

**IN THE COURT OF APPEALS OF MISSISSIPPI**

**CHRISTOPHER E. LOZIER**

**APPELLANT**

**VS.**

**CAUSE NO.: 2018-CA-00795**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF OF APPELLANT**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Christopher E. Lozier, Appellant
3. Honorable Lora E. Hunter, Department of Public Safety Attorney
4. Honorable Anthony Mazingo, 15<sup>th</sup> Circuit Court Judge
5. Honorable Haldon James Kittrell, 15<sup>th</sup> Circuit District Attorney

THIS the 28th day of January , 2019.

Respectfully submitted,  
CHRISTOPHER E. LOZIER

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**STATEMENT OF THE ISSUES**

**ISSUE I: THE TRIAL COURT ERRED IN DENYING APPELLANT’S PETITION FOR RELIEF OF DUTY TO REGISTER UNDER THE MISSISSIPPI SEX OFFENDER LAW.**

**STATEMENT OF THE CASE**

Lozier filed his Petition for Relief of Duty to Register under Mississippi Sex Offender Registry Law, Miss. Code Ann. §45-33-21, et. seq. (hereinafter “**MSORL**”) in Pearl River County on November 28, 2017. The State responded and Lozier filed a reply. A hearing was held on May 7, 2018. Following that, the Circuit Court denied Lozier’s Petition with an Order and Final Judgment dated May 15, 2018. Lozier appeals that Final Judgment now.

**STATEMENT OF THE FACTS**

Christopher Lozier is a current resident of Carriere, Mississippi, Pearl River County. Lozier was tried on a charge of rape and the case resulted in a mistrial on September 3, 1992 in the Superior Court of the Commonwealth of Massachusetts. Following the mistrial, Lozier pled guilty to the charge of Indecent Assault & Battery on a Person over 14 years of age. On March 24, 1993, Lozier was given a suspended sentence of four (4) to five ( 5) years and given probation with special circumstances of alcohol evaluation and given counseling as deemed necessary by the Probation Department.

Lozier registered with the Massachusetts Sexual Offender registry on September 15, 1997 as required by Massachusetts Sex Offender Registry Law, M.G.L. c. 6, § 178. Lozier was discharged from probation on May 24, 1996. See C.P. 15, Commonwealth of Mass., Court No. 72, Probation No. 44671. Lozier moved to Mississippi in 2006 to work construction. Lozier registered with Pearl River County Sheriff's Department as a convicted Sexual Offender on June 12, 2006, as was required by MSORL at that time. See CP 16-17, Mississippi Department of Public Safety Convicted Sex Offender Registration form.

On April 24, 2017, by the authority of Sex Offender Registry Board of the Commonwealth of Massachusetts, Lozier **was removed** from the Massachusetts Sex Offender Registry pursuant to M. G. L. Chapter 6, § 178 C through Q. See CP 18, Letter dated 4/24/2017 from the Sex Offender Registry Board of the Commonwealth of Mass. He had completed his registry of 20 years in the State of Massachusetts.

In the Circuit Court of Pearl River County, Lozier filed his Petition for Relief of Duty to Register under MSORL. Lozier argued that he was eligible to file for relief from continued registration and should be granted relief from continued registration. Lozier sought full faith, and credit given to letter of record from the Registry authority from the Commonwealth of Massachusetts, pursuant to *Article IV, Section 1 of the United States Constitution* and pursuant to Miss. Code Ann. §11-7-301, et seq; which would give that Authority the same effect as an equal Authority of this state. Lozier, having been removed from the Massachusetts Sex Offender Registry continues to argue that he should be removed from the Mississippi Sex Offender Registry. Only his registration in Mississippi's registry keeps him on the National Sex Offender Registry.

During his hearing, with testimony and documents, Lozier showed that the nature of the registerable offense, the criminal and relevant noncriminal behavior of the Lozier both before and after the conviction supported his relief from registration. The State and Court agreed at the hearing on Lozier's Petition that Lozier properly maintained his registration as required by law, and that he would not present a risk of reoffending or a risk to public safety. CP 86-89. The evidence presented by Lozier showed that he has registered as he should, that he has lived and worked in Mississippi, paid taxes, raised children, had no arrests or done anything less than being a good citizen. His grown children, who live in Louisiana, come and visit him frequently. CP 69. He is a construction worker and works seventy (70) hours a week and has not been able to take jobs because he has been on the registry. CP 68. The mere location of the jobs would cause him not to be qualified to work. He has worked consistently since he moved to Mississippi in construction and has been and is a supervisor of work crews. CP 71, Exhibit 1, resume of Christopher Lozier. He cannot help pick up his grandchildren from school or attend certain activities. In fact, the Court explained that it was inclined to grant Lozier's petition but felt like it did not have the authority to do so. *Id.* And, finally the Court did deny Lozier's petition based on MSORL, specifically Miss. Code Ann. §45-33-47 finding that Lozier had untimely filed his Petition prematurely, so that Lozier had not fulfilled his requirement to register under the Mississippi Statute. In the Court's Order and Final Judgment, the Court placed Lozier into and discussed Tier One of the Mississippi Sex Offender Registry finding that, at the very least, that Lozier would not be qualified to file the Petition until he served the minimum of 15 years from the date of his registry in Mississippi. See CP 49-51, Court's Final Judgment.



