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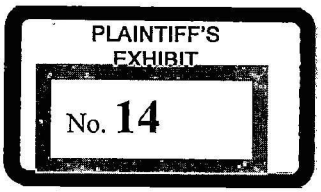
S.C. SUPREME COURT

State of South Carolina

County of Richland

Court of Common Pleas



Marie Assa'ad-Faltas	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2018-CP-40-01798
	)	
State of South Carolina	)	
	)	
Respondent.	)	

December 28, 2018
Columbia, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge.

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

Christopher Stephen Truluck, Esquire
Stand-by Counsel for the Applicant

Megan Jameson, Esquire
Counsel for the Respondent

Bethanie K. Creppon
Circuit Court Reporter

1 I N D E X

WITNESS PAGE

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(No Witnesses.)

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1 P R O C E E D I N G S

2 * * *

3 THE COURT: Yes, sir.

4 MR. TRULUCK: Your Honor, it's a little

5 unusual, but with Dr. Faltas' permission, she's

6 allowing me to address the Court first.

7 THE COURT: Well, you're already addressing the

8 Court and all the issues regarding this. I'm guided

9 by the order of the supreme court, so I'm not

10 certain that I'm following your

11 with-Dr.-Faltas'-permission statement.

12 MR. TRULUCK: I'll explain, Your Honor.

13 THE COURT: All right.

14 MR. TRULUCK: Your Honor, I was initially

15 appointed to one of Dr. Faltas' PCRs earlier this

16 year by Judge Jocelyn Newman. I had never handled a

17 PCR before. I wasn't on the PCR list; I was on the

18 608 list as a criminal attorney. It's my

19 understanding that list was exhausted, so pursuant

20 to the procedural rules set forth by the supreme

21 court, Judge Jocelyn Newman elected to appoint me as

22 Dr. Faltas' PCR attorney.

23 Initially I was surprised considering I've

24 never handled a case like that before. I spoke with

25 Judge Newman and she explained that she had hoped

1 that I would be able to work with Dr. Faltas. And
2 in the interest of assisting Dr. Faltas when, I
3 believe, that it may be difficult to find other
4 attorneys to do so, I agreed and did not object to
5 the appointment.
6 Over the course of the last, approximately, ten
7 months, Your Honor, I agreed to take two additional
8 cases for Dr. Faltas, both because there's limited
9 counsel to assist her, and to further grow a sense
10 of trust between both of us --
11 THE COURT: But pursuant to being appointed by
12 the court or based on your own free will?
13 MR. TRULUCK: Court appointment, Your Honor.
14 But it was also consensual. When she asked that
15 somebody take her case, I went to, on one occasion,
16 Judge Jocelyn Newman, and she appointed me to a
17 second PCR case and Judge Hood appointed me to a
18 summary court case that she had.
19 In all of these appointments, Your Honor, I was
20 appointed standby counsel only; specifically only to
21 assist her with pre- and post-hearing matters, and
22 that she had her right to represent herself in a
23 full pro se capacity at the individual hearings for
24 both her PCRs, and with regard to the summary court
25 matter, she is actually a defendant in that, so she

1 has full representation ability both -- through the
2 entire action. I'm only to assist her in the legal
3 matters, Your Honor.
4 I've represented her, Your Honor, now for
5 approximately ten months. I know that there's been
6 a lot of communication between my office and
7 possibly even Dr. Faltas and the AGs to your office
8 and to Ms. Reid about the nature of our
9 representation. There have been mentions of
10 requests to have me relieved. Dr. Faltas and I have
11 had those conversations --
12 THE COURT: Requests --
13 MR. TRULUCK: There have been -- I want to say
14 several, but that might be an exaggeration. But
15 certainly more than one request to have me relieved
16 over the course of that ten-month period. It has
17 never been because Dr. Faltas and I have not worked
18 well together and do not get along; it has because
19 of either differences in strategy or possibly that
20 there are some things I feel differently about and
21 do not want to do, and I believe, and I believe
22 Dr. Faltas believes, restricts her from fully
23 handling her case.
24 So we've dodged that bullet several times and
25 continue to work together. We have been successful

1 in her first PCR. She had Judge Goldsmith and Judge
2 Gravely rule for her and grant her PCR. The AG's
3 office, for a second time, has moved to reconsider
4 that grant.
5 The other PCR, Your Honor, is about to be
6 dismissed, is my understanding, by Judge Sprouse
7 without prejudice because she has issues that are
8 pending before the supreme court and/or being
9 considered before the Supreme Court of the United
10 States and she is supposed to be allowed to re-file
11 that later.
12 So for those two cases, they are very, very
13 nearly complete, Your Honor. You can say that one
14 is already complete and the final case, Your Honor,
15 is one where Dr. Faltas represents herself as the
16 defendant in which case she does not require
17 assistance.
18 THE COURT: So in the cases that you have said
19 are complete or nearly complete, then what's the
20 necessity of your being relieved?
21 MR. TRULUCK: Your Honor, and as best I can
22 characterize it on my end, Dr. Faltas has asked for
23 the opportunity to address the Court pursuant to my
24 standby counsel appointment later on this. The
25 problem is, Your Honor -- before I say this, I do

1 object to having a motion to be relieved in the
2 presence of opposing counsel, Your Honor. I have
3 mentioned that to Ms. Reid and I don't think it's
4 appropriate for her to be here while I have
5 discussions about conversations with my client that,
6 arguably, are privileged, Your Honor.
7 THE COURT: All right. Well, without entering
8 into that realm, because there are a lot of other
9 procedural aspects of you-all appearing where you
10 are today, you mention that you are appearing as
11 standby counsel.
12 MR. TRULUCK: Specifically, Your Honor, yes.
13 THE COURT: And all of your representation with
14 Dr. Faltas is as standby counsel.
15 MR. TRULUCK: That's correct, Your Honor,
16 except with regard to the summary court action. I
17 am standby counsel, but I am even less so because
18 there are --
19 THE COURT: We're not concerned with summary
20 court here today. So --
21 MR. TRULUCK: Well, actually, Your Honor, the
22 circuit court appointed me to the summary court
23 action, so I would respectfully submit that that is
24 a part of this as well, Your Honor.
25 THE COURT: Circuit court appointed you to

