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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court Of Common Pleas

Walton J. McLeod, Circuit Court Judge

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Appellate Case No. 2019-000327

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South Carolina Law Enforcement Division.....Respondent,

v.

Brandon Reed.....Appellant.

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**RECORD ON APPEAL**

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LEON DAVID LEGGETT  
ASSISTANT ATTORNEY GENERAL  
SC Bar Number 104366  
PO Box 11549  
Columbia, SC 29211  
Phone: (803) 734-3177  
[DavidLeggett@scag.gov](mailto:DavidLeggett@scag.gov)

HARLEY L. KIRKLAND  
DEPUTY ASSISTANT ATTORNEY GENERAL  
SC Bar Number 100382  
PO Box 11549  
Columbia, SC 29211  
Phone: (803) 734-0406  
[HKirkland@scag.gov](mailto:HKirkland@scag.gov)

ATTORNEYS FOR RESPONDENT

P. Andrew Anderson  
Kristina M. Anderson  
Anderson & Anderson LLP  
211 York Street, NE  
Aiken, South Carolina 29801  
(803)648-6000

ATTORNEYS FOR APPELLANT

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FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO. 2018-CP-02-00670

South Carolina Law Enforcement Division

Brandon Reed

PETITIONER/PLAINTIFF

RESPONDENT/DEFENDANT

Submitted by: Walton J. McLeod, IV, Presiding Judge	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---	--

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter comes before the court upon Respondent/Defendant Brandon Reed's Motion to Reconsider in which he seeks relief from the court's Order dated November 9, 2018, pursuant to Rules 59 and 60, SCRPC.

Respondent argues that this court erred in finding that the Family Court Order dated April 26, 2017, is void. More specifically, Respondent asserts that S.C. Code Ann. § 63-3-510 is an "Exclusive Original Jurisdiction" statute, which relates to jurisdiction over the person of a child rather than subject matter jurisdiction. However, the South Carolina Supreme Court has definitively recognized that S.C. Code Ann. § 63-3-510 addresses the subject matter jurisdiction to the Family Court:

Section 20-7-400 of the South Carolina Code, in effect at the time of these proceedings, provides for the subject matter jurisdiction of the family court. *Riggs v. Riggs*, 353 S.C. 230, 236 n. 3, 578 S.E.2d 3, 6 n. 3 (2003) (noting "§ 20-

7-420 determines the family court’s subject matter jurisdiction”). In 2008, section 20-7-400 was repealed and recodified as S.C. Code Ann. § 63-3-510 by 2008 S.C. Act No. 361, but the new provision is virtually identical.

*In re Shaquille O’Neal B*, 385 S.C. 243, 247-48, 648 S.E.2d 549, 552 (2009).

Seeing that S.C. Code Ann. § 63-3-510 refers to subject matter jurisdiction, the court notes that the Family Court’s subject matter jurisdiction in this matter terminated when Respondent attained the age of twenty-one years. S.C. Code Ann. § 63-3-510(B). As such, the court finds that it did not err in finding that the Family Court lacked subject matter jurisdiction and that the April 26, 2017 Order is void.

Respondent also argues that Respondent clearly and voluntarily waived personal jurisdiction in Family Court. The court declines to rule on whether the Family Court had personal jurisdiction in this matter because the court already deemed the April 26, 2017 Order void due to a lack of subject matter jurisdiction.

Lastly, Respondent again contends that SLED should be barred from relief based on the doctrines of res judicata and collateral estoppel. This issue was addressed in the court’s Order dated November 9, 2018, and for the reasons stated forth in the aforementioned Order, the court declines to reconsider, alter, or amend its judgment as to these issues.

Based on the forgoing, this court DENIES Respondent’s Motion to Reconsider.

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate “N/A” in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		



Aiken Common Pleas

**Case Caption:** South Carolina Law Enforcement Division (Sled) VS Brandon Reed  
**Case Number:** 2018CP0200670  
**Type:** Order/Form 4

So Ordered

s/Walton J. McLeod, 2765

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
South Carolina Law Enforcement Division, )  
 )  
Petitioner/Plaintiff, )  
 )  
v. )  
 )  
Brandon Reed, )  
 )  
Respondent/Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2018-CP-02-00670

**ORDER**

**THIS MATTER** comes before the court pursuant to Petitioner's/Plaintiff's Motion for Summary Judgment filed on June 14, 2018, seeking a summary judgment order on its Declaratory Judgment Action and Respondent's/Defendant's Motion to Dismiss or in the Alternative for Summary Judgment filed on July 16, 2018, seeking to dismiss Petitioner's/Plaintiff's Declaratory Judgment Action. A hearing on the matter was conducted on September 24, 2018. Appearing at the hearing were Harley Kirkland and T. Parkin Hunter, counsel for Petitioner/Plaintiff South Carolina Law Enforcement ("SLED"), and Kristina M. Anderson, counsel for Respondent/Defendant Brandon Reed ("Mr. Reed"). Based on the documents on file and the arguments heard, the court makes the following findings of fact and conclusions of law:

**Background**

In 1994, Mr. Reed was adjudicated a delinquent for a single count of criminal sexual conduct with a minor (1<sup>st</sup> Degree) at the age of twelve (12) by the Aiken County Family Court. Pl.'s Mem. Supp. Summ. J. 1 & Ex. A-B. Also in 1994, the General Assembly enacted the South Carolina Sex Offender Registry Act, which created the Sex Offender Registry ("SOR") and delegated to SLED the responsibility of maintaining the SOR. 1994 S.C. Act 497 (H.B. 4820) (enacting S.C. Code Ann. §§ 23-3-400 *et. seq.*). At that time, Mr. Reed was not required to register

with the SOR due to his adjudication as a delinquent in Family Court. However, in 1996, the SOR was extended to encompass persons, regardless of age, who have been adjudicated delinquent. 1996 S.C. Act 444 (S.B. 1286) (amending S.C. Code Ann. § 23-3-430). Subsequently, Mr. Reed was placed on the SOR pursuant to the newly amended S.C. Code Ann. § 23-3-430. Over twenty-two (22) years later on February 15, 2017, Mr. Reed filed a Motion for Removal from the SOR in the Aiken County Family Court and served the motion upon the Second Circuit Solicitor's office. Def.'s Mem. Supp. Mot. Dismiss 1, 2, 3 & Ex. 1. After a Notice of Hearing was served upon the State through the Second Circuit Solicitor's office on February 24, 2017, a hearing occurred on March 7, 2017, where the State appeared and did not consent to or object to Mr. Reed's removal from the SOR. Mot. Hr'g Tr. 8, Mar. 7, 2017<sup>1</sup>. Counsel for Mr. Reed, presumably to seek input or revisions, provided a proposed order to SLED prior to any order being filed by the Aiken County Family Court, but SLED provided no substantive input other than "the state would challenge were it granted". Def.'s Mem. Supp. Mot. Dismiss 2, 3 & Ex. 3. On April 26, 2017, the Aiken County Family Court issued its Order (the "Order") mandating that Mr. Reed be removed from the SOR immediately. Pl.'s Mem. Supp. Summ. J. 1 & Ex. A. No motions were filed with the Aiken County Family Court by any party or entity after this Order was entered.

On March 22, 2018, SLED filed this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, seeking relief from the Aiken County Family Court's Order due to the Order being "void" for lack of subject matter jurisdiction and personal jurisdiction. As a result, the parties filed the aforementioned dispositive motions and supporting memoranda with accompanying exhibits.

---

<sup>1</sup> Subsequent to the hearing on September 24, 2018, the court requested from the parties, *inter alia*, the transcript to the motion hearing held on March 7, 2017. The court's request along with the transcript are attached as Exhibit A and Exhibit B, respectively.

**Relief under the Uniform Declaratory Judgments Act**

The Uniform Declaratory Judgments Act provides:

Courts of record within their respective jurisdictions shall have power to declare rights, status[, ] and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

S.C. Code Ann. § 15-53-20 (2017).

To fall within the intended purpose and scope of the Uniform Declaratory Judgments Act, the parties must seek adjudication of a justiciable controversy. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004); Tourism Expenditure Review Comm. v. City of Myrtle Beach, 403 S.C. 76, 81, 742 S.E.2d 371, 373–74 (2013). Declaratory judgment actions are neither legal nor equitable and, therefore, the standard of review depends on the nature of the underlying issues. Doc v. South Carolina Medical Malpractice Liability Joint Underwriting, 347 S.C. 642, 645, 557 S.E.2d 670, 672 (2001); Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009)

**Family Court Subject Matter Jurisdiction**

SLED's primary contention is that Aiken County Family Court's subject matter jurisdiction over Mr. Reed had already expired when Mr. Reed sought removal from the SOR in 2017 and as a consequence, Aiken County Family Court's Order removing Mr. Reed from the SOR is void. This court agrees.

The Family Court's subject matter jurisdiction is statutorily provided for by the General Assembly and sets out parameters for handling minors. In re Shaquille O'Neal B., 385 S.C. 243, 246, 684 S.E.2d 549, 551 (2009) (providing that the Family Court "is a statutory court created by

the legislature and, therefore, is of limited jurisdiction [and its] jurisdiction is limited to that expressly or necessary implication conferred by statute”).

S.C. Code Ann. § 63-3-510(B) (2017) provides that “[w]hen**ever the court has acquired the jurisdiction of any child under seventeen years of age**, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but **jurisdiction shall terminate when the child attains the age of twenty-one years.**” (emphasis added).

Subject matter jurisdiction is based on a court’s “power to hear and determine cases of the general class to which the proceedings in question belong.” Coon v. Coon, 356 S.C. 342, 348, 588 S.E.2d 624, 627 (Ct. App. 2003), aff’d as modified, 364 S.C. 563, 614 S.E.2d 616 (2005) (citing Watson v. Watson, 319 S.C. 92, 93, 460 S.E.2d 394, 395 (1995)). A void judgment is void from its inception and is without legal effect. Thomas & Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995) (quoting 46 Am. Jur. 2d Judgments § 31 (1994)).

A void judgment encompasses judgments from courts that lack subject matter jurisdiction. McDaniel v. U.S. Fid. & Guar. Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996) (internal quotations omitted); see also Ross v. Richland County, 270 S.C. 100, 103, 240 S.E.2d 649, 650 (1978) (holding that if “a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void”); Coon, at 347, 588 S.E.2d at 627. Additionally, the issue of subject matter jurisdiction may not be waived and can be raised for the first time on appeal. In re Shaquille O’Neal B., at 246, 684 S.E.2d at 551.

Here, the Aiken County Family Court Order directing the removal of a thirty-three (33) year-old person from the SOR was filed approximately twelve (12) years after that court’s subject matter jurisdiction ceased. As such, the Order was at its filing, and remains, void. Moreover, the

fact that the State or SLED did not raise the issue of subject matter jurisdiction until the present action is irrelevant, and it does not render the Order any less void.

**Family Court Personal Jurisdiction**

SLED argues that it was not a party to the proceedings in Aiken County Family Court and that because it was not a party to the proceeding, the Aiken County Family Court did not have personal jurisdiction over SLED. Because this court has determined that the Order is void for lack of subject matter jurisdiction, it need not rule on whether the Aiken County Family Court had personal jurisdiction. However, this court feels the need to comment on SLED's argument.

It is well established law that a judgment issued by a court acting without personal jurisdiction is void because an order or judgment "affecting the rights of a party . . . should be made or rendered [with] proper notice to the party whose rights are to be thus affected." Ex parte South Carolina Dept. of Revenue, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002) (internal citations omitted). Generally, personal jurisdiction is established with a court upon the service of a summons on a party. Id.

The court acknowledges that SLED specifically was not a party to the Aiken County Family Court proceeding, and SLED was not served with a Summons in that matter. SLED was not captioned as a party, and there is nothing to show that SLED was ever served with a Summons to provide it with notice that Mr. Reed sought to be removed from the SOR, a responsibility which falls under the direction of SLED pursuant to S.C. Code Ann. § 23-3-410 (2017). However, the court notes that SLED is an entity of the State created by statute. See S.C. Code Ann. § 23-3-10 (2017). The Second Circuit Solicitor is also an entity of the State created by statute. See S.C. Code Ann. §§ 1-7-310, 1-7-320, and 1-7-350 (2017). The Second Circuit Solicitor was served with a Summons providing the State notice of Mr. Reed's request for relief, and the Second Circuit

Solicitor did appear on behalf of the State in the proceeding and did not object to the relief sought by Mr. Reed. Further, SLED was given an opportunity to provide feedback on Mr. Reed's proposed order to the Family Court, and it declined to offer substantive feedback. In addition, the State, the Second Circuit Solicitor, and SLED failed to appeal the Aiken County Family Court's Order or file any motion for reconsideration. In fact, SLED failed to file any sort of appellate action seeking relief from the Order until March 22, 2018<sup>2</sup>. If SLED, with or without the involvement of the Second Circuit Solicitor's office, had taken the opportunity to provide substantive input to Mr. Reed regarding the proposed order, made an appropriate motion, or sought an appeal of the Order, this entire saga may have been avoided altogether.

#### **Res Judicata/Collateral Estoppel**

Mr. Reed argues that SLED should be barred from seeking relief under the Uniform Declaratory Judgments Act based on the doctrines of res judicata and collateral estoppel as this matter was litigated previously and the Order was subsequently issued without appeal.

The purpose of the doctrine of res judicata is to "preclude relitigation of claims that were subject to judgment in a prior action where: (1) there is an identity of the parties or their privies, (2) there is an identity of the subject matter of the litigation, and (3) there was a final determination on the merits of the claim in the prior action." Nelson v. QHG of S.C. Inc., 354 S.C. 290, 303-04, 580 S.E.2d 171, 178 (Ct. App. 2003), aff'd in part, rev'd in part, 362 S.C. 421, 608 S.E.2d 855 (2005) (citing Wessinger v. Rauch, 288 S.C. 157, 159, 341 S.E.2d 643, 644 (Ct. App. 1986)).

Further, "[r]es judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between these

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<sup>2</sup> The court notes, however, that SLED filed a Petition for Original Jurisdiction with South Carolina Supreme Court to seeking to declare the Order void on September 1, 2017. Def.'s Mem. Supp. Mot. Dismiss 2, 3 & Ex. 6. This Petition for Original Jurisdiction with South Carolina Supreme Court was denied on December 14, 2017. Def.'s Mem. Supp. Mot. Dismiss 2, 3 & Ex. 7.

parties.” Id. at 304, 580 S.E.2d at 178 (citing Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)). Res judicata exists to prevent a litigant from raising any issues that were adjudicated in a previous action and any issues that could have been raised in the previous action. Id.

Even when all of the elements of res judicata are met, res judicata should not be applied if it contravenes important public policies. Id. at 304–05, 580 S.E.2d at 178 (providing that the courts must weigh the competing public policies).

Similarly, the doctrine of collateral estoppel bars the relitigation of issues once a final judgment on the merits has been reached. Id. at 305, 580 S.E.2d at 179 (citing Richburg v. Baughman, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986)). The issues must have been “actually and necessarily litigated” in the first suit in order for the same parties or their privies to be precluded from relitigating those issues. Id. ““When an issue of fact or law is actually litigated and determined by a **valid and final judgment**, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.”” State v. Bacote, 331 S.C. 328, 330, 503 S.E.2d 161, 162 (1998) (emphasis added).

The following are factors to consider in determining whether the doctrine of collateral estoppel exists and whether the issues were actually litigated in the first action: “whether privity exists, whether the doctrine is used offensively or defensively, and whether the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action.” Nelson, at 306, 580 S.E.2d at 179 (citing Pye v. Aycock, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct. App. 1997)). “Only a party to a prior action or one in privity with the party can be precluded


from relitigating an issue on the basis of offensive collateral estoppel.” *Id.* (citing Carrigg v. Cannon, 347 S.C. 75, 80, 552 S.E.2d 767, 770 (Ct. App. 2001)).

An exception exists to applying collateral estoppel where “circumstances justify affording him an opportunity to relitigate [an] issue” and “adverse impact of the determination on the public interests . . .” *Pye*, at 437-38, 480 S.E.2d at 460-61 (citing South Carolina Property & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625 (1991)).

Here, Mr. Reed raises a sound argument for barring SLED’s action through application of res judicata and collateral estoppel principles, but ultimately the public policy concerns regarding the statutorily implemented SOR being altered pursuant to an order issued without subject matter jurisdiction convinces this court that neither of these two (2) doctrines should be triggered.

**THEREFORE, IT IS HEREBY ORDERED THAT** the Order is *void ab initio* due to the Aiken County Family Court’s lack of subject matter jurisdiction as statutorily provided<sup>3</sup>. As such, Mr. Reed’s Motion to Dismiss or in the Alternative for Summary Judgment is denied, and SLED’s Motion for Summary Judgment for Declaratory Judgment is GRANTED.

**IT IS SO ORDERED.**

  
Walton J. McLeod, IV  
Presiding Judge

November 9, 2018  
Aiken, South Carolina

<sup>3</sup> The court also notes that this ruling is specific to the Aiken County Family Court Order at issue in this matter and is not intended as guidance in any other case regarding removal from the SOR.

Exhibit A

**McLeod, Walton Law Clerk (Jeff Hopkins)**

---

**From:** Harley Kirkland <HKirkland@scag.gov>  
**Sent:** Friday, September 28, 2018 3:45 PM  
**To:** Kris Anderson; McLeod, IV, Walton  
**Cc:** McLeod, Walton Law Clerk (Jeff Hopkins)  
**Subject:** RE: SLED v. Reed  
**Attachments:** Transcript of Reed hearing (01707735xD2C78).pdf

Judge McLeod,

I just spoke with Penny Johnson, the court reporter and she said I could share the transcript with you and Kris, so it is attached. It states that there were no exhibits.

Sincerely,

Harley

**Harley L. Kirkland**  
Assistant Attorney General  
Office of the Attorney General  
State of South Carolina

Post Office Box 11549  
Columbia, South Carolina 29211  
Phone: 803.734.0406  
Fax: 803.734.3677  
E-mail: [HKirkland@scag.gov](mailto:HKirkland@scag.gov)

---

**From:** Harley Kirkland  
**Sent:** Friday, September 28, 2018 3:33 PM  
**To:** 'Kris Anderson'; McLeod, IV, Walton  
**Cc:** McLeod, Walton Law Clerk (Jeff Hopkins)  
**Subject:** RE: SLED v. Reed

Judge McLeod,

I don't think I am supposed to share copies of the transcript, so I reached out to Desiree Allen at Court Administration for clarification. Ms. Allen said that she will ask the court reporter, Penny Johnson, to send you a copy of the family court transcript.

Kris, thank you for sending the documents from the Supreme Court petition.

Sincerely,

Harley

**Harley L. Kirkland**  
Assistant Attorney General  
Office of the Attorney General

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State of South Carolina

Post Office Box 11549  
Columbia, South Carolina 29211  
Phone: 803.734.0406  
Fax: 803.734.3677  
E-mail: [HKirkland@scag.gov](mailto:HKirkland@scag.gov)

---

**From:** Kris Anderson [mailto:kanderson@andersonandanderson.com]  
**Sent:** Friday, September 28, 2018 3:03 PM  
**To:** McLeod, IV, Walton; Harley Kirkland  
**Cc:** McLeod, Walton Law Clerk (Jeff Hopkins)  
**Subject:** RE: SLED v. Reed

Judge McLeod: I am attaching SLED's Petition with exhibits as well as Brandon Reed's Return to the Petition and the Return filed for Alfred Edward Buice, another named defendant. We never received a copy of the hearing transcript/exhibits that would have been provided to SLED. (That means I am punting that request to you Harley.) Let me know if you need anything else on this end. Thank you. Kris

*Kristina M. Anderson*  
Anderson & Anderson LLP  
211 York Street, NE  
Aiken, South Carolina 29801  
803.648.6000 - telephone  
803.648.0888 - facsimile

---

**From:** McLeod, IV, Walton [mailto:wjmcleodj@sccourts.org]  
**Sent:** Friday, September 28, 2018 9:32 AM  
**To:** Kris Anderson <kanderson@andersonandanderson.com>; [hkirkland@scag.gov](mailto:hkirkland@scag.gov)  
**Cc:** McLeod, Walton Law Clerk (Jeff Hopkins) <[wjmcleodlc@sccourts.org](mailto:wjmcleodlc@sccourts.org)>  
**Subject:** RE: SLED v. Reed

---

**From:** McLeod, IV, Walton  
**Sent:** Friday, September 28, 2018 10:30 AM  
**To:** 'kanderson@andersonandanderson.com' <[kanderson@andersonandanderson.com](mailto:kanderson@andersonandanderson.com)>; 'kmaroney@scag.gov' <[kmaroney@scag.gov](mailto:kmaroney@scag.gov)>  
**Cc:** McLeod, Walton Law Clerk (Jeff Hopkins) <[wjmcleodlc@sccourts.org](mailto:wjmcleodlc@sccourts.org)>  
**Subject:** SLED v. Reed

Counsel,

The transcript request and Returns filed with Petition to the Supreme Court are referenced in the record but not present in full form. Please provide me with the transcript (and exhibits attached thereto) of the family court hearing, and the Returns submitted in the previously submitted petition. Thank you.

Sincerely,

Walton J. McLeod, IV  
Circuit Court Judge

205 E. Main Street  
Lexington, SC 29072  
OFFICE: (803) 785-8239  
FAX: (803) 785-8444

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Exhibit B

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

FAMILY COURT  
1994-JU-02-396

STATE OF SOUTH CAROLINA,  
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

BRANDON REED,  
DEFENDANT.

March 7, 2017  
Aiken, South Carolina

B E F O R E:

THE HONORABLE DALE M. GABLE, JUDGE.

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

SERENA MCDANIEL, ESQ.  
Attorney for the Plaintiff

ANDREW ANDERSON, ESQ.  
Attorney for the Defendant

PENNY M. JOHNSON  
Family Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness  
(DW) - Denotes Defense Witness

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E X H I B I T S

(THERE WERE NO EXHIBITS SUBMITTED.)

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P R O C E E D I N G S

THE COURT: Madam Court Reporter, this is the matter of State of South Carolina vs. Brandon Reed. This case number is 1994-JU-02-396. We are here today because Mr. Anderson has filed a motion to have his client, Mr. Reed's name removed from the sex offender registry. Ms. McDaniel is here because she is the juvenile solicitor right now in this circuit. These orders --

MS. MCDANIEL: They're from before my time. Apparently, Assistant Solicitor Heidi Holland did the petition and then the plea was with Assistant Solicitor Tim Mehebert and Mr. Reed was represented by Public Defender Doug Novak.

THE COURT: Right. And Judge Inabinet signed the order and then in August of 1998, released Mr. Reed from his indefinite probation.

MS. MCDANIEL: Right. The plea was to an event of criminal sexual conduct, which required automatic registration. So no finding was ever made by the Court. It's one of those that statutorily just requires registration.

THE COURT: We actually had that discussion before y'all came in because I looked back through the file and did not ever see it.

