jurisdiction.

VEE Notify the sheriff of my county of primary registration of any intention to move out of country or travel out of country twenty-one (21) days in advance of the date of departure. Provide all required information as prescribed by SLED and the Sex Offender Registration and Notification Act (SORNA).

VEE I must re-register with the sheriff's office of my county of primary registration within three (3) business days of my return.

VEE I understand I am prohibited from living in campus housing at a public institution of higher learning supported in whole or in part by the state. (S.C. Code Ann. §23-3-465)

VEE I understand if I am convicted of certain offenses against a minor, I am prohibited from living within one thousand feet of a school, daycare center, children's recreational facility, park or public playground. If I am living at a prohibited address, I may be ordered to leave within thirty days. (S.C. Code Ann. §23-3-535)

VEE I understand that failure to register or provide notification of change of address, telephone number (fixed location phone or cell phone), vehicle information, or notification of permanent or temporary changes in employment, or attendance, enrollment, employment, volunteer status, intern status, or vocation status at any public or private school is a crime. (S.C. Code Ann. §23-3-470 and SORNA §114)

VEE I understand that willfully giving false information or omitting required information when registering or re-registering is a crime. (S.C. Code Ann. §23-3-475)

VEE I understand that failing to provide internet account(s) or internet identifier(s) information, or failing to provide notification of change of my internet account(s) or internet identifier(s) is a crime. (S.C. Code Ann. §23-3-555(B)(3))

VEE I understand that knowingly and willfully giving false information regarding my internet account(s) or internet identifier(s) is a crime. (S.C. Code Ann §23-3-555(B)(3))

VEE Under penalty of perjury, I certify that to my knowledge all the information I have provided this agency is true and accurate.

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

**State of South Carolina**  
**SEX OFFENDER REGISTRATION**  
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Below is an outline indicating what months you will be required to register in the future. For instance, if you are required to register bi-annually and your birthday is in January, you will register in January and July. If you are required to register quarterly and your birthday is in January, you will register in January, April, July and October.

Birth Month	2nd Quarter	3rd Quarter	4th Quarter
January	April	July	October
February	May	August	November
March	June	September	December
April	July	October	January
May	August	November	February
June	September	December	March
July	October	January	April
August	November	February	May
September	December	March	June
October	January	April	July
November	February	May	August
December	March	June	September

MY NEXT REGISTRATION IS IN THE MONTH OF

May 1-15, 2019  
 (TO BE COMPLETED BY SHERIFF'S OFFICE)

I understand that I am required to register pursuant to S.C. Code Ann. § 23-3-430 and that I have received notice of the registry conditions listed above, both verbally and in writing. By initialing beside each condition, I indicate that I understand my responsibilities.

*[Signature]*  
 Signature of Offender

Eichelberger  
 Print Last Name

3/20/2019  
 Date

\_\_\_\_\_  
 SCDC/DJJ Number

SC00636825  
 SID Number

2303489  
 SRS/Reg. Number

*[Signature]*  
 Signature of Agency Employee

Horton  
 Print Last Name

3/20/2019  
 Date

\_\_\_\_\_  
 Witness Signature

\_\_\_\_\_  
 Witness (Print Name)

3/20/2019  
 Date

(CJ-031) (12/2011)

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

**State of South Carolina**  
**SEX OFFENDER REGISTRATION**  
**Offender Information Form**

ATTACHMENT "A"

**Offenses which Require Registration (S.C. Code Ann. §23-3-430(C), 460(A) and 460(B)):**

**Tier III Quarterly Registration:**

- Criminal Sexual Conduct in the 1st Degree (S.C. Code Ann. § 16-3-652);
- Criminal Sexual Conduct in the 2nd Degree (S.C. Code Ann. § 16-3-653);
- Criminal Sexual Conduct in the 3rd Degree (S.C. Code Ann. § 16-3-654);
- Criminal Sexual Conduct with Minors, 1st Degree (S.C. Code Ann. § 16-3-655(A)(1)); (residency restrictions)
- Criminal Sexual Conduct with Minors, 2nd Degree (S.C. Code Ann. § 16-3-655(B)(1)(2)); (residency restrictions)
- Criminal Sexual Conduct: Assaults with the Intent to Commit (S.C. Code Ann. § 16-3-656); (residency restrictions if victim is a minor)
- Incest (S.C. Code Ann. § 16-15-20) (Victim under 16);
- Buggery (S.C. Code Ann. § 16-15-120);
- Criminal Sexual Conduct with Minors, 3rd Degree, Lewd Act Victim Under 16, Actor Over 14 (S.C. Code Ann. §16-3-655(C); (Victim under age of 13) or (involves sexual act per 18 USC §2246 and victim is 13 to 15 years old);
- Kidnapping (S.C. Code Ann. § 16-3-910) of a person under eighteen years of age except when the offense is committed by a parent; (residency restrictions if victim is a minor)
- Criminal Sexual Conduct When the Victim is a Spouse (S.C. Code Ann. § 16-3-658);
- Sexual Battery of a Spouse (S.C. Code Ann. § 16-3-615);
- Sexual Intercourse with a Patient or Trainee (S.C. Code Ann. § 44-23-1150) (where misconduct involves a sexual act, as defined by 18 U.S.C. §2246) (where misconduct involves sexual contact, as defined by 18 U.S.C. §2246 and the victim is less than 13);
- Administering, distributing, dispensing, delivering, or aiding, abetting, attempting, or conspiring to administer, distribute, dispense, or deliver a controlled substance or Gamma Hydroxy Butyrate (GHB) to an individual with the intent to commit a crime listed in S.C. Code Ann. § 44-53-370(f), except petit larceny or grand larceny.
- Any other offense specified by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109 -248), the Sex Offender Registration and Notification Act (SORNA);
- Accessory before and after the fact to commit an offense enumerated in this item and as provided for in S.C. Code Ann. § 16-1-40;
- Attempt to commit an offense enumerated in item (2) as provided by S.C. Code Ann. § 16-1-80;