## SUMMARY OF THE ARGUMENT

*This case presents multiple issues which appear to be of First Impression for the Mississippi Appellate Courts.*

The trial court erred in denying appellant's petition for relief of duty to register under the Mississippi Sex Offender Registry Law (MSORL) as follows: The trial court erred in its interpretation Miss. Code Ann. § 45-33-47 as applied to appellant. If this court finds that the trial court interpreted Miss. Code Ann. § 45-33-47 correctly, then MSORL is unconstitutional in its violation of the right to travel under the privileges and immunities clause of the Fourteenth Amendment to the United States Constitution and/or MSORL is criminal and punitive in nature and therefore, violative of appellant's right against the imposition of *ex post facto* laws and the *Eighth Amendment of the U.S. Constitution* right against cruel and unusual punishment and those corollary rights under the *Mississippi Constitution §16 and §28*. Finally, appellant argues that the trial court should have granted relief by giving full, faith and credit to the registry release issued by the Massachusetts Sex Offender Registry authority. Lozier therefore request that the trial court's ruling be reversed and rendered in his favor, granting his Petition filed in the lower court and/or reversed and remanded consistent with this Court's finding.

## ARGUMENT

*This case presents multiple issues which appear to be of First Impression for the Mississippi Appellate Courts.*

**ISSUE: THE TRIAL COURT ERRED IN DENYING APPELLANT’S PETITION FOR RELIEF OF DUTY TO REGISTER UNDER THE MISSISSIPPI SEX OFFENDER STATUTE**

The trial court denied Lozier’s Petition for Relief of Duty to Register Under the Mississippi Sex Offenders Registration Law (Miss. Code Ann. §45-33-21, et seq.)(hereinafter “MSORL”).first by declaring that MSORL Miss. Code Ann. § 45-33-47 states that Lozier should be given no credit for the time he has spent registered in another state. The Court found that the minimum number of years under MSORL is found in Tier One (not classifying Lozier specifically as Tier One) is fifteen years. The Court then decided that because Lozier registered in Mississippi in 2006 Tier One of the MSORL, Miss. Code Ann. § 45-33-47 requires that he be registered those fifteen years before Lozier would be eligible to petition the court for relief from registration. The Court failed to rule on the application of the merits of Lozier’s request as meeting the requirements for the relief. The Court also failed to rule as to the Lozier’s argument that he be given “full, faith and credit/recognition” of his release in Massachusetts. The Court stated that it did not specifically classify Lozier’s tier.

Therefore, Lozier argues for relief herein, as follows:

**A. THE TRIAL COURT ERRED IN ITS INTERPRETATION MISS. CODE ANN. § 45-33-47 AS APPLIED TO APPELLANT**

The current version of MSORL Miss. Code Ann. § 45-33-47, which outlines the Petition for relief from duty to register (relative portions are italicized) is:

(1) A sex offender with a duty to register under [Section 45-33-25](#) shall only be relieved of the duty under subsection (2) of this section.

(2) A person required to register for a registrable sex offense under [Section 45-33-25](#) may petition the circuit court of the sentencing jurisdiction, or for a person whose duty to register arose in another jurisdiction, the county in which the registrant resides, to be relieved of that duty under the following conditions:

(a) The offender has maintained his registration in Mississippi for the required minimum registration from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation or as determined by the offender's tier classification. Incarceration for any offense will restart the minimum registration requirement. Registration in any other jurisdiction does not reduce the minimum time requirement for maintaining registration in Mississippi.

(b) Tier One. (i) Tier One requires registration for a minimum of fifteen (15) years in this state and includes any of the following listed registrable sex offenses:

1. [Section 97-5-27\(1\)](#) relating to dissemination of sexually oriented material to children ;
2. [Section 97-29-61\(2\)](#) relating to voyeurism when the victim is a child under sixteen (16) years of age;
3. [Section 97-29-3](#) relating to misdemeanor sexual intercourse between teacher and student;
4. [Section 97-29-45\(1\)\(a\)](#) relating to obscene electronic communication;
5. Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this tier ;
6. Any conviction for violation of a similar law of another jurisdiction of any offense listed in this tier;
7. Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had, although registration would not be otherwise required in this state.

