IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

DERRICK LAMON SESSION Appellant,	)	
v.	)	CASE NO: S23A0022
STATE OF GEORGIA Appellee	)	

APPELLEE'S BRIEF

Matthew Rollins
District Attorney
State Bar No. 611763

A. Brett Williams
Assistant District Attorney
State Bar No. 760811

District Attorney's Office
Paulding Judicial Circuit
280 Constitution Boulevard, Room 2072
Dallas, Georgia 30132
Phone (770) 443-7561
Fax (770) 443-7538

IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

DERRICK LAMON SESSION Appellant	)	
v.	)	CASE NO: S23A0022
STATE OF GEORGIA Appellee	)	

APPELLEE'S BRIEF

PART ONE

STATEMENT OF THE CASE

The indictment in the underlying Paulding County case, 20-CR-1035, was filed on October 28, 2020; the indictment entails 2 counts alleging that Appellant has committed the crimes of Failure to Register as a Sex Offender. (Hereinafter, reference to this Court's digital appellate record for this case will be referred to as "V1" along with the corresponding page numbers of the digital appellate record (V1.3-5).) Count 1 of the indictment alleges that the offense occurred between March 1, 2019 and March 12, 2019; count 2 of the indictment alleges that the offense occurred on or about March 1, 2019. On July 5, 2022, the Trial Court conducted a consolidated bench trial on the underlying Paulding County case and Appellant's other Paulding County case, 20-CR-1059. (VI.44-54) At the

conclusion of the bench trial on the same day, the Trial Court found the Appellant guilty of both counts in the underlying case and guilty of count 1 of the indictment in case 20-CR-1059; accordingly, the Trial Court imposed on the Appellant an overall sentence for both cases of 20 years, to serve 5 years in confinement, and a $6,000 base fine, with the incarceration time being suspended upon the Appellant's paying the overall total fine within 6 months after the sentencing date; as a condition in each sentence, the Appellant is to register as a sex offender and comply with Georgia's sex offender registry's requirements. (V1.46-54) Thereafter, the Appellant timely filed a notice of appeal, prompting this case to become docketed with this Court. (V1.1-2)

STATEMENT OF THE FACTS

On or about January 14, 1994, in the Franklin Parish of Louisiana, the Appellant acted in a sexual way towards a 4-year-old girl (hereinafter referred to as "Victim"); consequently, on May 3, 1994, the Appellant was indicted in the Fifth Judicial District Court, Parish of Franklin, in case 94-284F for the crime of aggravated rape, L.R.S. 14:42. (The May 18, 1995-Louisiana guilty plea hearing transcript is depicted by ("PHT") and the corresponding page number(s) noted on the paper transcript, 5, and by this Court's electronic Volume 1 (V1) and the corresponding page numbers, 60-66.) Then, on May 18, 1995, in the Louisiana case, while the Appellant was represented by counsel and while the Appellant was

17-years-old, he entered a guilty plea to a reduced charge of sexual battery, a felony crime carrying a maximum possible punishment of 10 years' imprisonment, with or without hard labor. (V1.60-66) (PHT.3) (See L.R.S. 14:43.1 ("Sexual battery") 1994.) During the plea hearing, when the presiding Judge asked the Appellant, "Are you pleading guilty because you actually did the things charged?" the Appellant answered, "Yes sir." ((V1.60-66) (PHT.4) After accepting the Appellant's guilty plea, the presiding Judge ordered a pre-sentencing investigation and scheduled sentencing for August 15, 1995. (V1.60-66) (PHT.5-6)

On August 15, 1995, the Appellant appeared at the sentencing hearing with counsel before the same Judge, who advised that he had "now received that pre-sentence report and studied it for the purpose of determining an appropriate sentence in your case." (The Louisiana sentencing hearing transcript is depicted by ("SHT") and the corresponding page number(s) noted on the paper transcript, 2, and by this Court's electronic Volume 1 (V1) and the corresponding page numbers, 67-72.) Then, the Judge confirmed that said crime was the Appellant's only or first offense. (SHT.2) Before pronouncing sentence, the Judge noted that he "had carefully studied … *the offense report in the instant matter*, and the factors in mitigation …. I have considered all these matters as well as the nature of the present offense in light of the provision of Article 894.1." (V1.67-72) (SHT.3) Then, while pronouncing sentence, the Judge stated the following:

> What you did was inexcusable.... What *you are actually guilty of is raping a four year old.* You greatly reduced your exposure by your plea bargain and that's good for you, very good for you. There aren't many crimes in this Court's mind that are worse than this one. Most likely your victim has been scarred for life. She will live with this from now on. ... The maximum sentences are to be reserved for the worst offenders and as far as I'm concerned, Mr. Sessions, that's you. I found nothing in the pre-sentence investigation that will work by way of mitigation on your behalf. ... And then you turn and prey on those that are too young to defend themselves or do anything to help themselves. ... I have reviewed the sentencing guidelines but *because of the victim's age and the fact that what actually occurred was rape*, I have chosen not to go along with them. Therefore, in light of these findings you will be sentenced to a term of imprisonment for ten years at hard labor under the supervision of the Louisiana Department of Corrections.