MS. MCDANIEL: Hence, why we don't do the pleas

1 anymore, why they're always to assault and battery first  
2 or second degree, to avoid automatic registration leaving  
3 it open so we can seek it need be later on.

4 THE COURT: Which is exactly what I told everybody.

5 Okay. Mr. Anderson.

6 MR. ANDERSON: Judge, in the gallery is Marsha  
7 Jackson. I've been working on this case for 17 years. I  
8 haven't seen Marsha in about 15 years or so, but she has  
9 been riding my fanny for 17 years.

10 MS. MCDANIEL: That's how long it takes Andy to do  
11 things.

12 MR. ANDERSON: Yes.

13 THE COURT: Who is she?

14 MR. ANDERSON: I'm sorry, that's his mom.

15 THE COURT: Okay. That explains everything.'

16 MR. ANDERSON: She and dad have not been together for  
17 a very long time, since when this boy came into this  
18 courtroom. Now, he's a man. When he came in this  
19 courtroom as a young lad, his parents had already been  
20 apart for a while. Interestingly, his dad played  
21 professional football way back and they have started  
22 rekindling a relationship.

23 THE COURT: No offense to mom.

24 MR. ANDERSON: No offense to mom. Mom is just a good  
25 soul.

1           Judge, none of this paperwork -- and we couldn't get  
2 this from the clerk because all that stuff is sealed. We  
3 didn't represent the young man in the plea. There's no  
4 mention of sex offender registry here. My client and his  
5 mother don't remember ever hearing sex offender registry.  
6 You know, it was a probationary sentence, he went from  
7 Aiken to Generation Group Home, which we still use.  
8 Serena and I sent a kid there a couple of years ago. It's  
9 a good place. My client went and --

10           THE COURT: Successfully completed the program.

11           MR. ANDERSON: He did. And he's moved on with his  
12 life. And I've got, Judge, to hand up to you his resume  
13 -- just thought it'd be easy for you to look at. I've got  
14 -- I went ahead and sent him to Dr. McKee in Columbia, who  
15 specializes in sex offender stuff, and had him evaluated.  
16 And that was favorable. And then the boy flew in -- boy,  
17 he's 35 years old. My client flew in from Washington,  
18 D.C. last night and I had polygrapher, Tommy Platt,  
19 waiting on him and we polygraphed him as to whether or not  
20 he's had any reoffenses since he turned 18. And he passed  
21 the polygraph. We've got the favorable forensic  
22 evaluation.

23           MS. MCDANIEL: And, of course, Tommy Platt's the  
24 polygrapher for the sheriff's office, so he made sure I  
25 couldn't object to the polygrapher.

1 THE COURT: See, normally, we don't allow polygraphs  
2 for anything.

3 MR. ANDERSON: Well, the reason we did it, Judge, on  
4 these kinds of cases, there's no way of knowing for sure.

5 THE COURT: I know.

6 MR. ANDERSON: And so it always appeases the  
7 prosecutors and the judges if we, at least, do such.

8 THE COURT: Okay. Mr. Anderson, I presume that you  
9 or you had him supply you satisfactory information that he  
10 has not been arrested -- I mean, I read that it was his  
11 only conviction, but has not been arrested either here or  
12 in D.C. since he became of majority or 18?

13 MR. ANDERSON: I can --

14 THE COURT: Well, we can ask him. Because it says  
15 adjudication when he was 13, the only arrest and  
16 conviction in his entire life. Okay. Do you want the  
17 Court to hear from him briefly?

18 MR. ANDERSON: Sure. Yes, ma'am.

19 THE COURT: Ms. McDaniel, do you want to tell me  
20 anything?

21 MS. MCDANIEL: Your Honor, I haven't run him through  
22 the NCIC. I could have. Mr. Anderson didn't make that  
23 request of me. But he can testify, he's here and you can  
24 put him under oath.

25 Your Honor, what I need to say on the record is,

1 obviously, as we've already discussed, I wasn't the  
2 assistant solicitor. I only have what's on an index card  
3 because this was before the time of computers and  
4 databases. I know that Mr. Reed was 12 years old during  
5 the adjudication and disposition. The victim was three  
6 years old and it was digital, not any other -- any more  
7 than that.

8 I talked to my other assistant solicitors throughout  
9 the state, because we had a training a couple of weeks  
10 ago, about whether they've been dealing with motions to  
11 remove and they haven't. They haven't experienced that.  
12 This is my second one. Mr. Anderson tells me he's done  
13 two before.

14 I can tell you that I know the majority, if not all  
15 of the other assistant solicitors who prosecute in Family  
16 Court are against lifetime registration for juveniles on  
17 the sex offender. And had I been the one -- in the early  
18 stages of my career, I, too, pled people to these and then  
19 I learned of the repercussions, which I'm sure Mr. Reed is  
20 experiencing, and hence from many, many years ago, we  
21 changed our pleas to something to avoid that unless  
22 something came to light that the State needed to seek it.

23 We did try to contact the victim when Investigator  
24 Reiter was my investigator. She made contact with the  
25 victim and her mother. They told us they needed to think

1 about it and they never got back to us. So Investigator  
2 Reiter made several attempts to reestablish contact and  
3 she avoided us a lot. So we never got an exact answer  
4 from her, so I suppose by a not answer, maybe she opposes  
5 it, but I cannot say that either. We don't know.

6 So I couldn't give Mr. Anderson a consent based on  
7 that. I wouldn't do that without a victim's consent,  
8 however, I'm not objecting to it. I'm just letting the  
9 Court use its discretion in making this decision. I guess  
10 that says it all.

11 THE COURT: Okay. Mr. Anderson, let's get him up  
12 here on the stand for just a few minutes.

13 MR. ANDERSON: Can we go off the record for just one  
14 second?

15 THE COURT: Yes, sir.

16 (WHEREUPON, an off the record discussion ensued.)

17 THE COURT: Sir, would you come up here and have a  
18 seat beside me, please.

19 BRANDON REED, after being duly sworn,  
20 testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. ANDERSON:

23 Q Could you state your full name?

24 A Brandon Anthony Reed.

25 Q And you were convicted in this very courtroom when

1 you were -- ended up being 12?

2 A I don't even remember it's been that long, but if  
3 that's what you're telling me, I would assume so.

4 Q At the time, did you have any idea you were going to  
5 end up on the sex offender registry?

6 A No. I didn't even understand honestly what was going  
7 on. It was a lot going on around me.

8 Q Since -- after that, you spent time in Aurora?

9 A Yes.

10 Q You spent time at Inner Harbor in Florida?

11 A And in Douglasville, Georgia, correct.

12 Q And Generations Group Home in Greenville, South  
13 Carlina?

14 A That is correct, Simpsonville, South Carlina.

15 Q And all of this was counseling? You had some issues  
16 going on. You had some issues with your parents?

17 A Yes.

18 Q You had some sexual questionable issues?

19 A You could say that.

20 Q You had all kind of other issues that maybe young  
21 teens suffer from?

22 A Absolutely.

23 Q Did you engage in your counseling?

24 A Absolutely.

25 Q Did you benefit from your counseling?

1 A Absolutely.

2 Q After you got out of Generations, did you also go  
3 into about two years of counseling with Dr. Palini?

4 A That is correct.

5 Q And you were on medications?

6 A That is correct.

7 Q And you had -- every month, you had two sessions of  
8 counseling with him?

9 A If not more, that is correct.

10 Q And your mom was in on some of those and some of  
11 them, she wasn't?

12 A That's correct, yes.

13 Q Now, since your conviction, have you been convicted  
14 of any other crimes?

15 A No, nothing.

16 Q And you have been working in Virginia, Maryland,  
17 Washington, D.C.?

18 A That general area, yes.

19 Q And has this sex offender registry followed you  
20 there?

21 A Oh, yeah, definitely. I've had to move overnight  
22 because of law changes in Virginia. There was actually a  
23 statute in Virginia that says if you're required to  
24 register in another state, you're required to register  
25 there, also. But I met all the other criteria. That's

1 the last line in the statute. So it's affecting me in  
2 that way, in terms of getting jobs, finding housing. I  
3 could make the money, I could pass everything. And then  
4 we'd get to the end and they'd say no, because of your  
5 background, can't do it. And I even tried to be honest  
6 and write it at the bottom, you know, I was 11 years old.  
7 And it just follows you everywhere you go now.

8 Q Let's talk just a little bit about the incident. Do  
9 you take responsibility for the crime that you did commit?

10 A Without a doubt, absolutely.

11 Q Do you feel like you're suffering from issues where  
12 you are a menace to society?

13 A No, I'm not at all. I consider myself to be a very  
14 productive member of society.

15 Q Are you struggling with any sexual issues?

16 A No.

17 Q Have you had a normal -- well, define normal, but  
18 have you had a normal sex life?

19 A Absolutely. I've been forced to more than anything,  
20 but yes, absolutely.

21 Q Do you have a lady friend in your life?

22 A I do. I have a very close girlfriend in my life.

23 Q And does she know that you're on this registry?

24 A Yes, she does. I actually -- I had to tell her. I  
25 feel like when you love someone -- and these are things

1 that we practice during our group sessions. So when you  
2 love someone and you know you're going to be serious with  
3 someone, that's something you tell them. In addition to  
4 that, she's in the Navy and she also works for the  
5 Department of the Navy and she has a security clearance.  
6 So I know that if we get married, that's going to be  
7 something that definitely affects us.

8 Q Okay. Now, when you went to the evaluation with Dr.  
9 McKee in Columbia, were you honest and forthright with  
10 him?

11 A One hundred thousand percent, yes.

12 Q And then you took a polygraph last evening. Were you  
13 honest with the polygrapher?

14 A One hundred thousand percent, absolutely.

15 Q So are you asking today that you be removed from the  
16 sex offender registry?

17 A I am begging.

18 Q Do you believe that it serves any useful purpose for  
19 you to be on there?

20 A No, I don't.

21 MR. ANDERSON: Judge, that's all I have.

22 THE COURT: Any questions?

23 MS. MCDANIEL: No.

24 THE COURT: For the record, I will state that one of  
25 the paragraphs in Dr. McKee's letter says, In my opinion,

1 based on 35 years of research, evaluation and treatment of  
2 sex offenders and 11 years of service on South Carolina's  
3 Sexually Violent Predator Multidisciplinary Team,  
4 reviewing over 6,000 cases of sexually violent predator,  
5 eligible juvenile and adult inmate sex offenders, Mr. Reed  
6 is not a sexually violent predator as defined by South  
7 Carlina law.

8 Thank you, sir. You can go sit by your lawyer.

9 All right. I will allow an order to be done to  
10 remove his name from the sex offender registry.

11 Mr. Anderson, as soon as you get that to me, I will  
12 sign it.

13 I do understand, sir, and in the Family Court Judge's  
14 defense then, it wasn't me -- I won't say I was still in  
15 high school, but I wasn't, but it was automatic. When  
16 that kind of plea came in, it was automatic. And it has  
17 only been in the last probably 15 or so years that that  
18 kind of automatic registration has -- people have had  
19 thoughts about that, as to what 11-year-old boys do that  
20 ends up following them around.

21 Thank you.

22 \*\*\*\*\*END OF PROCEEDINGS\*\*\*\*\*  
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF AIKEN                    )

I, PENNY M. JOHNSON, Official Court Reporter for the Second 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 the evidence introduced in the trial of the captioned case, relative to appeal, in Family Court for Aiken County, South Carolina, on the 7th day of March, 2017.

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

June 6, 2017

Penny M. Johnson  
Penny M. Johnson Court Reporter  
My Commission Expires: 06/16/2018

# The Supreme Court of South Carolina

The South Carolina Law Enforcement Division,  
Petitioner,

v.

Brandon Reed, Daniel Brian Eustace, Kenyon Starling  
and Alfred Edward Buice, Respondents.

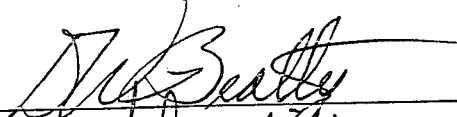

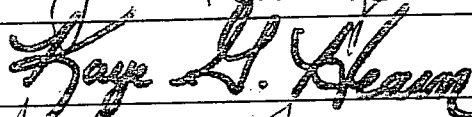
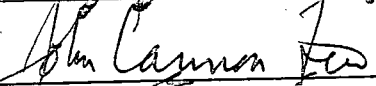
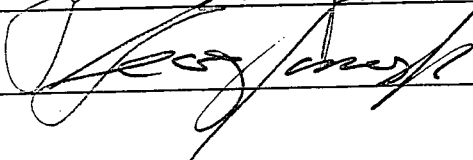
Appellate Case No. 2017-001813

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## ORDER

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The South Carolina Law Enforcement Division has filed a petition for original jurisdiction in which it requests this Court declare certain orders void ab initio. Respondents Brandon Reed and Alfred Edward Buice have filed returns in opposition to the petition. The petition is denied. Rule 245, SCACR.

|                                                                                      |      |
|--------------------------------------------------------------------------------------|------|
|  | C.J. |
|  | J.   |
|  | J.   |
|  | J.   |
|  | J.   |

Columbia, South Carolina

December 14, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 STATE OF SOUTH CAROLINA, )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 BRANDON REED, )  
 DEFENDANT. )

IN THE FAMILY COURT  
 SECOND JUDICIAL CIRCUIT

Case Number: 1994-JU-02396

ORDER  
 (Removal from Sex Offender Registry)

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 I, Robert J. Hart, Clerk of Court of the Probate, Juvenile and Juvenile and Juvenile Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in this office this

APR 26 2017

*Robert J. Hart*  
 C.C.P. & C., Aiken County, S.C.  
 Deputy Clerk

Defendant's attorney filed a Motion to Remove the Defendant from the Sex Offender Registry. Defendant was adjudicated delinquent at the age of twelve (12) in the Aiken County Family Court for a crime committed when he was eleven (11) years of age. He was placed on the registry in 1996 as a result of that adjudication. Since his adjudication of delinquency, he has received and completed extensive counseling and treatment, lived a productive life, and has had no other convictions. This court reviewed the file in this matter, including the documents submitted by Defendant at the hearing. This Court also considered Defendant's testimony and the arguments from the attorneys. The Defendant's mother also attended the hearing. Based upon all the above, this Court finds it appropriate for Defendant to be removed from the Sex Offender Registry immediately.

AND IT IS SO ORDERED this 9 day of April, 2017, in Aiken, South Carolina.

*Dale M. Gable*  
 Dale M. Gable  
 Presiding Family Court Judge

FILED  
 AIKEN COUNTY  
 APR 21 2017  
 15273  
 CLERK OF COURT  
 30

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

STATE OF SOUTH CAROLINA

VS.

BRANDON REED,  
DEFENDANT.

IN THE COURT OF FAMILY COURT  
SECOND JUDICIAL CIRCUIT

MOTION  
(Removal from Sex Offender Registry)

1994-JU-02-396

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Robert J. Harte, Clerk of Court for Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

FEB 15 2017

*[Signature]*  
Deputy Clerk

TO: THE PRESIDING FAMILY COURT JUDGE:

Defendant was 12 years old when he pled guilty in this Court to sexually abusing a 3 year old girl 23 years ago. Neither Brandon nor his mother had any idea of the long-term ramifications of this guilty plea. He has been on the Sex Offender Registry ever since. He was also ordered to receive in-patient treatment at Generations Group Home. Brandon completed that program, graduated high school, has been gainfully employed for the vast majority of his adulthood, and has no subsequent criminal convictions. Brandon has also received a favorable evaluation by a forensic psychologist specializing in sex-offender issues (a copy of the evaluation shall be presented to the Court at the hearing). Requiring Brandon to continue to register as a sex offender serves no useful purpose. The issues leading up to his juvenile prosecution have been resolved through counseling and maturation. He poses no threat to his community. In fact, he is a productive member of society in spite of his registry requirement. Brandon requests that he no longer be required to register as a sex offender.

Respectfully, I so move.

ANDERSON & ANDERSON, LLP

*[Signature]*

P. Andrew Anderson  
Attorney for Defendant  
Anderson & Anderson LLP  
211 York Street, NE  
Aiken, South Carolina 29801  
(803) 648-6000

February 15, 2017

*AIKEN COUNTY FAMILY COURT  
109 Park Avenue, SE  
P O Box 3047  
Aiken, SC 29802-3047*

**HEARING NOTICE**

SERENA MCDANIEL, ESQUIRE  
ATTORNEY AT LAW  
P.O. BOX 3368  
AIKEN, SC 29802  
Plaintiff's Attorney

P. ANDREW ANDERSON, ESQUIRE  
ATTORNEY AT LAW  
211 YORK STREET NE  
AIKEN, SC 29802  
Defendant's Attorney

**CASE CAPTION:        STATE OF SOUTH CAROLINA VS BRANDON REED**

**CASE NUMBER:        94-JU-02-396**

**HEARING DATE:       MAR 7 - 2017**

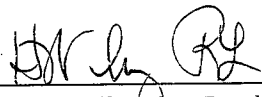
**TIME ALLOTTED:     15 MIN.**

**HEARING TIME:      2:00 PM**

Pursuant to your request, the above matter has been set for hearing.  
Please notify me immediately of any changes.

***YOU ARE TO NOTIFY OPPOSING ATTORNEY IF NOT NOTED ABOVE.***

Dated: February 24, 2017

  
\_\_\_\_\_  
Heidi Wilbanks, Docket Clerk  
by Rosie Lowman  
(803) 642-1715

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF AIKEN )  
)  
STATE OF SOUTH CAROLINA )  
PLAINTIFF, )  
)  
VS. )  
)  
BRANDON REED, )  
DEFENDANT. )  
\_\_\_\_\_ )

IN THE FAMILY COURT  
SECOND JUDICIAL CIRCUIT

Case No.: 1994-JU-02-396

REQUEST FOR HEARING

ATTORNEY FOR PLAINTIFF:

Office Address:

Telephone:

Serena McDaniel

P.O. Box 3368, Aiken, SC, 29802

642-1512

ATTORNEY FOR DEFENDANT:

Office Address:

Telephone:

P. Andrew Anderson

211 York St. NE, Aiken, SC, 29801

648-6000

GUARDIAN AD LITEM:

Office Address:

Phone:

None

TYPE OF CASE:

Motion

CONTESTED ISSUES:

DATE COMPLAINT SERVED:

ANSWER FILED:

DISCOVERY COMPLETED:

YES \_\_\_ NO \_\_\_ N/A X

YES \_\_\_ NO \_\_\_ N/A X

\*I agree and understand that failure to complete discovery prior to trial is not sufficient grounds to continue the case at trial.\*

TIME NEEDED:

CONTESTED ISSUES (EXPLAIN):

DATES AND TIMES AVAILABLE:

15 minutes

Please coordinate with Attorney

HEARING REQUESTED BY:

ATTORNEY FOR:

P. Andrew Anderson

Plaintiff \_\_\_ Defendant X

DATE: 2/15/17

COPY  
ORIGINAL FILED

FEB 15 2017

AIKEN COUNTY  
CLERK OF COURT

**THE STATE OF SOUTH CAROLINA**  
In The Supreme Court

---

South Carolina Law Enforcement Division,  
Petitioner,

v.

Brandon Reed, Daniel Brian Eustace, Kenyon Starling, Alfred Edward Buice,  
Respondents,

---

**NOTICE OF PETITION FOR ORIGINAL JURISDICTION**

---

Pursuant to SCACR 245(c), Petitioner gives notice to each Respondent that he has twenty days from the date of service to file an original and six copies of his return to this Petition for Original Jurisdiction with the Clerk of the Supreme Court, and he must serve all parties a copy of the return. If a party fails to file a timely return, that party may be deemed to have consented to the matter being heard in the original jurisdiction. Unless otherwise ordered by the Supreme Court, the Petition shall be decided without oral argument. If the Petition is granted, the Respondents shall have thirty days to serve and file an answer to the complaint.

[The signature block is on the next page]

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT D. COOK  
Solicitor General  
S.C. Bar No. 1373

J. Emory Smith, Jr.  
Deputy Solicitor General  
S.C. Bar No. 5262

T. Parkin C. Hunter  
Senior Assistant Attorney General  
S.C. Bar No. 2827

Kevin Desmond Maroney  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
803.734.3177  
[kmaroney@scag.gov](mailto:kmaroney@scag.gov)  
S.C. Bar No. 102545

By: Kevin Desmond Maroney

Attorneys for SLED

Sept, 1, 2017

**THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT**

|                                                                                     |               |                  |
|-------------------------------------------------------------------------------------|---------------|------------------|
| The South Carolina Law Enforcement<br>Division .....                                | ...           | .....Petitioner  |
| Brandon Reed<br>Daniel Brian Eustace<br>Kenyon Starling<br>Alfred Edward Buice..... | v.<br><br>... | .....Respondents |

**PETITION FOR ORIGINAL JURISDICTION**

The South Carolina Law Enforcement Division (SLED) petitions this Court to address four judicial orders in its original jurisdiction. SLED asks the court to declare the orders *void ab initio*. The orders involve the removal of individuals from the sex offender registry (SOR). SLED, however, was not given notice of the proceedings that led to the issuance of the orders, and it did not, consequently, have a meaningful opportunity to be heard at those proceedings. The failure to satisfy due process requirements is the reason the courts that issued these orders never obtained personal jurisdiction over SLED; SLED was never brought before the court via some form of legal process, and SLED never waived the issue of personal jurisdiction by appearing at a hearing.<sup>1</sup> Because the issuing courts were without personal jurisdiction over

<sup>1</sup> SLED did learn of some, though not all, of the orders prior to the expiration of ten days. SLED, however, could neither appeal nor file a motion under Rule 29, SC Crim.P. SLED was not a party in the criminal cases. In an effort to show the issues with the respective orders, SLED and the Office of the Attorney General did file Rule 59(e) and Rule 60(b), SCRCF motions in some of the cases, but they have not been scheduled for hearings. As the cases were criminal cases

36

SLED, the orders are *void ab initio* as to SLED. The lack of personal jurisdiction over SLED, moreover, was evident on the face of each order, a fact that allows SLED to attack the orders collaterally. In addition, the courts that issued these orders did not have subject matter jurisdiction, a fact that was also evident on the face of each order. SLED, therefore, requests that this Court agree to hear this case in its original jurisdiction and declare the orders *void ab initio* for lack of personal and subject matter jurisdiction.

### REASONS FOR THE EXERCISE OF ORIGINAL JURISDICTION

This Court has authority under Rule 245(a), SCACR and the Declaratory Judgment Act<sup>2</sup> to issue the requested declaration. Regarding Rule 245(a), generally—“[i]f the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised, the facts showing the reasons must be stated in the petition with supporting affidavits.” Rule 245(a), SCACR. Regarding the public interest, “Rule 245 is concerned with whether a case should be resolved by this court in the first instance because the public interest is involved and the need for prompt resolution [of a case].” Carnival Corp. v. Historic Asnonborough Neighborhood Ass’n, 407 S.C. 67, 80, 753 S.E.2d 846, 853 (2014). This Court is the best forum to address the significant issues at stake in this petition, issues involving the public interest and other good reasons, including good reasons specific to SLED. In addition, prompt resolution is required to correct the currently inaccurate SOR.

