

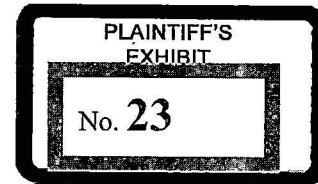
RECEIVED

JUN 09 2023

S.C. SUPREME COURT

State of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2019-CP-40-2218



Marie Assa'ad-Faltas,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)
_____)

Transcript of Record

November 17, 2022
Columbia, South Carolina

B E F O R E:

The Honorable D. Craig Brown, III, Judge

A P P E A R A N C E S:

Timothy L. Griffith, Esquire
Attorney for the Applicant

Danielle Dixon, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Ruling of the Court	11
Certificate Page.	14

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
C-1	Emails with Medical Graph	7
C-2	Email	13

1 MS. DIXON: May it please the court?

2 THE COURT: Yes, ma'am.

3 MS. DIXON: This is Danielle Dixon, assistant
4 attorney general for the State of South Carolina. This is
5 the case of *Marie Assa'ad-Faltas v. State*, docket number
6 2019-CP-40-2218.

7 This is a PCR matter that arises out of a municipal
8 conviction for unlawful parking. That occurred on December
9 9, 2010. The applicant proceeded to a trial before the
10 Honorable Steeley Bogan, and that occurred on -- I believe
11 that was December 9, 2010. As a result of the trial, she
12 was convicted of unlawful front yard parking and ordered to
13 pay \$175 in a fine plus costs.

14 She appealed that to the circuit court; that was
15 docket number 2010-CP-40-8650. That was filed December 10,
16 2010. On April 8, 2011, the South Carolina Supreme Court
17 issued an order prohibiting her from making further pro se
18 -- well, for appearing pro se in South Carolina courts.
19 Her case was called to trial for September 16, 2011, and
20 she appeared pro se. At that time, the court issued an
21 order giving her an additional thirty days to find counsel,
22 and on November 1, 2011, the circuit court dismissed her
23 appeal for failure to prosecute.

24 She did attempt to appeal that to the South Carolina
25 Supreme Court; she filed a pro-se notice of appeal December

1 1, 2011. The following day, the South Carolina Supreme
2 Court returned her notice of appeal and informed her they
3 would not be accepting it due to its prior orders
4 restricting her from filing pro se. She did also attempt
5 to later resubmit that in January of 2014, but it was
6 returned as well.

7 Meanwhile, in the circuit court action, on July 11,
8 2013, which was about a year and a half after the order
9 dismissing the case, she filed a motion requesting
10 appointment of counsel to help her perfect her appeal. On
11 November 8, 2017, the circuit court issued an order denying
12 the motion. She filed a motion for partial
13 reconsideration; that was ruled on December 23, 2020. That
14 was also appealed to the state supreme court, and that is
15 case number 2021-000048. That was dismissed by our state
16 supreme court on August 31, 2022. The remittitur was sent
17 October 13, 2022.

18 I do have several materials for Your Honor that I
19 would like to hand up, if you don't mind, and if you don't
20 mind, I'd like to read through the list of what I'm giving
21 you. I do have, first of all, several orders from the
22 state supreme court -- just a moment -- and they include a
23 2022 order of dismissal dated August 31, 2022; a 2019 order
24 clarifying a prior order that's dated 9/20/19; a 2017 order
25 restricting her access to the courts that's dated 9/27/17;

1 a 2014 order clarifying the prior orders that's dated
2 1/30/14; and a 2011 order restricting pro-se filings that's
3 dated 4/8/2011.

4 We also have as part of this PCR action her
5 application, the state's return, the state's amended
6 return, the letter appointing counsel which is dated May
7 18, 2020, her reply to the state's motion to dismiss, and
8 then there was an order vesting you with jurisdiction over
9 all of these cases. We have the transcripts from the prior
10 PCR hearings in this case, which include 2/20/2020 and then
11 an 8/10/2020. There is also a 12/28 -- I'm sorry, 12/2018
12 transcript from a PCR action that we do believe is
13 relevant. And we handed up also yesterday as part of
14 another case a January 2022 transcript from this action
15 that we believe is relevant. We have the transcript from
16 the unlawful parking trial dated December 9, 2010. We have
17 the circuit court notice of appeal. We have the order
18 ordering her -- giving her thirty days to appoint counsel.
19 We have the letter from the supreme court. We have pro-se
20 motion appointing -- where she moved to get an attorney
21 appointed in July of 2013. We have all the circuit court
22 orders denying the various things, and the supreme court
23 order as well. I think that's everything.