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

**State of South Carolina**  
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**Tier II Bi-Annual Registration:**

- Engaging a Child for Sexual Performance (S.C. Code Ann. § 16-3-810);
- Producing, Directing, or Promoting Sexual Performance by a Child (S.C. Code Ann. § 16-3-820);
- Peeping, Voyeurism, or Aggravated Voyeurism (S.C. Code Ann. § 16-17-470);
- Violations of Article 3, Chapter 15 of Title 16 involving a minor including but not limited to S.C. Code Ann. §§ 16-15-305, 315, 325, 335, 342, 345, 355, 365, 375, 385, 387, 395, 405, 410, 415, and 425;
- A person, regardless of age, who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of indecent exposure or of a similar offense in other jurisdictions is required to register pursuant to the provisions of this article if the court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender;
- Kidnapping (S.C. Code Ann. § 16-3-910) of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;
- Trafficking in persons (S.C. Code Ann. § 16-3-930) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense; (residency restrictions if victim is a minor)
- Any other offense specified by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA);
- Criminal Sexual Conduct with Minors, 3rd Degree, Lewd Act Victim Under 16, Actor Over 14 (S.C. Code Ann. §16-3-655(C); (Victim under age of 13) or (involves sexual act per 18 USC §2246 and victim is 13 to 15 years old);
- Sexual Intercourse with a Patient or Trainee (S.C. Code Ann. § 44-23-1150) (where misconduct involves sexual contact as defined therein by §18 U.S.C. 2246 and the sexual contact is not of the naked genitalia and victim is 13-15 years old or the victim is 15-17 years old);
- Accessory before and after the fact to commit an offense enumerated in this item and as provided for in S.C. Code Ann. § 16-1-40;
- Attempt to commit an offense enumerated in item (2) as provided by S.C. Code Ann. § 16-1-80;

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

**State of South Carolina**  
**SEX OFFENDER REGISTRATION**  
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ATTACHMENT "B"

**Registration Criteria (S.C. Code Ann. § 23-3-430 (A))**

Any person, regardless of age, residing in the State of South Carolina, who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense described below, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in any comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of a similar offense, or who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register pursuant to the provisions of this article. In addition, upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere of a person of an offense not listed in this article, the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the solicitor.

Local law enforcement officers must accept registrations from non-resident workers and/or non-resident full time and part-time students. The information collected must include individuals who are enrolled at or employed by public or private school(s), including but not limited to, a secondary school, adult education school, college or university and any vocational, technical or occupational school. Additionally, registration information must be accepted from individuals convicted in comparable courts, including but not limited to federal courts, military courts, and foreign country courts.

Registration will be accomplished using the out of state conviction and entering the correct crime code under the Offense tab in Offender Watch. A corresponding South Carolina offense must be provided for the purposes of classifying the offender per the Sex Offender Registration and Notification Act (SORNA).

**Information to be Collected**

Pursuant to 1976 SC Code of Laws as amended, Title 23, Chapter 3, Article 7, Section 530 (2) and the SC Code of Regulations, Chapter 73, Article 7, Section 260 (B), Sex Offender Registry, each sheriff's office will utilize the Offender Watch software in order to collect information when registering a convicted sex offender. The information collected must, at a minimum, include the data set forth below:

- Full Name including last name, first name and middle name;
- Race;
- Sex;
- Date of birth, including month, day, year, including any purported dates of birth;
- Height;
- Weight;
- Hair color;
- Eye color;
- Skin tone;

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

**State of South Carolina**  
**SEX OFFENDER REGISTRATION**  
**Offender Information Form**

- Blood Type;
- Aliases or other names or nicknames, ethnic or tribal;
- Social security number including any purported social security numbers;
- Driver's license number or operator's license number and expiration date;
- Full description of all scars, marks, or tattoos;
- Full description of all physical deformities or amputations;
- Full description of all speech impediments and peculiarities;
- Complete address of all residences where the offender may stay for ten (10) or more days including city, street, house, or apartment number, apartment complex, neighborhood, or housing development names and zip code or if no permanent residence the location or description where the offender habitually lives; Do not accept post office box in lieu of street address.
- Telephone number (both fixed location phones and cell phones) of all residences, including temporary residencies, where an offender may stay for ten (10) or more days, e.g. landline, cell, or any other designation used for purposes of routing or self-identification in telephone communications;
- Verification of telephone numbers should be accomplished by inquiring as to whom the phone is listed under. If there are multiple telephones, pay phones, or if there is no telephone, inquire as a number at which the offender can be contacted in case of emergency.
- The full name, address, and telephone number of the offender's next of kin;
- The full name, address, and telephone number of the offender's employer, including transient/day labor employment;
- Full description of all motor vehicles owned or operated by the offender, whether for work or personal use, to include license number, vehicle identification number, make, model, and color, including work vehicles that are used the majority of the employee's work time and the permanent or frequent location where all vehicles are kept;
- Miscellaneous numbers, e.g. selective service number;
- Specific sex crimes of which the offender has been convicted;
- Fingerprints and palm prints;
- All information regarding internet accounts with Internet access providers;
- All internet identifiers e.g. electronic mail address, user name, screen name, or similar identifier used for the purpose of Internet forum discussions, Internet chat room discussions, instant messaging, social networking, or similar Internet communication;
- Passport and immigration documents;