---

(closed criminal cases, in three instances) and SLED is not a party to the orders, the courts that issued the orders may decide not to address the civil motions.

<sup>2</sup> S.C. Code Ann. §§15-53-10 et seq.

1. There is a strong public interest in properly maintaining the SOR.

The strong public interest in maintaining the SOR is incorporated into legislation and has been recognized by this Court. The General Assembly has stated that the purpose of the SOR “is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens.” S.C. Code Ann. §23-3-400. This Court has repeated that important statutory intent: “[T]he General Assembly...intended to protect the public from those offenders who may re-offend.” State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002). That intent was recently reiterated in the Court’s most recent opinion regarding the registry. See In the Interest of Justin B., a Juvenile under the Age of Seventeen, 419 S.C. 575, 581, 799 S.E.2d 675, 678 (2017).

The orders at issue in this petition unlawfully remove individuals from the SOR. That unlawful action undermines the purpose of the SOR—protecting the public from offenders who may reoffend—because the SOR is no longer accurate; individuals who should register with the SOR are not registering. Because the orders undermine a statute implemented to protect the public welfare, SLED believes there is a strong public interest in this case.

2. SLED needs to be protected from invalid orders.

SLED is the only entity responsible for maintaining the SOR, including adding and removing offenders.

**The registry is under the direction of the Chief of the State Law Enforcement Division (SLED) and shall contain information the Chief considers necessary to assist law enforcement in the location of persons convicted of certain offenses. SLED shall develop and operate the registry to: collect, analyze, and maintain information; make information available to every enforcement agency in this State and in other states; and establish a security system to ensure that only authorized persons may gain access to information gathered under this article.**

S.C. Code Ann. § 23-3-410(A) (emphasis added).

In spite of the fact that SLED is the only entity that can remove someone from the registry, courts ordered the removal of individuals from the SOR without involving SLED in the adjudication. Then, without having had the opportunity to be heard, SLED received these orders, which placed it in an untenable and unenviable position—SLED had to choose between failing to follow the statutory law by following the court order, or risk subjecting itself to the contempt powers of a court by ignoring the court order. State v. Bevilacqua, 316 S.C. 122, 128, 447 S.E.2d 213, 216 (Ct.App.1994) (“Courts have no more important function to perform in the administration of justice than to ensure their orders are obeyed. The appellate courts of this state have zealously defended the right of trial courts to vindicate their authority by way of contempt”). In addition, if SLED had chosen to ignore the court order, it would have potentially risked incurring civil liability, as well as the legal costs of defending itself from civil liability.

SLED needs a declaration that these orders are *void ab initio*. Without such a declaration, SLED will remain in this impossible predicament.

3. Judicial economy and efficiency and guidance.

Resolving these orders at once will promote judicial economy and efficiency by precluding duplicative and lengthy litigation, including appeals. The results, moreover, could be inconsistent. A declaration from this Court will prevent SLED from having to seek declarations in multiple circuit courts. In addition, a declaration from this Court will also have the beneficial effect of alerting the entire bench and bar of the need to involve SLED in any action challenging a person’s placement on the SOR. Furthermore, a declaration from this Court will also assist the bench and bar in bringing and hearing challenges to a person’s registration status in the right court. The need for guidance in this regard is evident: attorneys have filed petitions in criminal cases (closed criminal cases, in three instances), seeking to address a client’s registration status

under the SOR statute, which is a civil statute. Courts empowered to hear criminal cases do not possess the authority to hear civil cases; thus, these courts did not have subject matter jurisdiction over a question concerning removal from the SOR. "Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." Brown v. Evatt, 322 S.C. 189, 193, 470 S.E.2d 848, 850 (1996). The requested declaration will provide the much-needed guidance by making clear that an action concerning a person's registration status should be in a Court of Common Pleas. The guidance will remove (or at least greatly lessen) the probability of similarly flawed judicial orders occurring in the future.

The public welfare, the public interest, the authority of SLED over the registry, the concern for judicial economy, the edification of the bench and bar, and the need for prompt resolution to correct the currently inaccurate SOR—all of these reasons support the exercise of this Court's authority under Rule 245(a). SLED respectfully requests that the Court do so.

### **GROUND SUPPORTING JUDGMENT FOR SLED**

#### **I.**

#### **BACKGROUND OF EACH CHALLENGED JUDICIAL ORDER**

i. **Brandon Reed: 1994-JU-02-396**

Brandon Reed was adjudicated delinquent at age twelve for a crime committed when he was eleven years of age. He was placed on the SOR in 1996 because of that adjudication. Decades later, in 2017, and well past his twenty-first birthday, the Family Court in Aiken County had a hearing and ordered that Mr. Reed should no longer have to register. The reasoning of the Family Court focuses on equitable considerations. "[Mr. Reed] has received and completed extensive counseling and treatment, lived a productive life, and has had no other convictions."

(Exhibit A, Reed Order). Regardless of the truth of those observations, they do not constitute grounds for removal from the SOR.

There are multiple problems with the Family Court's order. First, Mr. Reed did not initiate a civil action via the declaratory judgment act. Instead, Mr. Reed made a motion in his closed juvenile case, decades after closing. In spite of this procedural impropriety, the Family Court agreed to open the case and hold a hearing regarding Mr. Reed's registration status, without addressing the issue of subject matter jurisdiction. Second, the Family Court's jurisdiction over a juvenile ends when that juvenile turns twenty-one years of age. "Whenever the court has acquired the jurisdiction of any child under eighteen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction shall terminate when the child attains the age of twenty-one years." S.C. Code Ann. §63-3-510(B) (emphasis added). Third, the Family Court's order is based on equitable considerations, but equitable considerations are not proper grounds for removal from the SOR. The statutorily enumerated grounds for removal from the SOR do not include equitable considerations, See S.C. Code Ann. § 23-3-430(E), (F), (G), and equity follows the law. Regions Bank v. Wingard Props., Inc., 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct.App.2011) ("It is well known that equity follows the law." (quoting Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App.2007))). Furthermore, "[w]hen providing an equitable remedy, the court may not ignore statutes, rules and other precedents." Id. (quoting Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)). In fact, a "court's equitable powers must yield in the face of an unambiguously worded statute." Id., 394 S.C. 241, 254-5, 715 S.E.2d 348, 354-55 (quoting Santee Cooper Resor, Inc. v. S.C. Pub. Serv. Comm'n., 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)). Because the SOR statute

unambiguously precludes the possibility of equitable removal, the Family Court should not have ordered Mr. Reed's removal from the SOR on equitable grounds. Fourth, SLED was not given notice of the proceedings, thus depriving the only entity capable of removing Mr. Reed of notice and an opportunity to be heard.

ii. Kenyon Starling Order: 2000-GS-40-55771

In 2001, Kenyon Starling pled guilty to two counts of kidnapping. He kidnapped an eight-year-old child and a twenty-six year old woman. Thirteen years later, Mr. Starling, seeking an order removing him from the SOR, filed a motion in his closed criminal case. Based on a finding that Mr. Starling's kidnapping did not involve a criminal sexual offense or attempted criminal sexual offense, the court granted the motion. (Exhibit B, Starling Order). The problem is that Mr. Starling kidnapped an eight-year-old child, and he was not that child's parent. A person convicted of kidnapping someone under the age of eighteen must register for life, except when the offense is committed by a parent. S.C. Code Ann. §23-3-430(C)(16). As was the case in Mr. Reed's motion, Mr. Starling did not provide notice of the proceedings to SLED, which also deprived SLED of the opportunity to be heard.

iii. Daniel Brian Eustace Order: 1995-GS-30-0578

Mr. Eustace pled guilty to various charges, including kidnapping, in 1995. In January of 2016, more than twenty years after his conviction, Mr. Eustace received an order that removes him from the SOR. (Exhibit C, Eustace Order). Some time prior to the date of that order, Mr. Eustace filed a motion in his closed criminal case. The court, in granting his request for removal from the SOR, concluded that, because Mr. Eustace's kidnapping did not include a criminal sexual offense or attempted criminal sexual offense, he should not have to register. Mr. Eustace kidnapped a two-year-old child, however. That child, moreover, was not his. A person convicted

of kidnapping someone under the age of eighteen must register for life, except when the offense is committed by a parent. S.C. Code Ann. §23-3-430(C)(16). Mr. Eustace, like the other orders in this petition, did not provide notice to SLED.

Mr. Eustace's failure to provide notice to SLED is interesting, because he sought removal from the SOR in a 2012 declaratory judgment action. (Exhibit D, Eustace Civil Order). SLED is the named defendant. In that civil case, the court correctly determined that, because Mr. Eustace kidnapped a two-year-old, he must remain on the registry, regardless of the absence of any criminal or attempted criminal sexual conduct.

iv. Alfred Edward Buice Order: 2009-GS-30-000136 (Case No. 1808055)

Mr. Buice was convicted of lewd act on a minor in 1987. In 2009, Mr. Buice was charged with failure to register with the SOR, a violation of §23-3-470. The court, after a motion by Mr. Buice's public defender attorney, ordered SLED to amend its records to relieve Mr. Buice of any SOR registration requirement. (Exhibit E, Buice Order). The court gave three reasons in support of its order. The first reason involved *ex post facto* concerns: "The [c]ourt has serious concerns as to whether the registration law would [c]onstitutionally apply to a crime which occurred 7 years prior to the passage of the [SOR] law." (Exhibit C, Buice Order). The concerns should not have troubled the court at all, however, because the SOR is a civil statute; thus, the constitutional prohibition of retroactively applied criminal laws is inapplicable. State v. Walls, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) ("We find the [SOR] Act not so punitive in purpose or effect as to constitute a criminal penalty. Accordingly, the Act does not violate the *ex post facto* clauses of the state or federal constitutions.").

The court then cited §23-3-480(B). That section states that someone who was convicted of a crime requiring registration prior to July 1, 1994, and who was also released from custody

prior to July 1, 1994, shall not be subject to the penalties of § 23-3-470 (Failure to Register), unless the sheriff of the county in which the person resides serves notice. Because the Department of Probation Pardon and Parole, instead of the Sheriff, served notice of his need to register, the court concluded that Mr. Buice should not ever be required to register. The court misread §23-3-480(B). § 23-3-480(B) simply and clearly states that, under certain limited circumstances, a person cannot be charged with failure to register—that section does not say that a person in those circumstances need not ever register, however. In fact, once Mr. Buice was charged with failure to register, he had an affirmative legal duty to register.

An arrest on charges of failure to register, service of an information or complaint for the 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.

S.C. Code Ann. § 23-3-480(A).

Given § 23-3-480(A), although the exception of § 23-3-480(B) applied to Mr. Buice, the court should have concluded only that his pending failure to register charge must be dismissed; the code sections, when read together<sup>3</sup>, provide no basis upon which to conclude that Mr. Buice need not ever register.

The court also found that Mr. Buice did not need to register because the Solicitor's Office dismissed his failure to register charge. That reason does not support the court's conclusion. Mr. Buice has to register because he was convicted of lewd act on a minor, not because he was charged with failure to register. Based on § 23-3-480(A),

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<sup>3</sup>“The statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.” Centex Intern., Inc. v. South Carolina Dept. of Revenue, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (internal citation omitted).

moreover, Mr. Buice had an affirmative legal duty to register after being charged. Thus, the dismissal of Mr. Buice's failure to register charge was irrelevant to the question concerning his registration status. The court erred in concluding otherwise.

Finally, as was true in the cases of Mr. Reed and Mr. Starling, Mr. Buice challenged his registration status without providing notice to SLED, which again deprived SLED of an opportunity to be heard.

## II.

### **The Orders Are *Void Ab Initio* As To SLED And Subject To Collateral Attack**

#### i. Lack Of Personal Jurisdiction

SLED is the only entity with the authority to remove an individual from the SOR. S.C. Code Ann. § 23-3-410(A) ("The registry is under the direction of the Chief of the South Carolina Law Enforcement Division...SLED shall develop and operate the registry..."). In spite of this fact, none of the above orders involves SLED, though each requires SLED to remove a person from the SOR (a person who has been convicted of a predicate offense that requires registration). Consequently, the validity of the orders is compromised. "It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct.App.2002) (quoting Tryon Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992)). The requirements of due process, moreover, mandate not only notice but also the opportunity to be heard in a meaningful way. Id., (citing Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 58 L.Ed. 1363 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard")). The consequence of failing to satisfy the fundamental requirements is significant. "Generally, a person against whom a judgment or order

is taken without notice may rightly ignore it and may assume no court will enforce it against his person or property.” Id., (citing Tryon Fed. Sav. & Loan Ass’n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992)).

Although SLED is not bound by the orders, ignoring them is not the only option. A collateral attack on the orders is possible because they are void for lack of personal and subject matter jurisdiction, and because the jurisdictional defects are evident on the face of the records.

It has often been said that a **judgment is void** whenever the court which pronounced it **had not jurisdiction of the parties to the judgment or of the subject matter** in controversy.

Turner v. Malone, 24 S.C. 398, 403 (1886) (emphasis added). A void order, moreover, is subject to collateral attack when the jurisdictional infirmity appears in the record. “If the jurisdictional infirmity appears in the record itself, that is, no doubt, conclusive, and the judgment may be disregarded as a nullity whenever it is encountered, in any proceeding direct or collateral.” Id., 24 S.C. 398, 401 (emphasis added); see also Yarbrough v. Collins, 293 S.C. 290, 292, 360 S.E.2d 300, 301 (1987) (“A judgment may be collaterally attacked if the court lacked jurisdiction and the lack of jurisdiction appears on the face of the record.”) (citing Turner v. Malone, 24 S.C. 398 (1886)).

SLED is the only entity with authority to remove someone from the SOR, but SLED was not served with notice and did not have an opportunity to be heard at a proceeding that resulted in a court ordering SLED to remove someone from the SOR. The failure to satisfy due process requirements is the reason the courts did not obtain personal jurisdiction over SLED. SLED was never brought before the court via some form of legal process. Hansberry v. Lee, 311 U.S. 32, 40, 61 S.Ct. 115, 117, 85 L.Ed. 22 (1940) (“It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in litigation in which

he is not designated a party or to which he has not been made a party by service of process"). In addition, SLED never waived the issue of personal jurisdiction by appearing at a hearing. Therefore, the orders are void for lack of personal jurisdiction. Additionally, the orders are subject to collateral attack because the jurisdictional defect is evident on the face of the records.

SLED was not a party to the proceedings that resulted in the issuance of the challenged orders and, consequently, SLED is not in the captions of any of the challenged orders, which is evident on the face of each order. Because each order requires SLED to remove someone from the SOR, yet the caption of each order fails to name SLED, the court's lack of personal jurisdiction over SLED is evident on the face of each order. The orders, therefore, are both *void ab initio* and subject to collateral attack.

ii. Lack Of Subject Matter Jurisdiction

As seen above, when a court lacks subject matter jurisdiction, and when the lack of jurisdiction appears on the face of the record, a judicial order is *void ab initio* and subject to collateral attack. The orders at issue in this petition took place in a Court of General Sessions or Family court. Each involved either a closed or an open criminal case. The SOR, however, is a civil statute. Hazel v. State, 377 S.C. 60, 65, 659 S.E.2d 137, 140 (2008) ("The judge, in the Court of Common Pleas, properly determined respondent's status as affected by §23-3-340, a civil statute."); Thompson v. State, 415 S.C. 560, 564 n. 3, 785 S.E.2d 189, 191 n.3 (2016) ("As we have repeatedly stated, the sex offender registry is a civil requirement separate and apart from the criminal punishments associated with sexual offenses in this state."). Courts presiding over criminal cases cannot directly address a person's status under a civil statute; they lack subject

matter jurisdiction over civil statutes.<sup>4</sup> Thus, the orders in this petition are *void ab initio* for lack of subject matter jurisdiction.

What is more, the lack of subject matter jurisdiction was evident on the face of the records. The caption of each order indicates that the court issuing the challenged order was not a Court of Common Pleas, yet the order dealt with a person's status under the SOR, a civil statute. Because the jurisdictional defect was evident on the face of each order, each order is subject to collateral attack. The orders, therefore, are both *void ab initio* for lack of subject matter jurisdiction and subject to collateral attack.

#### Conclusion

The courts that issued the described judicial orders did not have personal jurisdiction over SLED or subject matter jurisdiction to address a person's status under a civil statute. Those jurisdictional defects were evident on the face of the records. Those orders, therefore, are both *void ab initio* and subject to collateral attack. SLED respectfully requests that the collateral attack occur in this Court. The public interest is affected by a SOR that is no longer accurate, and the quickest way for SLED to correct the inaccuracy is for the Court to resolve this petition promptly and in favor of SLED. Rapid resolution of this matter, moreover, will remove SLED from the legal jeopardy in which it finds itself. In addition, the requested declaration will enable SLED to fulfill its duty of ensuring the integrity of the SOR and will provide future guidance to

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<sup>4</sup> Although §23-3-430(D) grants authority to the judge presiding over a criminal trial to order SOR registration, as a condition of sentencing, for an otherwise non-registration offense, that section does not apply here. The judge presiding over the criminal trial, moreover, is not given authority to order that a person need not register when, as is the case in each order here, that person has been convicted of an offense that requires registration under the SOR statute. If someone is convicted of an offense listed within the SOR statute, then registration is compulsory and for life.

the courts. These and other considerations set forth above lead SLED to ask the Court to exercise its original jurisdiction and declare the orders void.

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT D. COOK  
Solicitor General  
S.C. Bar No. 1373

J. Emory Smith, Jr.  
Deputy Solicitor General  
S.C. Bar No. 5262

T. Parkin C. Hunter  
Senior Assistant Attorney General  
S.C. Bar No. 2827

Kevin Desmond Maroney  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
803.734.3177  
[kmaronev@scag.gov](mailto:kmaronev@scag.gov)  
S.C. Bar No. 102545

By: Kevin Desmond Maroney

Attorneys for SLED

Sept. 1, 2017

# Exhibit A

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 STATE OF SOUTH CAROLINA, )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 BRANDON REED, )  
 DEFENDANT. )

IN THE FAMILY COURT  
 SECOND JUDICIAL CIRCUIT

Case Number: 1994-JU-1186

ORDER  
 (Removal from Sex Offender Registry)

I, Robert J. Hartz, Clerk of Court for the Family Court, Second Judicial Circuit, County of Aiken, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in this office this

APR 26 2017

*[Signature]*  
 J. G. Gable, Aiken County, SC  
 Deputy Clerk

Defendant's attorney filed a Motion to Remove the Defendant from the Sex Offender Registry. Defendant was adjudicated delinquent at the age of twelve (12) in the Aiken County Family Court for a crime committed when he was eleven (11) years of age. He was placed on the registry in 1996 as a result of that adjudication. Since his adjudication of delinquency, he has received and completed extensive counseling and treatment, lived a productive life, and has had no other convictions. This court reviewed the file in this matter, including the documents submitted by Defendant at the hearing. This Court also considered Defendant's testimony and the arguments from the attorneys. The Defendant's mother also attended the hearing. Based upon all the above, this Court finds it appropriate for Defendant to be removed from the Sex Offender Registry immediately.

AND IT IS SO ORDERED this 27 day of April, 2017, in Aiken, South Carolina.

*[Signature]*  
 Dale M. Gable  
 Presiding Family Court Judge

FILED  
 AIKEN COUNTY  
 APR 21 2017  
 15228  
 CLERK OF COURT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
South Carolina Law Enforcement )  
Division (SLED), )  
 )  
Petitioner/Plaintiff, )  
 )  
 )  
v. )  
 )  
 )  
Brandon Reed, )  
 )  
Respondent/Defendant )  
 )  
 )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

**COMPLAINT**

The South Carolina Law Enforcement Division (SLED) alleges the following:

**PARTIES**

- 1. SLED is the agency solely responsible for managing the Sex Offender Registry (SOR).
- 2. Mr. Reed was lawfully placed on the SOR. The Aiken Family Court subsequently ordered his removal from the SOR. As will be more fully set forth below, this order was unlawful and is void.

**JURISDICTION**

- 3. This Court has jurisdiction over the parties and the causes of action asserted by SLED pursuant to *S.C. Code Ann. §§15-53-10 et seq.*, the Declaratory Judgment Act.

**ALLEGATIONS**

- 4. Respondent Reed was adjudicated delinquent at age twelve for a crime committed when he was eleven years of age. He was placed on the SOR in 1996 because of that

adjudication. Decades later, in 2017, and well past his twenty-first birthday, the Family Court in Aiken County, in the original criminal, juvenile proceeding had a hearing and ordered that Mr. Reed should no longer have to register. (Attachment A, Reed Order). The Family Court did not have jurisdiction to enter the Reed Order because Petitioner Reed was over age 21. Furthermore, the Reed order based its ruling on equitable considerations, but removal may not be based on equitable grounds. The grounds for the ruling stated in the Reed Order do not include any of the permissible grounds for removal under the SOR. Mr. Reed was convicted of an offense that requires registration on the SOR.

5. SLED, the only agency authority with authority to remove people from the SOR, was not made a party to the proceeding that resulted in the order of removal. Therefore, the courts did not have personal jurisdiction over SLED.
6. The order was issued in a closed, juvenile criminal case. Matters regarding the SOR are civil in nature, so the Aiken Family Court did not have subject matter jurisdiction to take action regarding the SOR. Additionally, the Aiken Family Court no longer had jurisdiction over Mr. Reed's juvenile case.
7. SLED did not have the authority to intervene and participate in the court proceedings because the proceedings were not brought in the proper court.

**FOR A FIRST CAUSE OF ACTION**

(Declaration that the orders are *void ab initio* for lack of personal jurisdiction)

8. The allegations of paragraph 1 through 7 are repeated as fully as if repeated verbatim herein.
9. SLED asks the court to declare, pursuant to the Declaratory Judgment Act, that the order is *void ab initio* for lack of personal jurisdiction.

**FOR A SECOND CAUSE OF ACTION**

(Declaration that the orders are *void ab initio* for lack of subject matter jurisdiction)

10. The allegations of Paragraph 1 through 9 are re-alleged as fully as if repeated verbatim herein.
11. SLED asks the court to declare, pursuant to the Declaratory Judgment Act, that the order is *void ab initio* for lack of subject matter jurisdiction.

**PRAYER FOR RELIEF**

**THEREFORE**, the Petitioner prays that the court declare the attached order **void ab initio** and for such other and further relief as this Court shall deem just and proper.

