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S.C. SUPREME COURT

BEFORE THE SUPREME COURT ("S Ct") OF SOUTH CAROLINA ("SC")

Appellate Case No. 2023-00----

AND STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT OF COMMON PLEAS
On Application for Post-Conviction Relief (PCR) No. 2019-CP-40-00112

Marie Assa'ad-Faltas, MD, MPH

Applicant/Appellant's *Timely* NOTICE of Appeal

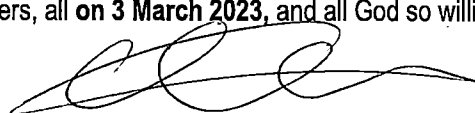
v.

State of South Carolina, and City of Columbia, SC

Marie Assa'ad-Faltas, MD, MPH ("Dr. Assa'ad-Faltas" or "Dr. Faltas"), having for all intents and purposes been abandoned by her forced counsel Timothy Lee Griffith ("Griffith"), who since 16 November 2022 failed to take any adequate action to protect Dr. Assa'ad-Faltas' rights and interests, and having on Saturday, 25 February 2023, received the ORDER OF DISMISSAL of the above-captioned case, as evidenced by the attached copy of the envelope from the Richland County Clerk of Court and by Dr. Assa'ad-Faltas' within declaration under penalty of perjury that she had *at least daily* been scanning the public index of her pending cases but did not see that signed and filed ORDER OF DISMISSAL until the afternoon of 21 February 2023, and then only after having e-mailed Griffith and South Carolina's Commission on Indigent Defense ("SCCOID") an inquiry on whether Griffith had sent SC Circuit Judge D. Craig Brown ("JDCB") any objections to the State's draft orders, **hereby gives timely notice of appeal from the ORDER OF DISMISSAL in the above action as said ORDER directs Dr. Assa'ad-Faltas to file said appeal** and this Court's 27 September 2017 ORDER, regardless of its contested validity, allows Dr. Assa'ad-Faltas to file a *pro se* notice of appeal and as any sentence imposed by this Court's 10 June 2022 ORDER in SC Case 2022-000815 had a six-month limit and has by now been fully served. **Should this Court disagree, it is hereby asked to issue fair clarification.**

Certificate of Submission AND Certificate of Service AND of Copies

Submitted and served by hand-delivery to SC Attorney General's ("SCAG") office at 1000 Assembly Street Columbia, SC 29201, and by hand-delivery to Richland County's Clerk of Court at 1701 Main Street Columbia, SC 29201, and *courtesy-copied* to: Griffith at tlgriffith@tlgriffith.com, and to SCCOID at hyoung@sccid.sc.gov, and hryan@sccid.sc.gov, and relevant others, all **on 3 March 2023**, and all God so willing.


S/Marie-Thérèse Assa'ad-Faltas, MD, MPH, Applicant-Appellant
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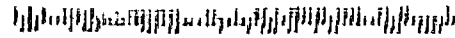
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STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Marie Assa'ad-Faltas,)
)
 Applicant,)
)
 v.)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2019-CP-40-0112

ORDER OF DISMISSAL

RICHLAND COUNTY
 FILED
 2023 FEB - 8 PM 12: 09
 EMMETT J. BROWN
 C.C.F., C.S., P.F.F.

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Marie Assa'ad-Faltas (Applicant) on January 7, 2019, and amended on August 25, 2021. On November 16-17, 2022, an evidentiary hearing convened before the Honorable D. Craig Brown. Applicant was represented by Timothy L. Griffith, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Despite being notified by this Court on November 2, 2022, that she would be required to appear in-person at this hearing, Applicant failed to attend. In her absence, Mr. Griffith did not have any witnesses to call or any other evidence to present. Based on Applicant's failure to attend and submit any evidence or testimony to support the allegations in her application, I find she has failed to meet her burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

This PCR application arises from a simple assault conviction in the City of Columbia Municipal Court; the warrant (L-66971) was issued September 11, 2009. On April 25, 2013, Applicant proceeded to a bench trial before the Honorable Carl L. Solomon. Theodore N. Lupton represented Applicant and David Fernandez prosecuted the case. Judge Solomon found Applicant

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guilty of simple assault and sentenced her to twenty days' detention.¹

Applicant appealed to the circuit court (2013-CP-40-3522), and the Honorable Allison Lee held a hearing on December 13, 2013. Applicant appeared pro se. On April 17, 2015, Judge Lee issued an order affirming Applicant's conviction.

