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0:00:10.0 Outspoken Offender: Hi, I'm The Outspoken Offender. Big news, I'm sure you've heard, out of the South Carolina Supreme Court, they have stated, they have ruled that the lifetime registration requirement is unconstitutional without a review. Wow! What does this mean for the numerous registrants and their families in South Carolina, and does it affect the constitutionality of SORNA, which is the Sex Offender Registration Notification Act? So many questions, and I was able to contact Lori S. Murray, a defense attorney in South Carolina, to answer our questions today on the show.

0:00:46.6 OO: Lori Murray, thank you so much. I know it's been crazy the last 48 hours, really, since this ruling in South Carolina. Lori Murray, you're a defense attorney there in South Carolina. Justices in this ruling called the South Carolina Sex Offender law, "the most stringent in the country." Do you agree with this statement?

0:01:06.9 Lori Murray: I do, and I don't even have to know what other states are, and the reason for that is because ours is a lifetime registry. Without regard to what your conviction is, it's a lifetime registry, so I don't think it could be any tougher than what it is. So yeah, it is the toughest in the country.

0:01:24.9 OO: Okay, and so South Carolina, the Supreme Court says that a state law inquiring registrant sex offenders to register for life without prior judicial review is unconstitutional. That's the ruling, the official ruling. I think that happened on June 9th, if I'm correct. I believe so.

0:01:43.9 LM: I believe that's right.

0:01:44.3 OO: Yeah. So what do you think, or rather, what does it mean by judicial review? What does that mean?

0:01:53.5 LM: Well, I think that's gonna be left up to our legislature, but in my opinion, judicial review means that a judge has to make a decision as to whether the individual defendant is likely to re-offend. We have something similar with regard to electronic monitoring. I'm not sure if you noticed that part of the ruling, but they've already done this for electronic monitoring, 'cause the judges were ordering lifetime electronic monitoring as well, and I don't know that anybody even orders that anymore. But at this point, judicial review would mean that a judge has to make a ruling after a hearing as to whether or not they are likely to re-offend before they order a lifetime registration.

0:02:35.5 OO: Okay, so I'm not aware of the electronic monitoring. Do you have any information on that? I wasn't aware of that in the ruling.

0:02:43.5 LM: The case is in there, and I'm blanking on the name of the case, but it's in the ruling in the bottom, and that's actually one of the ways that they got to this ruling without having much difficulty because they've already addressed the electronic monitoring rule back in 2013. It was a 2013 case. And back then, they said that you could not issue a lifetime electronic monitoring

without a due process hearing, so it was easy to get to this place, it's just that nobody actually challenged it from... Since 2013. So I think any time after 2013 when they issued that ruling, we could have had the ruling that we had two days ago, but they said in that ruling, same thing that they're saying today, that before you issue any kind of lifetime ruling like that, you have to have a due process hearing.

0:03:30.7 OO: Got it. I wasn't aware that South Carolina had a lifetime registry statute for anybody that was placed on the Sex Offender Registry. That caught me by surprise after I heard about this. Why do you think, and it's just a personal question, why do you think it took 30 years to challenge this statute in the registry in South Carolina?

0:03:51.7 LM: It's funny because you say you didn't know that we had lifetime. I didn't know that anybody else didn't have lifetime. I thought that was universal, because that's the way that we've always done it. And I prosecuted cases in the year 2000, 1998-2002. So I had no idea that there was any other way to do it other than lifetime registry.

0:04:16.1 OO: I see.

0:04:16.9 LM: Why do I think we have lifetime registry? I think it's because we are a very conservative state. I think we have people who have very deep-rooted beliefs about our judicial system and a need and a desire to punish and humiliate.

0:04:36.0 OO: I don't know if you know the answer to this question, but what does this mean for other level 3 registrants in your state, and could this be sort of an unravelling of a system that is honestly a mess throughout the country?

0:04:51.7 LM: For level 3 registrants, I think you're gonna have a difficult time even with this new statute because, again, they're looking at whether you're going to re-offend. We do have the psycho-sexual analysis that we can do, and we do often as a defense attorney, I've done that in many cases, and if they can go through that test and pass that test, that might be a great way to get past it as even a tier 3, but the tier 3s are the most serious offenses, and judges are gonna be very reluctant to take away that lifetime reporting requirement on a tier 3. And I think the reason for that is simply because of the politics around it, the publicity that could surround it if they re-offend. I hope that the judge will take that into account, and I hope that other attorneys know about the psycho-sexual analysis and use that as a tool, are using it as a tool, but it's gonna be typical for the level 3s, I think.

0:05:58.1 OO: So my understanding, Dennis Powell was considered a level 1 registrant according to SORNA. So this ruling in South Carolina is not gonna necessarily affect all levels of registrants, is that correct?