[The signature block is on the next page]

Respectfully submitted,

ALAN WILSON  
Attorney General

JEFFREY YOUNG  
Chief Deputy Attorney General

Harley Kirkland  
Assistant Attorney General  
S.C. Bar No. 100382

s/ Kevin Desmond Maroney  
Assistant Attorney General  
S.C. Bar No. 102545  
Attorney for Plaintiff  
Post Office Box 11549  
Columbia, SC 29211  
803.734.3177  
[kmaroney@scag.gov](mailto:kmaroney@scag.gov)

**ATTACHMENT A**

ELECTRONICALLY FILED - 2018 Mar 22 3:02 PM - AIKEN - COMMON PLEAS - CASE#2018CP0200670

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
STATE OF SOUTH CAROLINA, )  
PLAINTIFF, )  
VS. )  
BRANDON REED, )  
DEFENDANT. )

IN THE FAMILY COURT  
SECOND JUDICIAL CIRCUIT

Case Number: 1994-FJ-86

ORDER  
(Removal from Sex Offender Registry)

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Robert J. Harce, Clerk of Court of Clarendon, Calhoun, and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constituted a true and correct entry of the original documents which have been filed in my office this

APR 26 2017

*[Signature]*  
Clerk of Court  
Aiken County, SC  
Diane Blacke  
Deputy Clerk

Defendant's attorney filed a Motion to Remove the Defendant from the Sex Offender Registry. Defendant was adjudicated delinquent at the age of twelve (12) in the Aiken County Family Court for a crime committed when he was eleven (11) years of age. He was placed on the registry in 1996 as a result of that adjudication. Since his adjudication of delinquency, he has received and completed extensive counseling and treatment, lived a productive life, and has had no other convictions. This court reviewed the file in this matter, including the documents submitted by Defendant at the hearing. This Court also considered Defendant's testimony and the arguments from the attorneys. The Defendant's mother also attended the hearing. Based upon all the above, this Court finds it appropriate for Defendant to be removed from the Sex Offender Registry immediately.

AND IT IS SO ORDERED this 27 day of April, 2017, in Aiken, South Carolina.

*[Signature]*  
Date M. Cable  
Presiding Family Court Judge

RECEIVED

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S.C. SUPREME COURT

FILED  
AIKEN COUNTY  
APR 21 2017  
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CLERK OF COURT

|                                |   |                                 |
|--------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS    |
|                                | ) | FOR THE SECOND JUDICIAL CIRCUIT |
| AIKEN COUNTY                   | ) |                                 |
|                                | ) |                                 |
| South Carolina Law Enforcement | ) |                                 |
| Division (SLED),               | ) |                                 |
|                                | ) |                                 |
| Plaintiff,                     | ) |                                 |
| vs.                            | ) | Case No.: <u>2018-CP-02-670</u> |
|                                | ) |                                 |
| Brandon Reed,                  | ) |                                 |
|                                | ) |                                 |
| Defendant.                     | ) |                                 |

**ANSWER and AFFIRMATIVE DEFENSES**  
**of DEFENDANT BRANDON REED**

NOW COMES Defendant Brandon Reed (hereinafter referred to as “Defendant” or “Defendant Reed”) and files this, his Answer and Affirmative Defenses to the Complaint herein, and would allege and show unto this Honorable Court as follows:

**FOR A FIRST DEFENSE**

- I. The Complaint fails to state a claim upon which relief may be granted and should, therefore, be dismissed.

**FOR A SECOND DEFENSE**

- II. Plaintiff is not now nor has it ever been an entity independent of the State of South Carolina, § 23-3-10, *et. seq.* The State of South Carolina was represented and actively participated throughout the underlying matter, the outcome of which Plaintiff now seeks to set aside. Plaintiff failed to file any motion for relief or an appeal regarding the Order that it now challenges, which was entered more than a year ago. That Order is the law of the case and this action should be dismissed.

**FOR A THIRD DEFENSE**

- III. Plaintiff was aware of the pendency of the underlying action and was also provided with a copy of the proposed order in the matter prior to entry of the

same. Plaintiff took no action. The Order has been entered since April 21, 2017, and Defendant was already removed from the sex offender registry. Plaintiff's action is barred by the doctrine of laches due to unreasonable delay and the resulting prejudice to the Defendant. This action should be dismissed.

**FOR A FOURTH DEFENSE**

- IV. Plaintiff's cause of action is barred by the doctrines of *res judicata* and collateral estoppel in that the claims and/or issues presented have already been litigated or could have already been litigated in a prior matter. As a result, this action should be dismissed.

**FOR A FIFTH DEFENSE**

- V. Plaintiff is not seeking a declaratory judgment from this Court to determine its rights or obligations under any law or statute. There is clearly no requirement in the Sex Offender Registry Act that mandates that SLED be named individually as a party in any matter which may result in the inclusion or removal of individuals to/from the registry. Plaintiff seeks to use the Declaratory Judgment Act as a way of bypassing time limitations in place for motion for relief or an appeal that could have been filed at the time the underlying Order was entered, but were not. This is not a proper use of the Declaratory Judgment Act, and, as such, this case should be dismissed.

**FOR A SIXTH DEFENSE**  
**AND BY WAY OF AN ANSWER**

- VI. Defendant Reed responds to the allegations of the Complaint by paragraph numbers in the Complaint *ad seriatim* as follows:
1. Any allegation not hereinafter specifically admitted, explained or qualified is

hereby Denied.

2. Upon information and belief, Defendant admits the allegations contained in paragraph 1 of the Complaint in that SLED is the South Carolina State agency that maintains the list in question.
3. Defendant denies the allegations contained in paragraph 2 of the Complaint and demands strict proof thereof.
4. To the extent paragraph 3, which appear jurisdictional requires a response, Defendant denies the allegations contained in paragraph 3 of the Complaint and demands strict proof thereof.
5. Defendant denies the allegations contained in paragraph 4 of the Complaint and demands strict proof thereof.
6. Defendant denies the allegations contained in paragraph 5 of the Complaint and demands strict proof thereof. Defendant would assert instead that the State of South Carolina was represented by the Solicitor's Office of the Second Judicial Circuit in the matter and further that SLED itself was made aware of the proceeding and was contacted regarding the content of the proposed order. Even after entry of the Order in April 2017, the State did not file a motion for relief or an appeal of the matter. Instead SLED ordered the transcript of the hearing in May 2017 and then in September filed an Original Petition with the South Carolina Supreme Court asking that the Court exercise its original jurisdiction and set aside the Order in question. The Supreme Court Denied Plaintiff's Petition in December 2017.
7. Defendant denies the allegations contained in paragraph 6 of the Complaint and

demands strict proof thereof.

8. Defendant denies the allegations contained in paragraph 7 of the Complaint and demands strict proof thereof.
9. To the extent paragraph 8 requires a response, Defendant denies the allegations contained in paragraph 8 of the Complaint and demands strict proof thereof.
10. To the extent paragraph 9 requires a response, Defendant denies the allegations contained in paragraph 9 of the Complaint and demands strict proof thereof.
11. To the extent paragraph 10 requires a response, Defendant denies the allegations contained in paragraph 10 of the Complaint and demands strict proof thereof.
12. To the extent paragraph 11 requires a response, Defendant denies the allegations contained in paragraph 11 of the Complaint and demands strict proof thereof.

To the extent a response is required as to Plaintiff's 'Prayer for Relief,' Defendant denies the same and demands strict proof thereof.

WHEREFORE, Defendant prays:

- (1) That Plaintiff's Complaint be dismissed;
- (2) That Defendant receive attorney's fees and the costs of defending this action as provided for in § 15-53-10, *et. seq.*; and
- (3) For such other and further relief as this Court may deem just and proper.

ANDERSON & ANDERSON, LLP

BY: s/ Kristina M. Anderson

Kristina M. Anderson  
P. Andrew Anderson  
Attorneys for Defendant Reed  
211 York Street, NE  
Aiken, South Carolina 29801

June 12<sup>th</sup>, 2018.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
South Carolina Law Enforcement )  
Division (SLED), )  
 )  
Petitioner/Plaintiff, )  
 )  
v. )  
 )  
Brandon Reed, )  
 )  
Respondent/Defendant )  
 )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Case No. 2018-CP-02-670

**MOTION FOR  
SUMMARY JUDGMENT**

TO: KRISTINA M. ANDERSON

PLEASE NOTE THAT under Rule 56(a), SCRPC, the Petitioner/Plaintiff, SLED, moves for summary judgment. SLED will submit a memorandum in support near the date of the hearing, once the court schedules it.

[The signature block is on the next page]

Respectfully submitted,

ALAN WILSON  
Attorney General

JEFFREY YOUNG  
CHIEF DEPUTY ATTORNEY GENERAL

Harley Kirkland  
Assistant Attorney General

Kevin Desmond Maroney  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
803.734.3177  
kmaroney@scag.gov  
S.C. Bar no. 102545

BY: /s/ Kevin Desmond Maroney

**ATTORNEYS FOR SLED**

June 14, 2018

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
South Carolina Law Enforcement )  
Division (SLED), )  
 )  
Petitioner/Plaintiff, )  
 )  
vs. )  
 )  
 )  
Brandon Reed, )  
 )  
Respondent/Defendant. )  
 )  
\_\_\_\_\_ )

COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

2018-CP-02-00670

MEMORANDUM IN SUPPORT  
OF MOTION FOR  
SUMMARY JUDGMENT

**I. Background**

Brandon Reed was adjudicated delinquent at the age of twelve for committing criminal sexual conduct with a minor (1<sup>st</sup> degree). (Exhibits A-B). In 1996, he had to register on the South Carolina sex offender registry (SOR) because of that adjudication.<sup>1</sup> (Exhibit A-B). Decades later, in 2017, and well past his twenty-first birthday, the Family Court in Aiken County had a hearing and ordered his removal from the SOR. (Exhibit A). The Family Court's order (Reed order) is replete with errors.

<sup>1</sup> The Family Court order seems to indicate that Mr. Reed was adjudicated delinquent at the age of 12 and placed on the SOR in 1996. SLED has law enforcement paperwork that indicates Mr. Reed was actually adjudicated delinquent in 1994. SLED will bring this paperwork to the motion for summary judgment hearing. For the purpose of this motion, the Family Court's timeline is followed. Whether Mr. Reed was 12 in 1994 or 1996, the Family Court, in either scenario, still lacked subject matter jurisdiction over Mr. Reed.

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First, the reasoning of the Family Court focuses on equitable considerations. “[Mr. Reed] has received and completed extensive counseling and treatment, lived a productive life, and has had no other convictions.” (Exhibit A). Regardless of the truth of those observations, they do not constitute grounds for removal from the SOR. The statute enumerates the only avenues off the SOR. S.C. Code Ann. § 23-3-430(E)-(G). Equity is not among them.

Second, the Family Court’s jurisdiction over a juvenile ends when that juvenile turns twenty-one years of age.

Whenever the court has acquired the jurisdiction of any child under seventeen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, *but jurisdiction shall terminate when the child attains the age of twenty-one years.*

S.C. Code Ann. §63-3-510(B) (emphasis added).

Brandon Reed was 12 years old in 1996; he was 32 or 33 in 2017.

Finally, SLED was not a party to the proceedings. Thus, the Family Court never obtained personal jurisdiction over SLED.

**II. The S.C. Supreme Court authorizes collateral attacks on orders that are void for lack of subject matter jurisdiction or personal jurisdiction.**

“A judgment may be collaterally attacked if the court lacked jurisdiction and the lack of jurisdiction appears on the face of the record.” *Yarbrough v. Collins*, 293 S.C. 290, 292, 360 S.E.2d 300, 301 (1987) (citing *Turner v. Malone*, 24 S.C. 398, 403 (1886) (“It has often been said that a judgment is void whenever the court which pronounced it had not jurisdiction of the parties to the judgment or of the subject matter in controversy.”)). The Court does not limit the means by which a void order may be collaterally attacked. In this collateral attack, SLED has chosen the Uniform

Declaratory Judgment Act (Act). SLED asks the court to declare the Reed order void, thereby restoring SLED's ability to require Mr. Reed to register.

**III. An action for declaratory judgment is the appropriate means of attacking the Reed order.**

“Courts of record within their respective jurisdictions shall have the power to declare rights, status and other legal relations... .” S.C. Code Ann. §15-53-20. The legal relation between Mr. Reed, a person who by law must register on the SOR, and SLED, the sole entity with authority to enforce the registry, is broken and prevented by the Reed order. Although this type of legal relationship is not specifically enumerated in the Act, this is no limitation on the court's ability to resolve the controversy:

The enumeration in Sections 15-53-30 to 15-53-50 does not limit or restrict the exercise of the general powers conferred in Section 15-53-20 in any proceeding when declaratory relief is sought in which a judgment or decree will terminate the controversy or remove the uncertainty.

S.C. Code Ann. §15-53-60.

Declaring the Reed order void will end the uncertainty regarding SLED's authority to enforce Mr. Reed's SOR requirements, as well as end the controversy between them. In addition, the purpose of the Act is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” S.C. Code Ann. §15-53-130. The statute commands courts to construe and administer the Act liberally. *Id.* Consequently, even if the idea of using the Act to attack court orders collaterally causes concerns (though such concerns are unwarranted), the court should cast them aside and act liberally.

**IV. The Reed order is void for lack of subject matter jurisdiction and personal jurisdiction.**

**i. Personal jurisdiction**

“It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in litigation in which he is not designated a party or to which he has not been made a party by service of process.” *Hansberry v. Lee*, 311 U.S. 32, 40, 61 S.Ct. 115, 117, 85 L.Ed. 22 (1940). SLED is the only entity with the authority to remove an individual from the SOR. S.C. Code Ann. § 23-3-410(A) (“The registry is under the direction of the Chief of the South Carolina Law Enforcement Division...SLED shall develop and operate the registry...”); *see also* S.C. Code Ann. §23-3-420 (“[SLED] shall promulgate regulations to implement the provisions of this article.”). SLED, however, was not involved in the 2017 Family Court hearing; it was not a party. In spite of SLED’s absence, the Reed order commands SLED to remove Mr. Reed from the SOR. (Exhibit A). Because SLED was not designated a party or made a party by service of process, the order is void for lack of personal jurisdiction, at least so far as the order concerns SLED.

Finally, the lack of personal jurisdiction was evident on the face of the record. SLED is not in the caption of the Reed order (nor was it made a party through service of process), yet the order directs SLED to remove Mr. Reed from the SOR. Consequently, the order is subject to collateral attack. *Yarbrough v. Collins*, 293 S.C. 290, 292, 360 S.E.2d 300, 301.

**ii. Subject matter jurisdiction**

Registering on the SOR is a civil requirement. *Thompson v. State*, 415 S.C. 560, 564 n. 3, 785 S.E.2d 189, 191 n. 3 (2016) (“As we have repeatedly stated, the sex offender registry is a civil requirement separate and apart from the criminal punishments associated with sexual offenses in

this state.”). “Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong.” *Johnson v. South Carolina Dept. of Probation, Parole, and Pardon Serv.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007) (internal citation omitted). The Family Court has the exclusive power to hear and determine cases involving juveniles. *In re Shaquille O’Neal B.*, 385 S.C. 243, 247-51, 684 S.E.2d 549, 552-53 (2009). But Family Courts that acquired subject matter jurisdiction over juveniles when they were under the age of seventeen lose subject matter jurisdiction over those same juveniles, when those juveniles turn twenty-one. S.C. Code Ann. §63-3-510(B). The Family Court lost subject matter jurisdiction over Mr. Reed in 2005, when he was 21 years old—but still reopened his case in 2017 and issued an order that removed Mr. Reed from the SOR. Clearly the court lacked subject matter jurisdiction over Mr. Reed, who was then 32 or 33. Consequently, the Reed order is void.

Lastly, the lack of subject matter jurisdiction was evident on the face of the record. The 1994 juvenile case number is in the caption. (Exhibit A). The fact that Mr. Reed was adjudicated delinquent in 1996 at the age of 12 is also on the face of the record. *Id.* As is the fact that the court issued its order in 2017, well past Mr. Reed’s twenty-first birthday. *Id.* Because the court’s lack of subject matter jurisdiction was evident on the face of the record, the Reed order is subject to collateral attack. *Yarbrough v. Collins*, 293 S.C. 290, 292, 360 S.E.2d 300, 301.

## V. Conclusion

Because of his conviction, Mr. Reed should be on the SOR. The Reed order is the only reason he is not. That order, however, was issued by a court that did not have either personal or subject matter jurisdiction; consequently, the Reed order is void. The jurisdictional defects were also evident on the face of the record. This collateral attack is therefore proper. The court should grant SLED’s motion for summary judgment—and declare the Reed order void.

Respectfully submitted,

ALAN WILSON  
Attorney General

JEFFREY YOUNG  
CHIEF DEPUTY ATTORNEY GENERAL

Harley Kirkland  
Assistant Attorney General

T. Parkin C. Hunter  
Senior Assistant Attorney General

Kevin Desmond Maroney  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
803.734.3177  
kmaroney@scag.gov  
S.C. Bar no. 102545

BY: /s/ Kevin Desmond Maroney

**ATTORNEYS FOR SLED**

June 28, 2018

**EXHIBIT A**

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
STATE OF SOUTH CAROLINA, )  
PLAINTIFF, )  
VS. )  
BRANDON REED, )  
DEFENDANT. )

IN THE FAMILY COURT  
SECOND JUDICIAL CIRCUIT

Case Number: 1994-FU-26

ORDER  
(Removal from Sex Offender Registry)

APR 26 2017

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Robert J. Bane, Clerk of Court of the Family Court and General Sessions for Aiken County, South Carolina, do hereby certify that this foregoing constitutes a true and correct copy of the original document which has been filed in my office this

*[Signature]*  
Robert J. Bane  
Clerk of Court  
Aiken County, SC  
Family Court

Defendant's attorney filed a Motion to Remove the Defendant from the Sex Offender Registry. Defendant was adjudicated delinquent at the age of twelve (12) in the Aiken County Family Court for a crime committed when he was eleven (11) years of age. He was placed on the registry in 1996 as a result of that adjudication. Since his adjudication of delinquency, he has received and completed extensive counseling and treatment, lived a productive life, and has had no other convictions. This court reviewed the file in this matter, including the documents submitted by Defendant at the hearing. This Court also considered Defendant's testimony and the arguments from the attorneys. The Defendant's mother also attended the hearing. Based upon all the above, this Court finds it appropriate for Defendant to be removed from the Sex Offender Registry immediately.

AND IT IS SO ORDERED this 27 day of April, 2017, in Aiken, South Carolina.

*[Signature]*

Dale M. Cable  
Presiding Family Court Judge

RECEIVED

SEP 01 2017

S.C. SUPREME COURT

FILED  
AIKEN COUNTY  
APR 21 2017  
1:52:34  
CLERK OF COURT

**EXHIBIT B**

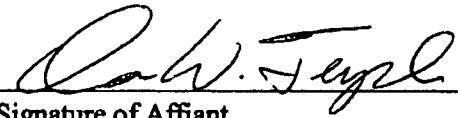
AFFIDAVIT OF DANA TEMPLE

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

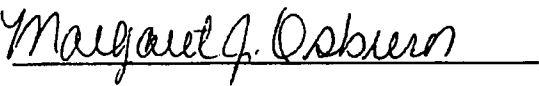
PERSONALLY came and appeared before me the undersigned Notary, the within named Dana Temple, who is a resident of Lexington County, State of South Carolina, and makes this her statement and Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

According to the records the South Carolina Law Enforcement Division received from the Aiken County Solicitor's Office, Brandon Reed was adjudicated delinquent sometime between 1994 and 1996 for Criminal Sexual Conduct with a Minor in the First Degree. Mr. Reed was approximately 12 years of age at the time. In accordance with S.C. Code Ann. § 23-3-430, any person, regardless of age, who has been adjudicated delinquent for Criminal Sexual Conduct with a Minor in the First Degree is statutorily mandated to register as a sex offender. If it were not for the Family Court Order dated April 21, 2017 removing him from the sex offender registry, Mr. Reed would still be properly listed on the registry.

DATED this the 28<sup>th</sup> day of June 2018.

  
Signature of Affiant

SWORN to and subscribed before me  
this 28<sup>th</sup> day of June 2018.

  
(Notary Signature)

Notary Public For: South Carolina  
My Commission Expires: 6/11/24

|                                |   |                                 |
|--------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS    |
|                                | ) | FOR THE SECOND JUDICIAL CIRCUIT |
| AIKEN COUNTY                   | ) |                                 |
|                                | ) |                                 |
| South Carolina Law Enforcement | ) |                                 |
| Division (SLED),               | ) |                                 |
|                                | ) |                                 |
| Plaintiff,                     | ) |                                 |
| vs.                            | ) | Case No.: <u>2018-CP-02-670</u> |
|                                | ) |                                 |
| Brandon Reed,                  | ) |                                 |
|                                | ) |                                 |
| Defendant.                     | ) |                                 |

**DEFENDANT REED'S RESPONSE TO PLAINTIFF SLED'S MOTION FOR SUMMARY JUDGMENT**

*TO SLED, by and through its Attorneys of Record:*

Defendant Brandon Reed would show unto this Honorable Court that Plaintiff's Motion for Summary Judgment in the within matter should be denied. Defendant will show that the law, procedural history, as well as the existing facts and circumstances, all depict that Summary Judgment for the Plaintiff would be inappropriate. This Response is supported by a Memorandum of Law to be filed with the Court, as well as Defendant's Answer and Affirmative Defenses, affidavits if appropriate, and certain documentary evidence, all of which will be filed separately with the Court.

Respectfully submitted,

ANDERSON & ANDERSON, LLP

BY: s/ Kristina M. Anderson  
 Kristina M. Anderson  
 SC ID No.: 66475  
 P. Andrew Anderson  
 Attorneys for Defendant Reed  
 211 York Street, NE  
 Aiken, South Carolina 29801  
 803.648.6000 - telephone  
[kanderson@andersonandanderson.com](mailto:kanderson@andersonandanderson.com)

July 12<sup>th</sup>, 2018.

|                                |   |                                 |
|--------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS    |
|                                | ) | FOR THE SECOND JUDICIAL CIRCUIT |
| AIKEN COUNTY                   | ) |                                 |
|                                | ) |                                 |
| South Carolina Law Enforcement | ) |                                 |
| Division (SLED),               | ) |                                 |
|                                | ) |                                 |
| Plaintiff,                     | ) |                                 |
| vs.                            | ) | Case No.: <u>2018-CP-02-670</u> |
|                                | ) |                                 |
| Brandon Reed,                  | ) |                                 |
|                                | ) |                                 |
| Defendant.                     | ) |                                 |

**DEFENDANT REED'S MEMORANDUM IN  
OPPOSITION TO SLED'S MOTION FOR SUMMARY JUDGMENT**

Now comes Defendant Brandon Reed and files this Memorandum in Opposition to Plaintiff SLED's Motion for Summary Judgment in the within matter. Defendant incorporates the pleadings filed herein including Defendant's Motion and Memorandum for Dismissal or Summary Judgment. Defendant Reed would show unto this Honorable Court as follows:

**Factual Background**

Defendant Reed was adjudicated delinquent in 1994 by the Aiken County Family Court for a single count of criminal sexual conduct with a minor. Reed was eleven (11) years of age at the time of the offense and twelve (12) when he entered a plea in In the Interest of Brandon Anthony Reed, Case No.: 1994-JU-02-396. In 1996 the sex offender registry (SOR) was extended to encompass not only criminal convictions in general sessions, but also delinquent adjudications as to minors in family court and Reed was placed on the registry.