1 handle a summary court case?
2 MR. TRULUCK: Yes, Your Honor.
3 THE COURT: And as an initial concern, being
4 aware of the various orders, particularly the order
5 of the supreme court -- today is September 27th,
6 2017 -- and the right of Dr. Faltas to appear before
7 certain courts, mitigate with certain courts, and do
8 certain things, I want to, first, have that
9 threshold addressed before anything is addressed to
10 me including this -- the matters that you said are
11 privileged.
12 MR. TRULUCK: Thank you, Your Honor.
13 DR. FALTAS: May I add something, if it's okay?
14 May I add something about that of which Mr. Truluck
15 may not be aware, if it pleases the Court?
16 THE COURT: Yes, ma'am.
17 DR. FALTAS: Thank you. Good morning, Your
18 Honor, and thank you for the opportunity to be
19 heard.
20 THE COURT: Yes, ma'am.
21 DR. FALTAS: First, to Your Honor's -- in
22 response to Your Honor's surprise that the circuit
23 court appointed Mr. Truluck to assist me in the
24 summary court --
25 THE COURT: Yes. I'm surprised by anything

1 that I'm not familiar with.

2 DR. FALTAS: And I'm not blaming. I'm also

3 saying that, previously, even in the case that is

4 underlying this PCR in which this current motion to

5 relieve counsel is filed, it was also the circuit

6 court Judge Barber who appointed Ted Lupton for the

7 trial for which I was convicted and I claimed that

8 he has been ineffective. In fact, in the published

9 opinion from the state supreme court in City of

10 Columbia versus myself, it said that the order

11 appointing Lupton came from the circuit court.

12 So it has been a pattern of the circuit court

13 appointing counsel for summary court. In fact, in

14 another case in 2011, it was also summary court, but

15 the public defender had a conflict, and your very

16 honor, you were then also chief administrative judge

17 for general sessions, and you signed an order

18 authorizing appointment of outside counsel for me.

19 And at that time, it was also Mr. Lupton.

20 But I want to say that I've had three PCR cases

21 in this court so far; one was represented by

22 Ms. Leah Moody, and Retired Chief Justice Toal,

23 sitting as a circuit judge, granted PCR. The

24 attorney general appealed to the state supreme

25 court. And before the state supreme court, the

1 Office of Appellate Defense is nominally
2 representing me.
3 But I filed the motion requesting leave to
4 represent myself as the respondent in that case, and
5 the state supreme court issued an order saying they
6 defer consideration on it. So they're basically
7 open to it. The other thing is that on subsequent
8 research, the state supreme court itself said that
9 PCRs are not really civil and they quoted the Fourth
10 Circuit Court of Appeals saying that habeas, which
11 is the mother -- I like to use the analogy of a
12 beehive, and the writ of habeas corpus is the queen
13 bee and then the PCRs are the little worker bees.
14 In fact, the only reason PCR was considered an
15 acceptable substitute is that it would do everything
16 that the writ of habeas corpus can do, and, of
17 course, constitutionally, the writ cannot be
18 suspended except in war or insurrection. So what
19 applies to habeas applies to PCR.
20 And the state supreme court itself accepted
21 that PCR is not exactly civil; it's hybrid between
22 civil and criminal. And in my very case, they are
23 open to letting me represent myself in the appellate
24 court as a respondent. They didn't say yes, but
25 they didn't say no either. So that's another thing.

1 Now, the case that's in summary court -- and
2 it's none of my fault -- the summary courts have run
3 out of judges. And I have filed a motion for that
4 matter to be transferred here under this Court's
5 current jurisdiction. So this is a matter -- I'm
6 still the criminal defendant in that matter. It's
7 Rule 29(b) to open, based on after-discovered
8 evidence.
9 And I have filed the motion in this Court's
10 concurrent jurisdiction for it to be transferred
11 here. And that's why it was very important for me
12 appear before Your Honor, before Your Honor takes
13 even more duties in another circuit. So that's
14 something that's pending.
15 I have also filed a petition for writ of
16 certiorari to Your Honor to the summary courts where
17 I'm still a defendant and there are cases where I
18 have been convicted and I found a matter -- a
19 provision in state law that says that whenever
20 somebody is convicted in summary court, that person
21 can apply to a circuit judge for certiorari. And I
22 have done that. As always, I file and I give them a
23 copy to put in Your Honor's box, and from there I
24 trust the system.
25 So, Your Honor, this is not the first time I've

1 had this issue. Exactly nine years ago, Mark Sawyer
2 was my standby counsel in the harassment case over
3 which Your Honor presided and over which I
4 represented myself totally pro se. The solicitor
5 was doing -- playing the same game; not serving me,
6 and instead serving Mr. Sawyer.
7 We came back before Your Honor. And thank God
8 that was transcribed. And you said, no, the
9 defendant has to be served. Here, the attorney
10 general has taken it to -- I'm sorry, I have to use
11 the word malicious. They provided the judge with a
12 judge's packet electronically with a link. They
13 knew that the only person who can open the link is
14 if they e-mail it to the person. They e-mailed it
15 directly to the judge, they e-mailed it to
16 Mr. Truluck, but they refused to e-mail it directly
17 to me. When I tried to log in to it, it said, no,
18 you're prohibited.
19 And we -- Mr. Truluck and I specifically asked
20 them to send me the e-mail so I can download it.
21 They said, why don't you, Mr. Truluck, download it
22 and then copy it to her? Your Honor, this was 94
23 files with, like, what, a gigabyte. That's really
24 abusing him. There was absolutely no reason for
25 them to do that other than -- and, Your Honor, all

1 the stuff about, no, we won't talk to you, we need
2 to talk to your counsel, is all a racist portrayal
3 of me as a ghoul like as they did in the harassment
4 case, falsely presenting that I was photographing
5 the children and scaring them and I am the Egyptian
6 witch who needs to go back to where she came from
7 because of frightening the children.
8 Well, guess what. Those very pictures that
9 were presented in Your Honor's court, they show that
10 woman, my false accuser, giving that toddler a key
11 chain to play with and the toddler putting it in her
12 mouth, which is a classic choking hazard. Any
13 prosecutor who has any sense of fairness should have
14 prosecuted my false accuser for child endangerment,
15 not prosecuted me for taking a picture to document
16 that from 30 feet away. And now I have -- it has
17 gone beyond that.
18 I have documented 378 instances of perjury that
19 happened in your court. And it's not I say, they
20 say; it's they say, they say in sworn testimony
21 before you in your court.
22 My false accuser, Ingram, said she was employed
23 and unable to go to work because I was blocking her
24 with my car. In another contemporaneous case, in
25 both the deposition and the trial, she testified,