(V1.67-72) (SHT.4) (emphasis and ellipses supplied)

Based upon the transcript of the Appellant's guilty plea and sentencing in his Louisiana case, the Appellee understands that a second formal charging document charging the Appellant with sexual battery was not prepared; he simply entered his guilty plea on the amended charge of sexual battery. The underlying Louisiana indictment accuses the Appellant of aggravated rape when, on or about January 14, 1994, "with force and arms," he "violated the provisions of L.R.S. 14:42 relative to Aggravated Rape, in that he did commit aggravated rape upon [the Victim], age four (4)[.] (V1.55-58) (V2.5) The 1994 version of L.R.S. 14:42, "Aggravated Rape," (A) indicates in pertinent part that "[a]ggravated rape is a rape committed ... where the ... vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following

circumstances: (1) When the victim resists the act to the utmost, but whose resistance is overcome by force." That statute also indicates that "[w]hoever commits the crime of aggravated rape shall be punished by life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence." (See L.R.A. 14:42 (C).)

When the Appellant committed the acts underlying his Louisiana conviction, 2 Louisiana statutes concerning sexual criminal conduct towards a minor existed -- L.R.S. 14:81.2 ("Molestation of a juvenile") (1994) and L.R.S. 14:81 ("Indecent behavior with juveniles") (1994); however, at that time, both statutes required the offender to be "over the age of seventeen."

In 2004, the Appellant's Louisiana sentence that the trial court imposed ended. (V1.44-45, 55-72) (V2.5) (See Appellant's brief at page 1.) When the Appellant's Louisiana sentence ended, he was required to register in Louisiana until he moved to Texas, where he was required to register as a sex offender. (V2.12, 30-31) (See Appellant's brief at page 8.) Then, in April of 2017, the Appellant moved to Georgia, where he apparently registered as required until 2019, when he failed to register and/or update his information as described by the counts of the indictment in Paulding County case 20-CR-1035, and in 2020, when he failed to register and/or update his information as described by at least count 1

of the indictment in Paulding County case 20-CR-1059. (V2.12-13) (See Appellant's brief at pages 1 and 2.)

The **general written stipulated facts for Paulding County cases 20-CR-1035 and 20-CR-1059** for the purpose of the bench trial are as follows:

> Derrick Session was born on March 2, 1978.
>
> On march 3, 1994, the Grand Jury for Franklin Parish, Louisiana, indicted Mr. Session in Case No. 94-284 for the Aggravated Rape of four-year-old juvenile L.M.R. on January 14, 1994.
>
> On June 6, 1995, Mr. Session amended his plea of not guilty to Guilty to Sexual Battery under R.S. 43.1.
>
> After accepting Session's plea, the trial court set Session's sentencing for August 15, 1995.
>
> At the August 15, 1995 hearing, the trial court sentenced Mr. Session to ten years to serve at hard labor.
>
> After successfully completing his sentence, Mr. Session qualified for and received a first-offender pardon pursuant to R.S. 15:572, which was issued on January 19, 2004. (V2.44)

For purposes of the underlying bench trial, the **specific stipulations for Paulding County case 20-CR-1035**, which is the basis for this appellate case, S23A0022, are as follows:

> After moving to Paulding County, Georgia, from Texas on April 4, 2017, Mr. Session registered with the Paulding County Sheriff's Office.
>
> On March 1, 2019, Mr. Session completed his Paulding County Sheriff's Office Georgia Sex Offender Registration Form. Listing his address as 500 Branch Valley Drive, Dallas GA 30132.

> On March 12, 2019 Paulding County Detective Brett Whritenour did a residence check at 500 Branch Valley Drive, Dallas GA 30132, and was told that Mr. Session wasn't living there.
>
> Mr. Sessions [sic] was living at 3571 Kennesaw Station Drive, Kennesaw, Georgia 30144 since November 25, 2018.
>
> Mr. Sessions [sic] was arrested for Failing to Register on March 12, 2019. (V2.44-45)

As noted in the *Statement of the Case* section of this brief, the Appellant was indicted in case 20-CR-1035 on October 28, 2020; the indictment entails 2 counts of failure to register as a sex offender. (V1.3-5) The indictment in the Appellant's other at-issue case, 20-CR-1059, was returned the same date; that indictment entails 2 counts of failure to register as a sex offender, but the Appellee only proceeded on count 1 of that indictment at the underlying bench trial. (V2.22)

On July 5, 2022, a bench trial for both of the Appellant's at-issue cases occurred before the Trial Court; during the bench trial, Ann Elliott, an employee of the Georgia Bureau of Investigations (hereinafter "Ms. Elliott) testified as a State witness, and the State tendered into evidence the Indictment in the Appellant's at-issue Louisiana case (State Exhibit (SE)-1), the Appellant's automatic first-offender pardon in his Louisiana case (SE-2), and the transcript of the plea hearing and the sentencing hearing in the Louisiana case (SE-3). (V1.55-72) (V2.5-13)

During Ms. Elliott's testimony during the bench trial, she explained that she has been employed with the Georgia Bureau of Investigations (hereinafter "GBI")

for 14 years and in that capacity, she has been the supervisor of the sex offender registry for almost 10 years. (V2.8) When Ms. Elliott was asked how the Georgia sex offender registry and the GBI work together, she testified as follows:

> Basically, what we do is under GBI procedures and Georgia law, we receive information from out of state agencies, review, conduct the verification process, and that individual is added to the sex offender registry here in the state of Georgia.

