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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Lexington County
Hon. Grace Gilchrist Knie, Circuit Court Judge
Appellate Case Tracking No. 2019-000691

Eric Ragsdale, Appellant,

v.

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

PETITION FOR REHEARING

On June 16, 2021, this Court reversed the circuit court's decision and remanded for a hearing allowing Ragsdale to present evidence he no longer poses a risk of reoffending sufficient to justify continued lifetime registration. The State believes this Court's opinion in Dennis Powell v. Mark Keel, Op. No. 28033 (S.C. Sup. Ct. filed June 9, 2021) is incorrectly decided and the State fully supports the rationale of and joins in the arguments provided in the Petition for Rehearing in that appeal.[1] Additionally, as noted in the Petition for Rehearing in Powell, there was no evidentiary merits hearing in Powell because all issues were decided on summary judgment. As a result, there is no hearing upon which a circuit court could base Ragsdale's hearing on remand. Additionally, even if Powell is upheld, this Court overlooked its own

[1] The Court recently made it clear: "Beginning with Walls, and continuing through Hendrix, Ronnie A., Dykes, and Justin B., we upheld the constitutionality of the mandatory lifetime sex offender registry requirement with electronic monitoring for adults and juveniles." In the Interest of Justin B., 419 S.C. 575, 582, 799 S.E.2d 675, 678 (2017). The Powell opinion provides no basis for abandoning this Court's prior holdings, and certainly no change that has occurred in the last four years to justify the departure.

holding in that case by ordering an immediate hearing for Ragsdale. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing in both this case and the Powell case, find lifetime registration constitutional under both the federal and state constitutions, and, in the alternative, find Ragsdale is not entitled to a hearing until action is taken by the Legislature even if the decision in Powell is upheld.

In Powell, this Court specifically found: "We hereby reserve the effective date of this opinion for twelve (12) months from the date of filing to allow the General Assembly to correct the deficiency in the statute regarding judicial review." As this Court has recently stated: "Determinations of public policy, however, are chiefly within the province of the legislature, whose authority on these matters we must respect." Fullbright v. Spinnaker Resorts, Inc., 420 S.C. 265, 271, 802 S.E.2d 794, 797 (2017) (citing Taghivand v. Rite Aid Corp., 411 S.C. 240, 244, 768 S.E.2d 385, 387 (2015) (recognizing that the "primary source of the declaration of the public policy of the state is the General Assembly")). In this appeal, the Court did not allow the Legislature the opportunity to correct the deficiency found by the Court or set the public policy based on its belief of the best way to protect the citizens of this State from the risk of harm.

The Legislature may determine that judicial review is not appropriate until a person has spent twenty or twenty-five years on the registry. Alternatively, the Legislature could determine a tiered system of automatic release—similar to the Federal SORNA system—is appropriate and, therefore, judicial review is not even necessary for Ragsdale. Either finding would entirely comport with this Court's holding in Powell that there cannot be lifetime registration without judicial review, and either legislative determination would mean Ragsdale would not be entitled to a hearing. In one case, the Legislature would have made a determination that the public needs additional protection from sex offenders like Ragsdale. With the alternative decision, the

Legislature would be saving Ragsdale, the judiciary, and the State the burden in both cost and time of holding a hearing. Any number of possible legislative solutions are available and many would not entitle Ragsdale to the relief this Court is granting even after this Court explicitly indicated the best solution was the one that came from the Legislature.[2]

This Court has expressed: "In honoring separation of powers, we adhere to the principle that a court must not reject the legislature's policy determinations merely because the court may prefer what it believes is a more equitable result." Smith v. Tiffany, 419 S.C. 548, 559, 799 S.E.2d 479, 485 (2017). This Court continued: "[T]he policy decision belongs to the legislature, and the legislature has crafted the provisions of the Act as it sees fit. We are a court, not a legislative body. That a court may disagree with a legislative body's policy decisions or believe a perceived 'more fair' outcome exists is of no moment." Id. at 565, 799 S.E.2d at 488. Additionally, in Justin B., this Court reiterated multiple times that any change in the policy, procedure, or requirements of the sex offender registry should come from the Legislature, and this Court would "defer to the Legislature's determination." Justin B. at 583, 799 S.E.2d 679. As this Court announced, if the registry requirements are "in need of change, that decision is to be made by the Legislature—not the courts. Id. at 586–87, 799 S.E.2d at 681. In this case, proper discretion to the separation of powers set forth in the South Carolina Constitution requires Ragsdale to wait until the Legislature has determined whether he is entitled to relief and what that relief will be, instead of this Court unilaterally usurping that role and determining he is entitled to an unspecified hearing with an unspecified standard to be applied by the circuit court.

[2] Additionally, this Court's decision allowing Ragsdale a hearing unnecessarily sets him apart from all the other individuals on the sex offender registry who may not have the same opportunity for relief.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing in this case, and in the Powell appeal, and find the lifetime registration requirement to be constitutional consistent with this Court's many prior decisions. In the alternative, the State asks this Court to hold Ragsdale's relief in abeyance until the Legislature has the opportunity to enact legislation designed to address this Court's concerns and sets forth a policy and procedure related to the sex offender registry.

Respectfully submitted,

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