1 under oath, that she was unemployed. She pretended
2 to have been in the Navy for a year and a half. We
3 FOIA'd her veteran's record. She was only there for
4 three weeks and not in the Navy.
5 Things objective like that and this -- people
6 want to be clear from crime, well, perjury is a
7 crime. And I'm asking you, as the chief
8 administrative judge for general sessions, to
9 prosecute the prosecutor who suborn 378 perjuries.
10 And you can get David Pasco to refer it to you.
11 But it has gone on long enough. The very false
12 accuser, the very false accuser in that harassment
13 case, which, thank God, I got dismissed with
14 prejudice while acting totally pro se, is the same
15 false accuser in that assault case from which I'm
16 seeking PCR and from which I'm also seeking my Rule
17 29(b) motion to be heard. That's nine years ago.
18 That's too long for -- nine years is way too long
19 for courts to sit on perjury committed under their
20 very eye, under their very eye.
21 And the reason they are abusing Mr. Truluck,
22 the reason they are abusing Mr. Truluck is that they
23 want him. And the man has been noble and patient
24 and brilliant. And I cannot say good enough about
25 him. But I will not sit by and see him abused just

1 so they can escape with perjury. It ends right here
2 and right now.
3 Either you will tolerate perjury or you will
4 not. And that, again, Judge, the Honorable Judge
5 Clifton Newman, it happened in your court. And
6 that's something that I began researching
7 immediately after the jury deadlocked. And I think,
8 I hope, that the clerk gave Your Honor that
9 annotated transcript.
10 THE COURT: Yes. Well, Dr. Faltas, the Court
11 does not investigate perjury. The Court does not --
12 DR. FALTAS: Then refer me to another
13 solicitor, because --
14 THE COURT: The Court does not prosecute
15 perjury. If -- any person who wished to have anyone
16 investigated for any crime, can pursue that through
17 law enforcement channels who initiate warrants. I'm
18 a judge and not a police officer, and I do not issue
19 orders of arrest, other than as a result of a court
20 contempt proceeding or something of that nature.
21 But --
22 DR. FALTAS: Except, Your Honor, that -- I'm
23 sorry to interrupt.
24 THE COURT: And, in addition to that, I'm not
25 here today to entertain any -- your perjury case or

1 case of perjury against anyone else. I'm here
2 because an emergency motion was filed seeking to
3 have Mr. Truluck relieved as counsel and seeking to
4 have you given the right to represent yourself. And
5 this hearing will be limited to those two things.
6 DR. FALTAS: Correct. I am giving you the
7 background --
8 THE COURT: Well, I've heard the background
9 sufficient for me to entertain those two motions.
10 But to --
11 DR. FALTAS: All right. But --
12 THE COURT: But to expect me to hear evidence
13 of perjury of a case from years ago, that's beyond
14 the scope of what I'm willing to entertain this
15 morning.
16 DR. FALTAS: Correct. I appreciate that. But
17 I also appreciate that you let me make my record.
18 THE COURT: Yeah. Well, no, you've made your
19 record, you've interrupted Mr. Truluck to give some
20 clarification to what he was explaining, and I've
21 heard what you have to say on that point. I'll now
22 move to the State's attorney and hear what they have
23 to say.
24 MR. TRULUCK: Your Honor, I never got a chance
25 to actually address your question, if I could be

1 allowed to do so.

2 THE COURT: Which question?

3 MR. TRULUCK: Your Honor, your question was how

4 to deal with the supreme court order with regard to

5 Dr. Faltas proceeding pro se.

6 THE COURT: Yes, sir.

7 MR. TRULUCK: With your permission, Your Honor,

8 I've reviewed this order countless times because I

9 have to rely on it for how to represent Dr. Faltas

10 as standby counsel. It doesn't give me a lot of

11 guidance; in fact, it puts me in a very compromised

12 situation with regard to ethics. And I've had that

13 conversation with Dean Wilcox at the ethics school

14 about how to deal with it.

15 At the end of the day, Your Honor, the only

16 thing that's important for the motion here today is

17 that that order does not prevent her, in my opinion,

18 from representing herself pro se in a postconviction

19 relief hearing. And I'll explain why.

20 It restricts her, to the best of my

21 understanding, from filing and participating in a

22 case pro se as a plaintiff in a civil action. I

23 think that's unequivocally clear. It restricts her

24 from going beyond filing an appeal and handling the

25 matter pro se in an appellate court. I think that's

1 a fair characterization. It reserves the right for
2 her to represent herself pro se in a matter where
3 she is a defendant in a civil capacity or a criminal
4 capacity.
5 And the criminal capacity can be modified,
6 subject to McCaskill v. Wiggins, which that case,
7 U.S. Supreme Court case, all it says is that a
8 defendant -- you cannot take away their right to
9 represent themselves, and if you do anything, the
10 most you can do is appoint standby counsel to help
11 them get through the procedure so that everything
12 moves smoothly. That's it. They can't control the
13 case, they can't tell the client what to do.
14 In this order, Your Honor, there are prongs --
15 or, I would say, two avenues why she can proceed pro
16 se. The first is, Your Honor, she's an applicant in
17 a postconviction relief procedure. There's no
18 restriction to her as a rule as an applicant,
19 period. The supreme court did not address it, they
20 did not restrict it, and if a court is going to take
21 away your rights in an unusual order, they need to
22 be specific enough; otherwise, she has all of her
23 rights that she would have ever had for this order
24 to proceed as an applicant.
25 And as much as I might anticipate the Attorney

