

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

	<u>Page</u>
3430 Barrett v. Charleston County School District	44
3431 State v. Paul A. Rice	54
3432 Estate of Moon v. The City of Greer	58
3433 Laurens Emergency Medical Specialist v. M.S. Bailey & Sons Bankers	66
3434 McCuen v. McCuen	71
3435 - Pilgrim v. Miller	76

UNPUBLISHED OPINIONS

2002-UP-001	State v. Coak Goldsmith, Sr. (Greenville, Judge Joseph J. Watson)
2002-UP-002	Windy Hill Water Park, Inc. v. Huggins (Horry, Judge Paula H. Thomas)
2002-UP-003	Lee v. Galloway (Florence, Judge Sidney T. Floyd)
2002-UP-004	Sefick v. The Town of Clemson (Anderson, Judge J.C. Nicholson, Jr.)

PETITIONS FOR REHEARING

3406 - State v. Yukoto Cherry	Pending
3408 - Brown v. Stewart	Pending
3411 - Lobresti v. Burry	(2) Pending
3413 - Glasscock v. United States Fidelity	Pending

3414 - State v. Duncan R. Proctor #1	Pending
3415 - State v. Duncan R. Proctor #2	Pending
3416 - Widman v. Widman	Pending
3417 - Hardee v. Hardee	(2) Pending
3418 - Hedgepath v. AT&T	(2) Pending
3419 - Martin v. Paradise Cove	Pending
3420 - Brown v. Carolina Emergency	Pending
3424 - State v. Roy Edward Hook	(2) Pending
3425 - State v. Linda Thompson Taylor	Pending
3426 - State v. Leon Crosby	Pending
2001-UP-419 - Moak v. Cloud	Pending
2001-UP-430 - State v. Dale Johnson	Pending
2001-UP-455 - Stone v. Roadway Express	Pending
2001-UP-469 - James Schneider v. State	Pending
2001-UP-470 - SCDSS v. Hickson	Denied 1-9-02
2001-UP-478 - State v. Leroy Staton	Denied 1-8-02
2001-UP-493 - State v. Marcus Griffin	Pending
2001-UP-507 - Adams v. Greaves	Pending
2001-UP-513 - Industrial Tractor Co. v. Poovey	Pending
2001-UP-518 - Abbott Sign Co. v. SCDOT	Pending
2001-UP-522 - Kenney v. Kenney	Pending
2001-UP-528 - State v. Kenneth Allen Barnes	Pending

2001-UP-533 - Corbett v. The Cottages at Shipyard	Pending
2001-UP-538 - State v. Edward Mack	Pending
2001-UP-543 - Benton v. Manker	Pending
2001-UP-548 - Coon v. McKay Painting	Pending
2001-UP-550 - State v. Gary W. Woodside	Pending
2001-UP-560 - Powell v. Colleton City	Pending
2001-UP-565 - United Student Aid v. SCDHEC	Pending

PETITIONS - SOUTH CAROLINA SUPREME COURT

3263 - SC Farm Bureau v. S.E.C.U.R.E.	Pending
3271 - Gaskins v. Southern Farm Bureau	Pending
3314 - State v. Minyard Lee Woody	Pending
3333 - State v. Dennis Zulfer	Granted 1-10-02
3343 - Langehans v. Smith	Pending
3344 - Henkel v. Winn	Denied 1-10-02
3346 - State v. Thomas Ray Ballington	Denied 1-10-02
3348 - Thomas v. Thomas	Pending
3351 - Chewning v. Ford Motor Co.	Pending
3352 - Ex Parte Moore v. Fairfield	Granted 1-9-02
3353 - Green v. Cottrell	Pending
3354 - Murphy v. Owens-Corning	Pending
3355 - State v. Leroy Wilkes	Granted 1-11-02

3356 - Keeney's Metal v. Palmieri	Denied 1-10-02
3358 - SC Coastal Conservation v. SCDHEC	Pending
3360 - Beaufort Realty v. Beaufort County	Pending
3364 - SCDSS v. Mrs. H and Mr. H	Denied 1-10-02
3365 - State v. Laterrance Ramon Dunlap	Pending
3367 - State v. James E. Henderson, III	Pending
3369 - State v. Don L. Hughes	Pending
3370 - Bailey v. Segars	Granted 1-10-02
3371 - State v. Curtis Gibbs #2	Granted 1-11-02
3372 - Dukes v. Rural Metro	Pending
3376 - State v. Roy Johnson #2	Pending
3380 - State v. Claude and Phil Humphries	Pending
3381 - Bragg v. Bragg	Pending
3383 - State v. Jon Pierre LaCoste	Pending
3386 - Bray v. Marathon Corporation	(2) Pending
2001-UP-016 - Stanley v. Kirkpatrick	Pending
2001-UP-123 - SC Farm Bureau v. Rabon	Granted 1-11-02
2001-UP-156 - Employer's Insurance of Wausau v. Whitaker's Inc.	Denied 1-10-02
2001-UP-159 - State v. Darnell Hunter	Denied 1-10-02
2001-UP-160 - State v. Elijah Price, Jr.	Denied 1-9-02
2001-UP-232 - State v. Robert Darrell Watson, Jr.	Pending
2001-UP-235 - State v. Robert McCrorey, III & Robert Dimitry McCrorey	Pending