0:06:13.7 LM: No, I think it will affect all levels of registrants, because the Supreme Court has said that you cannot order a lifetime registration without a due process hearing, so I think everybody is going to be entitled to that hearing. I think his being a level 1 is why his removal from the registry was granted, because the judge found that he was not likely to re-offend.

0:06:38.3 OO: Okay, I've been doing some research on this. Proponents of the ruling include this group called Sexual Trauma Services of the Midlands. They have stated that the law should be "victim-centered." Does the ruling by your state diminish victims' rights in your opinion?

0:06:57.9 LM: No, if anything, I think it'll increase victims' rights, because they'll have the opportunity to speak at the hearing. So they'll be heard, and I know that they are heard at sentencing on the individual plea or trial, but I don't know that they're ever given the opportunity to voice their opinions on whether the defendant should be put on the registration. But at this point, when you have a hearing specifically on the registration, they're gonna have to be notified and they'll definitely get a chance to voice their opinion on whether that person should be on the registration.

0:07:34.2 OO: Okay, and the SMART Office, which handles SORNA, they also said, "South Carolina has put forth exceptional work and effort in adopting SORNA and enhancing the sex offender registration and notification system." But since 2010, South Carolina has had the lifetime registration for all registrants, so this is not SORNA's policy, they've gone... South Carolina has gone above and beyond. Why do you think... We kind of talked about this already, but why do you think South Carolina chose lifetime? Is it just because of the conservative values there in the state?

0:08:13.8 LM: I think it's conservative values, I think it's laziness on the part of our legislature for not wanting to delve deeper into how to provide for the due process hearings and how to make the decision as to who is on lifetime. I think that they wanted it based on the actions of the defendant and not based on the charge itself, which SORNA bases their tiers on the actual charge that the person is charged with. So our state legislature probably wanted to base it on the defendant himself, and in doing that, they could not do... I'm losing my train here, but they could not base it on the defendant without doing an overall ruling that if you're on the registry, you're on there for life.

0:09:04.9 LM: I think it has to do with that and conservative values here in our state, and the stigma of a sex offender in our state and in the South is very difficult to overcome, and I think that is why they made the ruling that they did. Or not the ruling, the law.

0:09:21.8 OO: Sure, I do feel sorry for registrants and families in the South, and especially in Florida. I'm lucky enough to have grown up on the West Coast where it's a little more flexible, I should say, but nonetheless, the public aspect of the ruling there in South Carolina was upheld by the court. So my question is, is if someone is at a very low risk to offend because of the psycho-sexual evaluation and just because they've been put on a lower level, why the need for the information to be public?

0:10:00.1 LM: That's a very good question. I have no answer for that. I don't agree with the public nature of the registration. I will say that... And this is an area that I struggle with. I have two children. I checked... Before you and I spoke today, I checked my neighborhood within a mile radius of my house. I have six sex offenders living within a mile radius of my house. Most of those are child pornography charges, and they are not sexual act charges. But I think that as a mother, not a lawyer, but as a mother, I would wanna know if there were tier 3 offenders living near me. I definitely struggle with whether those offenders should be publicly listed. The other folks, I think it is designed to punish, and I think it's designed... I don't know that they intend to humiliate, they just

don't take into account that it does.

0:10:52.5 OO: I see. A quote that I read in one of the reports really got me frustrated as a registrant myself. Senate Republican Sandy. I don't know how to pronounce her... S-E-N-N, Senn, I believe, stated in an interview, "We are currently going to put or keep publicizing the Sex Offender Registry list. No one wants a sex offender moving into their neighborhood." She's saying any type, I guess, registrant, any sex offender. What would be your response to that?

0:11:27.8 LM: That's pure ignorance. And if she's not a lawyer... First of all, I don't know that she's a lawyer, and I especially don't think that she's a criminal lawyer, so she has no idea the difference between the levels and the charges that will actually put you on the registration. Something like indecent exposure, which you can get charged with for urinating on the side of the street, can put you on the registration. Masturbating somewhere where you don't think anybody's gonna see you and they actually do, could be something that puts you on the registration. So I think it's ignorance on her behalf. I think she is baiting her following, baiting the red state that we are, trying to appeal to those who have the more conservative values, but that's what it's like being in the red state. It is extremely difficult sometimes, and we deal with a lot of ignorance and a lot of people who speak out without knowing what they're talking about.

0:12:25.5 OO: Yeah, I agree, and another quote. I'm gonna throw another quote at you. I love quotes. A Berkeley County sheriff... I'm guessing that's a county in South Carolina?

0:12:35.1 LM: Yeah, it's a county.