1 General's Office will say, hey, Judge Newman, this
2 is a civil action, it's in the civil court, that's
3 partly true. But, also, in the case of Ferguson v.
4 Gathright, which is a Fourth Circuit decision that
5 was embraced by the South Carolina Supreme Court in
6 Washington v. Washington -- and I can get you the
7 cites and everything on those cases -- they said
8 that in criminal and quasi-criminal cases, a
9 defendant has a Sixth Amendment right, which is the
10 whole issue with McCaskill v. Wiggins.
11 And if Dr. Faltas is in a matter where her
12 liberty interests are at risk, as they are in a
13 postconviction relief hearing, it is, at minimum, a
14 quasi-criminal hearing. And as much as the supreme
15 court does not say she cannot represent herself as
16 applicant, one, and, alternatively, if you want to
17 equate terms in there, which I don't think is
18 appropriate considering the supreme court can't
19 strip people's rights by equation, but if you were
20 to equate it, she would be a defendant, not a
21 plaintiff in a PCR case because it has
22 quasi-criminal elements to it, and if she loses, she
23 runs the risk of having her liberty rights affected.
24 And so, Your Honor, I respectfully submit that
25 not only does the order not say she cannot represent

1 herself because it doesn't address applicants --
2 THE COURT: If she loses, she has her liberty
3 rights at stake in which of the cases?
4 MR. TRULUCK: If she loses in PCR and the case
5 is sent back to the summary court, there is --
6 DR. FALTAS: The sentence -- the sentence is
7 stayed, pending the PCR. So if I lose the PCR, I
8 automatically serve the sentence.
9 MR. TRULUCK: And, Your Honor, that would apply
10 to somebody who is incarcerated as well. They would
11 have a chance to come back on bond if they got their
12 PCR overturned.
13 So, Your Honor, she has a liberty interest at
14 risk, which would put her in the category of a
15 defendant, if you were to try to read into the
16 order. But I don't think this order should be read
17 into because it restricts her rights. It should
18 only be read as far as it can be read in the black
19 letter of the writing. And it makes no comment
20 whatsoever on her ability to represent herself as an
21 applicant. She's never been identified as a
22 plaintiff in the PCR action.
23 In addition to that, Your Honor, and this goes
24 partly to the motion to relieve, so I'll try to keep
25 it within the barriers of this, over the course of

1 this ten months that Dr. Faltas and I have worked
2 together, with no reflection on Dr. Faltas, it has
3 been exhausting. We've worked on this case -- or
4 these cases every other day, if not every day,
5 including weekends, for this entire year.
6 And it's ultimately because I am playing the
7 role as a courier, as assistant, as a secretary, as
8 a paralegal, and as standby counsel. Every time I
9 get an e-mail from Dr. Faltas or every time I get an
10 e-mail from the Court or every time I get an e-mail
11 from the Attorney General's Office, I forward it on
12 to the respective parties. And I --
13 THE COURT: Do you believe that the role that
14 you just described is a role sanctioned by the
15 courts for standby counsel?
16 MR. TRULUCK: Which courts, Your Honor? You
17 mean the courts in South Carolina?
18 THE COURT: Yeah, this court.
19 MR. TRULUCK: Yes, Your Honor.
20 THE COURT: When standby counsel is appointed,
21 do you believe that standby counsel is appointed to
22 serve as a -- given the names of those things
23 you just --
24 MR. TRULUCK: Courier, secretary, paralegal --
25 THE COURT: Courier, secretary, paralegal, or

1 the role of standby counsel is to advise and be a
2 resource person to the litigant regarding the
3 criminal -- the civil or criminal rules and
4 evidentiary issues, but not to assume the role of
5 representation or to carry out any of the other
6 functions that you just described.
7 MR. TRULUCK: I believe Your Honor's second
8 definition is the appropriate one; however, I do not
9 have a code of ethics to follow. And, again, I had
10 this conversation with Dean Wilcox. He seems to
11 believe I do because we have a code of ethics.
12 There are no code of ethics for standby counsel,
13 Your Honor. I have to try to amalgamate every rule
14 that I have as my responsibility as Dr. Faltas'
15 standby counsel, and it's a constant puzzle.
16 And I agree with you, Your Honor, that my role
17 should probably only be for counsel. Frankly, Your
18 Honor, Dr. Faltas doesn't need counsel at all. She
19 understands the law. And I say this at a minimum,
20 she understands it much more, at the minimum of a
21 new attorney, minimum. She doesn't need my
22 counsel --
23 THE COURT: I'm sure she'll debate that with
24 you.
25 MR. TRULUCK: No, no. I'm saying she may

1 understand a great deal more. I'm saying the
2 minimum is that. And, Your Honor, so I,
3 essentially, am not sure what my role entirely is.
4 But I can tell you this: The Attorney General's
5 Office and anybody else that I deal with, they do
6 not want to speak to Dr. Faltas directly. And if I
7 don't forward on correspondence from them to her, I
8 feel I am remiss in my duties inasmuch as they
9 refuse to communicate with her directly.
10 THE COURT: Well, after -- well, if you are
11 relieved, then what status would that relegate
12 things to?
13 MR. TRULUCK: Well, in the case of the PCR that
14 she has won twice, right now there's a pending
15 motion for consideration by the AG's office and she
16 has filed an opposition to that reconsideration. It
17 is only for Judge Gravely to rule. If he stays with
18 granting Dr. Faltas' PCR, my relationship with her
19 would terminate in that case.
20 In the other PCR where Judge Sprouse has
21 elected to dismiss without prejudice --
22 DR. FALTAS: But he hasn't.
23 MR. TRULUCK: He has not yet, Your Honor --
24 DR. FALTAS: He might change his mind.
25 MR. TRULUCK: -- but he might change his mind.

1 But inasmuch as Judge Sprouse has indicated that he
2 is inclined to dismiss the case without prejudice
3 and asked me to write the order -- which I found
4 disturbing as her counsel to write an order that
5 would be to her detriment -- and I initially
6 objected, Dr. Faltas asked me to reconsider.
7 But if it is dismissed, my relationship with
8 Dr. Faltas in that case would also be resolved
9 because I have only been appointed to that case
10 action number, and if she re-files the future, she
11 would require new appointment.
12 With regard to the final matter where she is a
13 full defendant and can represent herself entirely,
14 which she has a right to do, that matter is
15 currently on indefinite stay. I believe there are
16 timelines that will make decisions, but right now we
17 don't know when that would be able to be heard
18 because some of the issues are with the supreme
19 court or either being considered by the supreme
20 court.
21 And while Dr. Faltas does not agree it stays
22 that hearing, the Court, Judge Newsom, has
23 recognized he's not hearing it right now until
24 that's resolved. So one case is sort of on its own
25 track, the other two are soon to be resolved, Your

1 Honor.

2 However, Dr. Faltas has indicated that she does
3 not want me to be her attorney anymore. I have held
4 off on embracing that request to this Court for ten
5 months because I have tried to stay with her because
6 I don't want her to get another attorney, I don't
7 want to abandon her, I don't want to fail in my
8 duties to this Court.