Some twenty-three (23) years later, Reed, through undersigned counsel, filed a Motion for Removal from the SOR. The Motion was filed on February 15, 2017, in the court of original jurisdiction, the Aiken County Family Court. Additionally, this Motion and the subsequent actions in the matter were coordinated with the Aiken County Solicitor's Office, who was

involved on behalf of the State throughout the process. A hearing was held before the Family Court in the matter on March 7, 2017. Reed appeared with Counsel and his mother at the time of the hearing. The Aiken County Solicitor's Office was also present and participated. Extensive evidence was presented regarding Reed and his treatment and life in the twenty-three (23) years since the charge. This information included a polygraph examination showing that Reed had not re-offended since the 1994 incident. Additionally, reports of psychological evaluations were presented regarding Reed's treatment and state of mind. Based upon the evidence presented, the Family Court decided that Reed should be removed from the SOR registry he was placed on at the age of twelve (12). The Order of Removal from the SOR was entered by the Aiken County Family Court on April 21, 2017.

Prior to the entry of the Order in question, during March and April 2017, counsel for Defendant had phone conversations and email exchanges with SLED and forwarded SLED a copy of the draft Order for input. After the Order's entry, SLED sent a letter on May 25, 2017, to the court reporter ordering a copy of the transcript of the hearing that was held in Defendant's case to remove him from the SOR.

Thereafter, Plaintiff SLED filed a Petition for Original Jurisdiction to the South Carolina Supreme Court on September 1, 2017. SLED sought original jurisdiction of the State Supreme Court to declare void four (4) orders regarding removal of individuals from the SOR. The Reed Order of April 2017 was one of the Orders challenged. Counsel for Reed filed a Return on behalf of Defendant. SLED's Petition for Original Jurisdiction was denied by the South Carolina Supreme Court by Order dated December 14, 2017.

SLED then filed this declaratory judgment action with the Court on March 22, 2018. SLED contends it was not a party to the entry of the April 2017 Order and further contends that

the family court lacked jurisdiction to hear the matter. SLED also challenges the basis of the removal that is cited by the Aiken County Family Court. For all the reasons set-forth herein, and in Defendant's Motion and Memorandum for Dismissal or Summary Judgment, Defendant Reed shows that the Court should deny Plaintiff's motion for summary judgment and dismiss the matter or in the alternative grant summary judgment in favor of the Defendant.

**SLED's Improper Use of the Declaratory Judgment Act**

Plaintiff is not seeking a declaratory judgment from this Court to determine its rights or obligations under any law or statute. The Order that SLED again seeks to set aside has now been the 'law of the case' for more than a year. Plaintiff seeks to use the Declaratory Judgment Act as a way of attacking the judgment and bypassing time limitations in place for motions for relief or appeal that could have been filed at the time the underlying Order was entered, but were not.

Further, the Declaratory Judgment Act and the law surrounding it clearly require that there be a '*justiciable issue*' between the parties for resolution or clarification. Here there is no question for determination between the parties. The only issue presented is the collateral attack of the April 2017 Order. "To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Sunset Cay LLC v. Folly Beach*, 357 SC 414, 423, 593 SE2d 462, 466 (2004). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination." *Id.* The Declaratory Judgment Act was intended to provide clarification and guidance to those who in good faith have issues pending between them for resolution. This second bite at the appellate apple is not a proper use of the Declaratory Judgment Act and the motion for summary judgment should be denied and the case dismissed.

**STATE/SLED Waiver of Jurisdiction**

Plaintiff SLED contends that it was not a party before the family court when the

challenged Order was entered. But SLED is not now nor has it ever been an entity independent of the State of South Carolina, S.C. Code § 23-3-10, *et. seq.* There is clearly no requirement in the SOR that mandates that SLED be named individually as a party in any matter which may result in the addition or removal of individuals to/from the registry. The State was represented and actively participated throughout the underlying matter. The April 2017 Order, which went unchallenged in anyway, is the law of the case. “A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980). “A ‘judgment on the merits’ as that phrase is used in conventional statement of *res judicata* doctrine, is not necessarily a judgment based upon a trial of contested facts.” *Id.* “Fed.R.Civ.P. 54(a) defines ‘judgment’ as it is used in ‘these rules to include a decree and any order from which an appeal lies.’” *Id.* The State of South Carolina appeared and was actively involved in the Motion filed to remove Defendant from the SOR. “Where a ruling on demurrer to complaint was not appealed from, it became the law of the case.” *Cooper Tire & Rubber Co. v. Perry*, 261 S.C.538, 542, 201 S.E.2d 245, 247 (1973).

SLED further alleges that the April 2017 judgment is void contending that the Family Court lacked jurisdiction to hear the motion and that the reasoning for removal is improper. None of these issues were presented by the State during the pendency of the motion, the hearing on the matter or the entry of the April 2017 Order. The Aiken County Family Court was the court of original jurisdiction for this case and its jurisdiction over the motion filed was never questioned by the State. SLED took no action individually or through the State to stop entry of the Order for Removal. Months later, SLED sought Original Jurisdiction of the Supreme Court to declare the Order void, but that was denied. To argue lack of subject matter jurisdiction,

SLED points out that the SOR is a civil statute. The family court is a civil court and has powers of equity. SLED also relies on S.C. Code § 63-3-510(B), which states that the family court retains jurisdiction over any child “so long as in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction shall terminate when the child attains the age of twenty-one years.” This clearly refers to the Court’s ability to pro-actively direct the child with punishment or schooling. It goes without saying that family courts all across the State continue to entertain contempt motions on prior issued orders after the juvenile defendant is 21 and also execute and process orders of expungement on underlying juvenile cases long after the defendant has reached the age of 21. Simply put, there is no case law that has been shown which states that the Family Court with the participation of the Defendant and the State could not hear this motion.

Given that the State of South Carolina was represented throughout the process resulting in the Order now sought to be set aside, if the State, or SLED individually as privy of the State, had any issues with the foundation of the Order in question or the court of original jurisdiction hearing the matter, those issues were not voiced or preserved for review and have long since been waived. Interestingly, there are numerous cases that have been on appeal in this state regarding the SOR in which only the State is named as a party. Those cases also involve applications for removal that were filed in the court of common pleas and also applications that were filed in general sessions court, as the court of original jurisdiction over the underlying charge. *See: In re Shaquille O’Neal B.*, 385 S.C. 243, 684 S.E.2d 549 (2009) and *Hazel v. State.* 377 S.C. 60, 659 S.E.2d 137 (2008).

SLED already made these same arguments to the South Carolina Supreme Court seeking the Court’s original jurisdiction to declare this Order void and set it aside. That request was

denied. The April 2017 Order is the law of this case and this motion for summary judgment should be denied and the case dismissed.

Respectfully submitted this 21<sup>st</sup> day of September, 2018.

ANDERSON & ANDERSON, LLP

/s/ Kristina M. Anderson  
Kristina M. Anderson, # 066475  
P. Andrew Anderson, # 064131  
211 York Street, NE  
Aiken, South Carolina 29801  
(803) 648-6000 - telephone  
(803) 648 -0888 - facsimile  
Attorneys for Defendant Reed

|                                |   |                                 |
|--------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS    |
|                                | ) | FOR THE SECOND JUDICIAL CIRCUIT |
| AIKEN COUNTY                   | ) |                                 |
|                                | ) |                                 |
| South Carolina Law Enforcement | ) |                                 |
| Division (SLED),               | ) |                                 |
|                                | ) |                                 |
| Plaintiff,                     | ) |                                 |
| vs.                            | ) | Case No.: <u>2018-CP-02-670</u> |
|                                | ) |                                 |
| Brandon Reed,                  | ) |                                 |
|                                | ) |                                 |
| Defendant.                     | ) |                                 |

**DEFENDANT REED'S MOTION TO DISMISS  
OR IN THE ALTERNATIVE FOR  
SUMMARY JUDGMENT**

*TO SLED, by and through its Attorneys of Record:*

PLEASE TAKE NOTICE THAT pursuant to Rules 12 and 56, SCRCP, the Defendant Brandon Reed moves this Court to Dismiss Plaintiff's action or, in the alternative, for Summary Judgment. Defendant will submit a memorandum in support of this motion near the date of the hearing, once it is scheduled by the Court.

Respectfully submitted,

ANDERSON & ANDERSON, LLP

BY: s/ Kristina M. Anderson  
 Kristina M. Anderson  
 SC ID No.: 66475  
 P. Andrew Anderson  
 Attorneys for Defendant Reed  
 211 York Street, NE  
 Aiken, South Carolina 29801  
 803.648.6000 - telephone  
kanderson@andersonandanderson.com

July 12<sup>th</sup>, 2018.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE SECOND JUDICIAL CIRCUIT  
 AIKEN COUNTY )  
 )  
 South Carolina Law Enforcement )  
 Division (SLED), )  
 )  
 Plaintiff, )  
 vs. ) Case No.: 2018-CP-02-670  
 )  
 Brandon Reed, )  
 )  
 Defendant. )

**DEFENDANT REED’S MEMORANDUM IN SUPPORT OF  
 MOTION TO DISMISS and/or FOR SUMMARY JUDGMENT**

Now comes Defendant Brandon Reed and files this Memorandum in Support of his Motion to Dismiss or in the alternative for Summary Judgment in the within matter. Defendant Reed would show unto this Honorable Court as follows:

**Factual Background**

Defendant Reed was adjudicated delinquent in 1994 by the Aiken County Family Court for a single count of criminal sexual conduct with a minor. Reed was eleven (11) years of age at the time of the offense and twelve (12) when he entered a plea in *In the Interest of Brandon Anthony Reed, Case No.: 1994-JU-02-396*. In 1996 the sex offender registry (SOR) was extended to encompass not only criminal convictions in general sessions, but also delinquent adjudications as to minors in family court and Reed was placed on the registry.

Some twenty-three (23) years later, Reed, through undersigned counsel, filed a Motion for Removal from the SOR. The Motion was filed on February 15, 2017, in the court of original jurisdiction, the Aiken County Family Court. Additionally, this Motion and the subsequent actions in the matter were coordinated with the Aiken County Solicitor’s Office, who was involved on behalf of the State throughout the process. A hearing was held before the Family

Court in the matter on March 7, 2017. Reed appeared with Counsel and his mother at the time of the hearing. The Aiken County Solicitor's Office was also present and participated. Extensive evidence was presented regarding Reed and his treatment and life in the twenty-three (23) years since the charge. This information included a polygraph examination showing that Reed had not re-offended since the 1994 incident. Additionally, reports of psychological evaluations were presented regarding Reed's treatment and state of mind. Based upon the evidence presented, the Family Court decided that Reed should be removed from the SOR registry he was placed on at the age of twelve (12). The Order of Removal from the SOR was entered by the Aiken County Family Court on April 21, 2017.

Prior to the entry of the Order in question, during March and April 2017, counsel for Defendant had phone conversations and email exchanges with SLED and forwarded SLED a copy of the draft Order for input. After the Order's entry, SLED sent a letter on May 25, 2017, to the court reporter ordering a copy of the transcript of the hearing that was held in Defendant's case to remove him from the SOR.

Thereafter, Plaintiff SLED filed a Petition for Original Jurisdiction to the South Carolina Supreme Court on September 1, 2017. SLED sought original jurisdiction of the State Supreme Court to declare void four (4) orders regarding removal of individuals from the SOR. The Reed Order of April 2017 was one of the Orders challenged. Counsel for Reed filed a Return on behalf of Defendant. SLED's Petition for Original Jurisdiction was denied by the South Carolina Supreme Court by Order dated December 14, 2017.

SLED then filed this declaratory judgment action with the Court on March 22, 2018. SLED contends it was not a party to the entry of the April 2017 Order and further contends that the family court lacked jurisdiction to hear the matter. SLED also challenges the basis of the

removal that is cited by the Aiken County Family Court. For all the reasons set-forth herein, Defendant Reed shows that the Court should deny Plaintiff's application for declaratory judgment and dismiss the same or in the alternative grant summary judgment in favor of the Defendant.

**Procedural History**

The relevant procedural time-line related to this matter is as follows:

- September 14, 1994* - Reed was adjudicated delinquent on single count of csc/minor
- February 15, 2017* - Reed Motion for Removal from SOR Filed (EXHIBIT 1)
- February 15, 2017* - Request for hearing filed in Reed case, State of South Carolina  
Represented by Aiken County Solicitor's Office (EXHIBIT 2)
- February 24, 2017* - Hearing Notice issued to Reed and State (EXHIBIT 2)
- March 7, 2017* - Hearing held on Motion/Attorneys for Reed and State present
- March/April, 2017* - Phone and email exchanges with SLED (EXHIBIT 3)
- April 21, 2017* - Order entered that removes Reed from the SOR (EXHIBIT 4)
- May 25, 2017* - Attorney General's Office orders Reed hearing transcript (EXHIBIT 5)
- September 1, 2017* - Attorney General/SLED files Petition for Original Jurisdiction with  
South Carolina Supreme Court to declare Reed Order void (EXHIBIT 6)
- December 14, 2017* - South Carolina Supreme Court Denies SLED's Petition (EXHIBIT 7)
- March 22, 2018* - Attorney General/SLED Files Complaint for Declaratory Judgment  
declaring Reed April 2017 Order void *ab initio*

**Improper Use of the Declaratory Judgment Act**

Plaintiff is not seeking a declaratory judgment from this Court to determine its rights or obligations under any law or statute. The Order that SLED again seeks to set aside has now been

the 'law of the case' for more than a year. Plaintiff seeks to use the Declaratory Judgment Act as a way of attacking the judgment and bypassing time limitations in place for motions for relief or appeal that could have been filed at the time the underlying Order was entered, but were not.

Further, the Declaratory Judgment Act and the law surrounding it clearly require that there be a '*justiciable issue*' between the parties for resolution or clarification. Here there is no question for determination between the parties. The only issue presented is the collateral attack of the April 2017 Order. "To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Sunset Cay LLC v. Folly Beach*, 357 SC 414, 423, 593 SE2d 462, 466 (2004). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination." *Id.* The Declaratory Judgment Act was intended to provide clarification and guidance to those who in good faith have issues pending between them for resolution. This second bite at the appellate apple is not a proper use of the Declaratory Judgment Act and the request for relief should be denied and the case dismissed.

#### **Res Judicata / Collateral Estoppel**

Plaintiff SLED is not now nor has it ever been an entity independent of the State of South Carolina, S.C. Code § 23-3-10, *et. seq.* SLED now contends that it was not a party before the family court when the challenged Order was entered. But there is clearly no requirement in the SOR that mandates that SLED be named individually as a party in any matter which may result in the addition or removal of individuals to/from the registry. The State was represented and actively participated throughout the underlying matter, the outcome of which Plaintiff now seeks to set aside. SLED independently was aware of the pending Family Court Motion on behalf of Defendant. SLED independently received calls and emails regarding the same. SLED ordered the transcript after the hearing in the underlying matter. Plaintiff SLED failed to file any

motion for relief or appeal regarding the Order that it now challenges, which was entered more than a year ago. Plaintiff failed also apparently to communicate its disagreement with the entry of the Order in question to the attorneys for the State that appeared and participated. Defendant Reed has already been removed from the sex offender registry and entertaining this matter all over again would subject him to substantial prejudice.

The April 2017 Order, which went unchallenged in anyway, is the law of the case. “A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980). “A ‘judgment on the merits’ as that phrase is used in conventional statement of *res judicata* doctrine, is not necessarily a judgment based upon a trial of contested facts.” Id. “Fed.R.Civ.P. 54(a) defines ‘judgment’ as it is used in ‘these rules to include a decree and any order from which an appeal lies.’” Id. The State of South Carolina appeared and was actively involved in the Motion filed to remove Defendant from the SOR. Plaintiff SLED’s cause of action is barred by the doctrines of *res judicata* and collateral estoppel in that the claims and/or issues presented have already been litigated or could have already been litigated in a prior matter. “Where a ruling on demurrer to complaint was not appealed from, it became the law of the case.” *Cooper Tire & Rubber Co. v. Perry*, 261 S.C.538, 542, 201 S.E.2d 245, 247 (1973). As a result, Plaintiff’s request for relief should be denied and this action dismissed.

#### **Waiver as to Jurisdiction**

SLED is utilizing this Declaratory Judgment action to challenge the April 2017 judgment on the basis of jurisdiction contending SLED should have been a party and that the Court lacked jurisdiction to hear the motion. SLED further alleges that the Court’s reasoning for removal is

improper. None of these issues were presented by the State during the pendency of the motion, the hearing on the matter or the entry of the April 2017 Order. The Aiken County Family Court was the court of original jurisdiction for this case and its jurisdiction over the motion filed was never questioned by the State. SLED was clearly aware that this Motion for Removal had been filed in the Family Court and that the State's interests and SLED's interest was being represented by the Aiken County Solicitor's Office. SLED took no action individually or through the State to stop entry of the Order for Removal. Counsel provided SLED with a copy of the proposed Order of Removal to obtain SLED's input in the process. This was prior to the Order being furnished to the Family Court Judge. After entry of the Order on April 21, 2017, the Attorney General's Office sent a letter to the court reporter ordering the transcript in the matter. But no motion or appeal was ever filed. Months later, SLED sought Original Jurisdiction of the Supreme Court to declare the Order void, but that was denied.

Given that the State of South Carolina was represented throughout the process resulting in the Order now sought to be set aside, if the State, or SLED individually as privy of the State, had any issues with the foundation of the Order in question or the court of original jurisdiction hearing the matter, those issues were not voiced or preserved for review and have long since been waived. The State/SLED should not be able to actively participate in a legal matter through hearing and entry of an Order and then wait over a year to voice jurisdictional objections. Interestingly, there are numerous cases that have been on appeal in this state regarding the SOR in which only the State is named as a party. Those cases also involve applications for removal that were filed in the court of common pleas and also applications that were filed in general sessions court, as the court of original jurisdiction over the underlying charge. See: In re Shaquille O'Neal B., 385 S.C. 243, 684 S.E.2d 549 (2009) and Hazel v. State. 377 S.C. 60, 659

S.E.2d 137 (2008). At this point any objections to the April Order have been waived. The request for declaratory relief should be denied and this action should be dismissed.

Respectfully submitted this 6th day of September, 2018.

ANDERSON & ANDERSON, LLP

/s/ Kristina M. Anderson

Kristina M. Anderson, # 066475

P. Andrew Anderson, # 064131

211 York Street, NE

Aiken, South Carolina 29801

(803) 648-6000 - telephone

(803) 648 -0888 - facsimile

Attorneys for Defendant Reed

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

STATE OF SOUTH CAROLINA

VS.

BRANDON REED,  
DEFENDANT.

IN THE COURT OF FAMILY COURT  
SECOND JUDICIAL CIRCUIT

MOTION  
(Removal from Sex Offender Registry)

1994-JU-02-396

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Robert J. Harce, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office. this

FEB 15 2017

*[Handwritten Signature]*  
CLERK OF COURT  
Aiken County, SC

ELECTRONICALLY FILED - 2018 Sep 07 5:55 PM - AIKEN - COMMON PLEAS - CASE#2018CJP0200670

TO: THE PRESIDING FAMILY COURT JUDGE:

Defendant was 12 years old when he pled guilty in this Court to sexually abusing a 3 year old girl 23 years ago. Neither Brandon nor his mother had any idea of the long-term ramifications of this guilty plea. He has been on the Sex Offender Registry ever since. He was also ordered to receive in-patient treatment at Generations Group Home. Brandon completed that program, graduated high school, has been gainfully employed for the vast majority of his adulthood, and has no subsequent criminal convictions. Brandon has also received a favorable evaluation by a forensic psychologist specializing in sex-offender issues (a copy of the evaluation shall be presented to the Court at the hearing). Requiring Brandon to continue to register as a sex offender serves no useful purpose. The issues leading up to his juvenile prosecution have been resolved through counseling and maturation. He poses no threat to his community. In fact, he is a productive member of society in spite of his registry requirement. Brandon requests that he no longer be required to register as a sex offender.

Respectfully, I so move.