0:12:35.2 OO: Okay. Sheriff Dwayne Lewis stated, "The sex offender registry is very important to the safety and security of residents in our 46 counties. Many people rely on the registry to make decisions about where to live. Employment uses it as well to check applicants for jobs. It's an excellent opportunity to help protect citizens." As a registrant myself, again, and the many families and registrants watching this and listening to this, I find that is a huge problem. Once again, all registrants are put into one category and we already have enough difficult time finding work. I can't find work. I can't find housing many times. What is your opinion about what the sheriff said?

0:13:22.7 LM: Well, first of all, I call BS on the employment, because employees can pull a criminal history and that's what they're doing. They're not opening up sex offender registry every time they hire somebody. And many times I've seen somebody who comes back later because they were hired. You've seen news articles about someone who was on the registry and ended up hired anyway. So I know they're not checking it. Valuable to as to where you wanna live. We all know what neighborhood we're living in, and if you can police your own yard and if you monitor your children the way you're supposed to, then everything should be fine.

0:13:57.1 LM: But also, again, this registration has lumped everybody in to one area. Your Romeo and Juliet cases, again, I keep talking about those Romeo and Juliet cases where somebody of 19 is dating someone who is 15. If you were 26 and your partner was 30, then that's perfectly fine. But if you are in the 19 to 15 year range, then it's not. And you're lumped in with someone who has molested a two-year old child. And there is no way to distinguish that, unless you actually go to the

registration and you actually look and see what that person was convicted of. And even then, for the lay person, it's hard to decipher what that charge is. So, if you're using that to determine where you live and work, then you've got bigger problems than finding a place to live. That is not the way to go about finding a place to live.

0:14:51.9 OO: Sure. And there have been many reports that... It shows that the people that are committing first-time sexual offenses are not on the registry originally, and also the fact that most people that commit sexual-based crimes are... That know or have some relationship with the victim. For the states requiring lifetime registration, how does this not only affect the registrant forced to register, but families as well?

0:15:23.6 LM: In so many ways. But first the... Let me just go back and make one point too. The fact that we have required a lifetime registration has greatly diluted the effectiveness of our registration. We have way too many people on there, you cannot effectively see who you actually need to be protected from, if in fact you do need to be protected from that person. Because there are just hundreds. Because nobody ever gets let off unless they're dead. The only way to get out of a sex offender registry in South Carolina is to appeal it and have a not guilty or have a pardon and have the pardon board actually state it's because you were not guilty or evidence of innocence has been presented. So I just wanna make that point.

0:16:13.4 LM: Our list is not as effective as what the Sheriff in Berkeley County stated, as what the Congresswoman stated. We have some work to do on the effectiveness of our list. As far as it affecting families, the restrictions of this list are so difficult. Finding a place to live, let's talk about, you don't wanna live near a sex offender, try being the sex offender and finding a place to live. You can't be within a thousand feet of a church, a school, a movie theater or a day care. So many different places. And if you... This is not a thousand feet by road, this is as the crow flies. So it doesn't have to be a street. It takes you a mile to travel there by street. It's extremely difficult to find someplace to live.

0:17:01.8 LM: And then you have fathers who are not able to provide for their children because that list is on there and because their names have been found on their... Even the criminal path or criminal records. It's difficult for someone who's on that registry to put it behind them and to move on and to provide for their families through employment. So it's extremely difficult. Also, you have that stigma. You're gonna be that house in the neighborhood that nobody wants to walk by.

0:17:30.7 OO: Yeah, it's difficult, because I get a lot of emails and people contacting me saying, you don't care about victims, you are supporting pedophiles and things like that. Of course, I feel for the victims, and of course I'm all for victims' rights. Where is that balance that we need in America where we can recognize the victim's rights, but also the people on the registry to move on with their life and rebuild it?

0:18:00.3 LM: Well, I think SORNA did a good job in the recommendations of the timeframes that, I think the tier 3 was lifetime, tier 2 was 25 years and tier 1 was 15 years was the recommendation. South Carolina just didn't follow it. So I think you're right, there does have to be a balance, but let the victim be heard at the due process hearing, let the victim be heard as to their feelings on registration, and then let the defendant be heard and let the defendant have the

opportunity to present evidence that he's not likely to re-offend. And again, these people who know their victims, they are the ones who are not likely to re-offend. You have a lot of child... Of incest cases of people... Often... The guy down the street from me was arrested and charged with improperly touching his niece. So all of those people, they deserve a second chance, and the niece has the right to speak, but the defendant has the right to present evidence of whether he's going to re-offend at a due process hearing, which is what our supreme court has ordered.

0:19:05.2 OO: So it's very, very good news. It'll be interesting to see what happens. If there are other people that are on the registry or their family members that wanna challenge some statute in their registry, in their state, what advice would you give to them?

