

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-40-2218

**ORDER DENYING APPLICANT'S
MOTION TO RECONSIDER OR IN
THE ALTERNATIVE NEW TRIAL**

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RICHLAND COUNTY
FILED

This matter is before the Court by way of Applicant's "Motion to Reconsider or in the Alternative New Trial," filed on March 7, 2023. After consideration, the motion is **DENIED**.

Procedural History

This PCR application arises from an unlawful front-yard parking conviction in the City of Columbia Municipal Court on December 9, 2010 (Ordinance Summons 6034). Following a jury trial, Judge Steeley Bogan ordered Applicant to pay a fine of \$175.00 plus costs.¹

On December 10, 2010, Applicant filed a *pro se* notice of appeal in the circuit court (2010-CP-40-8650). Thereafter, on April 8, 2011, the South Carolina Supreme Court issued an order prohibiting Applicant from filing *pro se* actions in South Carolina courts.² Applicant's appeal was set for a hearing on September 16, 2011, and Applicant appeared *pro se*. Due to the South Carolina Supreme Court's order prohibiting Applicant from proceeding *pro se*, the circuit court granted Applicant an additional thirty days to obtain counsel before ruling on her appeal. On November 1, 2011, the circuit court issued an order dismissing Applicant's appeal for failure to prosecute.

On December 1, 2011, Applicant attempted to file a notice of appeal in the South Carolina

¹ In her application, Applicant does NOT assert she has paid this fine.

² Applicant appealed that order to the United States Supreme Court, which denied her petition for writ of certiorari on November 14, 2011.

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Supreme Court. The following day, Court notified Applicant by letter that her appeal had not been accepted due to the prohibitions of the Supreme Court's April 8, 2011 order.^{3,4}

On July 11, 2013—more than twenty months after the circuit court dismissed her circuit court appeal and more than nineteen months after the South Carolina Supreme Court rejected her notice of appeal—Applicant filed a motion requesting appointment of counsel to perfect her appeal of the circuit court's denial of relief. On November 8, 2017, the circuit court issued an order denying Applicant's motion for appointment of counsel. Applicant filed a motion for partial reconsideration on November 9, 2017; that motion was denied on December 23, 2020. Applicant appealed to the South Carolina Supreme Court (2021-000048); the appeal was dismissed on August 31, 2022, and the remittitur was sent October 13, 2022.

Current Application

Applicant filed the current application for PCR on April 22, 2019, alleging:

1. "Complete denial of appellate counsel"
 - a. "When I appeared before Judge Barber on 16 September 2011, I advised him (and he so documented in 22 September 2011 ORDER) that I had contacted at least four private lawyers to represent me but they refused due to my inability to pay them. Judge Barber knew of my entitlement to state-appointed appellate counsel but did not even offer me one. That prejudiced me because at the time, I was not allowed to advocate pro se at all but I had many meritorious appeal issues, all of which I had preserved at trial, which could have won my appeal had it been plenary (sic) heard."

³ Applicant "resubmitted" her notice of appeal on January 3, 2014. By letter dated February 21, 2014, the Clerk notified Applicant that her resubmitted notice of appeal would not be accepted.

⁴ On August 6, 2012, Applicant filed a petition for writ of habeas corpus in the United States District Court – District of South Carolina, seeking relief from an October 6, 2010 contempt hearing. In her PCR application, Applicant contends this habeas action is also somehow relevant to this December 9, 2010 conviction for unlawful front-yard parking. By order filed September 11, 2012, the district court dismissed the case without prejudice. The district court declined to issue a certificate of appealability, but Applicant nonetheless appealed to the Fourth Circuit Court of Appeals on September 25, 2012. The Fourth Circuit also declined to issue a certificate and dismissed the appeal on June 6, 2013.

