

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ARTHUR DOE, *et al.*,

Plaintiffs,

v.

JIM HOOD, Attorney General of the
State of Mississippi, *et al.*,

Defendants.

Case No. 3:16-cv-00789-CWR-FKB

DECLARATION OF GHITA SCHWARZ IN SUPPORT OF
PLAINTIFF ARTHUR DOE'S MOTION FOR SUMMARY JUDGMENT

I, Ghita Schwarz, declare as follows:

1. I am a member of the State Bar of New York and am admitted *pro hac vice* in this action. I am a Senior Staff Attorney at the Center for Constitutional Rights ("CCR"), and counsel of record along with the Law Office of Robert McDuff and the Law Office of Matthew Strugar for Plaintiffs in this action. The facts contained in this declaration are known personally to me and, if called as a witness, I could and would testify competently thereto under oath.

2. I make this declaration in support of Plaintiff Arthur Doe's Motion for Summary Judgment.

3. Plaintiffs and Defendants have entered into a settlement agreement and proposed a partial judgment that was submitted to the Court on April 3, 2018 and is pending. [REDACTED]

9. Attached as Exhibit 5 is a true and correct copy of excerpts of the file of the Plaintiff known as Arthur Doe. [REDACTED] [REDACTED] contain Bates Nos. Doe_P.00001, Doe_P. 00004, MSOR 000372, MSOR 000375, and MSOR 000421.

10. Attached as Exhibit 6 is a true and correct copy of excerpts of files of Plaintiffs known as Brenda Doe, Carol Doe, Diana Doe, and Elizabeth Doe. [REDACTED]

[REDACTED]

[REDACTED]

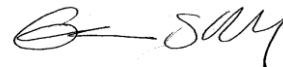
[REDACTED]. The excerpts contain Bates Nos. Doe_P.0005-28.

11. Attached as Exhibit 7 is a true and correct copy of the Affidavit and Report of Plaintiff's Expert Robert Rudder (December 6, 2017).

12. Attached as Exhibit 8 is a true and correct copy of excerpts from Defendant Hill's Responses and Objections to Plaintiffs' Third Set of Interrogatories (March 15, 2018).

13. Attached as Exhibit 9 is a true and correct copy of excerpts from Defendant Hood's Responses and Objections to Plaintiffs' First Set of Requests for Admission (April 10, 2018).

Executed this 8th day of May, 2018



Ghita Schwarz
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that on this day I, Ghita Schwarz, Counsel for Plaintiffs, electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notice of such filing to the following:

PAUL E. BARNES, MSB No. 99107
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ATTORNEYS FOR DEFENDANTS

THIS, the 8th day of May 2018.

/s/Ghita Schwarz

GHITA SCHWARZ

EXHIBIT 7

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AFFIDAVIT AND REPORT OF ROBERT RUDDER

ROBERT RUDDER, being first sworn, states as follows:

1. This affidavit serves as a report stating the opinions I will express and the underlying facts upon which I will rely in expressing those opinions in this case.
2. I am the training director for the Mississippi Office of State Public Defender (OSPD) in Jackson, Mississippi. I have been the training director since 2012 and in this capacity I am charged with training every public defender in Mississippi. Beginning in fiscal year 2013, OSPD has offered an average of six distinct training opportunities per year that include an average of sixty-five hours of continuing legal education credit spread out across those six trainings. Each year I design, plan, and execute two multi-day conferences, one in the fall and one in the spring, that focus on felony trial level defense. Two hundred to three hundred public defenders and other criminal defense attorneys attend one or both of these conferences each year.
3. Through training, OSPD teaches Mississippi's public defenders to be client-centered lawyers. This means they strive to provide their clients with the same quality of representation as their wealthier counterparts could afford by spending enough time and energy with their clients to jointly identify goals for the representation and by deferring to their clients with respect to important decisions in the case. Part of being a client-centered lawyer is fully advising clients of not only the possible jail time they face but also of any collateral consequences of conviction. Therefore, OSPD frequently trains public defenders on collateral consequences of conviction and how to avoid them. I have been able to identify at least six such instances since December of 2013. Most recently, in October of 2017, we trained our lawyers on the immigration consequences of criminal justice involvement. In April of 2017 we taught our juvenile defenders about the

collateral consequences of adjudication. In October of 2016 we talked specifically about the sex offender registry. In April of 2015 we had multiple presentations on the difficulty of reentry after conviction and unexpected collateral consequences. In April of 2014 we presented how to investigate potential collateral consequences of conviction. In October of 2014 we welcomed the Bronx Defenders to discuss their holistic defense model, a cornerstone of which is addressing collateral consequences of conviction prior to disposition of the case. Lastly, in December of 2013 we devoted an entire two-day conference to defending alleged sex crimes. Within that training we offered an hour entitled "Collateral Consequences: Registration and other Related Topics."