9 But the reality is, is that she can handle this
10 case herself. I see no restriction in the supreme
11 court order that says she cannot. I'm merely
12 holding her back, frankly, if only by
13 correspondence. And, Your Honor, the cases have
14 largely been resolved. I'm not abandoning her at a
15 point where she is not in control of her cases.
16 Now, again, I'm not going entirely into the motion
17 to be relieved, but she did ask me about her ability
18 to represent her pro se.

19 I believe the cases say that her Sixth
20 Amendment rights are preserved. The only
21 restrictions they have are for somebody who doesn't
22 know what they're. She does not have that problem.
23 And the supreme court order does not restrict her
24 from representing herself as an advocate or as a
25 defendant in either civil or criminal matters. And

1 this is, in my opinion, a quasi-criminal matter,
2 Your Honor. I'll stop at that. I know Dr. Faltas
3 wants --
4 THE COURT: All right. I'll hear from the
5 attorney general.
6 DR. FALTAS: I needed to add one --
7 THE COURT: I'll hear from the attorney
8 general.
9 MS. JAMESON: Thank you, Your Honor. Megan
10 Jameson on behalf of the State. I do want to note a
11 couple of things for the record. I do object to us
12 going forward today without Ms. McCallister present.
13 She is counsel of record on this 2018 case. She is
14 out of the state for the holidays. I'm appearing on
15 her behalf because this emergency motion was
16 scheduled yesterday. She's in the state of Florida
17 and could not make it back for this hearing. So I
18 do object to this hearing going forward without
19 counsel of record for the State.
20 The State is at a significant disadvantage. As
21 you can see, this is a very involved case. I'm not
22 counsel of record, I supervise Ms. McCallister, as I
23 do over all the other PCR actions that we have,
24 approximately anywhere from 2,500 to 3,000 cases.
25 I'm not as intimately familiar with this case as

1 Ms. McCallister is. So I am here on behalf of the
2 State and do object to going forward today.
3 Additionally, I would note for the record that
4 we're only here on the 2018 PCR. There's been
5 arguments by Applicant and her counsel that we're
6 here on a 2017 PCR motion to be relieved and a
7 summary judgment action. This motion, which, as of
8 this morning when I got to the courthouse, remains
9 un-filed, only references the 2018 PCR action. It
10 does not reference the 2017 PCR action that I'm also
11 not counsel of record for and it doesn't reference
12 the summary court action.
13 Additionally, the State is -- the Attorney
14 General's Office is not the opposing party to the
15 summary judgment action, so our position is we're
16 only here today on the 2018 postconviction relief
17 action.
18 I want to respond to a few things in
19 Mr. Truluck's motion. While I agree that the
20 order -- and, Your Honor, may I approach with a copy
21 of the 2014 [sic] order signed by Judge Jocelyn
22 Newman?
23 THE COURT: Yes.
24 MS. JAMESON: It is -- was filed April 24th,
25 2018. While it does use the word standby counsel,

1 it makes very clear -- I'm referencing Paragraph
2 No. 2: It is therefore ordered, with the consent of
3 Applicant and where no conflicts preventing
4 Appointee from assisting Applicant with these
5 proceedings are known, that is Appointee is
6 appointed as standby counsel in this action allowing
7 Applicant to appear pro se during the evidentiary
8 hearing and then and there examine witnesses, offer
9 evidence, and present oral arguments while ordering
10 Appointee -- which is Mr. Truluck -- to handle all
11 prehearing and posthearing matters, including
12 communications of the Court and staff and filing of
13 any documents.
14 So I take issue with Mr. Truluck's contention
15 that he's merely standby counsel and all
16 communication should be done through Dr. Faltas,
17 because that's clearly not what the order of the
18 court from April 24th references. Additionally, the
19 supreme court order from September 27th, 2017 makes
20 it very clear, in Provision No. 5, that she cannot
21 appear as a plaintiff in a civil action.
22 This is a civil action. It's filed in common
23 pleas. She clearly is a plaintiff. Pursuant to
24 Black's Law Dictionary, a plaintiff is a party who
25 brings a civil suit in a court of law. That's what

1 we're here for.

2 She brought this PCR action based on her

3 abusive conduct to the courts of South Carolina, the

4 United States Supreme Court, the federal courts, and

5 abuses to counterparties --

6 DR. FALTAS: Objection.

7 MS. JAMESON: -- like the State --

8 DR. FALTAS: Objection.

9 MS. JAMESON: -- these --

10 DR. FALTAS: Objection to her characterizing me

11 as abusive, Your Honor.

12 MS. JAMESON: These limitations were put in

13 place by the supreme court because of her conduct.

14 And that's why we're here today. She is a plaintiff

15 in a civil action. She cannot appear pro se based

16 on the supreme court's order, and, therefore, cannot

17 appear pro se.

18 If Your Honor is inclined to grant

19 Mr. Truluck's motion, we would request that another

20 attorney be appointed to represent her. She,

21 clearly, based on this order, cannot appear pro se.

22 And this is a civil action based on the black-letter

23 definitions of the law, and she is the plaintiff.