(ii) Notwithstanding any other provision of this chapter, an offender may petition the appropriate circuit court to be relieved of the duty to register upon fifteen (15) years' satisfaction of the requirements of this section for the convictions classified as Tier One offenses.

(c) Tier Two. (i) Tier Two requires registration for a minimum of twenty-five (25) years in this state and includes any of the following listed registrable sex offenses:

1. [Section 97-5-33\(3\)](#) through [\(9\)](#) relating to the exploitation of children;
2. [Section 97-29-59](#) relating to unnatural intercourse;
3. [Section 97-29-63](#), relating to filming another without permission where there is an expectation of privacy;
4. [Section 97-3-104](#) relating to crime of sexual activity between law enforcement or correctional personnel and prisoners;
5. [Section 43-47-18\(2\)\(a\) and \(b\)](#) relating to gratification of lust or fondling by health care employees or persons in position of trust or authority;
6. Any conviction of conspiracy to commit, accessory to commission, or attempt to

commit any offense listed in this tier;

7. Any conviction for violation of a similar law of another jurisdiction of any offense listed in this tier; or

8. Any conviction of a Tier One offense if it is the offender's second or subsequent conviction of a registrable sex offense;

*(ii) Notwithstanding any other provision of this chapter, an offender may petition the appropriate circuit court to be relieved of the duty to register upon twenty-five (25) years' satisfaction of the requirements of this section for the convictions classified as Tier Two offenses.*

*(d) Tier Three. Tier Three requires lifetime registration, the registrant not being eligible to be relieved of the duty to register except as otherwise provided in this section, and includes any of the following listed registrable sex offenses:*

(i) [Section 97-3-65](#) relating to rape;

(ii) [Section 97-3-71](#) relating to rape and assault with intent to ravish;

(iii) [Section 97-3-95](#) relating to sexual battery;

(iv) [Subsection \(1\) or \(2\) of Section 97-5-33](#) relating to the exploitation of children;

(v) [Section 97-5-5](#) relating to enticing a child for concealment, prostitution or marriage;

(vi) [Section 97-5-41](#) relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;

(vii) [Section 97-3-53](#) relating to kidnapping if the victim is under the age of eighteen (18);

(viii) [Section 97-3-54.1\(1\)\(c\)](#) relating to procuring sexual servitude of a minor;

(ix) [Section 97-3-54.3](#) relating to aiding, abetting or conspiring to violate antihuman trafficking provisions;

(x) [Section 97-5-23](#) relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;

(xi) [Section 43-47-18](#) relating to sexual abuse of a vulnerable person by health care employees or persons in a position of trust or authority;

(xii) [Section 97-5-39\(1\)\(c\)](#) relating to contributing to the neglect or delinquency of a child, felonious abuse and/or battery of a child, if the victim was sexually abused;

(xiii) Capital murder when one (1) of the above described offenses is the underlying crime;

(xiv) Any conviction for violation of a similar law of another jurisdiction or designation as a sexual predator in another jurisdiction;

(xv) Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this tier; or

(xvi) Any conviction of a Tier Two offense if it is the offender's second or subsequent conviction of a registrable sex offense.

(e) An offender who has two (2) separate convictions for any of the registrable offenses described in [Section 45-33-23](#) is subject to lifetime registration and shall not be eligible to petition to be relieved of the duty to register if at least one (1) of the convictions was entered on or after July 1, 1995.

(f) An offender, twenty-one (21) years of age or older, who is convicted of any sex

offense where the victim was fourteen (14) years of age or younger shall be subject to lifetime registration and shall not be relieved of the duty to register.

(g) A first-time offender fourteen (14) years of age or older adjudicated delinquent in a youth court for a registrable offense of rape pursuant to Section 96-3-65 or a registrable offense of sexual battery pursuant to [Section 97-3-95](#) is subject to lifetime registration, but shall be eligible to petition to be relieved of the duty to register after twenty-five (25) years of registration.

(h) Registration following arrest or arraignment for failure to register is not a defense and does not relieve the sex offender of criminal liability for failure to register.