Applicant appealed Judge Lee's order, and then-Appellate Defender John H. Strom filed a brief raising the issue of whether the municipal court violated her right to proceed pro se. The South Carolina Supreme Court issued a published opinion affirming. See City of Columbia v. Assa'ad-Faltas, 429 S.C. 28, 800 S.E.2d 782 (2017). Applicant filed a petition for writ of certiorari with the United States Supreme Court, which denied certiorari on October 1, 2018, and denied Applicant's petition for rehearing on January 7, 2019.

Meanwhile, while Applicant's appeal in the circuit court was pending, Applicant filed a motion for a new trial based on after-discovered evidence. Due to conflicts Applicant had with all the City of Columbia judges, the hearing was held in Magistrate's Court before the Honorable Phillip Newsom on February 4, 2019. On February 27, 2019, Judge Newsom issued an order denying Applicant's motion for a new trial.

Applicant timely appealed to the circuit court (2019-CP-40-1374), and the Honorable D. Craig Brown held a hearing on January 28, 2022, via WebEx. Dan Addison represented Applicant, and Marshall James represented the City. On February 9, 2022, Judge Brown issued an order affirming the magistrate's denial of Applicant's motion for a new trial. This order is currently pending on appeal in the South Carolina Court of Appeals (2022-000339).

Current Application

Applicant filed the current application for PCR on January 7, 2019, and an amended

¹ In her application, Applicant she alleges this sentence was stayed pending her appeals.

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application on August 25, 2021, alleging:²

1. The City is not a sovereign and cannot operate a court or prosecute crime.
2. Applicant's constitutional right to a disinterested judge was violated because City is a defendant in several cases brought by Applicant, and Judge Solomon was appointed and remunerated by the City.
3. Judge Solomon served at the City Council's pleasure, which eliminated his judicial independence and violated due process.
4. Prosecutor David Fernandez was not employed by an elected attorney general or circuit solicitor, and his prosecution of Applicant violated her due process right to be prosecuted only by an agent of a sovereign.
5. The more than three-year delay in trial violated Applicant's right to a speedy trial.
6. The denial of Applicant's right to make the final argument violated due process.
7. Applicant's sentence of twenty days' incarceration for "having done no more than touch a sheet of paper" to the victim is cruel and unusual punishment, in violation of the Eight Amendment.
8. No statute, ordinance, or case law previously held "mental injury" constitutes battery, and trying this case on a theory of assault and battery violated the proscription against *ex post facto* laws.
9. The City ordinance was preempted by State law.
10. The South Carolina Supreme Court's holding of both administrative and judicial powers denied Applicant due process of law and adjudication in a republican form of government.
11. The exclusion of lawful immigrants from juries denied Applicant her Sixth Amendment right to a jury of her peers.
12. The City ordinance is void for vagueness and overbreadth.
13. The City's failure to summon the statutorily-mandated number of venire jurors violated Applicant's Sixth Amendment right to a jury representative of the community.
14. The City's failure to identify jurors with juror tags exposed them to comments from City officers and others and denied Applicant's Sixth Amendment right to a jury shielded from improper influence.

² These are paraphrases of Applicant's allegations; the complete allegations are set forth in Applicant's application and amended allegation, as well as in Respondent's return, amended return, and second amended return.

