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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Grace Gilchrist Knie, Circuit Court Judge

Civil Action No. 2017-CP-32-00712
Appellate Case Tracking No. 2019-00691

Eric Ragsdale, ...Appellant,

v.

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

RESPONSE IN OPPOSITION TO PETITION FOR REHEARING

Having received and reviewed the Petition for Rehearing of Respondent, and the emailed request for a return dated July 2, 2021, the undersigned submits this Response in Opposition to Petition for Rehearing. For the reasons set forth herein, Respondent's petition should be denied.

On June 9, 2021, this Court correctly, and unanimously, decided Powell v. Keel, Op. No. 28033, 2021 WL 2346055 (S.C. Sup.Ct. filed June 9, 2021), finding that South Carolina Sex Offender Act ("SORA") was unconstitutional because it fails to afford an opportunity for judicial review to assess the risk of reoffending. The Opinion carefully recites the limited scope of review and recognizes the presumption of constitutionality. See Powell, at *2. The Court thereafter outlines prior decisions which have upheld SORA under different challenges before ultimately

concluding that the instant challenge, different from prior challenges, reveals its constitutional defect. See id., at *3-5. The foregoing is effectively what Respondent has challenged in their rehearing petition in Powell which has been incorporated by reference in the instant rehearing petition.[1] Both petitions, however, fail to "state with particularity the points supposed to have been overlooked or misapprehended by the Court." See Rule 221(a), SCACR. As such, both petitions should be deemed abandoned pursuant to Rule 240(g) of the South Carolina Appellate Court Rules. Respondent simply seeks a "second bite at the apple" which is improper in a rehearing petition.[2] Contrary to Respondent's suggestion, neither Powell nor Ragsdale disregard's "longstanding precedent" as suggested, but rather evaluates a new challenge to SORA while drawing upon existing authority such as State v. Dykes, 403 S.C. 499, 744 S.E.2d 505 (2013). Precedential authority was clearly considered, and utilized, in determining the instant challenges. Respondent's suggestion that such authority was either overlooked or misapprehended was not outlined, nor does it have merit.

Similarly, Respondent asserts that Powell injected the personal preferences of the Court into the interpretation of SORA as justification for revisiting these decisions. See Powell Rehearing Petition at 6. Respondents fails to specify or develop this position in violation of Rule 221(a) of the South Carolina Appellate Court Rules which is perhaps telling considering the

[1] Having read and reviewed the Return to Petition for Rehearing in Powell, rather than reargue the same presentation so adeptly presented therein, the undersigned incorporates by reference those responses presented by Powell in the Return. The petitions for rehearing in both matters should properly be denied.

[2] Many of the arguments presented in the rehearing petition were previously addressed both in the briefings before this Court and the oral arguments. As such, the undersigned incorporates by reference those arguments previously submitted in response to Respondent's arguments regarding prior precedent of this Court regarding SORA.

thorough analysis the Powell opinion devotes to due process. Our Country and State have a system of checks and balances wherein the Judiciary is designed to ensure the Legislature enacts laws in compliance with our Constitutions. This is precisely what was done in these two matters. Respondent's arguments in their petition amount to little more than a disagreement with the outcome and fail to justify a rehearing.

Finally, and specific to Ragsdale, Respondent seeks reconsideration of the decision in Powell to reserve the effective date of the opinion for twelve (12) months while also remanding Ragsdale for a hearing. Respondent suggests relief should be held in abeyance, *indefinitely*, until South Carolina's Legislature acts. Such a request belies Rule 220(a) which provides that "the court may affirm, reverse, or modify the decision below or remand all or any issues for further proceedings." See Rule 220(a), SCACR. In the instant matter, summary judgment was granted by the Circuit Court and Ragsdale appealed. This Court reversed that decision and remanded for a hearing consistent with the decisions in Powell and Ragsdale. While the Powell decision delayed the effective date of the opinion to afford the Legislature the opportunity to enact legislation to "correct the deficiency in the statute regarding judicial review" because Powell and Ragsdale are in judicial review already, albeit different postures, there is no justification to require Ragsdale to continue to suffer the unconstitutional onus of SORA. This fact clearly distinguishes Ragsdale from all other registrants that seems to be the concern outlined in footnote 2 of the Rehearing Petition. Our judges are certainly capable of determining whether an individual such as Ragsdale continues to present a risk of reoffending, or not.

The concern suggested in the Rehearing Petition that upon remand a Circuit Court Judge will not have a hearing upon which to base it's review as Powell was decided on summary

judgment is meritless. Summary Judgment is properly granted only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "To determine if any genuine issues of fact exist, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party." Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003)(citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)). Thus, in Powell, it isn't that there wasn't a hearing, but rather that viewing all the facts in the light most favorable to the State, it was apparent that Powell failed to present a risk of recidivism sufficient to justify his continued registration. A Circuit Court Judge on remand in this matter is well equipped to conduct a hearing.

For each of these reasons, as well as those that were previously argued in the filings in this matter, this Court's original decisions in this matter, and in Powell, were correct and the Rehearing Petitions should properly be denied.

Respectfully Submitted,

s/ Jonathan M. Milling
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