(i) *The department shall continue to list in the registry the name and registration information of all registrants who no longer work, reside or attend school in this state even after the registrant moves to another jurisdiction and registers in the new jurisdiction as required by law. The registry shall note that the registrant moved out of state.*

(3) *In determining whether to release an offender from the obligation to register, the court shall consider the nature of the registrable offense committed and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction. The court may relieve the offender of the duty to register only if the petitioner shows, by clear and convincing evidence, that the registrant properly maintained his registration as required by law and that future registration of the petitioner will not serve the purposes of this chapter and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The district attorney in the circuit in which the petition is filed must be given notice of the petition at least three (3) weeks before the hearing on the matter. The district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the petitioner may not again petition the court for relief until one (1) year has elapsed unless the court orders otherwise in its order of denial of relief.*

(4) *The offender will be required to continue registration for any sex offense conviction unless the conviction is set aside in any post-conviction proceeding, the offender receives a pardon, the charge is dismissed or the offender has received a court order pursuant to this section relieving him of the duty to register. Upon submission of the appropriate documentation to the department of one (1) of these occurrences, registration duties will be discontinued.*

(5) *A person required to register as a sex offender who is convicted under [Section 45-33-33](#) of providing false registration information or of failure to register, reregister, update registration, or comply with electronic monitoring shall be subject to electronic monitoring at the expense of the offender under the program provided in [Section 45-33-45](#). Termination of the duty to register*

Appellant argues that under the court had the authority to consider his petition under this

paragraph:

*(a) The offender has maintained his registration in Mississippi for the required minimum registration from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation or as determined by the offender's tier classification. Incarceration for any offense will restart the minimum registration requirement. Registration in any other jurisdiction does not reduce the minimum time requirement for maintaining registration in Mississippi.*

As demonstrated above, the wording of the statute uses the conjunction “or” in listing the conditions by which a registrant may be relieved of his duty to register. As such, the conditions can be read to say that an offender may be relieved from his duty to register if he has maintained his registration in Mississippi from the most recent date of at least one of the following: (1) release from prison OR (2) placement on parole OR (3) supervised release OR (4) probation OR (5) as determined by the offender’s tier classification. *See Miss. Code Ann. §45-33-47(2)(a).* The trial court determined that it did not have to place Mr. Lozier in the Mississippi Tier Classification since it had no authority to respond to the petition. CP 49-51. If Lozier is not placed in the MSORL tier classification, then arguably, he has no “minimum time for maintain registration in Mississippi.” per MSORL, in the State of Mississippi. Mr. Lozier was never imprisoned, on parole, or supervised release. He was placed on probation at the time of his sentencing in 1993 and released on May 24, 1996. CP 15. At the time he pled guilty and was released from his punishment for the crime, even the Massachusetts requirement to register had not been enacted. He could not have registered nor was he required to register in Mississippi. Only when he moved to Mississippi in June of 2006 was he required to register here and he did. At that time, the MSORL Miss Code Ann. § 45-33-47 read as follows (relative portions in italics):

45-33-47. (1) A sex offender with a duty to register under Section 45-33-25 shall only be relieved of the duty under subsection (2) of this section.

(2) A person having a duty to register under Section 45-33-25 may petition the circuit court of the sentencing jurisdiction to be relieved of that duty under the following conditions:

(a) *The offender has maintained his registration in Mississippi for not less than ten (10) years from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation. Incarceration for any offense will restart the ten-year minimum registration requirement. Registration in any other jurisdiction or state does not reduce the ten-year time requirement for maintaining registration in Mississippi.*

(b) If the offender has been convicted of one (1) of the following offenses, the offender is subject to lifetime registration and shall not be relieved of the duty to register:

(i) Section 97-3-65 relating to rape;

(ii) Section 97-3-71 relating to rape and assault with intent to ravish;

(iii) Section 97-3-95 relating to sexual battery;

(iv) Subsection (1) or (2) of Section 97-5-33 relating to the exploitation of children;

(v) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner; or

(vi) Any conviction for violation of a similar law of another jurisdiction.

(c) An offender who has two (2) separate convictions for any of the offenses described in Section 45-33-23 is subject to lifetime registration and shall not be eligible to petition to be relieved of the duty to register as long as at least one (1) of the convictions was entered on or after July 1, 1995.

(d) An offender who resides in Mississippi and who has been designated a sexual predator, a sexually violent predator or a similar designation in another state, is subject to lifetime registration and shall not be eligible to petition to be relieved of the duty to register.

(e) An offender twice adjudicated delinquent in a youth court for the crime of rape pursuant to Section 96-3-65 or sexual battery pursuant to Section 97-3-95 is subject to lifetime registration and shall not be eligible to petition to be relieved of the duty to register.