15. Trial counsel was ineffective for failing to follow up on discovery requests for the victim's medical and mental evaluations.
16. Trial counsel was ineffective for not objecting that no evidence was provided in discovery when the victim testified she had been on medication due to the assault.
17. Appellate counsel was ineffective for failing to compare how Applicant had successfully defended herself pro se in other cases.
18. Trial counsel was ineffective for failing to ask the victim to demonstrate how she was allegedly assaulted, and appellate counsel was ineffective for failing to raise the physical impossibility of the victim's testimony in his brief.
19. Trial counsel was ineffective for failing to secure a written order by the trial court documenting its denial of Applicant's right to self-representation before trial, and appellate counsel was ineffective for not including transcripts that showed Applicant was denied her right to proceed pro se.
20. Trial counsel was ineffective for failing to investigate the criminal history of the State's witness Charlene Crouch, and appellate counsel was ineffective for not moving to suspend the appeal so Applicant could present after-discovered evidence about Crouch lying to the trial court.
21. Trial counsel was ineffective for failing to investigate Crouch's criminal history and her incentive to testify against Applicant and for the victim.
22. There is no strategic reason for not investigating the criminal background of a witness.
23. Trial counsel was ineffective for failing to impeach Crouch with what little he knew of her criminal record.
24. Trial counsel was ineffective for allowing two juries to be selected from the same venire, and for waiting until after the panels were selected to move to dismiss a trespass charge.
25. Trial counsel's ineffectiveness regarding the jury coerced Applicant to waive her right to a jury trial.
26. "In Applicant, trial counsel had a reputedly-brilliant, highly motivated, and extremely candid and cooperative client with a history of having prevailed every time she testified to a jury." He also had no constraints of time, resources, or client cooperation to excuse his failure to investigate, make necessary motions, and move to dismiss the trespass charge before (rather than after) the jury was selected.
27. Applicant reserves the right to supplement this application with additional claims that may be adduced from testimony and evidence presented at the hearing.
28. Appellate counsel was ineffective for ignoring the reality

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that to prevail on appeal, the South Carolina Supreme Court would have to admit its denial of Applicant's Faretta rights was a grave constitutional error.

29. Appellate counsel was ineffective for not moving to consolidate Applicant's appeal with State v. Samuel.
30. The City's failure to refund interest on Applicant's cash bond constituted an unconstitutional taking.
31. Trial counsel was ineffective for not arguing the City's ordinance was preempted by state statute.
32. Trial counsel "knew he contravened both his client's wishes and the better practice" regarding his argument related to the ordinance.
33. Trial counsel was ineffective for failing to object to the introduction of evidence (that victim was on mediation) that was requested but not provided in discovery.
34. In February 2019, the victim testified she took Paxil for several years beginning in January 2010.
35. "Paxil is an anti-depressant with known side effects of drowsiness and memory lapses. It is also indicated for menopausal symptoms of which the 1958-born and biologically childless [victim] could plausibly have been suffering in the 2010-2013 period. Had [trial counsel] asked that basic question on cross-examination, Dr. Faltas could have expounded on those facts after having been qualified as an expert."
36. "Or, were [the victim] lying, a question on the name of her supposed prescriber would have belied her or exposed the prescriber to professional discipline." Trial counsel intentionally failed to ask this question.
37. The 2009 form signed by the victim denying any link between a "nervous breakdown" over the simple assault was relevant.
38. Stand-by counsel was ineffective for not obtaining copies of documents.
39. Stand-by counsel refused to help Applicant obtain certain documents.
40. Stand-by counsel was ineffective on the issue of speedy trial and did not help secure a trial date.
41. Municipal Judge Hanna's "shocking tyranny" proves Applicant was denied her Sixth Amendment right to a speedy trial.
42. The prosecution intentionally delayed Applicant's trial.
43. The prosecution violated Brady by not turning over the December 2009 form signed by the victim.
44. PCR can be granted for prosecutorial misconduct, and prosecutorial misconduct and Brady violations are added as

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grounds for this PCR.

45. The prosecution was aware of Crouch's importance as a witness and did not add her conviction on the public index or transmit it to SLED; "[p]lausibly then, the City and its prosecutor offered these benefits to Crouch in return for her false testimony."