I attest that the information that I have provided and listed above is accurate VEC so dated 3/20, 19

**State of South Carolina**  
**SEX OFFENDER REGISTRATION**  
**Offender Information Form**

- Professional licenses;
- The name, address, and county of each institution of higher learning, including specific campus locations, if the offender is enrolled, employed, volunteers, interns, or carries on a vocation there;
- Full descriptions of all motor vehicles, trailers, mobile homes, or manufactured homes the offender lives in, to include vehicle identification number, license tag number, registration number, and a description including color scheme as well as the permanent or frequent location where they are kept;
- Full descriptions of all vessels, live-aboard vessels, or houseboats the offender owns, operates, or lives in to include hull identification number, manufacturer's serial number, name of the vessel, live-aboard vessel, or houseboat, registration number, and a description of the color scheme;
- Full descriptions of all aircraft the offender owns or operates, whether for work or personal use, to include tail number, manufacturer's serial number, model of any aircraft, and a description of the aircraft including color scheme and the permanent or frequent location where all aircraft are kept;
- Current photograph of offender.
- The text of the provision of law defining the criminal offense for which the offender is registered.

**Campus Affiliation Information to be Collected**

According to S.C. Code Ann. § 23-3-460, "A person required to register pursuant to this article and who is employed by, attends, is enrolled, volunteers, interns, or carries on a vocation at any public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and any vocational, technical, or occupational school, must provide written notice within three (3) business days of each change in attendance, enrollment, volunteer status, intern status, employment, or vocation status at any public or private school in this State."

According to S.C. Code Ann. § 23-3-465 "Any person required to register under this article is prohibited from living in campus student housing at a public institution of higher learning supported in whole or in part by the state".

- Verification of the offender's enrollment, employment, or vocation status at any public or private school, and any vocational, technical or occupational school, shall be completed by requesting an identification card verifying their status. Financial documents demonstrating that the offender has paid semester or quarterly fees will also be accepted.
- If the offender volunteers, interns, or carries on a vocation at any public or private school, and any vocational, technical or occupational school, a letter verifying the offender's duties and status will be necessary from the agency coordinating the offender's responsibilities.
- If offender's employment requires travel to more than one campus or school, then a letter will be required from the employer listing the specific institutions.
- The offender must provide written notice in person of termination of employment or school affiliation; this includes residents, non-resident school affiliation, and non-resident employment.

I attest that the information that I have provided and listed above is accurate VEE so dated 3/20, 19

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  <b>MEMORANDUM IN OPPOSITION                  TO SUMMARY JUDGMENT</b>
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**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 of the 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.

Kris Brown  
Notary Public for South Carolina

My Commission expires: 1/28/29

WITNESSES

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

ARREST WARRANT NO. *B8818397*

ACTION OF GRAND JURY

FOREMAN OF GRAND JURY

VERDICT

FOREMAN OF PETIT JURY

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

THE STATE OF SOUTH CAROLINA

COUNTY OF

COURT OF GENERAL SESSIONS

TRIAL

THE STATE

VS.

**HEAD GUILTY**

*James Edwards Fostel Benson w/m*

[REDACTED]

*Michael Hallman, attorney*

*103*

INDICEMENT FOR

TRAD ACT UPON CHILD

ENTERED  
ACCT.

A Certified Copy  
*Paul B. Williams*  
Clerk of Court E.P. & C.S.  
Greenville County, SC  
Date *5-16-19*

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 Eichelberger

being over the age of fourteen years, did in Greenville

about April 12, 1988, wilfully and lewdly

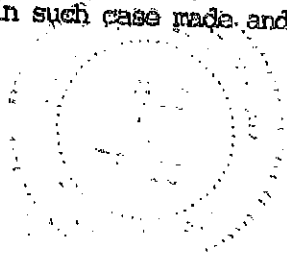
commit a lewd and lascivious act upon or with the body of one

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 statutes  
in such case made and provided.



Joseph J. Watson  
SOLICITOR

ELECTRONICALLY FILED - 2020 May 31 3:03 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2205360

88-GS-23 6460

NOW COMES THE DEFENDANT

Vance 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. Mattoe  
Clerk of Court  
Vance Edward Eichelberger

SENTENCE

The defendant Vance Edward Eichelberger is  
committed to the State Dept. of Corrections/County for a term of 3  
months/0 and/or to pay a fine \$ \_\_\_\_\_; provided upon the service of  
4 months/0 and/or payment of \$ 400<sup>00</sup>, plus pay/waive  
costs and assessments as applicable\*, the balance suspended with probation for  
5 months/0 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, Vance Edward Eichelberger acknowledge that I have pled guilty to the offense of Lewd act upon Child Indict No. 887-6400 and have received a sentence of 2 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/ all terms  
Family Ct order regarding def & vic  
pay @ 100 per mo

In Greenville County General Sessions Court before Judge Robert P. 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 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.**