24 THE COURT: Okay.

25 MS. DIXON: And I apologize.

1 THE COURT: That's okay. Were you planning on making
2 those court's exhibits as well?

3 MS. DIXON: I think if I just hand them up to you,
4 that's typically how we do it, but if you think it would be
5 cleaner to make them court exhibits, we could do that.

6 THE COURT: Why don't we do it to -- just in case.

7 MS. DIXON: This all of the documentation. Did try to
8 make it easy to -- this is the -- this stuff, this case.
9 This is the prior cases, and then it's kind of a
10 stand-alone transcript, and then these are the supreme
11 court orders. Your orders are also in here.

12 MR. GRIFFITH: Please the court, Your Honor? My
13 client has asked that she be able to view the proceedings
14 virtually rather -- even though she can't attend. If the
15 court would make a ruling on that so that I can inform her?

16 THE COURT: I'm not on my virtual courtroom. I mean,
17 these proceedings are live and in person.

18 MR. GRIFFITH: Okay, Your Honor. I'll, I'll let her
19 know.

20 MS. DIXON: Your Honor, at this time, the state has
21 been informed that Ms. Faltas is not planning to attend
22 this hearing. We do have an exhibit that we want to make
23 as a court's record. This is an email that you sent --
24 well, let me back that up.

25 She had previously requested to appear via WebEx, and

1 Your Honor had told her that unless she had a medical
2 condition that prevented it, that that would not be -- that
3 she would need to have some sort of documentation from a
4 doctor.

5 She did send everyone this graph without any kind of
6 interpretation as to what it means and, of course, us being
7 non-doctors could not interpret it. And Your Honor,
8 through your law clerk, wrote to her -- or her attorney on
9 November 2, 2022, stating:

10 Judge Brown has reviewed the document submitted
11 by Dr. Faltas. However, without medical
12 documentation stating that she is unable to
13 physically attend, she will still be required to
14 appear in person for her PCR hearings.

15 We are asking that these emails and this document be
16 entered as a court's exhibit and be placed under seal. It
17 is our understanding that she is not planning to attend
18 today, and I'll let Mr. Griffith -- I believe he has spoken
19 with her a few times, and I'll let him add whatever he, add
20 whatever he'd like to add.

21 MR. GRIFFITH: Without objection, Your Honor.

22 THE COURT: All right. So admitted without objection.

23 (EMAILS WITH MEDICAL GRAPH MARKED INTO EVIDENCE AS
24 COURT'S EXHIBIT NUMBER 1.)

25 MS. DIXON: And, Your Honor, at this time we would

1 move to dismiss this case. She is not here to present
2 evidence. So, without evidence to support her allegations,
3 there is nothing further to go forward on.

4 We also would move to dismiss based on the statute of
5 limitations and as to that, I would submit the pertinent
6 date to remember is that the circuit court dismissed its
7 appeal on November 1, 2011. She did attempt to file an
8 appeal with the state supreme court, but that was returned
9 to her on December 2, 2011. So, we submit that the statute
10 of limitations began running at least by December 2, if not
11 November 1. The statute regarding the statute of
12 limitations, section 17-27-45(a), requires an application
13 for PCR to be filed within one year after the entry of a
14 judgment or conviction, or within one year after the
15 sending of a remittitur to the lower court from an appeal,
16 or the filing of a final decision on appeal, whichever is
17 later. So, I mean, there's no remittitur in circuit court.
18 So, the filing of that was November 1, 2011. That's the
19 triggering start date.

20 She did come back and try to file something on July
21 11, 2013, but we would submit that that untimely motion
22 would not toll the statute of limitations. And we will
23 also note that in the most recent, one of the more recent
24 appeals to the supreme court actually from these same
25 proceedings, our supreme court found, let's see:

1 On July 12, 2013, more than eighteen months after
2 the appeals were dismissed and ended, applicant
3 -- appellant filed a motion to the circuit court
4 seeking to have counsel appointed for the
5 purposes of reopening her circuit court appeals
6 or for the purpose of filing PCR applications.
7 The circuit court did not rule on the tardy
8 motion at that time, apparently because the
9 matter was final, for the time for appeal had
10 long since run, and the one-year statute of
11 limitations for post-conviction matters had
12 passed.