(3) In determining whether to release an offender from the obligation to register, the court shall consider the nature of the registrable offense committed and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction. The court may relieve the offender of the duty to register only if the petitioner shows, by clear and convincing evidence, that <<+the registrant properly maintained his registration as required by law and that+>> future registration of the petitioner will not serve the purposes of this chapter.

(4) The offender will be required to continue registration for any sex offense conviction unless the conviction is set aside in any post-conviction proceeding, the offender receives a pardon, or the charge is dismissed. Upon submission of the appropriate documentation to the department of one (1) of these occurrences,

registration duties will be discontinued.

So, at the time of his placement in the Mississippi Sex Offender Registry in June of 2006, under MSORL, he was already technically eligible to petition for relief under Mississippi law (**if he had been holding a conviction for a Mississippi crime**) because he had passed the 10 years from the date of his release from probation, May, 1996. Yet, it was only because he was given 20 years to register in Massachusetts that he was even required to register in Mississippi in 2006.

Since his registration, our law has changed several times (this issue will be addressed further in the nature of *ex post facto* rights violation *supra*.) At the time of his registration, he was required to register for no more minimum time than ten years in Mississippi before filing his Petition for Relief. Lozier's ten years minimum registration in Mississippi ran in June of 2016, had the MSORL not changed.

The State argued that Mr. Lozier's now fell into Tier One (as a minimal requirement) because "The elements of the Massachusetts's Indecent Assault & Battery on a Person over the Age of Fourteen (14) years statute do not exactly match a Mississippi sex crime" and therefore, pursuant to the language of Miss. Code Ann § 45-33-47(2)(b)(7), the State argued that Lozier fell into Tier One." CP 25. This language reads:

*(b) Tier One.*

*(i) Tier One requires registration for a minimum of fifteen (15) years in this state and includes any of the following listed registrable sex offenses:*

*7. Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had, although registration would not be otherwise required in this state.*

*Id.*



Lozier argues that this clause became inapplicable to him when he was released from his duty to register and was, in fact, **no longer registered** in another jurisdiction (Massachusetts) after April 24, 2017.

The trial court was mistaken in stating that Lozier had not met a minimal year requirement in Mississippi and was ineligible for Petition consideration. The trial court misinterpreted the statute. Lozier registered under MSORL when the minimal requirement was ten years for petition eligibility. That time passed in June of 2016. Even under the current MSORL, Lozier can no longer fall into Tier One, as the State argued, because he does not fulfill any category of Tier One currently. He is not “required” to register in the jurisdiction wherein he was convicted of the offense.

Lozier argues that the trial court could have proceeded to rule on his petition and the factors that the court would have then considered as to Lozier’s eligibility are found in Section (3)

- a. The nature of the registerable offense committed;
- b. The criminal and relevant noncriminal behavior of the petitioner both before and after the conviction;
- c. The petitioner’s proper maintenance of his registration;
- d. Future registration will not serve the purposes of this chapter;
- e. The petition is not a current or potential threat to public safety.

Miss. Code Ann. §45-33-47(3).

Other than the State’s attempt to bar the Lozier from being eligible to Petition, because he has not met the minimum years required by the Mississippi Tier Classification, the factors for release as outlined in Section (3) gained no argument by the State in their Response. Lozier had no

criminal behavior either before or after the conviction, Lozier properly maintained his registration, future registration will not serve the purpose of this chapter and the Lozier is not a current or potential threat to public safety. Lozier is one of the rare individuals who has truly demonstrated that he has served his "time" on the sex offender's registry, has worked hard, maintained employment, moved on with his life and poses no threat imaginable to this community or any other community. Lozier respectfully requests that this honorable court reverse and render an opinion releasing him from registration on the Mississippi Sex Offender Registry, an act which will finally release him from registering on the National Sex Offender Registry OR Lozier respectfully requests that this honorable court reverse and remand to the Circuit Court for consideration consistent with this Court's finding that Lozier's Petition is ripe and he may be reviewed for relief.