ANDERSON & ANDERSON, LLP

*[Handwritten Signature]*

P. Andrew Anderson  
Attorney for Defendant  
Anderson & Anderson LLP  
211 York Street, NE  
Aiken, South Carolina 29801  
(803) 648-6000

February 15, 2017

EXHIBIT 1

89

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
STATE OF SOUTH CAROLINA )  
 )  
VS. )  
 )  
BRANDON REED )  
 )  
DEFENDANT. )  
\_\_\_\_\_ )

IN THE COURT OF FAMILY COURT  
SECOND JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

1994-JU-02-396

ELECTRONICALLY FILED - 2018 Sep 07 5:55 PM - AIKEN - COMMON PLEAS - CASE#2018CP0200670

CERTIFICATE OF SERVICE BY HAND-DELIVERY

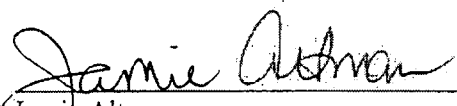
I, Jamie Altman, of Anderson & Anderson, LLP, attorneys for the Defendant in the above entitled action, do hereby certify that on February 15, 2017, I hand delivered a copy of the foregoing document(s), to the following attorney(s) and/or party(ies) of record, to wit:

**Name:**

Serena McDaniel, Assistant Solicitor  
Second Judicial Circuit  
P. O. Box 3368  
Aiken, SC 29802

**Document(s) Sent By Mail:**

Motion

  
\_\_\_\_\_  
Jamie Altman  
Anderson & Anderson, LLP  
211 York St. NE  
Aiken, South Carolina 29801

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 )  
 State of South Carolina )  
 Plaintiff, )  
 vs. )  
 )  
 Brandon Reed )  
 Defendant. )

IN THE FAMILY COURT  
 SECOND JUDICIAL CIRCUIT

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Docket No. 1994-JU-02-396

|                                                                                                                                                                  |                                                                                                                                                                                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Plaintiff's Attorney:<br>Serena McDaniel, Bar No. _____<br>Address:<br>P.O. Box 3368, Aiken, SC 29802<br>Phone: 803-642-1512 Fax _____<br>E-mail: _____ Other: _ | Defendant's Attorney:<br>P. Andrew Anderson, Bar No. 64131<br>Address:<br>211 York Street, Aiken, SC 29801<br>Phone: 803-648-6000 Fax 803-648-0888<br>E-mail: aanderson@andersonandanderson.com<br>Other: _____ |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

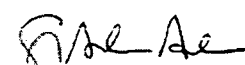
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Registry  
 Estimated Time Needed: 15 mins Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff /  Defendant Date submitted 2/15/17

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status  State Agency v. Indigent Party
- Sexually Violent Predator Act  Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication  Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_ Date: \_\_\_\_\_  
 Judge Signature: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

Custodial Parent (if applicable): \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
STATE OF SOUTH CAROLINA )  
PLAINTIFF, )  
VS. )  
BRANDON REED, )  
DEFENDANT. )

IN THE FAMILY COURT  
SECOND JUDICIAL CIRCUIT

Case No.: 1994-JU-02-396

REQUEST FOR HEARING

ATTORNEY FOR PLAINTIFF:  
Office Address:  
Telephone:

Serena McDaniel  
P.O. Box 3368, Aiken, SC, 29802  
642-1512

ATTORNEY FOR DEFENDANT:  
Office Address:  
Telephone:

P. Andrew Anderson  
211 York St. NE, Aiken, SC, 29801  
648-6000

GUARDIAN AD LITEM:  
Office Address:  
Phone:

None

TYPE OF CASE:

Motion

CONTESTED ISSUES:

DATE COMPLAINT SERVED:

ANSWER FILED:

DISCOVERY COMPLETED:

YES \_\_\_ NO \_\_\_ N/A X  
YES \_\_\_ NO \_\_\_ N/A X

COPY  
ORIGINAL FILED

FEB 15 2017

AIKEN COUNTY  
CLERK OF COURT

\*I agree and understand that failure to complete discovery prior to trial is not sufficient grounds to continue the case at trial.\*

TIME NEEDED:

15 minutes

CONTESTED ISSUES (EXPLAIN):

DATES AND TIMES AVAILABLE:

Please coordinate with Attorney

HEARING REQUESTED BY:  
ATTORNEY FOR:

P. Andrew Anderson  
Plaintiff \_\_\_ Defendant X

DATE: 2/15/17

EXHIBIT 2

**AIKEN COUNTY FAMILY COURT**

109 Park Avenue, SE  
P O Box 3047  
Aiken, SC 29802-3047

**HEARING NOTICE**

SERENA MCDANIEL, ESQUIRE  
ATTORNEY AT LAW  
P.O. BOX 3368  
AIKEN, SC 29802  
Plaintiff's Attorney

P. ANDREW ANDERSON, ESQUIRE  
ATTORNEY AT LAW  
211 YORK STREET NE  
AIKEN, SC 29802  
Defendant's Attorney

**CASE CAPTION:      STATE OF SOUTH CAROLINA VS BRANDON REED**

**CASE NUMBER:      94-IU-02-396**

**HEARING DATE:     MAR 7 - 2017**

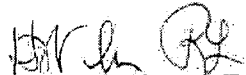
**TIME ALLOTTED:    15 MIN.**

**HEARING TIME:     2:00 PM**

Pursuant to your request, the above matter has been set for hearing.  
Please notify me immediately of any changes.

***YOU ARE TO NOTIFY OPPOSING ATTORNEY IF NOT NOTED ABOVE.***

Dated: February 24, 2017

  
\_\_\_\_\_  
Heidi Wilbanks, Docket Clerk  
by Rosie Lowman  
(803) 642-1715

**Andy Anderson**

**From:** Andy Anderson  
**Sent:** Thursday, April 06, 2017 5:05 PM  
**To:** Garner, Belton  
**Subject:** Re: REED

Can u tell me who said that so I could talk w/her/him?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

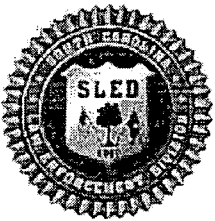
**From:** Garner, Belton  
**Sent:** Thursday, April 6, 2017 11:18 AM  
**To:** Andy Anderson  
**Subject:** RE: REED

Good Afternoon,

I received word back from your request that was forwarded to our General Council. While there wasn't any feedback regarding the content of the order, this is an order that the state would challenge were it granted, and due to that, it would be a conflict to provide additional revisions to the draft. I hope this response suits your needs, and I apologize for the delay in getting back to you.

Thank you,

Belton Garner  
SLED Sex Offender Registry Coordinator  
Office: 803-896-8951  
[REDACTED]  
Fax: 803-896-2311  
[REDACTED]



**From:** Andy Anderson [mailto:[REDACTED]]  
**Sent:** Monday, April 03, 2017 4:56 PM  
**To:** Garner, Belton  
**Subject:** REED

Hey. Have you heard anything about my proposed order? I really need to get it to the Judge

P. Andrew Anderson  
Anderson & Anderson LLP  
211 York Street, NE  
Aiken, South Carolina 29801



EXHIBIT 3

94

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 STATE OF SOUTH CAROLINA, )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 BRANDON REED, )  
 DEFENDANT. )

**IN THE FAMILY COURT  
 SECOND JUDICIAL CIRCUIT**

Case Number: 1994-JU-02-396

**ORDER  
 (Removal from Sex Offender Registry)**

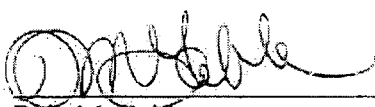
STATE OF SOUTH CAROLINA,  
 COUNTY OF AIKEN  
 I, Robert J. Harre, Clerk of Court,  
 Session for Aiken County, South Carolina, do hereby certify  
 that the foregoing constitutes a true and correct copy of the  
 original documents which have been filed in this office.

APR 26 2017

ELECTRONICALLY FILED - 2017 APR 26 04:55 PM - AIKEN - COMMON PLEAS - CASE#2018CP0200670

Defendant's attorney filed a Motion to Remove the Defendant from the Sex Offender Registry. Defendant was adjudicated delinquent at the age of twelve (12) in the Aiken County Family Court for a crime committed when he was eleven (11) years of age. He was placed on the registry in 1996 as a result of that adjudication. Since his adjudication of delinquency, he has received and completed extensive counseling and treatment, lived a productive life, and has had no other convictions. This court reviewed the file in this matter, including the documents submitted by Defendant at the hearing. This Court also considered Defendant's testimony and the arguments from the attorneys. The Defendant's mother also attended the hearing. Based upon all the above, this Court finds it appropriate for Defendant to be removed from the Sex Offender Registry immediately.

AND IT IS SO ORDERED this 27 day of April, 2017, in Aiken, South Carolina.

  
 Dale M. Gable  
 Presiding Family Court Judge

FILED  
 AIKEN COUNTY  
 APR 21 2017

EXHIBIT 4



ALAN WILSON  
ATTORNEY GENERAL

May 25, 2017

Penny M Johnson  
405 Woodvale Lane  
Aiken, SC 29801

RE: Civil Action Number 1994-JU-02-396  
State of South Carolina vs. Brandon Reed

Dear Ms. Johnson:

Please let me know the cost to obtain the transcript in the above referenced case. Judge Gable entered an Order on April 21, 2017, in this case and I understand you were the court reporter. Please let me know the estimated cost for the transcript of that hearing in Family Court in Aiken County.

Thank you.

Sincerely,

T. Parkin Hunter  
Senior Assistant Attorney General  
(803)734-6151  
phunter@scag.gov

cc: P. Andrew Anderson, Esquire  
Honorable Desiree Allen

ELECTRONICALLY FILED - 2018 Sep 07 5:55 PM - AIKEN - COMMON PLEAS - CASE#2018CP0200670

**THE STATE OF SOUTH CAROLINA**  
In The Supreme Court

---

South Carolina Law Enforcement Division,  
Petitioner,

v.

Brandon Reed, Daniel Brian Eustace, Kenyon Starling, Alfred Edward Buice,  
Respondents,

---

**NOTICE OF PETITION FOR ORIGINAL JURISDICTION**

---

Pursuant to SCACR 245(c), Petitioner gives notice to each Respondent that he has twenty days from the date of service to file an original and six copies of his return to this Petition for Original Jurisdiction with the Clerk of the Supreme Court, and he must serve all parties a copy of the return. If a party fails to file a timely return, that party may be deemed to have consented to the matter being heard in the original jurisdiction. Unless otherwise ordered by the Supreme Court, the Petition shall be decided without oral argument. If the Petition is granted, the Respondents shall have thirty days to serve and file an answer to the complaint.

[The signature block is on the next page]

EXHIBIT 6

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT D. COOK  
Solicitor General  
S.C. Bar No. 1373

J. Emory Smith, Jr.  
Deputy Solicitor General  
S.C. Bar No. 5262

T. Parkin C. Hunter  
Senior Assistant Attorney General  
S.C. Bar No. 2827

Kevin Desmond Maroney  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
803.734.3177  
[kmaroney@scag.gov](mailto:kmaroney@scag.gov)  
S.C. Bar No. 102545

By: Kevin Desmond Maroney

Attorneys for SLED

Sept 1, 2017

# The Supreme Court of South Carolina

The South Carolina Law Enforcement Division,  
Petitioner,




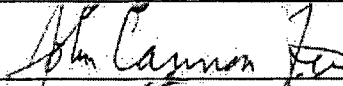
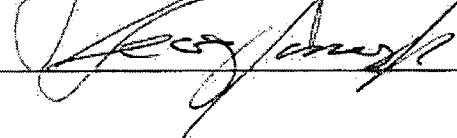
v.

Brandon Reed, Daniel Brian Eustace, Kenyon Starling  
and Alfred Edward Buice, Respondents.

Appellate Case No. 2017-001813

ORDER

The South Carolina Law Enforcement Division has filed a petition for original jurisdiction in which it requests this Court declare certain orders void ab initio. Respondents Brandon Reed and Alfred Edward Buice have filed returns in opposition to the petition. The petition is denied. Rule 245, SCACR.

|                                                                                      |      |
|--------------------------------------------------------------------------------------|------|
|  | C.J. |
|  | J.   |
|  | J.   |
|  | J.   |
|  | J.   |

Columbia, South Carolina

December 14, 2017

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 AIKEN COUNTY ) FOR THE SECOND JUDICIAL CIRCUIT  
 )  
 South Carolina Law Enforcement )  
 Division (SLED), )  
 )  
 Plaintiff, )  
 vs. ) Case No.: 2018-CP-02-670  
 )  
 Brandon Reed, )  
 )  
 Defendant. )

**DEFENDANT REED'S MOTION TO RECONSIDER**

*TO SLED, by and through its Attorneys of Record:*

PLEASE TAKE NOTICE THAT pursuant to Rules 59 and 60, SCRPC, Defendant Brandon Reed moves this Court to Reconsider, Alter/Amend or set aside its Judgment as contained in the Order entered by the Court on November 9, 2018. Defendant's counsel received notice of entry of the Order and service by electronic means on November 9, 2018. This Motion for Reconsideration timely follows.

Defendant moves this Court for relief from the November 9, 2018, Order requesting that the same be set aside. Defendant will support this Motion with a Memorandum of Law and other supporting documentation prior to hearing by the Court.

Respectfully submitted,

ANDERSON & ANDERSON, LLP

BY: s/ Kristina M. Anderson  
 Kristina M. Anderson  
 SC ID No.: 66475  
 P. Andrew Anderson  
 211 York Street, NE  
 Aiken, South Carolina 29801  
 803.648.6000 - telephone

November 19<sup>th</sup>, 2018.

|                                |   |                                 |
|--------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS    |
|                                | ) | FOR THE SECOND JUDICIAL CIRCUIT |
| AIKEN COUNTY                   | ) |                                 |
|                                | ) |                                 |
| South Carolina Law Enforcement | ) |                                 |
| Division (SLED),               | ) |                                 |
|                                | ) |                                 |
| Plaintiff,                     | ) |                                 |
| vs.                            | ) | Case No.: <u>2018-CP-02-670</u> |
|                                | ) |                                 |
| Brandon Reed,                  | ) |                                 |
|                                | ) |                                 |
| Defendant.                     | ) |                                 |

**DEFENDANT BRANDON REED'S  
MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER**

Now comes Defendant Brandon Reed and files this Memorandum in Support of his Motion to Reconsider in the within matter. Defendant moves this Court pursuant to Rules 59 and 60, SCRCP, to Reconsider, Alter/Amend or set aside its Judgment as contained in the Order entered by the Court on November 9, 2018. Defendant's counsel received notice of entry of the Order and service by electronic means on November 9, 2018. Defendant's Motion for Reconsideration was timely filed on November 19, 2018. Defendant Reed would show unto this Honorable Court as follows:

**Factual Background**

The Court is well versed in the factual background of this case. Rather than recap what has already been adequately covered, the Defendant references and incorporates the background and exhibit/documentary information set forth in the prior Memoranda filings before the Court.

**The Relevant Procedural History**

The relevant procedural time-line related to this matter is as follows:

*1994 SC Act 497* - General Assembly enacts SOR (it applies only to adult offenders)

- September 14, 1994 - Reed is adjudicated delinquent on single count of csc/minor
- 1996 SC ACT 444 - SOR amended to cover all offenders, regardless of age
- February 15, 2017 - Reed Motion for Removal from SOR
- April 21, 2017 - Order entered that removes Reed from the SOR
- March 22, 2018 - Attorney General/SLED Files Complaint for Declaratory Judgment  
declaring Reed April 2017 Order void *ab initio*
- November 9, 2018 - Court issues Order declaring April 21, 2017, order void
- November 19, 2018 - Defendant files Motion for Reconsideration

**April 2017 Order is Not Void:  
Family Court has Subject Matter Jurisdiction**

The Court’s November Order is founded upon a determination that the Family Court Order was void when signed and that the Family Court lacked subject matter jurisdiction to hear the motion that was filed. The supporting statute cited is S.C. Code Ann. § 63-3-510(B) which states that *“whenever the court has acquired the jurisdiction of any child under seventeen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction shall terminate when the child attains the age of twenty-one years.”*

S.C. Code Ann. § 63-3-510 is entitled “Exclusive Original Jurisdiction.” Subsection (A) goes onto list the areas where the Family Court has jurisdiction over the child and subsection (B) sets forth an expiration of this jurisdiction, which is tied to the age of the child. This wording by the legislature is specific and clearly relates to jurisdiction over the person of the child. The language refers to the Court’s efforts to educate or correct the child offender. This seems specific to the Court’s exclusive personal jurisdiction over the juvenile offender. In that regard, the jurisdictional power would be personal over the defendant, not the subject matter.

Family Courts across the State sign Orders related to cases before it regarding juvenile offenders even after those offenders reach the age of 21. Most obvious, is the Family Court's execution of Expungement Orders related to juvenile offenses that qualify. There is no time limit for the execution of orders to expunge the then-juvenile now-adult's criminal record. These are entered routinely. Additionally, the Family Court, as the Court of original jurisdiction, would rule on Motions for Contempt for Violation of a No Contact Order or a Motion for Modification of a No Contact Order - these can be brought before the Court at anytime to enforce, modify or set aside a prior order. There is no other Court that could hear these matters other than the Court of original jurisdiction regardless of when the motion is made even as it relates to a juvenile offender now over age 21.

In the present case, any motion filed in this matter would by necessity carry the family court case number from 1994. Importantly, S.C. Code Ann. § 63-3-530 relating to the jurisdiction of the family court states in relevant part: (A) The family court has exclusive jurisdiction: (25) *to modify or vacate any order issued by the court.* That jurisdiction has no time limit or expiration date.

The Order of April 2017 was entered on a motion filed by an adult defendant related to his juvenile case before that same Court and was made in conjunction with the prosecuting entity, the State of South Carolina. The April 2017 Order is not void on its face. To the extent that the Family Court lost its power to educate or correct Defendant Reed when he turned 21, Defendant Reed himself submitted to the jurisdiction of the Court by filing the Motion and seeking the Court's input regarding the Court's prior sentence and order. And further to the extent the April Order may be arguably voidable, no party to the Order has challenged it before this Court or any other.

**April 2017 Order is Not Void:  
Family Court has Personal Jurisdiction**

As stated above, to the extent that the Family Court lost its ability to direct the education or correction of Defendant Reed after he turned 21 years of age, Defendant Reed clearly and voluntarily waived personal jurisdiction. However, SLED has also argued that the April 2017 Order is void for lack of personal jurisdiction over SLED.

SLED contends that SLED, and not the State of South Carolina, should have been a named party to the Family Court Motion. Plaintiff SLED is not now nor has it ever been an entity independent of the State of South Carolina, see S.C. Code Ann. § 23-3-10, *et. seq.* There is clearly no requirement in the SOR that mandates that SLED be named individually as a party in any matter which may result in the addition or removal of individuals to/from the registry. The State of South Carolina was represented and actively participated throughout the underlying matter, just as they did in 1994. SLED independently was aware of the pending Family Court Motion on behalf of Defendant. SLED independently received calls and emails regarding the same. SLED ordered the transcript after the family court hearing in the underlying matter. The State of South Carolina sought no relief from the April 2017 Order and SLED still waited almost a year after entry of the Order to file this action.

**SLED Should be Barred from Relief:  
Res Judicata / Collateral Estoppel**

The April 2017 Order is now the law of the case. "A final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in that action." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980). "A 'judgment on the merits' as that phrase is used in conventional statement of *res judicata* doctrine, is not necessarily a judgment based upon a trial of contested facts." *Id.*

“Fed.R.Civ.P. 54(a) defines ‘judgment’ as it is used in ‘these rules to include a decree and any order from which an appeal lies.’” Id.

The State of South Carolina appeared and was actively involved in the Motion filed to remove Defendant from the SOR. Plaintiff SLED’s cause of action is barred by the doctrines of *res judicata* and collateral estoppel in that the claims and/or issues presented have already been litigated or could have already been litigated in a prior matter. “Where a ruling on demurrer to complaint was not appealed from, it became the law of the case.” Cooper Tire & Rubber Co. v. Perry, 261 S.C.538, 542, 201 S.E.2d 245, 247 (1973). Defendant Reid has now been off the SOR for almost 2 years. SLED’s delay and late attempt to attack this April 2017 Order has caused substantial prejudice to Defendant Reed.

#### Conclusion

Defendant Reed respectfully requests that this Court alter/amend or vacate its November 2018 Order and Dismiss SLED’s declaratory judgment action. The April 2017 Order is not void for lack of subject matter jurisdiction and SLED is not a party independent of the State of South Carolina, who appeared and was actively involved in the underlying matter. Further, SLED’s inaction and attempts to re-litigate or re-open matters already decided should be barred by *res judicata* and collateral estoppel.

Respectfully submitted this 11<sup>th</sup> day of January, 2019.

ANDERSON & ANDERSON, LLP

/s/ Kristina M. Anderson  
 Kristina M. Anderson, # 066475  
 P. Andrew Anderson, # 064131  
 Attorney for Defendant Brandon Reed  
 211 York Street, NE  
 Aiken, South Carolina 29801  
 803.648.6000 - tel / 803.648.6888 - fax

|                                |   |                              |
|--------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS |
|                                | ) | SECOND JUDICIAL CIRCUIT      |
| COUNTY OF AIKEN                | ) |                              |
|                                | ) | Case No. 2018-CP-02-00670    |
| South Carolina Law Enforcement | ) |                              |
| Division (SLED),               | ) |                              |
|                                | ) |                              |
| Petitioner/Plaintiff,          | ) |                              |
|                                | ) | <b>REPLY TO MOTION</b>       |
| v.                             | ) | <b>TO RECONSIDER</b>         |
|                                | ) |                              |
| Brandon Reed,                  | ) |                              |
|                                | ) |                              |
| Respondent/Defendant           | ) |                              |
| _____                          | ) |                              |

This matter comes before the Court by way of Respondent’s Motion to Reconsider filed on November 19, 2018. On November 9, 2018, this Court issued an order granting the Petitioner’s motion for Summary Judgment in this Declaratory Judgment Action, and denying Respondent’s Motion to Dismiss or in the Alternative for Summary Judgment. The Court ordered that the April 2017 Family Court Order issued in 1944-JU-02-396 is *void ab initio* due to the Aiken County Family Court’s lack of subject matter jurisdiction under the relevant statute.

**ARGUMENT**

**I. Petitioner cannot use a motion under Rule 59 or 60 to raise new arguments that could have been raised previously before the Court.**

Respondent’s motion raises a new argument which should be denied as procedurally inappropriate under Rules 59 and 60. Under South Carolina Rule of Civil Procedure 59, “[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” SCRCP 59(e). Under Rule 60, a court may provide a party relief from an order in one of two instances: a clerical mistake or one of five enumerated reasons is present.

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

SCRCP 60. Respondent does not assert a clerical error or any of the five enumerated reasons listed above. Rather, Respondent asks the Court to consider a new argument that could have previously been raised before the Court at summary judgment—but was not. Respondent’s failure to previously raise this argument deprives the Court of the opportunity to “reconsider” it.

This position is confirmed by both South Carolina and federal law.<sup>1</sup> *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004) (“There is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an *earlier argument*, but also to revisit a *previously raised argument*. It is inherently unfair to disallow such an opportunity [under Rule 59(e)].” (emphasis added)); *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (“Finally, we note that a motion for reconsideration and a successive Rule 60(b) motion, as brought by [defendant] in this case, are inappropriate vehicles to reargue an issue previously addressed by the court when the motion merely advances new arguments, or supporting facts *which were available at the time of the original motion*. Absent extraordinary circumstances, not present here, *the basis for the second motion must not have been available at the time the first motion was filed*. Moreover, a motion to reconsider filed within ten days after entry of judgment is considered a Fed. R. Civ. P.

<sup>1</sup> *Elam*, 361 S.C. at 22, 602 S.E.2d at 779 (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”); *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004) (utilizing federal precedent regarding Federal Rule of Civil Procedure 60 to interpret South Carolina Rule of Civil Procedure 60).

59(e) motion. . . . Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law. *It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.*” (citations omitted) (emphasis added)).

Accordingly, to the extent Respondent advances new arguments that could have been raised in prior briefing or argument before the Court but were not, the Court should deny the motion as improper under Rules 59 and 60 as to those arguments.

**II. The court properly found that the April 2017 Family Court Order is Void for lack of subject matter jurisdiction.**

Even if Respondent’s motion was procedurally proper, his new argument is nonetheless unavailing. Respondent argues S.C. Code Ann. §63-3-510 confers *personal* jurisdiction on the Family Court rather than *subject matter* jurisdiction. Respondent’s assertion is incorrect. The inherent limitation on the Family Court’s jurisdiction necessarily requires consideration of the juvenile’s age. This consideration, however, should not be viewed so as to conflate subject matter jurisdiction and personal jurisdiction. If Respondent’s personal jurisdiction argument was correct, a 70 year old individual could be adjudicated delinquent in Family Court if they were willing to waive personal jurisdiction.

Furthermore, the South Carolina Supreme Court has definitively recognized that §63-3-510 addresses the subject matter jurisdiction to the Family Court:

Section 20–7–400 of the South Carolina Code, in effect at the time of these proceedings, provides for the subject matter jurisdiction of the family court. *Riggs v. Riggs*, 353 S.C. 230, 236 n. 3, 578 S.E.2d 3, 6 n. 3 (2003) (noting “§ 20–7–420 determines the family court's subject matter jurisdiction”). In 2008, section 20–7–400 was repealed and recodified as S.C. Code Ann. § 63–3–510 by 2008 S.C. Act No. 361, but the new provision is virtually identical.