13 So, we would just submit to Your Honor that this
14 should be barred by the statute of limitations.
15 Alternatively, we would also assert laches.

16 THE COURT: All right, Mr. Griffith.

17 MR. GRIFFITH: Your Honor, we would object to the
18 dismissal under those grounds.

19 Dr. Faltas, I spoke to her this morning actually, and
20 she told me to inform the court that she did receive some
21 results back from a heart monitor and that her heart did
22 stop for two seconds. She didn't send me any documentation
23 on that, Your Honor, but she did tell me that she's a
24 medical doctor, of course.

25 But, Your Honor, we would ask that the court either

1 continue the case or allow the case to go forward
2 virtually.

3 THE COURT: Anything else, Ms. Dixon?

4 MS. DIXON: Your Honor, just in regards to the
5 continuance, I do want to note for the record. I mean, we
6 have a PCR term this week in Richland County where we get
7 five days. We have set aside, and we certainly do not mind
8 doing it, but three days are matters involving Dr. Faltas.
9 We typically docket about six cases a day. That's about
10 eighteen cases that, you know, would, would have otherwise
11 been docketed.

12 And again I -- you know, she absolutely has a right to
13 have a hearing, to appear in court. I'm a firm believer in
14 due process, but it is also -- to continue this matter when
15 she had the opportunity yesterday and today to come present
16 her case I do believe is prejudicial to the state in that
17 we are still trying to move I don't even know how many
18 cases on the Richland County docket. Russ could probably
19 tell you.

20 MR. BARLOW: Greater than eighty.

21 MS. DIXON: Yeah, a good bit. So, more than eighty
22 cases we're trying to move, and we get a term every two or
23 three months. So, it's, it's, it's a challenge.

24 THE COURT: Well, with all due respect, Mr. Griffith,
25 I know you've conveyed to the court what your client has

1 conveyed to you. The court is respectfully denying your
2 request for a continuance. This matter, not exactly sure
3 -- Ms. Dixon can further enlighten the court as to when
4 this roster was published. At least thirty days ago. At
5 least thirty days ago.

6 MS. DIXON: Was it one month? We do publish them one
7 month ---

8 MR. BARLOW: Four weeks in advance.

9 THE COURT: Well, that's, that's the norm. You know,
10 they're published at least thirty days or thereabouts in
11 advance.

12 RULING OF THE COURT:

13 THE COURT: Dr. Faltas has conveyed to Mr. Griffith
14 again some kind of issue with her heart. Once again, there
15 has been no medical documentation provided to Mr. Griffith
16 which would in turn allow him to present such to the court
17 for the court to consider such and, therefore, the court
18 is respectfully denying any motion to continue these
19 matters.

20 MS. DIXON: Thank you, Your Honor.

21 THE COURT: Now, I guess as it relates to the state's
22 motion to dismiss for failure to prosecute, as well as
23 statute of limitations and laches, I note Mr. Griffith
24 objected to the issue of laches yesterday. I am going to
25 grant the state's motion to dismiss pursuant to Dr.

1 Faltas's failure to prosecute this matter.

2 In addition, as an additional sustaining ground, I
3 believe that it would, it would be appropriate to dismiss
4 the case based upon the statute of limitations as well, but
5 I will certainly -- and I will look at that, how it's laid
6 out in the proposed order of dismissal. I do not believe
7 that it's necessary to address the laches issue, so I'm not
8 going to address that. The matter of statute of
9 limitations has been out there long enough, so to speak.

10 But again, I'm granting it on failure to prosecute.
11 Dr. Faltas has been advised that she needed to appear in
12 person. Not only has the court conveyed such to Mr.
13 Griffith through my law clerk that she was required to
14 appear personally. There is nothing other than assertions
15 at this time before the court that she can't appear.
16 There's been no medical documentation or any supporting
17 information that would warrant this court continuing the
18 matter or denying the state's motion to dismiss for failure
19 to prosecute.

20 MR. GRIFFITH: Thank you, Your Honor.

21 THE COURT: Thank you. All right, anything else as it
22 relates to 2218?

23 MS. DIXON: Nothing further from the state.

24 MR. GRIFFITH: Nothing from Dr. Faltas, Your Honor.

25 THE COURT: All right.

1 (OFF THE RECORD.)

2 (EMAIL MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER

3 2.)

4 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 17TH DAY OF NOVEMBER, 2022.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 4TH, 2022