(V2.7-8) Ms. Elliott testified that the GBI had placed the Appellant on the Georgia sex offender registry, and she confirmed that she had been able "to verify that Mr. Session was required to register in Louisiana." (V2.9) Ms. Elliott testified that the Appellant's registration form that was presumably completed upon the Appellant's relocating from Texas to Georgia indicates that the Appellant has a Louisiana conviction and had a Texas driver's license and "a spouse or family information in Texas." (V2.12) Additionally, Ms. Elliott testified that the Appellant was placed on the Georgia sex offender registry on or about April 10, 2017, noting that "we started the verification process when we sent the information over to the Louisiana Sex Offender Registry on April 7 of 2017. Mr. Session signed his sworn form with the Paulding County Sheriff's Office on April 7 of 2017." (V2.12) Ms. Elliott further explained as follows how the Appellant had been initially placed on Georgia's sex offender registry:

> He [i.e., the Appellant] signed the form on the 7th and that's basically what we look at as registration, but then we conduct our verification process

> which was on or about the 10th of April that he was placed on the Georgia Sex Offender Registry. (V2.12)

Consequently, the Appellee contends that the Appellant had clearly known that he had been (and continues to be) required to register with the Registry and update his Registry information in accordance with Georgia law during the time frames noted by the 2 underlying Paulding County indictments.

During the Prosecutor's closing argument at the bench trial, she explained how the State had met all the elements of the offenses that the Trial Court was adjudicating at the bench trial. (V2.22-23) Additionally in her closing argument, the Prosecutor noted that State v. Moore, 847 So. 2d 53, 56-60 (2003) explains that the automatic first offender pardon that the Appellant has received in his Louisiana case did not relieve him of registering with Louisiana's sex offender registry. (V2.27-28) The Prosecutor also noted that in Touchet v. Broussard, 31 So. 3d 986, 991-995 (2010), the Louisiana Supreme Court had explained the difference between Louisiana's automatic pardon that the Appellant has received and Louisiana's full gubernatorial pardon. (V2.27-28)

At the conclusion of the bench trial, the Trial Court found the Appellant guilty and sentenced him as noted in the *Statement of the Case* section of this brief. (V2.32-41)

The record will be further developed below as necessary to address the Appellant's enumeration of errors.

PART TWO

APPELLEE'S RESPONSE TO APPELLANT'S ENUMERATION OF ERRORS

1. THE TRIAL COURT HAS NOT ERRED IN CONVICTING THE APPELLANT, AND THE GEORGIA SEX OFFENDER STATUTE O.C.G.A § 42-1-12 DOES APPLY TO THE APPELLANT.
2. THE TRIAL COURT HAS NOT ERRED IN CONVICTING THE APPELLANT, AND THE GEORGIA SEX OFFENDER STATUTE O.C.G.A § 42-1-12 DOES NOT VIOLATE THE FOURTEENTH AMENDMENT AS APPLIED TO THE APPELLANT.
3. GEORGIA'S SEX OFFENDER REGISTRY DOES NOT VIOLATE THE 1983 GEORGIA CONSTITUTION'S ARTICLE 1, SECTION 1, PARAGRAPH XXV, WHICH CONCERNS SOCIAL STATUS LEGISLATION.

STATEMENT OF JURISDICTION

Pursuant to the 1983 Georgia Constitution, art. VI, § VI, para. II, this Court has exclusive jurisdiction in all cases involving the construction of the Georgia constitution, including when a Georgia statute is alleged to be in whole or in part unconstitutional. See generally City of Decatur v. Dekalb County, 284 Ga. 434, 436-437 (2008) and In re K.R.S., 284 Ga. 853, 853 (1) (2009). However, for this

Court to have constitutional question jurisdiction, the appellant must have specifically raised the constitutional issue with the trial court and the trial court must have distinctly ruled on it. See generally Jenkins v. State, 284 Ga. 642, 643-645 (1), including n. 1 (2008) (Addressing a constitutional-void for vagueness challenge to O.C.G.A. § 42-1-12, this Court explained that when a final judgment by a trial court has been issued and filed pursuant to O.C.G.A. § 5-6-34 (a), (b), or (c), that trial court's related constitutional question-ruling, whether in writing or not, may invoke this Court's jurisdiction under O.C.G.A. § 5-6-34 (d) if that constitutional question will have been properly raised and distinctly ruled upon by the trial court.); City of Decatur v. Dekalb County, supra, 284 Ga. at 436 and Nathans v. Diamond, 282 Ga. 804, 807-808 (2) (2007); see too Bello v. State, 300 Ga. 682, 683, n. 2 (2017) (Although the trial court's appealed-from-order denying appellant's motion did not "substantively discuss" the constitutional challenges to the Georgia statute that the motion entails, "the trial court clearly ruled on the constitutional issues inasmuch as those issues were the only issues raised in the motion[s]."); compare City of Decatur v. Dekalb County, supra, 284 Ga. at 436 (2) ("The Court of Appeals has jurisdiction when the constitutionality of a state law is questioned if the law has been held to be constitutional against the same attack being made, as such a case 'requires merely an application of unquestioned and

unambiguous constitutional provisions. ...' *Zepp v. Mayor & Council of City of Athens*, 255 Ga. 449, 451 (2) ... (1986).").

The Appellee defers to this Court's determination as to its jurisdiction over the issues raised by the Appellant's brief.

ARGUMENT AND CITATION TO AUTHORITY

1. THE TRIAL COURT HAS NOT ERRED IN CONVICTING THE APPELLANT, AND THE GEORGIA SEX OFFENDER STATUTE O.C.G.A § 42-1-12 DOES APPLY TO THE APPELLANT.

A Georgia Appellate Court reviews under a de novo standard a Trial Court's ruling that involves its construction or interpretation of a Georgia statute. See generally Williams v. State, 299 Ga. 632, 633 (2016). When a criminal defendant challenges the constitutionality of a statute,

> [a] trial court must uphold [the] statute unless the party seeking to nullify it shows that it manifestly infringes upon a constitutional provision or violates the rights of the people. The constitutionality of a statute presents a question of law. Accordingly, [this Court] review[s] a trial court's holding regarding the constitutionality of a statute de novo.