*In re Shaquille O'Neal B.*, 385 S.C. 243, 247–48, 684 S.E.2d 549, 552 (2009); *see also Sheila R. v. David R.*, 396 S.C. 41, 52, 719 S.E.2d 682, 688 (Ct. App. 2011) (addressing S.C. Code Ann. §§ 63–3–510(A) under the heading of “Subject Matter Jurisdiction”); *In Interest of Robert T.*, No. 2015-002030, 2018 WL 1108733, at \*1 (S.C. Ct. App. Feb. 28, 2018) (addressing S.C. Code Ann. § 63-3-510(B) in a subject matter jurisdiction analysis). As the Supreme Court and this Court have acknowledged, the Family Court loses subject matter jurisdiction over the action when—at the latest—“the child attains the age of twenty-one years.” S.C. Code Ann. § 63-3-510(B). This goes to subject matter jurisdiction (the Family Court’s ability to hear the case)—not personal jurisdiction (the Family Court’s ability to exercise authority over a party).

Accordingly, Respondent’s new argument regarding the Family Court’s jurisdiction, while creative, is simply incorrect.

**III. SLED is not barred by *Res Judicata* or Collateral Estoppel**

Respondent’s arguments that the instant action should be barred by *res judicata* or collateral estoppel remain unavailing. “*Res judicata* bars subsequent actions by the *same parties* when the claims arise out of the same transaction or occurrence that was the subject of a prior action *between those parties*.” *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (emphasis added). Notably, SLED and the State of South Carolina are not the “same parties.” *Cf.* S.C. Code Ann. § 15-78-70(c) (drawing a distinction between the State and its entities in the context of litigation under the tort claims act). Therefore, SLED is not barred by *res judicata* from bringing the instant action.

Further, SLED is the only entity or party with the authority to remove an individual from the SOR. *See* S.C. Code Ann. § 23-3-410(A) (“The registry is under the direction of the Chief of the South Carolina Law Enforcement Division . . . SLED shall develop and operate the registry

....”). While the Solicitor’s Office might have been heard at the initial hearing, SLED—as the entity responsible for overseeing and maintaining the registry—was not made aware of this case until after the hearing and was not able to intervene in the Family Court case, and was not heard from by the Court before this order was issued.

In sum, the Court has already considered these types of *res judicata* or collateral estoppel arguments at the hearing, and in its order, and found “ultimately the public policy concerns regarding the statutorily implemented SOR being altered pursuant to an order issued without subject matter jurisdiction convinces this court that neither of these two (2) doctrines should be triggered.” Petitioner agrees with the Court’s finding, and would ask the Court to deny Respondent’s motion to reconsider on this ground.

#### CONCLUSION

Respondent’s motion to reconsider under South Carolina Rules of Civil Procedure 59 and 60 should be denied. First, it raises new arguments that could have been previously raised before the Court, warranting denial on procedural grounds. Second, Respondent’s new argument regarding personal jurisdiction is in conflict with current South Carolina Supreme Court precedent. Lastly, Respondent’s argument raising *res judicata* and collateral estoppel issues have already been addressed by the Court, and no new information has been provided demonstrating that SLED and the State of South Carolina are one entity. Accordingly, the Court should deny Respondent’s motion on both procedural and substantive grounds.

[Signature block on the following page.]

Respectfully Submitted,

ALAN WILSON  
ATTORNEY GENERAL

W. JEFFREY YOUNG  
CHIEF DEPUTY ATTORNEY GENERAL

T. PARKIN HUNTER  
SENIOR ASSISTANT ATTORNEY GENERAL  
Office of the Attorney General  
SC Bar Number 2827  
PO Box 11549  
Columbia, SC 29211  
Phone: (803) 734-6151  
PHunter@scag.gov

HARLEY L. KIRKLAND  
ASSISTANT ATTORNEY GENERAL  
Office of the Attorney General  
SC Bar Number 100382  
PO Box 11549  
Columbia, SC 29211  
Phone: (803) 734-0406  
HKirkland@scag.gov

WESLEY A. VORBERGER  
ASSISTANT ATTORNEY GENERAL  
Office of the Attorney General  
SC Bar Number 103301  
PO Box 11549  
Columbia, SC 29211  
Phone: (803) 734-3177  
WVorberger@scag.gov

By: s/ Harley L. Kirkland

ATTORNEYS FOR THE SOUTH CAROLINA LAW  
ENFORCEMENT DIVISION

JANUARY 18, 2019.  
COLUMBIA, SOUTH CAROLINA.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

RECEIVED

FEB 26 2019

Walton J. McLeod, IV, Circuit Court Judge

SC Court of Appeals

Case No.: 2018-CP-02-00670

South Carolina Law Enforcement Division (SLED).....Respondent,

v.

Brandon Reed.....Appellant.

NOTICE OF APPEAL

Brandon Reed appeals the Order of the Honorable Walton J. McLeod, IV, denying Appellant's Motion for Reconsideration of the Court's Order of November 9, 2018. The Form Order Denying the Motion for Reconsideration is dated January 23, 2019, and was filed in the Clerk that same day. Appellant received electronic service/notice of this Order on January 23, 2019.

February 22<sup>nd</sup>, 2019.

  
s/ Kristina M. Anderson

P. Andrew Anderson  
Kristina M. Anderson  
ANDERSON & ANDERSON, LLP  
211 York Street, NE  
Aiken, South Carolina 29801  
(803) 648-6000  
Attorneys for Appellant



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EXHIBITS

| NO.  | DESCRIPTION | ID | EVDS. |
|------|-------------|----|-------|
| NONE |             |    |       |

1 Thereupon, the following proceedings were had,

2 (Side bar off the record.)

3 THE COURT: SLED versus Brandon Reed. Okay.

4 MS. ANDERSON: All right. Judge, just to give the  
5 Court a little bit of background here from the standpoint  
6 of the factual scenario that we're looking at, I'm  
7 representing Brandon Reed who was placed on the sex  
8 offender registry in 1996 for an adjudication in Family  
9 Court that occurred in 1994. There's a lot of dates in  
10 this, Judge, so I apologize for any confusion but it's  
11 all covered in the memoranda that have been filed with  
12 the Court.

13 Brandon was 11 years old when he had inappropriate  
14 contact with a three year old. He pled guilty in Family  
15 Court here in Aiken County obviously and was adjudicated  
16 delinquent in 1994. The SOR, the Sex Offender Registry  
17 initially became effective in 1994. My understanding of  
18 it and certainly they probably have a way better  
19 understanding than I do because my experience is limited  
20 to this case basically, my understanding is that  
21 initially the SOR applied to adult defendants who were  
22 convicted of criminal sexual conduct actions in General  
23 Sessions Court. In 1996 that changed and the statute,  
24 the SOR was modified slightly to cover defendants of any  
25 age and not just criminal convictions but also

1 adjudications which cover Family Court adjudications  
2 which is how Brandon got put on the SOR in '96. He was  
3 12 at the time he was placed on.

4 Long story short, we fast forward 23 years. My  
5 client is 35 years old at that point. He has a desire  
6 obviously to be removed from the Sex Offender Registry.  
7 He's complied with everything that he was supposed to do  
8 and there's a lot of underlying stuff about that, Judge,  
9 but to the extent the Court is going to grant a motion to  
10 dismiss for the declaratory judgment action, I don't  
11 really think that the specific fact finding of the Family  
12 Court even comes into play here. The order is either  
13 going to be void on its face or it's not and obviously a  
14 year and a half down the road the time to appeal this or  
15 do anything about it has long since expired but at least  
16 initially in February of 2017 a motion was filed in  
17 Family Court with quite frankly the cooperation of the  
18 Solicitor's Office so the State was involved the entire  
19 time.

20 Judge Gable as I just informed the Court at side bar  
21 scheduled a motion in March of 2017 to hear both the  
22 State of South Carolina and my office on behalf of  
23 Brandon Reed and his removal from the SOR. He was  
24 present. There were doctors' records present. There was  
25 a bunch of stuff present that the Court considered. As I

1       said, the State participated the entire time. At the  
2       conclusion of that hearing in March essentially the  
3       motion was granted to remove him from the SOR at that  
4       time and that motion was granted in April of 2017. SLED  
5       was aware that this was going on because there were  
6       communications between my office and SLED quite candidly  
7       and we provided those to the Court and as I said SLED, I  
8       mean, obviously is a part of the State of South Carolina  
9       and the State of South Carolina was involved the entire  
10      time throughout this whole process.

11       SLED ordered the transcript from the hearing. That  
12      order went in in May requesting a copy so we weren't  
13      really sure if they were going to file an appeal or if  
14      they were going to pursue a motion 59, a motion under  
15      Rule 59 or under Rule 60 but nothing was done so  
16      essentially Brandon Reed was removed from the SOR. He  
17      hasn't been on it now for a year and a half after that  
18      order was entered on April 21st, 2017 the order we are  
19      here about today. Nothing happened until September of  
20      2017 some six months or so later. SLED filed an original  
21      application with the South Carolina Supreme Court  
22      briefing the Reed case and several others. There were  
23      three or four other orders that had been entered around  
24      the state removing individuals from the SOR trying to do,  
25      I guess, kind of a catch all presentation of all these

1 orders should be void.

2 So we're asking the South Carolina Supreme Court to  
3 take jurisdiction of this and basically void all these  
4 orders including the Reed order. It was briefed and  
5 presented. We prepared a brief obviously on Mr. Reed's  
6 behalf. There were other briefing documents that were  
7 presented and in December of 2017 the South Carolina  
8 Supreme Court denied SLED's application so the order  
9 stood. The arguments before the South Carolina Supreme  
10 Court were the exact same ones that are being voiced here  
11 today in this declaratory judgment motion that's now been  
12 filed by SLED. This was filed in March almost a full  
13 year after this order had already been in effect.

14 The arguments in the declaratory judgment that's  
15 been filed by SLED are, one, we're asking the Court to  
16 declare this order void from the Family Court on its face  
17 because you didn't have subject matter jurisdiction in  
18 Family Court, you couldn't hear this, it's a civil issue  
19 and it should have been brought in civil court, and, two,  
20 you didn't have personal jurisdiction over SLED is what  
21 they're arguing. There is some reference to the fact  
22 that the factors that were used by the Family Court to  
23 issue the order were improper looking at the SOR but  
24 again to the extent we're here looking at a declaratory  
25 judgment action on whether or not this order is void on

1 its face I don't really think the factors used in the  
2 determination actually matter. I would say in response  
3 to --

4 THE COURT: Is it your argument that the order that  
5 they filed, the DJ action order was already affirmed by  
6 the Supreme Court?

7 MS. ANDERSON: It is not but I do think that it is  
8 relevant to point out that to the extent that this order  
9 which we're here on now in this declaratory judgment  
10 action is so appalling on its face that it should be void  
11 and not enforced. The Supreme Court looked at that and  
12 had a chance to exercise jurisdiction over it and  
13 declined to do it. So, I mean, I think the argument  
14 could be made that it obviously wasn't something that  
15 upset them enough for them to do anything about it  
16 frankly if it was a problem.

17 The argument with regard to SLED being a party and  
18 the lack of personal jurisdiction in the Family Court  
19 frankly given the fact that the State of South Carolina  
20 participated in this and was involved the entire way I  
21 don't see any way to actually argue that SLED was a  
22 required party in that and quite candidly the case law is  
23 not overwhelmingly helpful on any of this. Frankly  
24 there's no path spelled out for removal from the SOR  
25 clearly because the intent is it's a lifetime registry

1 and they're not spelling out a way for you to get off the  
2 SOR basically.

3 THE COURT: But apparently some courts have done so  
4 and the Supreme Court did not get involved. Is that what  
5 you said?

6 MS. ANDERSON: Well, with regard to this particular  
7 case, yes, Judge, that's correct. There were four  
8 different cases that were briefed as a part of this one  
9 to set aside those orders and all of them as far as I  
10 know are still standing. I don't know of any of them  
11 that have been individually piecemeal taken up. There's  
12 a lot of case law on this. There's case law in which  
13 SLED is a party regarding the SOR. There's appellate  
14 case law. There's case law in which just the State of  
15 South Carolina is named. And two my knowledge there is  
16 no case out there that says that SLED is a required party  
17 in an SOR matter.

18 THE COURT: Has there been any communication with  
19 Judge Gable about the order? Has there been any motions  
20 filed with Judge Gable about the order?

21 MS. ANDERSON: No, Judge. Nothing's been done. The  
22 order has been the order of the Court, like I said, for a  
23 year and a half now and she's now retired.

24 THE COURT: Be that as it may, prior to her  
25 retirement two, three months ago, was there any motion

1 made to Judge Gable --

2 MS. KIRKLAND: Not that I'm aware of.

3 THE COURT: -- regarding this order? Okay.

4 MS. ANDERSON: She was aware that this was pending.  
5 I mean, she knew that this was filed.

6 THE COURT: Yeah. I just wanted to know if the  
7 State made any communications or motions to the Judge who  
8 signed the order?

9 MS. KIRKLAND: No, sir.

10 MS. ANDERSON: Not that I'm aware. As far as, I  
11 mean, in the SOR as far as the statute is concerned  
12 there's no requirement in the Sex Offender Registry law  
13 that SLED be made a party. There is nothing there, at  
14 least nothing that I'm aware of. There are people placed  
15 on the SOR every day in this state that SLED is not a  
16 party of those litigations or those resolutions in any  
17 way.

18 As far as the argument of lack of subject matter  
19 jurisdiction in Family Court which is the other argument  
20 that's voiced with regard to the order being void on its  
21 face, the Family Court was the court of original  
22 jurisdiction. The argument that SLED wants to make now  
23 all this time later that obviously could have been  
24 covered in motions or an appeal or anything like that  
25 prior to now is that the Family Court lacked jurisdiction

1 because Brandon Reed was no longer under age anymore.  
2 The Family Court statute specifically says that they can  
3 basically have control of a juvenile defendant for  
4 probationary purposes through the age of 18 but Family  
5 Court jurisdiction for the purposes of education and  
6 correction ends at the age of 21. That's what the  
7 statute says. They're wanting to use that language which  
8 discusses education and correction to mean that the  
9 Family Court couldn't hear this motion if it was filed  
10 there, that the Family Court Judge couldn't be the one  
11 who decided this on the case that she was originally  
12 involved in. The law on that, there is no case law out  
13 there that specifically says that.

14 There is case law out there that says that this is a  
15 civil statute. The SOR is a civil statute. While the  
16 Family Court is a civil court, it's also a court of  
17 equity. The Family Court Judge thought she could hear  
18 this motion and she did with the participation of the  
19 State and like I said, it's been an order now for a year  
20 and a half. My argument in the motion to dismiss is that  
21 this is basically, they're using, Judge, the declaratory  
22 judgment action not to resolve a judicable controversy  
23 which would be required under the declaratory judgment  
24 law but basically it's some kind of second quasi bite at  
25 an appellate apple. They put all of their everything

1 essentially into going to the South Carolina Supreme  
2 Court on these various orders that have been entered, my  
3 order being one of them, saying declare these void,  
4 Court, and the Court after a couple months said no. That  
5 was in December of 2017. At that point the order had  
6 been in place for eight months.

7 THE COURT: Is that order in the file?

8 MS. ANDERSON: Yes. It was filed, Judge. It's  
9 attached as an exhibit. Now here we are long after  
10 motions could have been filed or an appeal could have  
11 been made and we stand here now a year and a half down  
12 the road, this man has been off the SOR for a year and a  
13 half under this order and we are here now wanting to set  
14 the order aside claiming it's void on its face and  
15 restore him to the SOR which frankly I don't even need to  
16 go into the highly prejudicial impact this is going to  
17 have on my client who clearly, he's living in Maryland,  
18 he works in D.C., he has major issues at risk here as far  
19 as this determination is concerned. He may have to move.  
20 He may lose his job. This is an inappropriate use of the  
21 declaratory judgment statute. The statute specifically  
22 looks to providing responses and help for people who have  
23 controversies between them with regard to contract  
24 interpretation, statute interpretation, law  
25 interpretation. Tell me what my rights are.

1           The only question here by SLED in this declaratory  
2 judgment action is do I have to obey a court order?  
3 That's the question. That's not a legitimate issue under  
4 the declaratory judgments statute. It's just not. And  
5 to the extent res judicata or collateral estoppel which  
6 we have pled as affirmative defenses in our response, the  
7 State of South Carolina was involved in the totality of  
8 this. If there was anything to be raised or any issues  
9 with regard to what was happening, the time to express  
10 that has long since expired. The same parties were  
11 involved in the Family Court action for all intents and  
12 purposes frankly. The State of South Carolina, I mean,  
13 SLED is a privy to the State of South Carolina obviously.  
14 SLED doesn't exist separate and apart. Any complaint to  
15 what happened there the time for complaining about that  
16 is done. The time to appeal, the time to file motions,  
17 all of that has expired and frankly because they were  
18 active participants in all of it and basically ceded the  
19 Family Court jurisdiction of the matter, participated in  
20 the hearing and then now a year and a half later want to  
21 ask the Court, I mean, I guess they have buyer's remorse  
22 at this point so they want to set it aside. I mean, this  
23 application for declaratory judgment should be dismissed  
24 and the order of the Family Court should stand as it has  
25 for the last year and a half.

1 THE COURT: Okay. I presume you disagree?

2 MS. KIRKLAND: Yes, Your Honor, respectfully. As  
3 far as -- Let us concern -- In our perspective there is  
4 absolutely judicable controversy here. SLED is tasked  
5 with maintaining and enforcing the Sex Offender Registry,  
6 the civil statute and SLED was presented after the Judge  
7 had ruled in the Family Court case with an order,  
8 proposed order to go to the Judge that was in a Family  
9 Court case where the individual was in his 30's and SLED  
10 knew at that point, I think, that this order was not  
11 right but there was no way for SLED to appeal this  
12 action. SLED is not the same as the State of South  
13 Carolina. It's an agency of the State of South Carolina.  
14 I don't believe there's any kind of relationship between  
15 the Solicitor's Office and SLED when it comes to the  
16 registry.

17 So as far as whether or not there is a controversy  
18 here, as far as SLED is concerned it's looking at this  
19 order that's incorrectly interpreting the law where it  
20 was not a party to the underlying action that's facially  
21 invalid given the age of the defendant Mr. Reed at the  
22 time it was entered. Your Honor, there's a copy of the  
23 order that's been filed but I also have one if Your Honor  
24 would like to just take a look at it.

25 THE COURT: Sure.

1 MS. KIRKLAND: (Proffering.)

2 THE COURT: This is Judge Gable's order?

3 MS. KIRKLAND: Yes, Your Honor.

4 THE COURT: Okay. All right.

5 MS. KIRKLAND: So as far as SLED is concerned there  
6 is absolutely a controversy here. They have got a  
7 statute on the one hand telling them this man needs to  
8 register and then on the other hand this order that in  
9 our opinion is facially void so the declaratory judgment  
10 action we believe should stand and we believe that it's  
11 additionally appropriate to attack this order  
12 collaterally on lack of jurisdiction because it appears  
13 on the face of the record.

14 There's a case Yarborough v. Collins that's cited in  
15 our memo that allows for that. We believe that it's  
16 facially invalid for two reasons. Ms. Anderson was kind  
17 enough to outline them for you earlier. The first reason  
18 is lack of personal jurisdiction over SLED so it's pretty  
19 well established in South Carolina case law that orders  
20 are only binding on you if you're a party. SLED is not a  
21 party. SLED is not named as the State of South Carolina  
22 or the Solicitor's Office. It's an agency of the State  
23 of South Carolina. So to kind of dig into that, like the  
24 Department of Transportation is also not the same as SLED  
25 and the Solicitor's Office wouldn't bind the Department.

1 of Transportation, it wouldn't show up at a Department of  
2 Transportation case and try to bind them and that's  
3 essentially what's happening here.

4 The Sex Offender Registry is a civil collateral  
5 consequence of your conviction. It's never - the State  
6 has argued in the past it was appropriate to handle in a  
7 criminal context. We were -- The Supreme Court disagreed  
8 and said that the Sex Offender Registry is civil in  
9 nature. It's not proper to address it in criminal cases.  
10 It has to be addressed in civil cases. In Family Court  
11 where there is a juvenile it's appropriate to address it  
12 in Family Court but in this case there was no juvenile.  
13 I believe he was 32 or 33 years old at the time and it  
14 was done in the closed criminal Family Court case so it  
15 wasn't even like a separate action was filed in Family  
16 Court to try to address the civil consequences of the  
17 conviction. They went back into the closed criminal case  
18 to issue an order in a '94 case number.

19 THE COURT: Let me ask you this: How do you get off  
20 the registry?

21 MS. KIRKLAND: You don't.

22 THE COURT: It's just a lifetime thing?

23 MS. KIRKLAND: It is a lifetime thing. There are a  
24 few avenues for removal from the registry.

25 THE COURT: What are they?

1 MS. KIRKLAND: You can have your conviction  
2 overturned or vacated on appeal. You can receive a  
3 habeas and that habeas results in an acquittal and a new  
4 trial will allow you to come off of the registry. And  
5 you can receive a pardon based on a finding of not  
6 guilty. So essentially it has to be shown that you did  
7 not actually receive this conviction.

8 THE COURT: What is the statute that provides that  
9 there is no removal from the registry?

10 MS. KIRKLAND: It's not explicitly stated that there  
11 is no other removal. There are three avenues for  
12 removal.

13 THE COURT: Pardon. What were the other ones?

14 MS. KIRKLAND: I'm sorry. The three avenues,  
15 overturned or vacated on appeal, you can have a habeas,  
16 or a pardon.

17 THE COURT: Okay.

18 MS. KIRKLAND: So those avenues for removal preclude  
19 the ability to argue equity. It's not really what we're  
20 arguing today and I'll be happy to go into it but I do  
21 want to make the distinction. We're not challenging the  
22 underlying order. I do believe that's something that the  
23 State would have needed to appeal.

24 So what we believe, and I'm happy to explain why the  
25 Family Court order was incorrect, our argument today

1 really is just that it's facially invalid. But Key  
2 Corporate Capital says that where there are statutory  
3 avenues for removal or a statutory remedy is available,  
4 the Court cannot fashion an equitable removal or an  
5 equitable remedy or in this case an equitable removal.  
6 There is a case Johnson v. Lloyd where in the underlying  
7 Circuit Court case the plaintiff, I believe, Johnson  
8 argued that he was entitled to equitable removal because  
9 he didn't meet any of the statutory avenues for removal.  
10 The Court of Appeals citing Key Corporate Capital says  
11 that when there is a statutory remedy even if you don't  
12 qualify for it, the court can't fashion an equitable  
13 remedy for you. That was overturned on issue  
14 preservation at the Supreme Court but I think that the  
15 law and the reasoning from the Court of Appeals still  
16 stands since that was issue preservation. It was  
17 overturned on issue preservation not on the logic behind  
18 it.