**B. IF THIS COURT FINDS THAT THE TRIAL COURT INTERPRETED MISS. CODE ANN. § 45-33-47 CORRECTLY, THEN MSORL IS UNCONSTITUTIONAL IN ITS VIOLATION OF THE RIGHT TO TRAVEL UNDER THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND/OR MSORL IS CRIMINAL AND PUNITIVE IN NATURE AND THEREFORE, VIOLATIVE OF APPELLANT'S RIGHT AGAINST THE IMPOSITION OF *EX POST FACTO* LAWS AND THE EIGHTH AMENDMENT OF THE U.S. CONSTITUTION RIGHT AGAINST CRUEL AND UNUSUAL PUNISHMENT AND THOSE COROLLARY RIGHTS UNDER THE MISSISSIPPI CONSTITUTION §16 and §28.**

The United States Supreme Court first addressed constitutional challenges to sex offender regulation statutes in *Kansas v. Hendricks*, 521 U.S. 346 (1997) and *Smith v. Doe*, 538 U.S. 84 (2003). In each of these cases, the majority held these laws to be civil, nonpunitive regulatory measures and thus, the retroactive application of these laws, contravening the prohibition against ex post facto laws, was permitted. *Id.* Most courts have followed precedent of these two cases; however, the Sex Offender Registration requirements have become much more restrictive on the

registering offender, including the Mississippi SORL. *See* Comparison in the June 2006 MSORL above and the current 2019 MSORL for section 45-33-47. For convenience of space in this Brief, Lozier respectfully requests that this Court compare the early versions of the MSORL with the latest version.

In 2016, the Sixth Circuit in *Does#1-5 v. Snyder*, 834 F. 3d 696 (6<sup>th</sup> Circuit 2016) decided that Michigan's version of their Sex Offender Registration Act was punitive in nature and thus "the retroactive application of SORA's 2006 and 2001 amendments to Plaintiffs in unconstitutional, and it must therefore cease." *Id.* at 706. This *Snyder* opinion noted that the sex offender statutes of two decades earlier were far more modest than the 2016 SORA law in Michigan. *Id.* at 700. This decision was appealed to the U.S. Supreme Court, but the writ of certiorari was DENIED. This leaves the possibility that U.S. Supreme Court may be willing now to find the sex offender regulations in place currently are punitive in nature.

Of course, criminal laws afford constitutional protection. In order to draw the line between punitive and regulatory law, the Supreme Court adopted the two part intent-effects test outlined in *United States v. Ward*, 448 U.S. 242 (1980). The Court in *Ward* said that if it is deemed that the legislature intended the law to be punishment, the analysis ends. If, however, the intent of the law is ambiguous, then a court must consider whether the law is so punitive in purpose or effect as to overcome manifest intent to the contrary. That manifest intent will only be rejected if it can be shown by the "clearest proof that the scheme is so punitive in purpose or effect as to negate" the legislature's intention to deem it civil. *Id.* at 248-249

A growing minority of courts are beginning to rule that these laws are punitive. *Doe v. State*, 189 P. 3d 999 (Alaska 2008); *Wallace v. State*, 905 N.E. 2d 371 (Ind. 2009); *Maine v.*

*Letalien*, 985 A. 2d 4 (Me. 2009); *Doe v. Dep't of Pub. Safety & Corr. Servs.* 62 A. 3d 123 (Md. 2013); *State v. Williams*, 952 N.E.2d 1108 (Ohio 2011); *Starkey v. Okla. Dep't of Corr.*, 305 P. 3d 1004 (Okla. 2013) (detailing all case law from state courts regarding retroactive application of sex offender registration and notification statutes.)

In *Snyder*, the Sixth Circuit found that the current version of the SORA in Michigan was far more restrictive than earlier registration schemes; and second, that scientific studies suggest that sex offenders might not be as dangerous to the public as previously thought. *Snyder*, 834 F. 3d at 704. (citing Lawrence A. Greenfield, *Recidivism of Sex Offenders Released from Prison in 1994* (2003)). The *Snyder* court then analyzed the *ex post facto* implication of SORA through the intent-effects test and asked five questions: 1. Does the law inflict what has been regarded in our history and traditions as punishment? 2. Does it impose an affirmative disability or restraint? (3) Does it promote the traditional aims of punishment? 4. Does it have a rational connection to a non-punitive purpose? 5. Is it excessive with respect to this purpose? In conclusion to the *ex post facto* question, the court said:

A regulatory regime that severely restricts where people can live, work, and “loiter,” that categorizes them into tiers ostensibly corresponding to present dangerousness without any individualized assessment thereof, and that requires time-consuming and cumbersome in-person reporting, all supported by—at best—scant evidence that such restrictions serve the professed purpose of keeping

Michigan communities safe, is something altogether different from and more troubling than Alaska’s first generation registry law. SORA brands registrants as moral lepers solely on the basis of a prior conviction. It consigns them to years, if not a lifetime, of existence on the margins, not only of society, but often, as the record in this case makes painfully evident, from their own families, with whom, due to school zone restrictions, they may not even live. It directly regulates where registrants may go in their

daily lives and compels them to interrupt those lives with great frequency in order to appear in person before law enforcement to report even minor changes to their Michigan's SORA imposes punishment. And while many (certainly not all) sex offenses involve abominable, almost unspeakable, conduct that deserves severe legal penalties, punishment may never be retroactively imposed or increased.