Rhodes v. State, 283 Ga. 361, 362 (2008) (Parentheticals added.); see too generally Williams v. State, supra, 299 Ga. 632, 633 (2016). Regarding the presumed constitutionality of a Georgia statute, this Court has also explained as follows:

> We presume that statutes are constitutional, and before an Act of the legislature can be declared unconstitutional, the conflict between it and the fundamental law must be clear and palpable and this Court must be clearly satisfied of its unconstitutionality. Because all presumptions are in favor of

> the constitutionality of a statute, the burden is on the party claiming that the law is unconstitutional to prove it.

Ga. Dep't of Human Servs. v. Steiner, 303 Ga. 890, 894-895 (II) (2018) (Internal citations and quotations omitted.). Additionally, while reviewing the constitutionality of a Georgia statute, the Appellate Court applies the standard canons and precepts of statutory construction, including that the Court will

> presume that the General Assembly meant what it said and said what it meant. To that end, [the Court] must afford the statutory text its plain and ordinary meaning, [the Court] must view the statutory text in the context in which it appears, and [it] must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would.

Williams v. State, supra, 299 Ga. at 633 (1) (Parentheticals added.) (quoting Deal v. Coleman, 294 Ga. 170, 172-173 (1) (2013)); see too Martinez v. State, 325 Ga. App. 267, 273 (2) (2013); Dixon v. State, 278 Ga. at 4 (1), n. 2; and Spivey v. State, 274 Ga. App. 834, 835 (2005). Additionally, upon such review of a statute, if this Court were to find the challenged statutory text clear and unambiguous, this Court would then attribute to the text its plain meaning. Williams v. State, supra, 299 Ga. at 633 (1).

In Smith v. Doe, the Supreme Court of the United States held that Alaska's sex offender registration statute is not punitive and, accordingly, does not violate the Ex Post Facto Clause of the federal constitution. Smith v. Doe, 538 U.S. 84, 96-106 (2003); see too Wiggins v. State, 288 Ga. 169, 171-172 (3) (2010); Rainer v. State, 286 Ga. 675, 675-676 (1) (2010); Watson v. State, 283 Ga. App. 635, 635-

637 (2007); and Smith v. State, 84 So. 3d 487, 497-499 (VI) (Supreme Ct. of Louisiana 2012) In so holding, the Supreme Court noted that the "Ex Post Facto Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences." Smith v. Doe, 538 U.S. at 103. Indeed, in citing authority for concerns about the high recidivism rates among sex offenders, the Supreme Court found that "Alaska could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism." Id. at 103-106. At the outset of the opinion, the Smith-Court explained as follows the genesis for all states of this country and the District of Columbia to enact sex offender registration statutes:

> The State of Alaska enacted the Alaska Sex Offender Registration Act (Act) on May 12, 1994. ... Like its counterparts in other States, the Act is termed a 'Megan's Law.' Megan Kanka was a 7-year-old New Jersey girl who was sexually assaulted and murdered in 1994 by a neighbor who, unknown to the victim's family, had prior convictions for sex offenses against children. The crime gave impetus to laws for mandatory registration of sex offenders and corresponding community notification. In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, ... which conditions certain federal law enforcement funding on the States' adoption of sex offender registration laws and sets minimum standards for state programs. By 1996, every State, the District of Columbia, and the Federal Government had enacted some variation of Megan's Law.

Smith v. Doe, 538 U.S. at 89-90 (both ellipses added).

"The [Georgia] General Assembly first adopted the sexual offender registration requirements in 1996. See Ga. L. 1996, p. 1520." Yelverton v. State,

300 Ga. 312, 313, n. 3 (2016) (parenthetical added). However, in and prior to 1994, the following Georgia statutes were in effect although for most, if not all, not with their exact current wording: child molestation and aggravated child molestation (O.C.G.A. § 16-6-4) (("enacted by Ga. L. 1968"); criminal attempt (O.C.G.A. § 16-4-1) ("enacted by Ga. L. 1968"); rape (O.C.G.A. § 16-6-1) ("enacted by Ga. L. 1968"); and aggravated sexual battery (O.C.G.A. § 16-6-22.2) ("enacted by Ga. L. 1990") (quoting from the O.C.G.A. annotations that correspond with the foregoing statutes).

O.C.G.A. § 42-1-12 (a) (2019) defines the "terms" that are used throughout that code section. O.C.G.A. § 42-1-12 (a) (9) (A) (2019) indicates in pertinent part that a '"[c]riminal offense against a victim who is a minor' with respect to convictions occurring on or before June 30, 2001, means any … offense under … the laws of another state … which consists of: … (iii) Criminal sexual *conduct* toward a minor; … or (vii) Any conviction resulting from an underlying sexual offense against a victim who is a minor." (emphasis provided)

O.C.G.A. § 42-1-12 (a) (9) (20) (2019) indicates in pertinent part that '"[s]exual offender' means any individual: … (B) Who has been convicted under the laws of another state … of a criminal offense against a victim who is a minor or a dangerous sexual offense; or (C) Who is required to register pursuant to subsection (e) of this Code section."

O.C.G.A. § 42-1-12 (e) (2019) indicates in pertinent part that "(r)egistration pursuant to this Code section shall be required by any individual who: … (3) Has previously been *convicted of a criminal offense against a victim who is a minor* and may be released from prison or placed on parole, supervised release, or probation on or after July 1, 1996; … (6) Is a nonresident who changes residence from another state … to Georgia who is required to register as a sexual offender under … the laws of another state …." (emphasis provided)

The above-quoted provisions of O.C.G.A. § 42-1-12 (2019) are the same in the 2020 version.