4. As the training director for OSPD, when I am not planning or directing a training event, I am engaged in providing technical assistance to those that we train. This assistance most often takes the form of answering questions and discussing cases over the phone, via email, or in person. Collateral consequences are a frequent concern and topic for discussion. Even though sex cases are just a small fraction of total cases, the potential consequence that is brought up most frequently and that merits the most discussion is sex offender registration. Defenders are always asking how to advise their clients prior to adjudication about the registry and options for avoiding the registration requirement. Defenders also ask about past clients and options for relieving them of the duty to register.
5. From 2004 to 2012 I was an assistant public defender representing felony trial level clients from appointment through disposition. I exclusively represented clients charged with felony crimes in adult court. I had at least one hundred clients at all times and five to ten percent of those clients were charged with offenses that could result in a requirement to register as a sex offender. In negotiating these cases and advising my clients, avoiding registration was almost always a high priority of the client second only to avoiding jail time. The specter of a lifetime registration requirement played a role in most client conversations and was used as a negotiating tool by both myself as well as the State.
6. Through advising clients and litigating cases for the first ten years of my career and through training and consulting with public defenders for the last five years, it is clear to me that collateral consequence and more specifically, sex offender registration, is a critical issue for criminal defendants charged with sex crimes. The question of whether a defendant must register is almost always pivotal in deciding how to resolve the case.
7. A list of offenses for which a person convicted of one of those offenses must register as a sex offender can be found at Miss. Code Ann. § 45-33-23 (h). Miss. Code. Ann. § 45-33-25 (1) (a) states that only a conviction for a registerable offense triggers the requirement to register as a sex offender. Miss. Code. Ann. § 45-33-23 (a) states "“Conviction” means that, regarding the person's offense, there has been a determination or judgment of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere regardless of whether adjudication is withheld.”"
8. In practice, and in training public defenders on defending sex offense charges, emphasis should be placed on avoiding "conviction" for a registerable offense because

“conviction” is the only factor that triggers the registration requirement. This can be accomplished in a least four very apparent ways: 1) dismissal of the charge, 2) by entering a guilty plea to an offense that is not listed in § 45-33-23 (h) and thereby does not trigger the requirement to register, 3) by going to trial and winning an acquittal on the sex charge, or 4) by going to trial and winning a conviction of a lesser offense not listed in § 45-33-23 (h).

9. The following example is common place and the strategy employed and conviction obtained effectively allows the defendant to avoid the requirement to register as a sex offender:
 - a. Joe is a 40 year old male and is indicted for committing the crime of sexual battery as defined in § 97-3-95 against a 12 year old girl. Conviction for sexual battery in this circumstance is a registerable sex offense because the crime is listed in § 45-33-23 (h). After investigating the case, defense counsel believes there is not sufficient evidence to convict her client of sexual battery however there is some evidence that her client committed the crime of simple assault as defined in § 97-3-7 (1)(a), not a registerable offense because it is not listed in § 45-33-23 (h). After consultation with Joe, defense counsel approaches the district attorney and asks that he reduce the charge of sexual battery to simple assault and in exchange for that reduction Joe will enter a plea of guilty to simple assault. The district attorney agrees and Joe pleads guilty to simple assault and is convicted of simple assault and thereby avoids the requirement to register as a sex offender. Even though Joe was originally charged with a registerable sex offense, he was not “convicted” of a registerable sex offense as defined in § 45-33-23 (a).
10. In the previous four years I have neither testified as an expert nor been deposed.
11. I am not being compensated for my study and/or testimony in this case.

I state under penalty of perjury that the forgoing is true and correct to the best of my knowledge, information, and belief.

Signature: 
Robert Rudder

Executed on: December 6, 2017