*Snyder* at 705-506

Following *Snyder* and other State Supreme Court cases, Lozier asks that this honorable court follow the analysis in *Snyder* and find that MSORL has become punitive and the criminal *ex post facto* analysis, preserves the right for him to have the MSORL in effect when he registered in June 2006, which would allow him to Petition for Release after 10 years on the Mississippi Registry. *U.S. Constitution. Article 1, Section 10 (1)* and *Mississippi Constitution*.

In addition or alternatively, Lozier asks that this Court follow the analysis of the intent-effects test to find that the *Eighth Amendment of the U.S. Constitution* and the corollary rights under the *Mississippi Constitution* apply and that MSORL currently is, in fact, cruel and unusual punishment and is unconstitutional. In *Millard v. Rankin*, 265 F. Supp. 3d 1211 (2017), the United States District Court in Colorado, found that the Colorado Sex Offender Registration Act violated the cruel and unusual punishment clause of the *Eighth Amendment* to the *United States Constitution*. The court applied the intent-effects test and found that the SORA was, in effect punishment and, in fact, that public shaming and banishment are forms of punishment that may be considered cruel and unusual under the *Eighth Amendment*. *Smith v. Doe, at 109*. In *Millard*, the court reviewed the record to determine if the Plaintiffs had experienced shaming and banishment and found evidence of this. In the record in this case we also find that Lozier testified that he feels the shame at the DMV when he continues to complete the form, he is limited in picking up his

grandchildren and going to their activities at school and that he has lost several opportunities to work when the construction jobs included working near or at schools. The *Millard* case also recognized that the “theoretical ability to deregister can be illusory” *Millard* at 1230. Interestingly, Lozier has now faced the same problem: After fulfilling his registry requirements in Massachusetts AND fulfilling the registry requirements that were in place in Mississippi at the time of his registry and move here, he now is told, basically, to “serve some more time.” If the law changes again, will he be pushed back again, to serve more time, remain humiliated, continue to be banished and shamed?

In *Millard*, the Colorado Federal court stated,

The registration requirements imposed by SORA, coupled with the actual and potential effects of being required to register, are not merely akin to historical punishments, as discussed above. As shown by the evidence in this case, SORA’s requirements, as applied to Plaintiffs, subject them to additional punishment beyond their sentences through the pervasive misuse and dissemination of information published by the CPI. Defendant has offered no evidence that any Plaintiff presents an objective threat to society, such as a material risk of recidivism. Yet Plaintiffs have been and continue to be subjected to actual and potential dangers of ostracism and shaming; effective banishment and shunning in the form of limitations on their abilities to live and work without fear of arbitrary and capricious eviction, harassment, job relocation, and or firing, significant restriction on familial association, and actual and potential physical and mental abuse by members of the public who for whatever reason become aware of their status as a registered sex offender.

*Id.*

Lozier argues that MSORL has effected the same punishments on him as the *Millard* court found in Colorado and that he too, is being subjective to additional criminal punishment which violated his *Eighth Amendment Right of the U.S. Constitution* against cruel and unusual punishment (along with the corollary rights in *Mississippi Constitution*).

Additionally and alternatively, Lozier argues that his right to travel found implied in the *Privileges and Immunities Clause of the Fourteenth Amendment* to the *U.S. Constitution* has been violated by MSORL. In *Saenz v. Roe*, 526 U.S. 489 (1999), the Supreme Court held that a California statute, in which residency restrictions limited welfare benefits for new residents in the state to the level of the state that they moved from for their first year of residence, was unconstitutional because it violated the *Privileges or Immunities Clause of the Fourteenth Amendment*. The Court explicitly affirmed the fundamental nature of the right to travel, and in doing so, altered the right's analysis by dividing the right into three parts, stating:

The “right to travel” discussed in our cases embraces at least three different components. It protects the right of a citizen of one state to enter and to leave another state, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second state, and, *for those travelers who elect to become permanent residents, the right to be treated like other citizens of that state.*

*Id.* at 500. (*emphasis added*)

The U.S. Supreme court has not reviewed SORAs of different states in this context. Lozier asks that this honorable court review the current version of MSORL and recognize that the statute violates this right to travel as to the third component because Lozier is being treated differently, having moved into this state, from Mississippi residents. Lozier has time spent on another state's residency which is not being counted. Had the offense for which he registered been actually committed in the State of Mississippi, he would not be denied credit for any time served on the registry. He would have been afforded credit from the date of the offense and original registry (in his case, in Massachusetts, in 1997). Because he registered out of state for some period, he is being treated from Mississippi residents who always lived here.