Before this Court are the filings of this current action, including the application and amended application, Respondent's return, Respondent's amended return, and Respondent's second amended return; the transcript of the municipal hearing before Judge Solomon; the records from the circuit court appeal (2013-CP-40-3522) and subsequent appeal to the South Carolina Supreme Court (2015-000941); the records from Applicant's motion for a new trial, including the records from the circuit court appeal (2019-CP-40-1374) and the pending appeal in the South Carolina Court of Appeals (2022-000339); prior orders from the Supreme Court of South Carolina restricting Applicant's ability to proceed pro se (Order dated Sept. 20, 2019 in 2019-000036; Order dated Sept. 27, 2017 in 2013-000862; Order dated Jan. 30, 2014 in 2013-000862; Order dated Apr. 8, 2011 in *The City of Columbia, Respondent, v. Marie Assa'ad-Faltas, MD, MPH, Appellant*); and prior orders from this Court regarding restrictions on Applicant's contact with the judicial branch and her ability to proceed pro se (*Order Restricting Applicant's Ability to Make Pro Se Filings and Directing the Richland County Clerk of Court to Refuse any Filings From Dr. Faltas Unless They are Filed on Her Behalf by Counsel of Record*, filed July 12, 2021; and *Global Order Re-emphasizing that Dr. Faltas is NOT to Communicate with Any Member of the Judicial Branch, Its Employees or Staff, and Outlining Contempt Proceedings Should She Continue To Do So*, filed July 12, 2021).

The Evidentiary Hearing

Prior to the hearing, Applicant requested to attend via WebEx. The State objected, and this Court informed Applicant by email that she would be required to appear in person unless she

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provided medical documentation indicating she could not attend. Thereafter, Applicant emailed the parties a graph of what appears to be a diagnostic test. See Court's Ex. 1. However, Applicant did not send any statement from a treating physician interpreting the graph or otherwise relaying that Applicant could not attend the hearing due to health reasons. On November 2, 2022, the undersigned's law clerk emailed the following to Applicant's counsel: "Judge Brown has reviewed the document submitted by Dr. Faltas, however, without medical documentation stating that she is unable to physically attend, she will still be required to appear in person for her PCR hearings." See Court's Ex. 1. This Court did not receive any further documentation prior to this hearing related to Applicant's health. Thus, her request to appear via WebEx was denied.³

At the beginning of the hearing, counsel for Applicant relayed to the Court that Applicant did not intend to attend the hearing.⁴ Respondent moved to dismiss the case based on Applicant's failure to appear and present evidence and testimony to support her allegations. Counsel relayed Applicant's fear, "whether rational or irrational, . . . that if she shows up at this tribunal, she will be placed in jail." This Court reviewed the prior orders restricting Applicant's ability to make pro se filings and contact the Judicial Branch and determined they do not restrict her from attending a Court hearing where she is the Plaintiff. After providing Applicant more than thirty minutes to appear, this Court granted the State's motion to dismiss.

³ This Court also denied the State's request to have an out-of-state witness appear via WebEx.

⁴ Applicant likewise did not attend her second PCR hearing scheduled for November 16, 2022 (2019-CP-40-2217) or either of her PCR hearings scheduled for November 17, 2022 (2019-CP-40-2218, -2219). She did, however, attend the November 18, 2022 hearing in Austin Woods Apartments v. Marie Assa'ad-Faltas, MD, MPH (2018-CP-40-963), in which she was permitted to proceed pro se. The Undersigned, who was vested with exclusive jurisdiction of all these cases pursuant to a September 15, 2020 order issued by the Supreme Court of South Carolina, finds Applicant did not have an apparent health condition that prevented her from attending court on November 18, 2022.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the proceedings from the municipal action and all related cases and appeals. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry her burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, **an applicant bears the burden of proving the allegations.** Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice due to counsel's deficient performance. Strickland, 466 U.S. at 687-88; Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant did not present any evidence or testimony to support her PCR allegations.

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Applicant was informed that she would be required to attend in-person well in advance of the hearing and never offered documentation from a treating physician of her inability to attend. Further, this Court allowed Applicant more than thirty minutes past the start time of this hearing to attend, but she did not appear and relayed to her counsel that she did not intend to appear. In Applicant's absence, counsel for Applicant did not have a witness to testify and present evidence to support the allegations in the PCR application. Thus, Applicant failed to meet her burden of proof, and this Application is denied and dismissed with prejudice.

[Conclusion and Signature Page Follows]

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Conclusion

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, she must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED that this application for PCR is denied and dismissed with prejudice.

AND IT IS SO ORDERED THIS 1st day of February, 2023.



D. CRAIG BROWN
Presiding Judge
Fifth Judicial Circuit

Florence, South Carolina