**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 )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT  
 Case No.: 2019-CP-23-05360

Vance Eichelberger, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Mark Keel, Chief )  
 State Law Enforcement Division, )  
 )  
 )  
 )  
 Defendant. )

**NOTICE OF MOTION AND  
 MOTION TO ALTER OR AMEND  
 THE GRANT OF RELIEF TO  
 PLAINTIFF**

PLEASE TAKE NOTICE THAT the Defendant South Carolina Law Enforcement Division by and through Chief Mark Keel (hereinafter “SLED”), by and through its undersigned attorneys, hereby move this Honorable Court for to alter, amend, or set aside this Court’s grant of relief to the Plaintiff due to the factual and legal errors contained therein. Defendant would also incorporate any and all arguments set forth in the Memo filed on May 31, 2020, which is attached hereto and incorporated herewith as Attachment 1.

**THE COURT’S ORDER PROVIDES FOR RELIEF THAT WAS NOT SOUGHT  
 NOR PROPERLY RAISED IN THIS MATTER**

On June 2, 2020, the Court heard arguments on the Defendant’s Motion for Summary Judgement. The only matter properly before the Court at that time was whether or not to grant Summary Judgment to the Defendant. Any other finding, specifically this Court’s order of removal from the South Carolina Sex Offender Registry, is relief that was not sought nor properly raised before the Court at a motion hearing on the Defendant’s Motion for Summary Judgment. As such, the order must be altered, amended, or set aside as a matter of law as this Court granted relief on an issue not properly before the Court.

Specifically, the Defendant asked the Court that “the law be upheld here as it has consistently been in South Carolina to find that summary judgment is proper as a matter of law and that Mr. Eichelberger will be required to continue registering as a sex offender for life.” *See* Attachment 2 (Transcript p. 10). In regards to the Plaintiff’s position at this hearing, it was specifically stated that “[w]e would ask the Court to deny the defendant’s motion.” *See* Attachment 2 (Transcript p. 15). After consideration, the Court concluded that “this court finds that the State’s mandate to Plaintiff to register as a sex offender on March 18, 2019 was unlawful and that Plaintiff’s name shall be removed from the sex offender registry. It is hereby ordered that the defendant shall remove plaintiff from the sex offender registry.” *See* Attachment 3 (Order of Removal from Sex Offender Registry). Accordingly, based on the Defendant’s Motion before the Court at this hearing and the relief respectively sought by the parties, it is legally improper to grant such relief in this matter. The only matter properly before the Court was whether or not to grant Summary Judgment to the Defendant. Any other finding, specifically an order of removal from the South Carolina Sex Offender Registry, is relief that was not sought nor properly raised before the Court. As such, the order must be altered, amended, or set aside as a matter of law.

#### **ADDITIONAL GROUNDS TO ALTER, AMEND, OR SET ASIDE ORDER**

In addition, this order must be altered, amended, or set aside as a matter of law for the following additional grounds:

1. The Court improperly found it was not proper to determine whether or not the Plaintiff may be removed from the registry based upon the enumerated criteria for removal as set forth in S.C. Code Ann. § 23-3-430 (E), (F), or (G). It is binding precedent in this state that these are the only proper avenues of removal from the registry. In Johnson v. Lloyd it was held that “[t]he general assembly enacted an unambiguously worded statute that sets forth the legal remedies available to an individual on the registry.” 399 S.C. 470, 476-477, 732 S.E.2d 198, 201 (Ct. App.2012) *reversed on other grounds by Johnson v. Lloyd*, 407 S.C. 610, 611, 757 S.E.2d 705, 706 (2014).

2. The Court erred in finding that the only retroactive application of the Sex Offender Registry must take place under S.C. Code Ann. § 23-3-440. *See* Attachment 1 (Memorandum in Support of Summary Judgment).
3. The Court improperly found that no authority exists allowing for the State to require an individual to register as a Sex Offender more than 26 years after being released from supervision. *See* Attachment 1 (Memorandum in Support of Summary Judgment).
4. The Court erred in providing that the notice given to the Plaintiff that he register as a Sex Offender was unlawful. *See* Attachment 1 (Memorandum in Support of Summary Judgment).
5. The Court did not properly evaluate which version of the registry legally applies to the Plaintiff. *See* Attachment 1 (Memorandum in Support of Summary Judgment).
6. The Court erred in finding that Lewd Act Upon a Minor is not a qualifying offense mandating the Plaintiff register as a Sex Offender under South Carolina law. *See* Attachment 1 (Memorandum in Support of Summary Judgment).
7. The Court incorrectly finds that State v. Ross, 423 S.C, 504 (2018) is analogous and instructive to the question of whether Sex Offender registration in this unique set of circumstances passes constitutional muster. Specifically, the Supreme Court in Ross stated that “[w]e emphasize that our decision in this case is precedential only in cases in which the State requests the imposition of electronic monitoring pursuant to subsection 23-3-540(E).” *See Id.*
8. The Court provided guidance regarding a hypothetical hearing based upon subjective registration criteria that is not set forth in any statute or established jurisprudence of this state as the proper to determine if registration is mandated. Such a hearing would constitute an unconstitutional violation of the South Carolina Constitution’s mandate for the separation of powers between the judicial and legislative branches of government. *See* S.C. Const. art. I, § 8.
9. The Court’s order disregards established binding legal precedent and relies on numerous errors of law.
10. The Court did not apply the correct standard of review, in light of the facts, procedural posture of this case, and the established binding jurisprudence.