The result of the statute, as it stands, means that IF a resident of another state moves into

Mississippi one day before his registry is completed in another state, then he not only must register, but his entire time on the registry MUST start over, according to MSORL.

In summary of these constitutional arguments, Lozier asks that this honorable court find that MSORL as applied to him, is unconstitutional for one or all of the above arguments, and that the trial court's ruling should be reversed and this Court render an Order and Judgment releasing him from his requirement to register under MSORL, which will finally release him from the National Registry.

**C. THE TRIAL COURT SHOULD HAVE GRANTED RELIEF BY GIVING FULL, FAITH AND CREDIT TO THE REGISTRY RELEASE ISSUED BY THE MASSACHUSETTS' SEX OFFENDER REGISTRY.**

Full, Faith and Credit should be given in Mississippi to the administrative rulings from other States wherein that State's Registry authority has released the person from registration in the State wherein the crime was committed. *See* CP 18, Letter dated 4/24/2017 from the Sex Offender Registry Board of the Commonwealth of Massachusetts. Here, Mr. Lozier's crime was defined by the Massachusetts's legislative body and his registration, because *that* crime was listed specifically as an enumerated crime in the Registry law in Massachusetts, because a registerable offense in Massachusetts.

When Mr. Lozier moved to Mississippi, in 2006, he was only required to register because he was registered in another state. The basis of his registration had nothing to do with the crime for which he was convicted. He registered only because of a conviction of a Massachusetts crime and that State's registry requirement. When the requirement to register in the origin State is



removed, Mississippi's registration requirement, based solely on the Massachusetts registration requirement, should be relieved as well.

MSORL requires registration for a person moving in to the state, only when a person is registered in another state. When the Massachusetts court released Lozier, his registry requirement in Mississippi should end. Also, although some states have not recognized the application of the Full, Faith and Credit clause to be applicable to Sex Offender Registry releases from another state, the Mississippi Appellate Courts **have not ruled** on same. The State cited the cases which have decided not to give that recognition. However, those decisions in those States are merely persuasive argument to this honorable court. Appellant would like for this court to consider the application of the constitutional theory differently.

Lozier argues that the only response to a situation like Mr. Lozier's is to recognize that the state, which defined the crime and placed him on the sex offender registry, is the state which should define his ultimate term of registration and registration conditions, i.e. *the nature of the registerable offense committed and the time for which he should be registered is answered only by Massachusetts law.*

*Article 4, Section 1* of the *United States Constitution* provides, in pertinent part, that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." *U.S. Const. Art. IV Sec. 1.* Because of Massachusetts's final disposition in this case and its release of Mr. Lozier from the Massachusetts Sex Offender Registry, Mississippi is required to give full faith and credit to said disposition and release. *Davis v. State*, 826 So. 2d 83,84 (Miss. 2002) citing *United States v. California & O. Land Co.*, 192 U.S. 355 24 S.Ct. 266, 48 L.Ed. 476 (1902); *Fauntleroy v. Lum*, 210 U.S. 230, 237, 28 S.Ct. 641, 52 L.Ed. 1039 (1908)).

The Mississippi Supreme Court has held that “a judgment is conclusive as to all the *media concludendi*; and it needs no authority to show that it cannot be impeached either in or out of the state by showing that it was based upon a mistake of law.” *Id.* As such, a Mississippi court cannot deny enforcement of another state’s decision based upon the full faith and credit clause of the United States Constitution. *Id.* at 85.

Lozier asks that this honorable court give full, faith, and credit to his release from the Massachusetts Sex Offender Registry and reverse and render the lower court’s decision by granting his relief to be relieved from registration in Mississippi and be finally able to be relieved, after 26 years from the date of the entry of a plea, following a mistrial, be relieved from registration on the National Sex Offender Registry.

### **CONCLUSION**

Lozier therefore request that the trial court’s ruling be reversed and rendered in his favor, granting his Petition filed in the lower court and an Order of Judgment be entered allowing him to end his registration on the Mississippi Sex Offender Registry (which will therefore end his registry on the National Sex Offender Registry) or that the lower court’s ruling finding that the court had no authority under MSORL be reversed and this case remanded, consistent with this Court’s finding.

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I, Vicki L. Gilliam, do hereby certify that I have this the 28<sup>th</sup> day of January, 2019 served the Brief of Appellant through the Court's electronic service and/or US Mail, postage prepaid to:

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