2001-UP-248 - Thomason v. Barrett	Pending
2001-UP-261 - San Souci Owners Association v. Miller	Pending
2001-UP-292 - Franzello v. Bankhead	Denied 1-10-02
2001-UP-298 - State v. Charles Henry Bennett	Pending
2001-UP-300 - Robert L. Mathis, Jr. v. State	Pending
2001-UP-304 - Jack McIntyre v. State	Pending
2001-UP-321 - State v. Randall Scott Foster	Pending
2001-UP-322 - Edisto Island v. Gregory	Pending
2001-UP-323 - Goodwin v. Johnson	Pending
2001-UP-324 - State v. John Williams, III	Pending
2001-UP-335 - State v. Andchine Vance	Pending
2001-UP-344 - NBSC v. Renaissance Enterprises	Pending
2001-UP-355 - State v. Gavin V. Jones	Pending
2001-UP-360 - Davis v. Davis	Pending
2001-UP-364 - Clark v. Greenville County	Pending
2001-UP-368 - Collins Entertainment v. Vereen	Pending
2001-UP-374 - Boudreaux v. Marina Villas Association	Pending
2001-UP-377 - Doe v. The Ward Law Firm	Pending
2001-UP-384 - Taylor v. Wil Lou Gray	Pending
2001-UP-385 - Kyle & Associates v. Mahan	Pending
2001-UP-389 - Clemson v. Clemson	Pending
2001-UP-391 - State v. Jerome Hallman	Pending
2001-UP-393 - Southeast Professional v. Companion Property & Casualty	Pending

2001-UP-397 - State v. Brian Douglas Panther	(2) Pending
2001-UP-398 - Parish v. Wal-Mart Stores, Inc.	Pending
2001-UP-399 - M.B. Kahn Construction v. Three Rivers Bank	Pending
2001-UP-401 - State v. Keith D. Bratcher	Pending
2001-UP-403 - State v. Eva Mae Moss Johnson	Pending
2001-UP-409 - State v. David Hightower	Pending
2001-UP-421 - State v. Roderick Maurice Brown	Pending
2001-UP-425 - State v. Eric Pinckney	Pending

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

The State, Respondent,

v.

Tommy Walls, Appellant.

Appeal From York County
Lee S. Alford, Circuit Court Judge

Opinion No. 25396
Heard October 24, 2001 - Filed January 14, 2002

AFFIRMED

Assistant Appellate Defender Robert M. Dudek, of the South Carolina Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Robert E. Bogan, and Assistant Attorney General Melody J. Brown, of Columbia, and Solicitor Thomas E. Pope, of York, for respondent.

JUSTICE MOORE: Appellant appeals his conviction under the South Carolina Sex Offender Registry Act (the Act), S.C. Code Ann. § 23-3-400 to -530 (Supp. 2000), claiming an *ex post facto* violation. We affirm.

FACTS

Appellant was convicted in 1973 on the charge of assault with intent to ravish, and sentenced to three years imprisonment. In 1998, he was serving time on an unrelated conviction. Prior to his release, the Department of Corrections notified appellant, in verbal and written form, that he was required to register as a sex offender under the Act as a result of his 1973 conviction.¹ Appellant was given two forms: (1) a pre-registry form, signed and dated by appellant, advising him of the registration requirement; and (2) a pre-registry form requesting addresses where he planned to be. Appellant did not register as required.² Following a bench trial, appellant was

¹S.C. Code Ann. § 23-3-440(1) (Supp. 2000) provides that prior to an offender being released from the Department of Corrections, the Department must “notify the sheriff of the county where the offender intends to reside and SLED that the offender is being released . . .” Further, the Department must “provide verbal and written notification to the offender that he must register with the sheriff of the county in which he intends to reside within twenty-four hours of his release.” The Department also must “obtain descriptive information of the offender, including a current photograph prior to release.”