Therefore, based upon the foregoing, as well as the oral arguments presented at the June 2, 2020 hearing in this matter (Attachment 2), the Defendant’s previously submitted memorandum in support of summary judgment (Attachment 1), any additional reasons set forth in a subsequent memorandum of law, and all those advanced at any hearing on this matter, the

Defendants request that this Honorable Court alter, amend, or set aside its Order finding it was unlawful that the State mandate the Plaintiff register as a Sex Offender and providing for the Plaintiff's removal from the South Carolina Sex Offender Registry.

Respectfully Submitted,

S/ Paul T. Ahearn, III  
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**ATTORNEYS FOR CHIEF KEEL AND SLED**

COLUMBIA, SOUTH CAROLINA  
JULY 27, 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

**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), SCRPC. See M&M Group, Inc. v. Holmes, 379 S.C. 468, 474, 666 S.E.2d 262, 265 (Ct. App. 2008) (subjecting Rule 7, SCRPC, 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

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) 2019-CP-23-05360  
) )  
) )  
) )  
) )  
) )  
VANCE EICHELBERGER, )  
PLAINTIFF, )  
) )  
vs. ) TRANSCRIPT OF RECORD  
) )  
MARK KEEL, CHIEF, STATE LAW )  
ENFORCEMENT DIVISION, AND )  
THE STATE OF SOUTH CAROLINA, )  
DEFENDANT. )  
\_\_\_\_\_ )

June 2, 2020  
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, JUDGE

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

CHRISTOPHER D. BROUGH, ESQ.  
Attorney for the Plaintiff

PAUL T. AHEARN, III, ESQ.  
Attorney for the Defendant

CHERYL A. SMITH  
Circuit Court Reporter

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INDEX

(SW) - Denotes State's Witness  
(DW) - Denotes Defense Witness  
(IC) - Denotes In Camera

PAGE

There were no witnesses called.

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 2:00 p.m.)

THE COURT: Let's call to bar the case of Eichelberger vs. Keel. And that is Case Number 2019-CP-23-5360. And it's a motion for summary judgment.

So I believe it's the plaintiff's motion, if I'm not ---

MR. AHEARN: Defendant's motion, Your Honor.

THE COURT: Okay. All right. Good enough. I'll be happy to hear it.

MR. AHEARN: All right. Good afternoon, Your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. AHEARN: Paul Ahearn for defendant Mark Keel and the State Law Enforcement Division.

THE COURT: Yes, sir.

MR. AHEARN: And as we just mentioned, you know, we're here on the defendant's motion for summary judgment in this matter. 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. There is one matter that I'll address in a moment that we both kind of see a little bit differently.

1 But for the most part, we really do agree that this one is  
2 properly determined by the Court as a matter of law.

3 So by way of kind of brief background, and, you know,  
4 I would just simply incorporate the briefs filed in this  
5 matter and all their subsequent attachments into this  
6 argument. But everything was spelled out, I believe,  
7 pretty clearly in there for the Court.

8 THE COURT: Okay.

9 MR. AHEARN: In 1988 the plaintiff, Mr. Eichelberger,  
10 pled guilty to lewd conduct upon a minor. And at the time  
11 that he committed this offense, there was no sex offender  
12 registry. The registry, of course, came into be in 1994.  
13 And SLED's contention, and this has been upheld by the  
14 South Carolina Supreme Court in some case law that I'll  
15 get into in a moment, applies retroactively. There's no  
16 ex post facto violation to making someone have to register  
17 even if their offense occurred before the registry came  
18 into be, the seminal case there, of course, being State v.  
19 Walls where it was an individual who committed a sexual  
20 offense back in the 1970s, and then upon arrest in 1998,  
21 before he went to go be released, he was provided notice  
22 that he needed to go register.

23 Now, the facts of that case are slightly different  
24 than the one in Mr. Eichelberger's here where in 1994 when  
25 the registry was created, I would respectfully contend

1 that Mr. Eichelberger has in essence been a sex offender  
2 in South Carolina for 26 years. The registry, as it  
3 applied to him in '94, technically triggered his  
4 requirements to register, which are for life in South  
5 Carolina absent certain avenues of removal, which I'll  
6 also briefly touch on here. However, when that happened  
7 in '94, that was the triggering event. And when the  
8 registry was created, lewd act upon a minor was a  
9 specifically enumerated offense in the 1994 registry. I  
10 have the cite to the legislative language at the time in  
11 my brief that shows that unequivocally a conviction for  
12 that offense mandates registration for life.

13 Now, in the alternative, I recognize that was  
14 26 years ago, and the registry, as it exists to now, has  
15 certainly changed a little bit over time. There have been  
16 certain offenses added to it, and in this case, certain  
17 offenses that have been recodified. Lewd act upon a minor  
18 has been held by -- well, has been stated in the Supreme  
19 Court decision of State v. Ross to be nothing more than a  
20 recodification into CSC with a minor, third. The elements  
21 of the offense are the same. It was in a general  
22 recodification of statutes. And so if it weren't the '94  
23 registry that applies, which I do certainly make my  
24 position that it is, the current registry also provides  
25 that the offense he committed in 1988 still exists on the

1 registry just under albeit a different name.

