

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

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IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-21-02264

John Christopher Johnson,
Plaintiff/ Petitioner,

vs.

Reginald C. Lloyd, Chief,
State Law Enforcement Division, and
The State of South Carolina,
Defendant,

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ORDER

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CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

FILED

THIS MATTER came before the court February 2, 2011 upon Petition of the Plaintiff, filed September 28, 2009, seeking declaratory relief. 1

Present at the call of the case were Plaintiff, attorneys for the parties, and the parties' witnesses. The court heard testimony from the following: Investigator Scott Dangerfield, Deputy Randall Carmichael, Amber Powell, Paula Miller, Margo Matthews, Plaintiff and Tiffany McDaniel. The court reviewed the following items of evidence, entered without objection: warrant H020145, indictment 2003-GS-45-93, sentencing sheet, Notice of Sex Offender Registry, Sex Offender Registry Fee paperwork, 2003 statement of Amber Powell, 2009 affidavit of Amber Powell, letter from Court Administration about 2003 transcript, general circulation paper "Carolina Mugshots," and discovery requests and responses between the parties. After reviewing the pleadings and the evidence presented, the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

This court has the power to make findings of fact pursuant to the Declaratory Judgment Act, §15-53-

1 Court reporter: Krystal Smith

CERTIFIED A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P & G.S.
FLORENCE COUNTY, S.C.

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20, SC Code of Laws, Hazel v. State, 659 S.E. 2d 137 (2008.)

This court finds the Plaintiff, John Christopher Johnson, pled guilty May 12, 2003, to Lewd Act Upon a Minor, based on a charge from January 2003. He was 17 at the time of both the offense and plea. This court finds the plaintiff's criminal conduct was limited to kissing a 13 year old girl. This court further finds they kissed each other consensually. This court employs the term "consensual" as it is commonly understood and as it is used by the General Assembly in the S.C. Code of Laws.² Moreover, I find the parties did not engage in any conduct that would rise to the level of sexual battery, or even sexual activity as it is defined by § 16-15-375, S.C. Code of Laws.

This court further finds that, as a consequence of his conviction, Plaintiff must register on the South Carolina Sex Offender Registry pursuant to § 23-3-430(A)(11), S.C. Code of Laws, and comply with its provisions for the rest of his life.

Amber Powell, the victim identified in the indictment, now 21, testified she was 13 at the time, turning 14 in March. Both she and the Plaintiff testified they knew each other from the neighborhood where they lived with their mothers, who both also testified. Miss Powell testified she and three female friends were "hanging out" in Hemingway, S.C. and rode with one of the girls to meet three boys at a motel. Consistent with her statement to law enforcement at the time, Miss Powell testified to this court that over the course of the night, she and the other teens in the room together ate, watched t.v., and shared beer and cigarettes. She testified she kissed the Plaintiff, Chris Johnson, voluntarily and consensually, and that they gave each other "hickeys." She testified this was the extent of their conduct. She testified that at no time were either of them naked and specifically testified that none of the conduct defined as sexual activity under § 16-15-375 occurred. Miss

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² e.g. §§16-3-655(b)(2), 23-3-430(C)(5)

Powell's testimony was corroborated by the testimony of Plaintiff, Miss Matthews, and Deputy Carmichael. Deputy Carmichael testified Plaintiff was arrested on a warrant sworn out by Ms. McDaniel, Miss Powell's mother, who testified and corroborated this. Deputy Carmichael further testified his investigation revealed no evidence of behavior other than kissing. Both Deputy Carmichael and Miss Powell testified they were surprised to learn Plaintiff was required to register as a sex offender.

Investigator Dangerfield testified he is responsible for registering and monitoring sex offenders in Florence County. He testified Plaintiff is and has been compliant with the Registry requirements, which include but are not limited to: registering and paying a \$150 fee biannually; notifying him immediately of all residence changes; notifying him of all Internet Service Providers, email accounts, and electronic usernames; immediately notifying him of all vehicle and boat purchases, title transfers, and VIN numbers; and notifying him of descriptions, ownership information, and associated VIN numbers for all vehicles Plaintiff uses or borrows. He further testified Plaintiff has not been identified at any time with a "predator status." He testified South Carolina's Sex Offender Registry is lifelong.

Ms. Miller, Plaintiff's mother, testified she was unable to hire an attorney for her son when he was seventeen. Upon his conviction, she testified he was not allowed to return to her home and finish high school because of the Sex Offender restrictions on where her son could live. She testified to myriad detrimental effects this registry has had on her son and his young family, including, among other things, Plaintiff's appearances in the color publication "Carolina Mugshots" as being a Sex Offender, having been convicted of Lewd Act on a Child.