24 And I would contend that --

25 THE COURT: Well, do we operate by Black's Law

1 Dictionary or by case precedent?
2 MS. JAMESON: We operate by case precedent.
3 But I didn't hear anything that Mr. Truluck
4 mentioned -- I know he wants to interpret this as a
5 quasi-criminal procedure, but I think the supreme
6 court's order was trying as hard as it could to
7 cover all of the various instances that Dr. Faltas
8 has filed, which are in the -- I don't even want to
9 guess how many. And so this order tries to
10 encompass anything that she could possibly file in
11 the future.
12 They didn't know that we have this 2016, 2017,
13 or 2018 case going on. This was before the 2018
14 case was even filed. And so I think it's expansive
15 to cover all of the actions she has going on at any
16 time. And Provision No. 5 clearly applies here.
17 But even if Your Honor --
18 THE COURT: Let me look at Provision No. 5
19 again.
20 MS. JAMESON: And, Your Honor, do you --
21 Ms. McCallister e-mailed a copy of the order
22 yesterday. I have a copy, if you'd like.
23 THE COURT: No. I have the copy by the supreme
24 court.
25 MS. JAMESON: Provision No. 5 says: Respondent

1 may not represent pro se as a plaintiff in a civil
2 action in any court of this state. Instead, she
3 must be represented by counsel before any court in
4 this state when appearing as a plaintiff.
5 Respondent is advised that she is not precluded from
6 addressing any non-frivolous grievances she may have
7 as a plaintiff in the courts of this state, assuming
8 that she is represented by an attorney licensed to
9 practice law in South Carolina.
10 So the State's position is that Provision No. 5
11 in this order from September 27th, 2017 is
12 controlling here, and she needs to be represented by
13 counsel. If Your Honor is inclined to relieve
14 Mr. Truluck, then we would ask that another attorney
15 be appointed immediately because she is precluded
16 from appearing pro se.
17 And, additionally, Your Honor, I would note
18 that the State's position is that this is just a
19 delay tactic. The 2018 case has been dismissed
20 without prejudice by --
21 DR. FALTAS: It has not been dismissed. This
22 is a falsehood. It has not been dismissed. There
23 is no order saying that and enough is --
24 THE COURT: Dr. Faltas, this is a court of law.
25 I don't recall counsel for the State objecting -- or

1 interrupting you in any form or fashion. You cannot
2 interrupt her.
3 DR. FALTAS: Thank you, Your Honor. But I --
4 MS. JAMESON: Your Honor, Ms. McCallister, who,
5 again, is counsel of record for the State, received
6 an e-mail from Judge Sprouse's law clerk on December
7 21st, last Friday evening, indicating he was
8 granting the State's motion to dismiss without
9 prejudice. An order has not been drafted yet, which
10 is referenced in Applicant's emergency motion.
11 Mr. Truluck was asked to draft the order.
12 Mr. Truluck objected. Again, I'm not privy to any
13 of these e-mails. I'm operating at a disadvantage
14 because, again, Ms. McCallister is counsel of
15 record.
16 THE COURT: The case that Judge Sprouse was
17 handling, was it the -- is it the 2018 case?
18 MS. JAMESON: Yes, it is, Your Honor. The
19 State moved to dismiss. And the State filed a
20 second amended return and motion to dismiss on
21 December 6th, 2018, seeking dismissal without
22 prejudice. So she has leave -- Dr. Faltas has leave
23 to re-file when two conditions were met. She has a
24 pending United States Supreme Court appeal of this
25 case. And, also, there was a Rule 29(b) motion that

1 was filed that still has not been heard. So the
2 State moved to dismiss without prejudice based on
3 these two things.
4 THE COURT: What is the 29(b) motion?
5 MS. JAMESON: It was filed, I believe, in 2013,
6 and has just kind of languished. It's not something
7 our office is handling --
8 THE COURT: I'm not --
9 MR. TRULUCK: Your Honor, it's a motion to
10 reopen the case after after-discovered evidence.
11 It's the magistrate provision.
12 THE COURT: All right.
13 MS. JAMESON: And Judge Sprouse did not,
14 according to this e-mail -- and, again, it's been a
15 holiday week, so we have -- I don't believe we've
16 had a response. I'd probably defer to Mr. Truluck
17 because he's copied on those e-mails. But
18 Ms. McCallister did ask for clarification if it was
19 being dismissed without prejudice based on both of
20 those grounds or just the ground as indicated in
21 this e-mail from last Friday.
22 THE COURT: So this motion before me -- and I
23 see the -- an e-mail that was handed up that
24 references PCR No. 2018-40-01798, emergency motion
25 to relieve counsel. Was that the case that Judge

1 Sprouse has under advisement?
2 MS. JAMESON: Well, Your Honor --
3 THE COURT: Or referred by Judge Sprouse?
4 MS. JAMESON: And provisionally granted the
5 State's motion to dismiss via e-mail and we're just
6 waiting for the order to be drafted by a party.
7 Once Mr. Truluck objected to drafting,
8 traditionally, when the State's motion to dismiss is
9 granted, the State does draft those orders.
10 Ms. McCallister offered to draft that e-mail
11 because Dr. Faltas is represented by counsel, and
12 our position is she shouldn't be drafting her own
13 orders. And we've not heard back from Judge Sprouse
14 as of this morning. Again, I'm not counsel of
15 record, I'm not copied on any of these e-mail
16 chains --
17 THE COURT: Well, if I were to relieve
18 Mr. Truluck and he is, I guess -- I don't know if
19 he's under orders by Judge Sprouse to draft an order
20 or -- would he be abandoning ship when it's about to
21 dock or -- or, jurisdictionally, would I be
22 interfering with a case under advisement by Judge
23 Sprouse?
24 MS. JAMESON: With all due respect to another
25 member of the bar, yes, I do see this as a delay

1 tactic and jumping ship near the end of the case.
2 It's been --
3 MR. TRULUCK: Objection, Your Honor. I take
4 that as a personal --
5 THE COURT: Your objection is noted, but don't
6 object and then argue. She has the floor.
7 MS. JAMESON: The case is all but over. This
8 is a delay tactic, so an order cannot be entered.
9 This is a repeated pattern where we get called in to
10 court for these emergency motions. The case is
11 almost over. There is no emergency here. An order
12 of dismissal without prejudice needs to be entered
13 once the case is concluded, then she can re-file her
14 PCR action. But there doesn't appear to be, at
15 least on the State's position, an emergency, because
16 we do have a ruling, we're just waiting on an order
17 at this point, Your Honor.
18 THE COURT: All right.
19 MS. JAMESON: And so the State respectfully
20 would ask you to deny the motion because she cannot
21 appear pro se, based on the supreme court's order.
22 Based on Judge Newman's order, it's clear that while
23 the word standby is used, Dr. Faltas should not be
24 communicating with the Court or the State for any
25 pre- or post-hearing matters, which she has

1 repeatedly done.