2 Now, when it comes to one of the plaintiff's main  
3 issues, here is the issue of the manner in which he was  
4 notified and whether there was legal grounds to actually  
5 notify him at all of his obligation to register. You  
6 know, I say respectfully, but I believe the plaintiff's  
7 argument is a bit -- it has some tunnel vision to it when  
8 it's looking at the statute of 23-3-430 that provides that  
9 a person can only be -- you know, they shall be notified  
10 by the Department of Corrections, by PPP upon release from  
11 that jurisdiction if they have to register as was the case  
12 in Walls. He had been arrested and was being released in  
13 1998.

14 Well, that's not to the exclusion of all the other  
15 avenues by which the State can lawfully inform someone and  
16 serve upon them notice that they have to register as an  
17 offender. It's also found in South Carolina Code  
18 23-3-480, which is also instructive, that provides that,  
19 you know, immediately following actual notice through  
20 arrest, service or arraignment, that a person is required  
21 to register.

22 You know, we have individuals that move here from out  
23 of state in which, you know, there's a body of  
24 jurisprudence that dictates what will trigger registration  
25 here. But the ability for the sheriff's office to provide

1 notification, you know, 440 was not meant to be an  
2 exclusive statute. That's why there's other language that  
3 exists out here, especially even just going to 23-3-430,  
4 which provides that a conviction for any of these offenses  
5 mandates registration in South Carolina as a sex offender  
6 for life.

7 And so, you know, I would just respectfully contend  
8 here that, you know, while it may be that -- you know, if  
9 they wanted the registry to function in a way that an  
10 individual who committed an offense before the registry  
11 was created in an offense that was enumerated could only  
12 go on the registry upon the commission of an entirely  
13 separate offense, let's say one that wasn't even sexually  
14 related, sexually involved, but then they could only be  
15 notified to go register when they're being released from  
16 incarceration of that offense, that would, frankly, kind  
17 of be an absurd result for the legislative intent behind  
18 the registry, which is, of course, stated very cleanly and  
19 very plainly in 23-3-400 to say that it's to inform the  
20 public and to give law enforcement information. That's  
21 been the stated purpose of the registry since its  
22 inception, and it's been upheld numerous times by the  
23 Supreme Court as being constitutional in all grounds.

24 Now, going off of that one step further to say that,  
25 you know, he wasn't, you know, here properly notified to

1 have to register, there was one point of contention with  
2 the plaintiff here in regards to the manner in which he  
3 was notified. He was served with notice by the  
4 Spartanburg County Sheriff's Office to register as a sex  
5 offender, at which point I don't know the exact amount of  
6 days or hours that passed, but he then voluntarily went  
7 into the sheriff's department. During that window, I  
8 don't know if he contacted an attorney, I don't know what  
9 steps he made, but he went in there, and they told him  
10 this is the law and you have to register, at which point  
11 he was told that if you don't register, you will be  
12 charged with failure to register. That's a statement of  
13 fact. If you don't register and you've been provided  
14 actual notice as provided in the statute, you are going to  
15 be charged with failure to register. He acknowledged his  
16 obligation, and he signed all the requisite documents  
17 recognizing that he is properly identified as a sex  
18 offender in South Carolina.

19 With that being said, then we get to kind of the back  
20 end in which, you know, there are three avenues of removal  
21 in South Carolina to come off the sex offender registry.  
22 While it is for life, it's also very clear that the  
23 registry sets forth in 23-3-430(E), (F) and (G) the three  
24 avenues by which an individual can come off the registry.  
25 The first, of course, is if their sentence is vacated on

1 appeal. The second is a pardon specifically with a  
2 finding of not guilty. And the third is through a habeas  
3 action in which an individual is granted a new trial.

4 Absent one of those avenues, it's been consistently  
5 upheld by courts in this state that registration is for  
6 life. I can certainly, you know, appreciate that 26 years  
7 later, you know, being hit with this reality is difficult,  
8 but it is in full spirit with South Carolina law and  
9 established jurisprudence of this state, and SLED would  
10 certainly take the position that it's proper and that it  
11 must continue to be for life.

12 The last thing I would add is that upon information  
13 and belief in this matter, at the time of the 1988  
14 conviction for lewd act upon a minor, the plaintiff was  
15 charged initially with CSC with a minor, second. The  
16 arrest report read that the police officer, the affiant,  
17 has a formal written statement which was provided by a  
18 13-year-old female that implicates the defendant. In the  
19 statement, the victim indicated the defendant did perform  
20 digital vaginal intercourse on her against her will. The  
21 victim identified the defendant to be her stepfather and  
22 stated this occurred at her residence, which I omitted  
23 from the factual recitation.

24 And then furthermore, there is no information that I  
25 found to show that he appealed this 1998 conviction, that

1 he applied for any postconviction relief challenging the  
2 sufficiency of his legal representation in the matter, he  
3 hasn't sought pardon, he hasn't filed a writ of habeas  
4 corpus, his conviction has not been reversed, overturned  
5 or vacated, and as such that he does not meet any of the  
6 statutorily enumerated criteria of removal as set forth in  
7 South Carolina law.

8 And with that, Your Honor, I will take a seat. But  
9 we would just simply ask that the law be upheld here as it  
10 has consistently been in South Carolina to find that  
11 summary judgment is proper as a matter of law and that  
12 Mr. Eichelberger will be required to continue registering  
13 as a sex offender for life.

