

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.: [REDACTED]

[REDACTED]  
Defendant.  
\_\_\_\_\_ /

**ORDER DENYING WITHOUT PREJUDICE DEFENDANT'S  
PETITION FOR REMOVAL FROM FLORIDA'S SEX OFFENDER REGISTRY**

**THIS MATTER** has come before the Court upon Defendant's *Petition for Removal From Florida's Sex Offender Registry Pursuant to §943.0435(11)* (Petition) filed on September 9, 2019. A hearing on the motion was held on January 23, 2020. Upon consideration, the Court finds as follows:

On [REDACTED] Defendant entered a plea of no contest to the charge of lewd, lascivious, or indecent act upon a child in violation of § 800.04, Fla. Stat. On [REDACTED], 1993, he was sentenced to ten years' probation in accordance with negotiations with the State. Defendant's subsequent motion for termination of probation was granted on July 21, 1999.

The Petition states that Defendant is registered as a sexual offender with the Florida Department of Law Enforcement. The Petition cites § 943.0435(11), Fla. Stat. (1998), which allows an individual who has been released from all sanctions for at least 20 years and has not since been arrested for either a felony or a misdemeanor to petition the court for removal of the sexual offender registration requirement. Attached to the Petition is a signed affidavit from the victim in the case, who indicates that she does not oppose the Petition. Defendant advises further that since his release from the above-styled case, he was arrested in 2001 for an unrelated offense for which he received only a fine in January 2022.

In 2007, § 943.0435(11) was amended, extending the time that must elapse before a petition can be considered from 20 years to 25 years. That is one of two issues the parties contested at the hearing; the other is whether the nature of the original offense renders Defendant ineligible for removal from the registry.

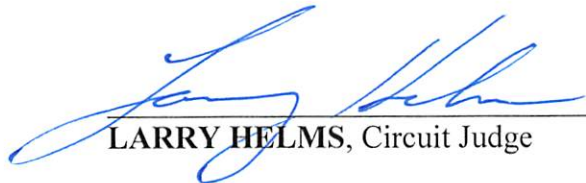
The Court finds that the 2007 amendment to § 943.0435(11) is punitive in nature. Therefore, in accordance with cases cited by Defendant, Starkey v. Oklahoma Department of Corrections, 305 P. 3d 1004 (Supreme Court of Oklahoma 2013), In the Matter of Aaron Evans Hamilton, No. COA11-1463 (N. Car. Ct. of Appeals 2012), and State v. Williams, 129 Ohio St. 3d 344 (Ohio 2011), the amendment does not apply retroactively.

The Court also finds that Defendant's original offense is not among those listed in § 943.0435(11)(a)1., and does not bar him from seeking the requested relief.

Defendant's 2002 sentencing for the battery, however, renders him statutorily ineligible to petition for removal from the registry at this time.

It is therefore **ORDERED AND ADJUDGED** that Defendant's Petition is **DENIED WITHOUT PREJUDICE**. So long as Defendant remains arrest-free, Defendant may re-petition for removal from the sexual offender registry after twenty years have passed since his January 2002, conviction. At that time, the Court will reconsider the petition.

**DONE AND ORDERED** in Bartow, Polk County, Florida this 23 day of November, 2020.

  
LARRY HELMS, Circuit Judge

Copies furnished to:

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- Victoria J. Avalon, Esq., Assistant State Attorney

LH/jmp