2 One other thing I did want to point out:

3 Dr. Faltas mentioned, when she was arguing her

4 motion, and also in her written motion, she says the

5 State is denying her access to materials. The State

6 uses a Kiteworks file-sharing software, and we have

7 e-mail confirmation that that was accessed by her

8 counsel of record, Mr. Truluck, on the 19th and the

9 materials were downloaded.

10 Additionally, because there was this concern

11 that Dr. Faltas couldn't download these materials, a

12 CD was provided for her. So she's been provided

13 this in multiple avenues. And all of these

14 materials are a compilation of a judge's packet of

15 previously filed materials. But I did want to note

16 that for the record too.

17 And, additionally, the emergency motion to

18 relieve counsel discusses the State's manipulation

19 of the PCR docket. I did want to note for the

20 record that in the Fifth Judicial Circuit, all of

21 the postconviction relief hearings for the entire

22 calendar year have been set by Judge Hood in his

23 capacity as chief administrative judge. We've had

24 no manipulation or role in setting of the dockets

25 this year, and that is a gross mischaracterization

1 of how the dockets were set in Richland County this
2 year.
3 THE COURT: All right.
4 I'm going to take a few minutes' break and then
5 I'll come back to Mr. Truluck and Dr. Faltas.
6 MR. TRULUCK: Thank you, Your Honor.
7 DR. FALTAS: Thank you, Your Honor.
8 (Brief recess.)
9 THE COURT: All right. Thank you.
10 Mr. Truluck?
11 MR. TRULUCK: May it please the Court, Your
12 Honor. I apologize for speaking on an objection in
13 the middle of Ms. Jameson's response. Your Honor, I
14 get a little upset when I get allegations of delay
15 upon me when Dr. Faltas has tried to have these
16 matters heard for such a long period of time. And I
17 think Ms. Reid, your law clerk, can attest to that.
18 Additionally, Your Honor, just to clarify,
19 Dr. Faltas filed this motion. I endorse this
20 motion. This is Dr. Faltas' filed motion.
21 Finally, Your Honor, inasmuch as I've just been
22 accused of delay, whether directly or indirectly,
23 Your Honor, the final straw of all this came when
24 after ten months of relaying all this information as
25 Dr. Faltas' go-between, the State sent, as

1 Dr. Faltas told you, an encrypted file folder with
2 94 .pdf files. And in response to that, because she
3 could not open it, because she is in control of her
4 case, I wrote to Ms. McCallister, and Ms. Jameson
5 responded: I would really appreciate it if you
6 forward the e-mail to Dr. Faltas as the person in
7 control of this case. If you simply refuse, I will
8 do my best to provide her with the documents. But I
9 am of the opinion that, in this case, it's simply
10 unreasonable to refuse to forward her an e-mail so
11 that she can get the information in preparing for
12 her case. If so required, I would happy to
13 facilitate communication. But if you cannot
14 accommodate this request, I will speak to Dr. Faltas
15 about seeking an order of court directing you or
16 your office to identify her as the proper party of
17 correspondence and disclosure of discovery in all
18 matters. And her response --
19 THE COURT: Are you still talking about this
20 2018-40-01798 matter?
21 MR. TRULUCK: Yes, Your Honor.
22 THE COURT: All right.
23 MR. TRULUCK: And in response to that, they
24 declined. In fact, they even sent back my own order
25 of appointment by Judge Jocelyn Newman. And,

1 essentially, Your Honor, when I finally got a chance
2 to look at it, it was 94 files and, I think, as
3 Dr. Faltas said, a gigabyte.
4 Ms. McCallister did send me the CDs, but it
5 puts me, as her standby counsel, in a very awkward
6 position that I have to filter through and deliver
7 this information to her. And so that's part of the
8 frustration that we are going through, Your Honor,
9 with the AG's office.
10 And to put this in better context, whenever I
11 send them a message from Dr. Faltas to them at her
12 request, when they respond, they scrape her e-mail
13 address off. They go through more trouble in
14 responding to me than they do if they had just
15 replied all and copied her.
16 And, Your Honor, I think it's frustrating for
17 the State to take the position that we're causing
18 delay when Dr. Faltas is zealously committed to
19 having these matters heard.
20 THE COURT: She's speaking, I believe, in the
21 context that the matter has been heard and the judge
22 has his final order -- issuance of his final order
23 under advisement.
24 MR. TRULUCK: I agree with that, Your Honor --
25 or, well, I'm sorry, I don't disagree with what

1 you're saying. But I don't see as to how that's
2 delay on our part, because they're refusing to
3 communicate with her directly on massive amounts of
4 information and, essentially, frustrating her
5 ability to review what they did with them by having
6 me be a go-between.
7 THE COURT: What --
8 DR. FALTAS: Sir --
9 THE COURT: What would a review of these
10 documents have to do with the matter already heard
11 by the judge who he's --
12 DR. FALTAS: It wasn't a -- it wasn't heard on
13 the merits at all, Your Honor. It wasn't heard on
14 the merits at all. In fact, even my motion for the
15 State's default was not heard. The only thing he
16 took under advisement was -- was that -- so, no, the
17 merits were not reached. And, in fact, before
18 that --
19 THE COURT: I'm not in a position of reviewing
20 that judge's matter. If the -- you know, the -- for
21 weeks, you-all were seeking to have me schedule this
22 case for hearing before some judge. And I scheduled
23 it before Judge McLeod, that didn't work out; so we
24 had it scheduled before Judge Sprouse, and Judge
25 Sprouse heard the case. To whatever extent he heard

1 it, I'm not here to second-guess or anything. But
2 you-all have indicated that he is in the process of
3 issuing an order subsequent to that hearing.
4 And here you've -- and in that same case,
5 you've filed for an emergency motion for counsel to
6 be relieved in a case where the order subsequent to
7 the hearing is being anticipated. In fact, he asked
8 you to -- I don't know. Did you draft the order?
9 MR. TRULUCK: No, Your Honor. I immediately
10 responded and asked that the judge not instruct me
11 to write an order to Dr. Faltas' detriment.
12 THE COURT: And the judge probably respected
13 that, so he'll probably issue it himself or have
14 someone else draw it. If any drafting needs to be
15 done -- I mean, while you've been here, we've heard
16 a case from the attorney general, he submitted an
17 order, we signed it, and he's gone. So it's not --
18 it's not an insurmountable task by a judge.
19 MR. TRULUCK: I just want to say one more
20 thing, and then I'll sit down and let Dr. Faltas
21 address you, if you'll allow her.
22 Your Honor, I agree with everything that you've
23 said. The problem is, is that I believe the AG's
24 office is taking advantage of the relationship that
25 I have with Dr. Faltas, and I find that to be a