²S.C. Code Ann. § 23-3-450 provides:

The offender shall register with the sheriff of the county in which he resides. To register, the offender must provide information as prescribed by SLED. . . . A copy of this information must be kept by the sheriff's department. . . . An

convicted for failing to register, and was sentenced to ninety days in prison.³

ISSUE

Does the Act violate the *ex post facto* clause?

DISCUSSION

When the issue is the constitutionality of a statute, every presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution. State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001).

The United States and South Carolina Constitutions specifically prohibit the passage of *ex post facto* laws. State v. Wilson, 315 S.C. 289, 433 S.E.2d 864 (1993) (citing U.S. Const. art. 1, § 10; S.C. Const. art. 1, § 4). For a law to fall within *ex post facto* prohibitions, two critical elements must be present. First, the law must be retroactive so as to apply to events occurring before its enactment. Second, the law must disadvantage the offender affected by it. State v. Wilson, *supra*. See also Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000) (*ex post facto* violation occurs when a

offender shall not be considered to have registered until all information prescribed by SLED has been provided to the sheriff.

The offender is required to register annually for life, and must re-register when moving within the same county, to another county, or to another state. S.C. Code Ann. § 23-3-460 (Supp. 2000).

³S.C. Code Ann. § 23-3-470 (Supp. 2000) provides that if a person is convicted for a first offense of failing to register, that person will be guilty of a misdemeanor and will be imprisoned for a mandatory period of ninety days, no part of which will be suspended nor probation granted.

AFFIRMED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.

cert. denied 529 U.S. 1053, 120 S.Ct. 1554, 146 L.Ed.2d 460 (2000); Russell v. Gregoire, 124 F.3d 1079 (9th Cir. 1997), cert. denied sub nom. Stearns v. Gregoire, 523 U.S. 1007, 118 S.Ct. 1191, 140 L.Ed.2d 321 (1998); Lanni v. Engler, 994 F. Supp. 849 (E.D. Mich. 1998); Patterson v. State, 985 P.2d 1007 (Alaska App. 1999); State v. Noble, 829 P.2d 1217 (Ariz. 1992); Kellar v. Fayetteville Police Dep't, 5 S.W.3d 402 (Ark. 1999); Jamison v. People, 988 P.2d 177 (Colo. App. 1999); State v. Kelly, 770 A.2d 908 (Conn. 2001); People v. Malchow, 739 N.E.2d 433 (Ill. 2000); State ex rel. Olivieri v. State, 779 So.2d 735 (La.), cert. denied, ___ U.S. ___, 121 S.Ct. 2566, 150 L.Ed.2d 730, (2001); State v. Manning, 532 N.W.2d 244 (Minn. App. 1995); State v. Costello, 643 A.2d 531 (N.H. 1994); People v. Langdon, 685 N.Y.S.2d 877 (N.Y.A.D. 1999); State v. Burr, 598 N.W.2d 147 (N.D. 1999); Commonwealth v. Gaffney, 733 A.2d 616 (Pa. 1999); Meinders v. Weber, 604 N.W.2d 248 (S.D. 2000); Kitze v. Commonwealth, 475 S.E.2d 830 (Va. 1996), cert. denied, 522 U.S. 817, 118 S.Ct. 66, 139 L.Ed.2d 28 (1997); State v. Ward, 869 P.2d 1062 (Wash. 1994); Snyder v. State, 912 P.2d 1127 (Wyo. 1996).

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

The State, Respondent,

v.

Thomas Kennedy, Petitioner.

**ON WRIT OF CERTIORARI TO THE COURT OF
APPEALS**

Appeal From Richland County
John W. Kittredge, Circuit Court Judge

Opinion No. 25397
Heard December 12, 2001 - Filed January 14, 2001

AFFIRMED

Assistant Appellate Defender Tara S. Taggart, of S.C.
Office of Appellate Defense, of Columbia, for
petitioner.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh, Senior

Assistant Attorney General Charles H. Richardson,
and Solicitor Warren B. Giese, all of Columbia, for
respondent.

PER CURIAM: We granted a writ of certiorari to review the Court of Appeals's decision in State v. Kennedy, 339 S.C. 243, 528 S.E.2d 700 (Ct. App. 2000). We now affirm pursuant to Rule 220(b), SCACR. *See* Rule 404(b), SCRE; State v. Brazell, 289 S.C. 42, 344 S.E.2d 611 (1986) (speedy trial issue).

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E.C. Burnett, III J.

s/Costa M. Pleicones J.