14 THE COURT: Okay. Thank you.

15 Yes, sir?

16 MR. BROUGH: May it please the Court, Your Honor.

17 THE COURT: Yes, sir. Absolutely.

18 MR. BROUGH: Your Honor, Chris Brough representing  
19 Mr. Eichelberger.

20 Judge, in going through this case, and we would  
21 incorporate into our argument the memorandum in opposition  
22 to summary judgment that we had filed along with the  
23 exhibits, including Mr. Eichelberger's affidavit in which  
24 we would contend that he was under duress given the fact  
25 he was not allowed to consult with an attorney and told he

1 would be arrested if he did not sign on the dotted line.

2 In looking at this case, Judge, he was convicted in  
3 1988. His sentence essentially was a suspended one on a  
4 lewd act on a minor including a term of five years of  
5 probation. He completed all of his supervision before the  
6 enactment of the registry in 1994.

7 In looking at the registry -- and the registry, I  
8 would contend, contains not just the 23-3-430, but all of  
9 the related statutes. One of the things that I find  
10 extremely interesting is that both in the original version  
11 of the sex offender registry as well as in the current  
12 version, there has been no amendment or changes under  
13 Section 23-3-440. And in that section in Subsection 4, it  
14 specifically states that the Department of Corrections,  
15 the Department of Probation, Parole and Pardon Services,  
16 and the Department of Juvenile Justice shall provide to  
17 SLED the initial registry information regarding the  
18 offender prior to his release from imprisonment or relief  
19 from supervision. And that's very clear that that is the  
20 initial registry information. Now, that was not done here  
21 because he was not on probation, nor was he in the custody  
22 of the Department of Corrections. But that language has  
23 not changed.

24 In looking over the memorandum in support that was  
25 filed after the memorandum that we had filed, you know, I

1 was struck by what I thought was the State's intent to  
2 essentially rewrite the law during different periods in  
3 order to basically require Mr. Eichelberger to register.  
4 In saying that, they are ignoring that 440 provision,  
5 Judge. It's like they're rendering it completely invalid.  
6 And I would ask the Court to strictly construe the statute  
7 to indicate what the legislature's intent was.

8 By contrast, in a different type of crime -- and I  
9 just want the Court to consider this in terms of how the  
10 legislature could have provided for things, but if the  
11 Court looks at, for example, the implied consent statute  
12 on DUI cases under 56-5-2950, in there in Subsection E,  
13 one of the paragraphs basically indicates that SLED shall  
14 administer the provisions of this subsection and shall  
15 make regulations necessary to carry out this subsection's  
16 provisions.

17 Now, I find that very interesting given the arguments  
18 in this case specifically because that language or that  
19 type of language could have been used in terms of  
20 requiring people to register, but it wasn't. It was just  
21 the registration shall be forwarded to SLED under  
22 23-3-440, Subsection 4, and that initial registry  
23 information shall be provided to them prior to the  
24 person's release from supervision.

25 We would contend that when the legislature enacted

1 this, they foresaw the problems of trying to get all the  
2 information if you're going to make a statute retroactive  
3 in the people in the system, and that, yes, it was  
4 retroactive, but it was only meant to deal with the people  
5 that were still in custody when they came out. It was  
6 never intended to go ahead and require someone who was off  
7 all supervision to then go forward and register. There's  
8 nothing in the law that indicates that.

9 The other issue that we have is under the current  
10 version of the registry, which I will contend was in force  
11 at the time in 2019 when Mr. Eichelberger was served by  
12 the sheriff's office in person of his requirement that he  
13 had to report to register, the current version of the  
14 statute does not indicate anywhere in it the crime that  
15 which he was convicted of. Now, there is a subsection in  
16 there talking about if you were convicted of a different  
17 offense that could require registration, that certainly  
18 you could be required to register if the sentencing judge  
19 so provides, which, of course, did not happen in this  
20 case, Judge.

21 But I would also -- and I've reviewed the cases that  
22 have been submitted in support of summary judgment, and,  
23 Judge, those cases are very distinguishable from the one  
24 here. The Walls case that is referred to, that was an  
25 individual who was under supervision at that time. And,

1 yes, you know, he was someone that was convicted prior to  
2 the enactment of the registry, but he was under  
3 supervision, he was on probation, and it was his agent who  
4 forwarded that information to SLED. That's very  
5 distinguishable from this case here.

6 The other thing is that case was argued on ex post  
7 facto grounds, which we're not arguing here today, Judge.  
8 And so, you know, I want the Court to consider that as  
9 well.

10 And, Your Honor, that other case, that State vs. Ross  
11 case, I reviewed that case as well. It looks like Your  
12 Honor might have been the Circuit Court judge on that  
13 case, if I looked at it correctly. And in reviewing that  
14 case, you know, what I saw is the reference to the  
15 recodification. The recodification didn't take place  
16 until 2012. That was when that recodification took place.  
17 I believe this court originally heard that case back in  
18 2011. So the fact that the Supreme Court goes by and says  
19 that somehow there's a recodification, I don't think that  
20 was ever even considered at that point in time, Judge. So  
21 we would ask the Court not to look at that as being some  
22 sort of evidence that there's a recodification that takes  
23 place.

24 And we would simply ask the Court to follow the law  
25 on this case, Judge. And this is an individual that

1 should have never been put on the registry. There was no  
2 legal authority that justifies law enforcement coming back  
3 to him 27 years after he was relieved from supervision to  
4 say all of a sudden now you're required to register as a  
5 sex offender, Judge. And so that would be our position.  
6 We would ask the Court to deny the defendant's motion.