0:19:22.3 LM: I think our state is unique. I don't know, I got that email from... An email from, off of my website with the very same question, "Can you help me? I'm in Virginia." And I can't answer that without knowing what your state law says. I know that the way to challenge it now, because this nice case came out, is through a declaratory judgment action and to try and find some reason that your due process is violated. Our state again is unique because there was no hearing involved. You were just automatically ordered to be on the registry and it was for life. So without knowing the specific state's laws, I cannot offer a blanket piece of advice other than look at our state's laws and see if you have anything in similarity with this case, and then you perhaps have a chance to fight it.

0:20:12.8 OO: Yeah, that's... Lori, that's part of the craziness of the registry is you have SORNA, which is like a national blanket telling states to implement their process, I guess, and then you have other states that like South Carolina that have gone above and beyond, more strict than it needs to be and then other states that don't even implement SORNA, for example, the state I live in now has not fully implemented SORNA's regulations, so what I'm saying, it sounds like it's just a mess.

0:20:42.1 LM: It's a huge mess. It should be a national... It should be a federal statute, it's... All of this came out of Megan's Law, and there's a federal... It looked like a federal agency, and SMART is, I'm assuming, a federal agency, that should be a blanket law, and maybe that's something that the United States House of Representatives and Senate should take up instead of our local governments, maybe that's a federal law, it should... I mean, we're talking about Megan's Law, and that's one of the things that we always do here in South Carolina, is you think you got a tough law, you know, we're gonna do you one better. Whenever you get... If you think you got tough laws for Megan's Law in your state, watch what we can do. We did that with DUI laws. We still have a ton of DUIs. But we try to do one up and it's just... Here we are, in front of the same court again.

0:21:32.5 OO: Lori, thank you so much. Is there anything else that you wanna mention or tell our viewers and listeners before I let you go and get back to work on a Friday?

0:21:42.7 LM: Let's go, we're getting ready to go home on the Friday. The only thing I would say is I spoke with someone this morning who was just charged with a reverse dateline sting-type case. He was very distraught, no prior record, has a child, an infant child, a five-year-old, he's engaged, has a very good job, and this guy was completely distraught because he thought he had ruined his life, and at least... At least I was able to tell him at this point that you have a chance, first of all, that you won't be convicted, or we can work something out with regard to this plea, if there is one. But

at the same time, I was also able to tell him, you have something now in place that was not in place three days ago, so consider yourself a little bit lucky, it's not the end of the world, and I know it feels that way at this point, but at least we have a time limit now. I don't know... What does your state have?

0:22:48.6 OO: Well, Washington state is very interesting. It's a little confusing, like everything, it's 10 years, if... They haven't fully implemented the SORNA, so they don't have that exact tier level. Level 1 is 10 years, but if you're on level 1 and it's an out-of-state offense, which is mine, they add 5 years. So I'm at 15 years, but then... Mine's a federal offense. I am still figuring this out personally... Am I under SORNA? Am I under Washington? No one will give me an answer, it's just... I'm confused myself, I don't know how many years I have on the registry. But Washington is also unique in the fact that they do not list publicly level 1 and level 2 registrants online, so that means it's private, which helps living situations for those people.

0:23:41.0 LM: I like that. That's not something...

0:23:43.4 OO: Yeah. And some states are doing that.

0:23:44.2 LM: Yeah. And that's not something that I... I didn't have a chance to look at other states, I knew that we... I knew there was no way to get any more stringent than what we have, but I did not look at what other states have. That's a great compromise, as to the registry not making those public, a great way to keep up with people, but also not publicly humiliate them at the same time. And I would think, personally I would think that the federal trumps the state, you can run state concurrent to federal, but you can't run federal concurrent to state as far as your registration.

0:24:13.2 OO: Yeah, okay, that's good, that's good to know. So it's not gonna be like 10 years plus another 20 years, combining those...

0:24:20.4 LM: I wouldn't think it was concurrent, but also if it's for the same offense, then I would think your federal... Your federal conviction, it states what your registration should be, not the state's.

0:24:31.5 OO: And of course, yeah, and it depends on the crime as well. Lori Murray, a defense attorney in South Carolina, thank you for taking time out of your busy schedule, and we learned a lot from talking to you today, and I really appreciate your time, have a great weekend, by the way.

0:24:46.4 LM: Thanks, Matt, you too, I appreciate you having me.

0:24:48.4 OO: A lot of good information. Thanks again, Lori Murray, attorney. And if you're in need of a defense attorney in the state of South Carolina, there's the information on the screen. You can contact Lori for more information on your situation.

0:25:01.5 OO: So good news coming out of South Carolina. We're gonna see, I'm gonna keep an eye on this to see what happens and how it potentially could affect other states. If you'd like to be a guest on The Outspoken Offender, let me know. Contact me any time. I wanna appreciate you

South Carolina's Lifelong Sex Offender Registry Is Illegal-1

watching this on YouTube and listening to this on my podcast. Have a great day.

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