In Spivey v. State, supra, in which the Court of Appeals analyzed the provisions of a prior version of O.C.G.A. § 42-1-12 that are similar to the above-excerpted provisions of O.C.G.A. § 42-1-12 (a) (9) (A) (2019), the Court explained the legislature's intent in enacting and updating the Registry as follows:

> The sexual offender registry statute is *designed to require registration for a wide array of offenses*. Registration is required for those convicted of sexually violent crimes, and for those convicted of committing a variety of offenses against children. … Registration is required not only for those convicted of sexual offenses against a child but also for those … convicted of charges based on *conduct* underlying a criminal conviction that constitutes a sexual offense against a child.

Spivey v. State, 274 Ga. App. 834, 835 (1), and n. 1 (2005) (emphasis provided in one instance but it is in the original in the other; ellipses provided). As to the Spivey-Court's above-quoted language concerning the Registry's applicability to a

wide range of various sex offenses, this Court quoted said language with approval in Jenkins v. State, 284 Ga. 642, 645 (2008). See too Wiggins v. State, supra, 288 Ga. 169, 173 (2), n. 2 (2010) (This Court explained that in 2001 as to the Registry, "the General Assembly expanded the definition of a criminal offense against a minor that would subject the offender to sex-offender registration to include, among other things, convictions with underlying sexual conduct against children. … Appellant's conviction for child molestation was based on underlying sexual conduct, i.e., requiring the 16-year-old victim to touch his penis and requiring her to permit him to touch her breast.").

The record before this Court on this appeal demonstrates that in the Appellant's aforementioned Louisiana case, his conduct toward the four-year-old Victim constitutes "criminal sexual conduct toward a minor." See Owens v. Urbina, 296 Ga. 256, 256-259 (2014); Price v. State, 320 Ga. App. 85, 89 (2013) (In finding that the trial court had been authorized to order appellant Price to register as a sex offender, the Court of Appeals explained: '"In determining whether the conduct toward the minor was sexual in nature, courts must look to the underlying facts of the conviction in question. This inquiry may include looking to the underlying facts as set forth in the indictment or accusation.'") (quoting Rogers v. State, 297 Ga. App. 655, 656 (2009)); Rogers v. State, 297 Ga. App. 655, 656-658, including n. 3 (2009); and Brown v. State, 270 Ga. App. 176, 179-180 (2)

(2004) (Before the misdemeanor exception became a part of O.C.G.A. § 42-1-12, the Brown-Court held that appellant's act of and conviction for public indecency constituted "criminal sexual conduct toward a minor" and authorized the trial court to require him to register as a sex offender.). Additionally, the Appellee contends that this Court could find that based upon the sentencing Judge's comment that the Appellant had actually raped the 4-year-old Victim, the Appellant's underlying offense constitutes a "dangerous sexual offense" as defined by O.C.G.A. 42-1-12 § (a) 10 (A) (ii). Further, the Appellant's at-issue felony Louisiana conviction constitutes a "conviction resulting from an underlying sexual offense against a victim who is a minor" and, consequently, constitutes a "criminal offense against a victim who is a minor." See O.C.G.A. § 42-1-12 (a) (9) (A) (iii) and (e) (3). Further, the Appellant's Louisiana conviction makes him a sexual offender as defined by O.C.G.A. 42-1-12 § (a) (20) (B) and (C).

Therefore, since the Appellant had moved to Georgia in April 2017, he has been subject to O.C.G.A. § 42-1-12 pursuant to subsection (e) (3) of that statute. See Holland v. Deal, 2018 U.S. Dist. LEXIS 127939, *4-8 (United States District Court for the Northern District of Georgia; April 24, 2018, decided).

In 2010, Louisiana Revised Statute § 15:544 ("Duration of Registration Period") was modified to include the following pertinent language:

> (B) (1) A person required to register pursuant to this Chapter who was convicted of a *sexual offense against a minor as defined by R.S. 15:541* shall

> register and provide community notification … for a period of *twenty-five years* from the date of initial registration in Louisiana …. The requirement to register shall apply to an offender who has been pardoned.
>
> (C) (2) An offender required to register pursuant to the provisions of this Chapter shall only receive credit for the period of time in which he resides in this state and is in compliance with all registration and notification requirements of this state.

(L.R.S. § 15:544 (2011)) (emphasis supplied); see Smith v. State, supra, 84 So.3d 487, 496, n. 6 (2012) (noting the just-mentioned modification to the L.R.S. 15:544). In April 2017, when the Appellant moved from Texas to Georgia, where he has apparently resided since, the above language of L.R.S. 15:544 existed except that the foregoing pardon language had changed to the following under subsection (A) of the statute: "The requirement to register shall apply to an offender who receives a pardon as a first time offender pursuant to Article IV, Section 5 (E) (1) of the constitution of Louisiana and R.S. 158572 (B) (1)." This is the type of pardon that the Appellant has received in his Louisiana case. See generally State v. Moore, supra, 847 So. 2d 53, 56-60 (2003) and Touchet v. Broussard, supra, 31 So. 3d 986, 991-995 (2010) (V2.73-74). (See Appellant's brief at pages 1 and 8.) Also in the 2017 version of this statute, the above-mentioned language about credit for time served under subsection (C) (2) appears in subsection (D) (2). All the foregoing excerpted language has remained in that statute to date. (See L.R.S. 15:544 (2022).) Additionally, under the above-mentioned L.R.S. § 15:541 ("Definitions") at subsection (25) (a), sexual battery, a

felony, is noted as a "sexual offense against a victim who is a minor"; further, under subsection (24) (a) of that statute, sexual battery, R.S. 14:43.1, is noted as a "sexual offense." The just-mentioned definitions of L.R.S. § 15-541 (2022) were the same in the 2017 version of the statute and in the subsequent versions.