19 THE COURT: How many orders were involved on the  
20 issue that went to the Supreme Court? This is one of  
21 them, right?

22 MS. KIRKLAND: Yes, sir. That's one of them. There  
23 were three others before the Supreme Court.

24 THE COURT: Three others. From what counties?

25 MS. KIRKLAND: One of them was in Greenville. I'm

1 not sure about the other two. We have been having  
2 trouble serving --

3 THE COURT: And I haven't reviewed that. I'm just  
4 curious.

5 MS. ANDERSON: I believe it's Lexington and  
6 Richland.

7 MS. KIRKLAND: That is right. Thank you.

8 THE COURT: Okay.

9 MS. KIRKLAND: I think another one might have even  
10 come in since that time that we're likely going to file a  
11 declaratory judgment for as well. Those have, Judge  
12 McKinnon in Laurens heard SLED v. Alfred Busey which was  
13 another one that was before the Court.

14 THE COURT: So Judge McKinnon has one pending just  
15 like this right now?

16 MS. KIRKLAND: Yes, sir. He has taken it under  
17 advisement and we're submitting additional memorandum in  
18 the next few weeks on that issue. But as far as the  
19 Supreme Court all they did was deny cert. They didn't  
20 say that these orders --

21 THE COURT: I mean, I get that they denied cert.  
22 They could have said more but they didn't.

23 MS. KIRKLAND: Right. Our interpretation is that  
24 was go fight it out at the Circuit Court level and bring  
25 it back up to us individually on appeal.

1 THE COURT: Sure. Sure. Any other under advisement  
2 issues regarding those orders?

3 MS. KIRKLAND: That's the only one. This is the  
4 second one that has come up so Judge McKinnon has the  
5 Busey case in Laurens, I believe, and then this one is  
6 also pending.

7 THE COURT: Okay. I think, Ms. Anderson, I think I  
8 understand your argument. You're welcome to reply.

9 MS. ANDERSON: Well, I was just going to point out  
10 from the standpoint of the subject matter jurisdiction  
11 issue as far as the order being void facially because  
12 this gentleman is over the age of 21 under the correction  
13 or education portion of the Family Court statutes, you  
14 know, this court, the Family Court here on a weekly basis  
15 I'm sure processes and receives orders of expungement and  
16 processes them on Family Court cases where juveniles have  
17 been adjudicated delinquent that are now 25, 30 years  
18 old, whatever age they are because that's the only court  
19 that can process an order of expungement frankly because  
20 that's the originating court. So there is no ban that  
21 says Family Court cannot touch anything once somebody  
22 turns 21 as far as making this facially invalid. Also,  
23 just from a standpoint of arguing about it, if Brandon  
24 Reed had gone back and contacted the victim in this case  
25 when he was 22 or 23 years old in violation of that

1 Family Court order that was originally existing when he  
2 was a juvenile, where would they take him? Because he  
3 can't go into General Sessions. If he's going to be in  
4 violation of that court order, he's going back to Family  
5 Court. He has to in order to be held in contempt.

6 THE COURT: As a practical matter Family Court cases  
7 even when they're closed if something comes up in a  
8 divorce ten years after the divorce is finalized, it gets  
9 the same caption. That's my understanding. I may be  
10 wrong but... Okay. So I have heard the motion to  
11 dismiss. Have you got your own motion?

12 MS. KIRKLAND: Yes, sir.

13 THE COURT: We need to figure this one out first,  
14 okay?

15 MS. KIRKLAND: Oh.

16 THE COURT: Well, I mean, were you --

17 MR. KIRKLAND: Well, our motion for summary judgment  
18 is that factually according to - there's no material  
19 factual dispute here. Just simply based on the law we're  
20 entitled to summary judgment because facially this order  
21 is void because there's no subject matter jurisdiction  
22 for the Family Court to be entering this in the first  
23 place, this 32 year old. This should have been brought  
24 in a civil declaratory judgment action in Circuit Court  
25 and it's not binding on SLED. SLED was not a party, is

1 not the same thing as the State. When the Solicitor  
2 speaks on behalf of the State in a criminal context, that  
3 is just a complete 180 from the Sex Offender Registry  
4 civil statute which specifically tasks SLED whose leader  
5 is the Director, Chief Keel appointed by the Governor,  
6 confirmed by the Senate as opposed to the Solicitor who  
7 is elected. I mean, the two have no -- It's all the  
8 State but it's not - they're not --

9 THE COURT: Kind of what you just said earlier.

10 MS. KIRKLAND: Yes, sir.

11 THE COURT: So we all agree.

12 MS. KIRKLAND: My response to her motion to dismiss  
13 is essentially the same as our motion for summary  
14 judgment.

15 THE COURT: Okay. All right. Anything you want to  
16 say along the same grounds?

17 MS. ANDERSON: I think I have said everything,  
18 Judge, that I can.

19 THE COURT: All right. Well, thank you for this  
20 motion. We'll get an answer to you at some point.

21 MS. KIRKLAND: Thank you, Your Honor.

22 MS. ANDERSON: Thank you, Judge.

23 THE COURT: All right.

24 WHEREUPON, THE HEARING WAS CONCLUDED.

25

## 1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON )

4  
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,  
6 and Official Circuit Court Reporter for the Eleventh Judicial  
7 Circuit in and for the State of South Carolina, do hereby  
8 certify that I reported the proceedings in the before  
9 captioned case in the Court of Common Pleas in and for the  
10 State of South Carolina on the 24th day of September, 2018.

11 I FURTHER CERTIFY that the forgoing 21 pages  
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel  
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at  
16 Lexington County, this 7th day of April, 2019.

17  
18 By:s/ Steven E. LeBlanc

19 Steven E. LeBlanc, Sr., R.P.R.  
20 Eleventh Circuit Court Reporter  
21 State of South Carolina.  
22  
23  
24  
25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter  
P.O. Box 184, Lexington, South Carolina 29071

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I N D E X

(PW) - Denotes Plaintiff's Witness  
(DW) - Denotes Defense Witness

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E X H I B I T S

(THERE WERE NO EXHIBITS SUBMITTED.)

P R O C E E D I N G S

1  
2 THE COURT: Madam Court Reporter, this is the matter  
3 of State of South Carolina vs. Brandon Reed. This case  
4 number is 1994-JU-02-396. We are here today because Mr.  
5 Anderson has filed a motion to have his client, Mr. Reed's  
6 name removed from the sex offender registry. Ms. McDaniel  
7 is here because she is the juvenile solicitor right now in  
8 this circuit. These orders --

9 MS. MCDANIEL: They're from before my time.  
10 Apparently, Assistant Solicitor Heidi Holland did the  
11 petition and then the plea was with Assistant Solicitor  
12 Tim Mehebert and Mr. Reed was represented by Public  
13 Defender Doug Novak.

14 THE COURT: Right. And Judge Inabinet signed the  
15 order and then in August of 1998, released Mr. Reed from  
16 his indefinite probation.

17 MS. MCDANIEL: Right. The plea was to an event of  
18 criminal sexual conduct, which required automatic  
19 registration. So no finding was ever made by the Court.  
20 It's one of those that statutorily just requires  
21 registration.

22 THE COURT: We actually had that discussion before  
23 y'all came in because I looked back through the file and  
24 did not ever see it.

25 MS. MCDANIEL: Hence, why we don't do the pleas

1 anymore, why they're always to assault and battery first  
2 or second degree, to avoid automatic registration leaving  
3 it open so we can seek it need be later on.

4 THE COURT: Which is exactly what I told everybody.  
5 Okay. Mr. Anderson.

6 MR. ANDERSON: Judge, in the gallery is Marsha  
7 Jackson. I've been working on this case for 17 years. I  
8 haven't seen Marsha in about 15 years or so, but she has  
9 been riding my fanny for 17 years.

10 MS. MCDANIEL: That's how long it takes Andy to do  
11 things.

12 MR. ANDERSON: Yes.

13 THE COURT: Who is she?

14 MR. ANDERSON: I'm sorry, that's his mom.

15 THE COURT: Okay. That explains everything.

16 MR. ANDERSON: She and dad have not been together for  
17 a very long time, since when this boy came into this  
18 courtroom. Now, he's a man. When he came in this  
19 courtroom as a young lad, his parents had already been  
20 apart for a while. Interestingly, his dad played  
21 professional football way back and they have started  
22 rekindling a relationship.

23 THE COURT: No offense to mom.

24 MR. ANDERSON: No offense to mom. Mom is just a good  
25 soul.

1           Judge, none of this paperwork -- and we couldn't get  
2 this from the clerk because all that stuff is sealed. We  
3 didn't represent the young man in the plea. There's no  
4 mention of sex offender registry here. My client and his  
5 mother don't remember ever hearing sex offender registry.  
6 You know, it was a probationary sentence, he went from  
7 Aiken to Generation Group Home, which we still use.  
8 Serena and I sent a kid there a couple of years ago. It's  
9 a good place. My client went and --

10           THE COURT: Successfully completed the program.

11           MR. ANDERSON: He did. And he's moved on with his  
12 life. And I've got, Judge, to hand up to you his resume  
13 -- just thought it'd be easy for you to look at. I've got  
14 -- I went ahead and sent him to Dr. McKee in Columbia, who  
15 specializes in sex offender stuff, and had him evaluated.  
16 And that was favorable. And then the boy flew in -- boy,  
17 he's 35 years old. My client flew in from Washington,  
18 D.C. last night and I had polygrapher, Tommy Platt,  
19 waiting on him and we polygraphed him as to whether or not  
20 he's had any reoffenses since he turned 18. And he passed  
21 the polygraph. We've got the favorable forensic  
22 evaluation.

23           MS. MCDANIEL: And, of course, Tommy Platt's the  
24 polygrapher for the sheriff's office, so he made sure I  
25 couldn't object to the polygrapher.

1 THE COURT: See, normally, we don't allow polygraphs  
2 for anything.

3 MR. ANDERSON: Well, the reason we did it, Judge, on  
4 these kinds of cases, there's no way of knowing for sure.

5 THE COURT: I know.

6 MR. ANDERSON: And so it always appeases the  
7 prosecutors and the judges if we, at least, do such.

8 THE COURT: Okay. Mr. Anderson, I presume that you  
9 or you had him supply you satisfactory information that he  
10 has not been arrested -- I mean, I read that it was his  
11 only conviction, but has not been arrested either here or  
12 in D.C. since he became of majority or 18?

13 MR. ANDERSON: I can --

14 THE COURT: Well, we can ask him. Because it says  
15 adjudication when he was 13, the only arrest and  
16 conviction in his entire life. Okay. Do you want the  
17 Court to hear from him briefly?

18 MR. ANDERSON: Sure. Yes, ma'am.

19 THE COURT: Ms. McDaniel, do you want to tell me  
20 anything?

21 MS. MCDANIEL: Your Honor, I haven't run him through  
22 the NCIC. I could have. Mr. Anderson didn't make that  
23 request of me. But he can testify, he's here and you can  
24 put him under oath.

25 Your Honor, what I need to say on the record is,

1 obviously, as we've already discussed, I wasn't the  
2 assistant solicitor. I only have what's on an index card  
3 because this was before the time of computers and  
4 databases. I know that Mr. Reed was 12 years old during  
5 the adjudication and disposition. The victim was three  
6 years old and it was digital, not any other -- any more  
7 than that.

8 I talked to my other assistant solicitors throughout  
9 the state, because we had a training a couple of weeks  
10 ago, about whether they've been dealing with motions to  
11 remove and they haven't. They haven't experienced that.  
12 This is my second one. Mr. Anderson tells me he's done  
13 two before.

14 I can tell you that I know the majority, if not all  
15 of the other assistant solicitors who prosecute in Family  
16 Court are against lifetime registration for juveniles on  
17 the sex offender. And had I been the one -- in the early  
18 stages of my career, I, too, pled people to these and then  
19 I learned of the repercussions, which I'm sure Mr. Reed is  
20 experiencing, and hence from many, many years ago, we  
21 changed our pleas to something to avoid that unless  
22 something came to light that the State needed to seek it.

23 We did try to contact the victim when Investigator  
24 Reiter was my investigator. She made contact with the  
25 victim and her mother. They told us they needed to think

1 about it and they never got back to us. So Investigator  
2 Reiter made several attempts to reestablish contact and  
3 she avoided us a lot. So we never got an exact answer  
4 from her, so I suppose by a not answer, maybe she opposes  
5 it, but I cannot say that either. We don't know.

6 So I couldn't give Mr. Anderson a consent based on  
7 that. I wouldn't do that without a victim's consent,  
8 however, I'm not objecting to it. I'm just letting the  
9 Court use its discretion in making this decision. I guess  
10 that says it all.

11 THE COURT: Okay. Mr. Anderson, let's get him up  
12 here on the stand for just a few minutes.

13 MR. ANDERSON: Can we go off the record for just one  
14 second?

15 THE COURT: Yes, sir.

16 (WHEREUPON, an off the record discussion ensued.)

17 THE COURT: Sir, would you come up here and have a  
18 seat beside me, please.

19 BRANDON REED, after being duly sworn,  
20 testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. ANDERSON:

23 Q Could you state your full name?

24 A Brandon Anthony Reed.

25 Q And you were convicted in this very courtroom when

1 you were -- ended up being 12?

2 A I don't even remember it's been that long, but if  
3 that's what you're telling me, I would assume so.

4 Q At the time, did you have any idea you were going to  
5 end up on the sex offender registry?

6 A No. I didn't even understand honestly what was going  
7 on. It was a lot going on around me.

8 Q Since -- after that, you spent time in Aurora?

9 A Yes.

10 Q You spent time at Inner Harbor in Florida?

11 A And in Douglasville, Georgia, correct.

12 Q And Generations Group Home in Greenville, South  
13 Carlina?

14 A That is correct, Simpsonville, South Carlina.

15 Q And all of this was counseling? You had some issues  
16 going on. You had some issues with your parents?

17 A Yes.

18 Q You had some sexual questionable issues?

19 A You could say that.

20 Q You had all kind of other issues that maybe young  
21 teens suffer from?

22 A Absolutely.

23 Q Did you engage in your counseling?

24 A Absolutely.

25 Q Did you benefit from your counseling?

1 A Absolutely.

2 Q After you got out of Generations, did you also go  
3 into about two years of counseling with Dr. Palini?

4 A That is correct.

5 Q And you were on medications?

6 A That is correct.

7 Q And you had -- every month, you had two sessions of  
8 counseling with him?

9 A If not more, that is correct.

10 Q And your mom was in on some of those and some of  
11 them, she wasn't?

12 A That's correct, yes.

13 Q Now, since your conviction, have you been convicted  
14 of any other crimes?

15 A No, nothing.

16 Q And you have been working in Virginia, Maryland,  
17 Washington, D.C.?

18 A That general area, yes.

19 Q And has this sex offender registry followed you  
20 there?

21 A Oh, yeah, definitely. I've had to move overnight  
22 because of law changes in Virginia. There was actually a  
23 statute in Virginia that says if you're required to  
24 register in another state, you're required to register  
25 there, also. But I met all the other criteria. That's

1 the last line in the statute. So it's affecting me in  
2 that way, in terms of getting jobs, finding housing. I  
3 could make the money, I could pass everything. And then  
4 we'd get to the end and they'd say no, because of your  
5 background, can't do it. And I even tried to be honest  
6 and write it at the bottom, you know, I was 11 years old.  
7 And it just follows you everywhere you go now.

8 Q Let's talk just a little bit about the incident. Do  
9 you take responsibility for the crime that you did commit?

10 A Without a doubt, absolutely.

11 Q Do you feel like you're suffering from issues where  
12 you are a menace to society?

13 A No, I'm not at all. I consider myself to be a very  
14 productive member of society.

15 Q Are you struggling with any sexual issues?

16 A No.

17 Q Have you had a normal -- well, define normal, but  
18 have you had a normal sex life?

19 A Absolutely. I've been forced to more than anything,  
20 but yes, absolutely.

21 Q Do you have a lady friend in your life?

22 A I do. I have a very close girlfriend in my life.

23 Q And does she know that you're on this registry?

24 A Yes, she does. I actually -- I had to tell her. I  
25 feel like when you love someone -- and these are things

1 that we practice during our group sessions. So when you  
2 love someone and you know you're going to be serious with  
3 someone, that's something you tell them. In addition to  
4 that, she's in the Navy and she also works for the  
5 Department of the Navy and she has a security clearance.  
6 So I know that if we get married, that's going to be  
7 something that definitely affects us.

8 Q Okay. Now, when you went to the evaluation with Dr.  
9 McKee in Columbia, were you honest and forthright with  
10 him?

11 A One hundred thousand percent, yes.

12 Q And then you took a polygraph last evening. Were you  
13 honest with the polygrapher?

14 A One hundred thousand percent, absolutely.

15 Q So are you asking today that you be removed from the  
16 sex offender registry?

17 A I am begging.

18 Q Do you believe that it serves any useful purpose for  
19 you to be on there?

20 A No, I don't.

21 MR. ANDERSON: Judge, that's all I have.

22 THE COURT: Any questions?

23 MS. MCDANIEL: No.

24 THE COURT: For the record, I will state that one of  
25 the paragraphs in Dr. McKee's letter says, In my opinion,

1 based on 35 years of research, evaluation and treatment of  
2 sex offenders and 11 years of service on South Carolina's  
3 Sexually Violent Predator Multidisciplinary Team,  
4 reviewing over 6,000 cases of sexually violent predator,  
5 eligible juvenile and adult inmate sex offenders, Mr. Reed  
6 is not a sexually violent predator as defined by South  
7 Carlina law.

8 Thank you, sir. You can go sit by your lawyer.

9 All right. I will allow an order to be done to  
10 remove his name from the sex offender registry.

11 Mr. Anderson, as soon as you get that to me, I will  
12 sign it.

13 I do understand, sir, and in the Family Court Judge's  
14 defense then, it wasn't me -- I won't say I was still in  
15 high school, but I wasn't, but it was automatic. When  
16 that kind of plea came in, it was automatic. And it has  
17 only been in the last probably 15 or so years that that  
18 kind of automatic registration has -- people have had  
19 thoughts about that, as to what 11-year-old boys do that  
20 ends up following them around.

21 Thank you.

22 \*\*\*\*\*END OF PROCEEDINGS\*\*\*\*\*

23  
24  
25

CERTIFICATE OF REPORTER

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STATE OF SOUTH CAROLINA            )  
COUNTY OF AIKEN                    )

I, PENNY M. JOHNSON, Official Court Reporter for the  
Second 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 the  
evidence introduced in the trial of the captioned case,  
relative to appeal, in Family Court for Aiken County, South  
Carolina, on the 7th day of March, 2017.

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

June 6, 2017

Penny M. Johnson

Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

AFFIDAVIT OF DANA TEMPLE

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

PERSONALLY came and appeared before me the undersigned Notary, the within named Dana Temple, who is a resident of Lexington County, State of South Carolina, and makes this her statement and Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

According to the records the South Carolina Law Enforcement Division received from the Aiken County Solicitor's Office, Brandon Reed was adjudicated delinquent sometime between 1994 and 1996 for Criminal Sexual Conduct with a Minor in the First Degree. Mr. Reed was approximately 12 years of age at the time. In accordance with S.C. Code Ann. § 23-3-430, any person, regardless of age, who has been adjudicated delinquent for Criminal Sexual Conduct with a Minor in the First Degree is statutorily mandated to register as a sex offender. If it were not for the Family Court Order dated April 21, 2017 removing him from the sex offender registry, Mr. Reed would still be properly listed on the registry.

DATED this the 28<sup>th</sup> day of June 2018.

*Dana Temple*  
Signature of Affiant

SWORN to and subscribed before me  
this 28<sup>th</sup> day of June 2018.

*Margaret J. Osburn*  
(Notary Signature)

Notary Public For: South Carolina  
My Commission Expires: 6/11/24



ALAN WILSON  
ATTORNEY GENERAL

May 25, 2017

Penny M Johnson  
405 Woodvale Lane  
Aiken, SC 29801

RE: Civil Action Number 1994-JU-02-396  
State of South Carolina vs. Brandon Reed

Dear Ms. Johnson:

Please let me know the cost to obtain the transcript in the above referenced case. Judge Gable entered an Order on April 21, 2017, in this case and I understand you were the court reporter. Please let me know the estimated cost for the transcript of that hearing in Family Court in Aiken County.

Thank you.

Sincerely,

T. Parkin Hunter  
Senior Assistant Attorney General  
(803)734-6151  
phunter@scag.gov

cc: P. Andrew Anderson, Esquire  
Honorable Desiree Allen

150

## Andy Anderson

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**From:** Andy Anderson  
**Sent:** Thursday, April 06, 2017 5:05 PM  
**To:** Garner, Belton  
**Subject:** Re: REED

Can u tell me who said that so I could talk w/her/him?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

---

**From:** Garner, Belton  
**Sent:** Thursday, April 6, 2017 11:18 AM  
**To:** Andy Anderson  
**Subject:** RE: REED

Good Afternoon,

I received word back from your request that was forwarded to our General Council. While there wasn't any feedback regarding the content of the order, this is an order that the state would challenge were it granted, and due to that, it would be a conflict to provide additional revisions to the draft. I hope this response suits your needs, and I apologize for the delay in getting back to you.

Thank you;

Belton Garner  
SLED Sex Offender Registry Coordinator  
Office: 803-896-8951  
Cell: 803-312-3377  
Fax: 803-896-2311  
[bgarner@sled.sc.gov](mailto:bgarner@sled.sc.gov)



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**From:** Andy Anderson [mailto:[aanderson@andersonandanderson.com](mailto:aanderson@andersonandanderson.com)]  
**Sent:** Monday, April 03, 2017 4:56 PM  
**To:** Garner, Belton  
**Subject:** REED

Hey. Have you heard anything about my proposed order? I really need to get it to the Judge

*P. Andrew Anderson*  
Anderson & Anderson LLP  
211 York Street, NE  
Aiken, South Carolina 29801

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No.: 2019-000327

**RECEIVED**  
OCT 08 2019  
SC Court of Appeals

South Carolina Law Enforcement Division, .....Respondent,

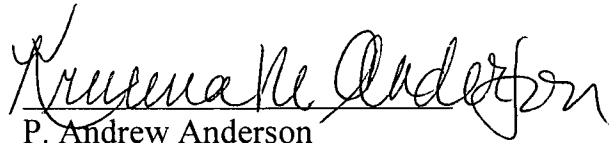
v.

Brandon Reed .....Appellant.

**CERTIFICATE OF COUNSEL**

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.

October, <sup>17<sup>th</sup></sup>~~7~~, 2019.



P. Andrew Anderson  
Kristina M. Anderson  
Anderson & Anderson LLP  
211 York Street, NE  
Aiken, South Carolina 29801  
(803) 648-6000  
Attorneys for Appellant Reed