7 THE COURT: And I'll ask both of you this. Has the  
8 specific offense for which the plaintiff was convicted  
9 ever appeared in the statute as requiring registry?

10 MR. AHEARN: Yes, Your Honor. In the original 1994  
11 iteration of the registry, this offense was specifically  
12 enumerated as a mandatory registerable offense. You can  
13 find that actually in my -- the citation to that exact  
14 legislative language in my brief on pages 3 and 4 where we  
15 specifically lay out the legislative history confirms the  
16 conclusion here that lewd act on a minor was in the  
17 initial 1994 iteration of the registry.

18 MR. BROUGH: Judge, I believe we included that as  
19 Exhibit 3, the original registry, in our memorandum, Your  
20 Honor.

21 THE COURT: Okay, okay. So it was included.

22 MR. BROUGH: Yes, sir.

23 THE COURT: But then it fell off in 2015?

24 MR. BROUGH: 2012.

25 MR. AHEARN: So respectfully, I wouldn't say it fell

1 off so much as ---

2 THE COURT: Just recodified the definitions.

3 MR. AHEARN: It was recodified.

4 And I would state, you know, it was really in State  
5 v. Ross the Supreme Court had a note in the body of their  
6 decision as well as the footnote that really just stated  
7 that simply as a matter of fact that lewd act upon a minor  
8 became CSC with a minor, third.

9 THE COURT: Yeah.

10 MR. AHEARN: It really wasn't -- it wasn't an issue  
11 at hand in the case other than they wanted to make clear  
12 that this is the same offense. It is still lewd and  
13 lascivious act upon a minor of a certain age and that  
14 those are the same charges, just simply under different  
15 statutory designations.

16 THE COURT: Okay. Anything else?

17 MR. BROUGH: Just that they did not address how that  
18 relates to the sex offender registry when they laid that  
19 out, Judge.

20 THE COURT: Okay. Well, I'll take it under  
21 advisement. I'll take a look at it.

22 I have a vague recollection of that State v. Ross,  
23 but I can tell you, when it was published, I have no  
24 recollection of it having come before me. And it occurred  
25 to me it was because two good lawyers came into the

1 courtroom and talked to me and said, "We've got this issue  
2 and nobody knows the answer to it. We need to get it up  
3 to the Supreme Court." So that's kind of how that came  
4 about.

5 So notwithstanding that I may have been the trial  
6 judge in that case, I need to go back and look at it  
7 because I didn't commit the issues to memory.

8 I will say that, you know, ultimately, this is a  
9 question of public policy as much as anything else, and  
10 that's why I need it to go to the Supreme Court, because  
11 the Supreme Court determines public policy more so than  
12 the trial court does. And the question is, is it fair to  
13 the citizens of the State of South Carolina to  
14 retroactively, almost 30 years after the fact, to impose  
15 an administrative penalty that wasn't articulated on the  
16 record at the time of the plea? And, you know, there are  
17 competing public policy concerns, and that's an issue for  
18 the Supreme Court. They may have resolved it in Wall and  
19 they may have resolved it in Ross. I'm just going to go  
20 back and look at it, okay?

21 MR. BROUGH: Yes, sir.

22 THE COURT: I'll go back and look at it. I don't  
23 particularly like it, but I understand the public policy  
24 behind it too. So, you know, what I think personally  
25 doesn't make a hill of beans.

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MR. BROUGH: Yes, sir.

THE COURT: I'm just going to look at the law and see how it applies to the case at bar, okay?

All right. Good luck to you. Thank you.

(WHEREUPON, proceedings concluded at 2:22 p.m.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF GREENVILLE            )

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth 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 Court of Common Pleas for Greenville County, South Carolina, on the 2nd day of June, 2020.

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

July 24, 2020

Cheryl A. Smith

Cheryl A. Smith, CVR-M

Court Reporter

**From:** [Ahearn, Paul](#)  
**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)  
**Date:** Tuesday, September 1, 2020 5:12:00 PM

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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

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

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

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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 Chrisopher 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

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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]

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**South Carolina  
Law Enforcement Division**

P.O. Box 21398  
Columbia, South Carolina  
29221-1398

*Henry D. McMaster, Governor*  
*Mark A. Keel, Chief*

*Tel: (803) 737-9000*

July 29, 2020

The Honorable Robin B. Stilwell  
305 E. North St.  
Greenville, SC 29601

Re: Vance Eichelberger. v. Mark Keel, Chief, State Law Enforcement Division  
Civil Action No.: 2019-CP-23-05360

Dear Judge Stilwell:

I hope this correspondence finds you well. Enclosed is a copy of **Defendants' Motion to Alter or Amend the Grant of Relief to Plaintiff**, which I have already served on opposing counsel via electronic filing.

With kind regards, I am  
Sincerely,

Paul T. Ahern, III  
Deputy General Counsel

Enclosures – listed in text

**RECEIVED**

**Jan 22 2021**

**SC Court of Appeals**

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Certificate of Counsel

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/ Paul T. Ahearn, III  
Paul T. Ahearn III, Esquire  
Deputy General Counsel  
South Carolina Law Enforcement Division  
Post Office Box 21398  
Columbia, South Carolina 29221-1398  
(803) 896-4395  
S.C. Bar Number 103321  
**Attorney for Appellant**

January 21, 2021