Therefore, the Appellee contends that when the Appellant moved from Texas to Georgia in April 2017, he was (and still is) required to register in Louisiana if he were to move back to that state, and he would not receive any credit towards the twenty-five years that he must register in Louisiana for the time that he has not resided in Louisiana. Accordingly, since the Appellant had moved to Georgia in April 2017, he has been subject to O.C.G.A. § 42-1-12 pursuant to subsection (e) (6) of that statute.

The current version of the aforementioned L.R.S. 15:541 at subsection (2) lists the offenses that are considered aggravated offenses; that subsection includes "(d) Sexual battery prosecuted under the provisions of R.S. 14:43.1 (c) (2)," which entails committing sexual battery against a victim who is younger than thirteen-years-old; and "(e) Second degree battery (R.S. 14:43.2)." In the 2017 version of this statute and thereafter, both of these offenses are considered aggravated offenses.

The aforementioned Louisiana Revised Statute § 15:544 ("Duration of Registration Period") that was modified in 2010 includes the following pertinent language in subsection (A):

> Except as provided for in Subsection B of this Section, a person required to register and provide notification pursuant to the provisions of this Chapter shall comply with the requirement for *a period of fifteen years* from the date of the initial registration in Louisiana .... The requirement to register shall apply to an offender who is pardoned.

The just-quoted language remains in the current version of that statute. (See L.R.S. § 15:544 (2022).) If this Court were to determine that the applicable time period for which the Appellant has been required to register in Louisiana from the conclusion of his sentence in 2004 while he had resided there is 15 years, rather than 25 years, the Appellee contends that the Appellant had not fulfilled said registry requirement when he moved to Georgia in April 2017, especially since the time that he had resided in Texas has presumably not counted toward Louisiana's mandatory reporting period. In this regard, in the above-mentioned L.R.S. § 15:541 ("Definitions") (2022), compare subsection (12) with subsection (25) (a), sexual battery, a felony. Consequently, under this rationale, the Appellee contends that the Appellant would still have been required to register in Georgia when he moved to Georgia and thereafter pursuant to O.C.G.A. § 42-1-12 (e) (6).

Because the Appellant had been required to register in Texas while he had resided there and the Appellant moved from Texas to Georgia, the Appellant has also been required to register in Georgia pursuant to O.C.G.A. § 42-1-12 (e) (6). (See Appellant's brief at page 8.)

Wherefore, the Appellant's claim that O.C.G.A. § 42-1-12 does not apply to him is meritless.

2. THE TRIAL COURT HAS NOT ERRED IN CONVICTING THE APPELLANT, AND THE GEORGIA SEX OFFENDER STATUTE O.C.G.A § 42-1-12 DOES NOT VIOLATE THE FOURTEENTH AMENDMENT AS APPLIED TO THE APPELLANT.

"An **as-applied challenge** addresses whether a statute is unconstitutional on the facts of a particular case or to a particular party." Bello v. State, 300 Ga. 682, 686 (2017) (quoting Hertz v. Bennett, 294 Ga. 62, 66 (2) (c) (2013)); compare Wiggins v. State, supra, 288 Ga. 169, 172 (2010) (In addressing Wiggins' as-applied void for vagueness challenge to O.C.G.A. § 42-1-12, this Court noted that it "decline[d] to address the *appellant's hypothetical arguments* regarding the statute's failure to identify what other individuals or entities may require an individual to register as a sex offender[,]" because the trial court had been authorized to require the appellant to register with the Registry as a special condition of probation.) (emphasis and alterations supplied); see too generally

Youmans v. State, 291 Ga. 754, 755-756 (2012); Dunn v. State, 286 Ga. 238, (2009); State v. Boyer, 270 Ga. 701, 701-703 (1) (1999); and Pecina v. State, 274 Ga. 416, 417 (2001).

As to **Appellant's equal protection challenge** that is part of his as-applied challenge, because he is not similarly situated to a person convicted of having violated the 1994 version of Georgia's misdemeanor sexual battery statute, his challenge fails at the threshold of the analysis. See generally Woods v. State, 361 Ga. App. 844, 847 (1) (2021); Dunn v. State, supra, 286 Ga. 238, 242-244 (2) (2009); and Rainer v. State, 286 Ga. 675, 677-679 (2) (2010). (See Appellant's brief at page 20.) Further, the overall record about the Appellant's Louisiana conviction demonstrates that the Appellant's "conduct" underlying his felony sexual battery conviction would have merited his being prosecuted for one or more felony offenses in the State of Georgia if his conduct were to have occurred in Georgia during the same time period. See Stately v. State, 284 Ga. 873, 874 (2009) (In discussing Georgia's child molestation criminal statute and exploitation of children statute, this Court noted: "The General Assembly, by enacting § 16-6-4 and 16-6-5, intended to protect children in this state under the age of 16 from sexual predators and offenders. Ga. L. 1995, p. 957.").