Plaintiff testified to the facts of his underlying offense, consistent with Miss Powell's testimony. He further testified he pled guilty because he "did kiss her." He testified at no time was he made aware of the Sex Offender Registry, until he registered with his probation officer. Among his restrictions as a Sex Offender:

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waiver of confidentiality of mental health treatment; no contact with unrelated minors under age 18; no going within 1,000 feet of places "frequented by persons under 18" such as pools, shopping malls, arcades, or theaters without prior authorization; no use of computer without prior authorization; no possession of sexually explicit material; no alcohol consumption; restrictions on residency within 1,000 feet of schools, daycares, shopping malls, and other places frequented by minors; and more. The court finds Plaintiff was himself a minor at the time he registered, having turned seventeen the October before the offense date in January. Plaintiff testified to the adverse impact of the Sex Offender Registry on his education and employment, including having to drop out of high school, and missed employment opportunities because he could not utilize a CDL to make deliveries to schools. He testified the Registry "destroyed" his future. He testified that he is now a father of a five year old son, and the problems he encounters related to him being a Sex Offender as a parent regarding his son's schooling, recreational sports, and family life. He further testified to his humiliation as the restrictions regard his inability to do things with his son and his struggle to overcome the public presumption that he "held down a child" and committed a sex crime on a child.

The court finds the record is *full* of reasons to support a finding that Plaintiff is entitled to personal relief in his unique circumstances.

CONCLUSIONS OF LAW

Plaintiff's action is properly one for declaratory judgment and this court has jurisdiction to grant him relief. As regards a constitutional challenge to a statute, "[a] party should seek declaratory judgment from the circuit court..." Video Gaming Consultants, Inc. v. South Carolina Dep't of Revenue, 342 S.C. 34 (2000) (quoting Evans v. State, 44 S.C. 60 (2001)). Plaintiff makes a fourfold claim for relief:

- 1) declaring the requirement he register as a sex offender for rest of his life impermissibly cruel and unusual under the 8th Am., U.S. Const.;

- 2) declaring the distinctions between §§ 16-3-655(B)(2) (criminal sexual conduct with a minor 2d degree), 16-15-140 (lewd act upon a minor), and 23-3-430(C)(5) of the S. C. Code of Laws (1976, as amended), unconstitutionally violative of his right to equal protection of the laws under the 14th Am., U.S. Const., as the distinctions relate to a "Romeo" exemption for consensual sex but none for lewd act;
- 3) equitable relief, enjoining Defendant Reginald C. Lloyd from keeping Plaintiff on the SLED-maintained South Carolina Sex Offender Registry, and ordering Plaintiff removed from it; and
- 4) other or further equitable relief as the court deems appropriate.

This court declines to grant Plaintiff relief on his constitutional claims. Equitable personal relief, however, is appropriate in this case.

"Equity abhors a wrong without a remedy." Key Corp. Capital, Inc. v. County of Beaufort, 360 S.C. 513, 602 S.E.2d 104 (S.C. App. 2004) citing State ex. rel. Daniel v. Strong, 185 S.C. 27, 43, 192 S.E. 671, 678 (1937.) "Equity is reserved for situations where there is no adequate remedy at law." Id. at 107 (citing Santee Cooper Resort, Inc., v. South Carolina Public Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989.)) This is just such a situation.

The purpose of the Sex Offender Registry is "to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes." State v. Walls, 348, S.C. 26, 31, 558 S.E.2d 524, 526 (2002.) Although convicted of Lewd Act on a Child, the facts before this court do not support a finding that Plaintiff is or ever was a child molester. Investigator Dangerfield testified Plaintiff has not been flagged for risk of predation or recidivism. All parties involved testified the conduct for which Plaintiff is required to register as a Sex Offender was to kiss a consenting thirteen year old girl when he was barely seventeen. The court is mindful that kissing is behavior sought out and engaged in by many if not most teenagers in this state. The criminalization of this conduct is not before this court. What is before this court is Plaintiff's request that he be removed from the burdens, restrictions, and obligations of the Sex Offender Registry on the remainder of his

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life. This is a request in which the now-adult Miss Powell joins.

Under the facts of Plaintiff's case, the requirement of lifelong Sex Offender Registry is wildly disproportionate to the underlying conduct. "The concept of proportionality is central to the Eighth Amendment." Graham v. Florida, ___U.S.___, 130 S.Ct. 211, (2010.) This court notes, however, the South Carolina Supreme Court has determined "registering as a sex offender is a non-punitive imposition." Walls, *supra*. As noted, this court declines to grant constitutional relief. However, justice compels a remedy for this particular situation.

South Carolina courts have long observed that equity "looks beneath rigid rules of law to seek substantial justice." Drury Development Corp. v. Foundation Insurance Co., et. al, 380 S.C. 97, 668 S.E.2d 798, 801 (2008) citing State ex. rel Daniel, *supra*. Substantial justice is served in this case by granting Plaintiff personal relief. Principles of justice and right compel this court to grant Plaintiff's request for removal from the South Carolina Sex Offender Registry.

THEREFORE, IT IS THE JUDGMENT OF THIS COURT THAT:

1. Plaintiff has established his claim for relief by evidence satisfactory to the court;
2. Defendant Reginald C. Lloyd, Chief, South Carolina Law Enforcement Division, is hereby ordered to remove Plaintiff's name from the South Carolina Sex Offender Registry within ten (10) days of the date of service of this Order.

AND IT IS SO ORDERED.

2 - 11, 2011



The Honorable William Henry Seals Jr.
Circuit Court Judge

CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

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