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2. “Per *Robinson v. California*, 370 U.S. 660, 667 (1962), criminalization of my legal and constitutionally-protected conduct violates the Eighth Amendment to the U.S. Constitution. The Eighth Amendment was made applicable to the states by the U.S. Supreme Court in *Timbs v. Indiana*, 586 U.S. ____ (decided 20 February 2019). This PCR is timely filed within one year of the *Timbs* decision per § 17-24-45(B), SC Code of Laws.”
 - a. “Parking in one’s own front yard, even if I had arguendo done it, cannot be a crime. The City of Columbia violated the Eighth Amendment by prosecuting and fining me for front-yard parking.”
3. “After-discovered evidence of actual innocence. This PCR is timely filed within one year of the most recent discovery of evidence per § 17-24-25(B), SC Code of laws.”
 - a. “The owner of the house where I was a tenant in 2007 and there and then cited for front-yard parking brutally set me out on 30 September 2008 and moved into [the] same house on 1 October 2008, provably to practice occupancy fraud. There, she front-yard parked for ten years without repercussions from the City of Columbia. She also admitted that she had urged the City to prosecute me for front-yard parking to harass me into vacating the rental house. She later received a provably fraudulent transfer of another house from her husband to shield him from a judgment entered against him. That landlady just built for herself the second driveway she refused to install for me when I was her tenant. The City of Columbia has been proven to harass people it hates for non-violations or insignificant code violations while neglecting life-threatening issues such as the gas leaks in the Benedict-Allen apartments.”
4. “Through no fault of mine, the transcript of 16 September 2011 hearing before SC Circuit Court Judge Barber was lost or destroyed. I have a constitutional right to said transcript under *Chessman v. Teets*, 350 U.S. 3 (1955).”
 - a. “In May-August 2016, I duly contacted SC Court Administration to obtain the transcript of the 16 September 2011 hearing, which must be kept for five years; but I received in writing confirmation that the court reporter (Ms. L. Coconut Pantsari) who was assigned to that court that day cannot find her recording of the transcript of my hearing.”

Respondent filed a return moving to dismiss this application pursuant to the statute of limitations. On November 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

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she would be required to appear in-person at this hearing, Applicant failed to attend.⁵ 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, this Court found Applicant failed to meet her burden of proof. This Court further found this action was barred by the statute of limitations. On February 8, 2023, this Court issued an order of dismissal. On March 3, 2023, Applicant served a copy of her "Motion to Reconsider or in the Alternative New Trial" on Respondent.

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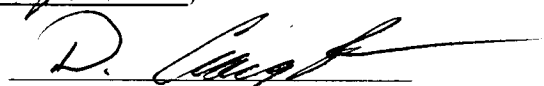
⁵ Applicant likewise did not attend her other PCR hearing scheduled for November 17, 2022 (2019-CP-40-2219) or either of her PCR hearings scheduled for November 16, 2022 (2019-CP-40-112, -2217). She did, however, attend the November 18, 2022 hearing in Austin Woods Apartments v. Marie Assa'ad-Faltas (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.

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Denial of Applicant's Motion

In her Motion to Reconsider, Applicant contends this Court “had and should have considered a Judgment on the voluminous Pleadings.” After reviewing Applicant’s motion and this Court’s order of dismissal, this Court finds Applicant’s argument is without merit. This Court’s order of dismissal found Applicant failed to present any evidence to support the allegations in her application and amendment, and thus failed to meet her burden of proof. This Court further found Applicant’s application was barred by the statute of limitations. Applicant has not alleged any argument was overlooked or misapprehended by this Court. Further, Applicant is not requesting an alteration or amendment to the Order; rather, Applicant is asking this Court to reconsider its ruling and grant Applicant post-conviction relief. This Court sees no basis to reconsider its ruling; thus, this Court finds this motion should be denied in full.

AND IT IS SO ORDERED THIS 6 day of April, 2023.



D. CRAIG BROWN
Presiding Judge
Fifth Judicial Circuit

Florence, South Carolina