Even pretermitting that the Appellant has established that he is similarly situated to a person convicted of Georgia's 1994 version of its sexual battery

statute, the Appellant's claim still fails under the applicable rational basis test, because he would still be (and has been) required to register under O.C.G.A. § 42-1-12 (e) (6). See generally Rainer v. State, supra, 286 Ga. 675, 676-679 (2010); Holland Deal, supra, 2018 U.S. Dist. LEXIS 127939, *5-8 (United States District Court for the Northern District of Georgia; April 24, 2018, decided) (In rejecting appellant's claim that O.C.G.A. § 42-1-12 (e) (1) precluded his being required to register pursuant to (e) (3) of the statute, the Court noted that appellant's argument would render meaningless the statute's (e) (2) through (e) (8) provisions, which are listed in the disjunctive.); and Moffitt v. State, 359 Ga. App. 261, 263 (2021) (As to statutory construction, Courts interpret a statute's provisions so as to try to avoid rendering any of the provisions "mere surplusage."). However, as stated previously, the Appellee contends that the Appellant has not carried his burden of establishing that he is similarly situated in the manner that he has contended.

The enactment and enforcement of O.C.G.A. § 42-1-12 and related statutes is a proper exercise of the State of Georgia's police powers and is properly tailored to serve the State's remarkably legitimate and compelling interests in protecting children and other persons from possible harm from convicted sex offenders and/or dangerous sexual predators who travel to or move to Georgia. See Smith v. Doe, supra, 538 U.S. 84, 95-103 (2003) and Davis v. State, 248 Ga. 783, 785, 783-785 (1982) (In rejecting the appellant's claim that his constitutional right to travel had

been violated, this Court noted that "[i]t has been recognized that 'a state has vast discretion in developing classifications and categories in the exercise of its police powers.'").

The United States Supreme Court case concerning the federal constitutional **right to travel** that is cited in the Appellant's brief, Saenz v. Roe, 526 U.S. 489, 500-506 (1999), deals with a California state law that used a durational residency requirement to reduce the amount of state welfare benefits for those who had recently become state residents compared to those who had been residents of the state for a longer period of time. This type of state durational residency requirement imposed in order to qualify a resident to receive state benefits or to vote has been deemed by the High Court, for the most part, as an impermissible infringement on the right to move to and establish a residence in a state. See generally Zobel v. Williams, 457 U.S. 55 (1982); Shapiro v. Thompson, 394 U.S. 618 (1969); and Dunn v. Blumstein, 405 U.S. 330 (1972); compare Sosna v. Iowa, 419 U.S. 393 (1975). In other words, such state statutes or laws have been deemed unconstitutional when the only factor, or at least the main factor, in such state statutory scheme that causes a newly arrived resident to be situated and treated differently is the duration of time he or she has been a resident in such state.

A sex offender is required to register in Georgia pursuant to O.C.G.A § 42-1-12 because he or she will have been convicted of a qualifying criminal offense.

Consequently, the Appellee contends that such convicted sex offender's right to interstate travel and to establish a new residence in a different state of the United States is qualified, to an extent, based upon such conviction. See Jones v. Helms, 452 U.S. 412, 422-426 (1981). Additionally, the Georgia state government, like the state governments of other states of this country, and the people living in Georgia need to be able to know where sex offenders reside in the state, and those limitations that O.C.G.A. § 42-1-12 and related statutes impose upon sex offenders residing in Georgia are necessary to protect the citizens of and other persons in this state.

Regardless of which of the 3 tiers of scrutiny this Court were to use to assess whether O.C.G.A. § 42-1-12 violates the Appellant's constitutional right to interstate travel, this Court should find that said statute does not impermissibly infringe upon the Appellant's constitutional right to move his residence from another state of the United States to Georgia; that is, the statute does not impermissibly impede any constitutional right to travel as to the Appellant. See United States v. Ambert, 561 F.3d 1202, 1209-1210 (11th Cir. 2009) and Doe v. Moore, 410 F.3d 1337 (11th Cir. 2005).

Wherefore, O.C.G.A. § 42-1-12 is constitutional as applied to Appellant, and his contention to the contrary is without merit; consequently, Appellant's second enumerated error is without merit.

3. GEORGIA'S SEX OFFENDER REGISTRY DOES NOT VIOLATE THE 1983 GEORGIA CONSTITUTION'S ARTICLE 1, SECTION 1, PARAGRAPH XXV, WHICH CONCERNS SOCIAL STATUS LEGISLATION.

Art. I, sect. I, para. II of the 1983 Georgia Constitution indicates as follows: "Protection to person and property is the paramount duty of the government and shall be impartial and complete. No person shall be denied the equal protection of the laws." This Court has held that this constitutional provision is "coextensive" with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Grissom v. State, 262 Ga. 374, 376-377 (2) (1992). Grissom v. State, supra, is valid appellate case law as to the construction of art. I, sect. I, para. II of the 1983 Georgia Constitution and should remain so. Additionally, in Ranier v. State, supra, and Dunn v. State, supra, this Court rejected equal protection challenges to O.C.G.A. § 42-1-12. Ranier v. State, supra, 286 Ga. 675, 676-679 (2) (2010) and Dunn v. State, 286 Ga. 238, 242-244 (2) (2009).

In the exercise of its police powers, the State of Georgia "may make, repeal, alter, or modify laws for the protection of the public." Bailey v. State, 210 Ga. 52, 55 (1953); see too Dennis v. State, supra, 226 Ga. 341, 342-343 (1) (1970) (discussing the police power of this state); Davis v. Pope, 128 Ga. App. 791, 792 (3) (1973) (In response to the claimant's claim that Georgia's implied consent law

suspending his driver's license for his refusal to take a state-administered test violated Due Process, the Court of Appeals noted that "[t]he state has the right to regulate drivers upon its public highways, and to impose conditions upon the use thereof, such as requirement of a driver's license .... This is a proper exercise of the police power of the state to prescribe regulations for public safety. Hence, the application of the Implied Consent Law does not offend the constitutional provisions respecting due process in any manner.") (ellipsis provided); Mackey v. Montrym, 443 U.S. 1, 13, 17-19 (1979) (in light of claimant's rejected-due process challenge to Massachusetts' implied consent statutory scheme, discussing Massachusetts' police power in relation to its implied consent statute that suspended a person's license for refusing a state-administered test); and Lebrun v. State, 255 Ga. 406, 406 (1986) (noting that under Georgia's police power, it was constitutionally permissible to impose reasonable conditions to qualify for a license); see too State v. James, 1999 Ohio App. LEXIS 5845, *4-5 (3rd Dist. Ohio Ct. of Appeals; December 8, 1999, decided) (In rejecting James' contention that Ohio's sexual predator statute is overly oppressive and violates his right to privacy, the Court reiterated that said statute is "a valid exercise of the state's police powers.") and Smith v. Doe, supra, 538 U.S. 84, 93-94 (2002) (In discussing Alaska's sex offender statute, the Supreme Court explained that "where a legislative restriction 'is an incident of the State's power to protect the health and

safety of its citizens,' it will be considered 'as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment."').

In Turner v. State, in discussing the admissibility of victim impact statements at sentencing in a capital case, Justice Sears cited art. I, sect. I, para. XXV of the 1983 Georgia Constitution (hereinafter "Paragraph XXV") in her concurrence; the following excerpt shows the context in which she cited the statute at endnotes 18 and 19 of the opinion:

> I write separately, however, to stress the importance of the majority's findings that neither of the impact statements in this case emphasized the victim's social status, and to caution trial courts against permitting any such emphasis in impact statements in future cases.
>
> [new paragraph] The Georgia Constitution's prohibition against legislation with 'the social status of a citizen' as its subject is based upon the principle that an individual's standing in society is irrelevant to even-handed administration of justice. Consistent with this principle, it is established that a jury may not recommend capital sentencing based upon a victim's class or wealth. This is so because, under our justice system, all victims are held in equal esteem, and accorded the same degree of reverence, no matter if they are rich or poor, loved or unloved, celebrated or anonymous. In other words, if we are to fulfill our obligation to ensure equal protection of the law, no victim can be valued over any other victim.

Turner v. State, 268 Ga. 213, 217-218 and n. 18 and 19 (1997) (Sears, J., concurring); see too Livingston v. State, 264 Ga. 402, 418-419 (Benham, P.J., dissenting) (citing Paragraph XXV in his discussion of victim impact statements in death penalty cases); see too the suggested pattern jury charge on sympathy.

In Jones v. Burks, the Court of Appeals cited Paragraph XXV while discussing the standard to use to decide whether a third party has established by clear and convincing evidence that a child's parent's having custody of the child is or would be harmful. Jones v. Burks, 267 Ga. App. 390, 392 and n. 2 (2004). In this regard in Jones v. Burks, the Court explained that in order to meet the best-interest-of-the-child standard, such third party must demonstrate "that custody would harm the child physically or emotionally (not socially or economically)" "to rebut the statutory presumption in favor of the parent … and, upon meeting its initial burden, the third party must show … that 'an award of custody to him or her will best promote the child's health, welfare, and happiness.'") (ellipses supplied).

O.C.G.A. § 42-1-12 requires a person to register with and comply with Georgia's sex offender registry based upon such person's prior conduct and related criminal conviction and the perceived potential threat that such person might pose to other people, including, of course, children, in the future. The statute does not classify or categorize or require persons to register based upon their respective past, current, or foreseeable economic status; class; race; gender; or age; additionally, the statute does not classify or categorize or require persons to register based upon their victims' respective past, current, or foreseeable economic status; class; race; gender; or age. Consequently, the enactment and enforcement of O.C.G.A. § 42-1-12 is a proper exercise of the State of Georgia's police powers

in its efforts to protect the citizens of Georgia, and the statute does not violate art. I, sect. I, para. XXV of the 1983 Georgia Constitution.

Wherefore, the Appellant's third enumeration of error is without merit.

CONCLUSION

For the foregoing reasons, the Appellee requests this Court to affirm the Appellant's convictions and sentences in the underlying Paulding Co. case.

Respectfully submitted this 13th day of September, 2022.

/s/ Matthew Rollins
Matthew Rollins
District Attorney
Paulding Judicial Circuit
State Bar No. 611763

/s/ A. Brett Williams
A. Brett Williams
Assistant District Attorney
Paulding Judicial Circuit
State Bar No. 760811

District Attorney's Office
Paulding Judicial Circuit
280 Constitution Boulevard, Room 2072
Dallas, Georgia 30132
Phone (770) 443-7561
Facsimile (770) 443-7538

IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

DERRICK LAMON SESSION Appellant	)	
v.	)	CASE NO: S23A0022
STATE OF GEORGIA Appellee	)	

CERTIFICATE OF SERVICE

This is to certify that I have served a true PDF – formatted electronic copy of the foregoing brief on the Appellant's attorneys, **Mr. Keegan Gary, APD, and Mr. Hunter J. Rodgers, APD,** of the Paulding Judicial Circuit's Public Defender's Office at 280 Constitution Boulevard, Room 1086, Dallas, Georgia 30132. These attorneys and I have agreed to electronic service on our common appellate cases with this Court. I emailed both attorneys their respective copies at their work email addresses: keegan.gary@paulding.gov and hunter.rodgers@paulding.com.

Filed this 13th day of September, 2022.

/s/ A. Brett Williams
A. Brett Williams
Assistant District Attorney
Paulding Judicial Circuit
State Bar No. 760811