1 problem. I similarly find to be a problem that I in
2 no way believe that they should be here as part of a
3 motion to determine whether or not I continue to
4 represent her as counsel and whether or not you
5 would allow her to change her representation status
6 going forward, because they have no standing to
7 argue with how her case is presented.
8 That being said, Your Honor, I do reserve the
9 opportunity to address you with regard to the motion
10 to be relieved, which I have not fully touched on at
11 all yet, Your Honor. Thank you.
12 DR. FALTAS: Your Honor, I need to correct a
13 couple of things.
14 THE COURT: All right.
15 DR. FALTAS: First of all, Your Honor knows
16 that until and unless an order is signed, it may be
17 changed and reconsidered by the judge.
18 THE COURT: Yes.
19 DR. FALTAS: And even if he does sign one
20 dismissing without prejudice, I still have the right
21 to ask for reconsideration.
22 THE COURT: All right.
23 DR. FALTAS: But they're saying that it's a
24 delay. That is totally false. They asked for
25 dismissal without prejudice back in May. And they

1 tried to sneak an order for the judge to sign it
2 without even a hearing. They wrote a letter for
3 Judge Hood to go ahead and sign it without a
4 hearing. And I gave Your Honor a motion saying if
5 this is an open question of state law, please
6 certify it to the state supreme court.
7 So back in May, seven months ago, I asked Your
8 Honor, specifically, to make your ruling on the
9 issue of whether an application for certiorari to
10 the U.S. Supreme Court stays a PCR, because the
11 statute, the PCR act in South Carolina, is quite
12 clear: It has to be filed within one year from the
13 remittitur.
14 And there is the case of Green v. State where
15 somebody had a federal case pending and said that
16 tolls the PCR time. And the state supreme courts
17 unanimously said, no, the act says one year from the
18 remittitur.
19 So I think that is a false argument. I did not
20 delay. I immediately asked for you to either make a
21 ruling or certify it to the state supreme court.
22 The attorney general refused to schedule my case for
23 a hearing until December 7th of this year. And
24 then, even after it was assigned to December 7th,
25 they crowded me out. They said, no, we have to

1 change it. And they fully have half of the PCR
2 cases --
3 THE COURT: Well, I'm going to remove from
4 consideration the argument by the attorney general
5 that this is intended for delay. So that's -- I'm
6 not going to consider that argument.
7 DR. FALTAS: Okay. Thank you.
8 THE COURT: So let's move to some other point.
9 DR. FALTAS: The other thing is that she says
10 the state supreme court did not know that I may have
11 PCRs. That is totally false. The reason it is
12 totally false is that, first of all, the reason
13 behind an order or a law or a statute supersedes its
14 language. They are claiming, the state supreme
15 court, which I take issue, that I have been
16 frivolous.
17 Okay. The two PCR cases that I have filed out
18 of the three pending, the two that have been
19 resolved have been ruled in my favor. So I could
20 not have been frivolous in PCRs, and so they could
21 not have any interest in my not filing PCR pro se.
22 In addition, for heaven's sake, convicted
23 serial murderers get to file their own PCRs pro se
24 in this state. What did Dr. Faltas do to be denied
25 that right except defend herself ably pro se before

1 Your Honor and prevail? Now, the other thing is,
2 that PCR, the first one, number 16 -- 16-CP-40- --
3 2016-CP-40-1444, was filed March 2016. Retired
4 Chief Justice Toal heard the first part of it in
5 December 2016. And at the end of that hearing, she
6 said, we're not finished, I will ask Chief Justice
7 Beatty to assign me to another special term to
8 continue this case.
9 So when Ms. Megan Jameson stands up and says
10 the supreme court did not, in September of 2017,
11 know that I had PCR cases, that is totally false.
12 The state supreme court knew it because it was
13 retired Chief Justice Toal who sat on one and asked
14 for a special term to continue it. And by June
15 2017, she had issued that order from the bench.
16 THE COURT: All right.
17 DR. FALTAS: So before September, the order of
18 September 2017, the state supreme court knew that
19 I'm filing PCR cases and knew that I'm filing
20 meritorious ones. And if they had any suspicion
21 that I was filing any frivolous ones, they would
22 have, by name, removed my right from filing that.
23 Additionally, Your Honor, again, she said that
24 they provided me a CD. They did not provide me a
25 CD. They mailed a CD to Mr. Truluck, which, again,

1 makes him a courier.

2 THE COURT: Okay.

3 DR. FALTAS: So -- so --

4 THE COURT: Yes, ma'am.

5 DR. FALTAS: May I show you this, please?

6 THE COURT: I accept what you're saying as

7 true.

8 DR. FALTAS: Yeah. So, as Mr. Truluck said,

9 they go out of their way to burden Mr. Truluck. And

10 the reason it's an emergency is that we don't know

11 what Judge Sprouse is going to do, but it's an

12 emergency because Mr. Truluck has been -- on my

13 account, been put in the dilemma of refusing a court

14 order -- to draft an order or filing -- or filing --

15 or drafting an order to detriment to me. So that's

16 the emergency.

17 THE COURT: All right. Well --

18 MS. JAMESON: May I be briefly heard in reply,

19 Your Honor?

20 I do want to start off by saying Mr. Truluck

21 said we were taking advantage of the situation and

22 Dr. Faltas said we are going out of our way to

23 obstruct the case. The State has gone out of their

24 way to comply with the order signed by Circuit Court

25 Judge Jocelyn Newman from April 24th, 2014. It's

1 clear all communications need to come through
2 Mr. Truluck. So I take great objection to saying
3 that the attorneys in my office and myself have gone
4 out of our way to delay this case or unreasonable or
5 take advantage in any way. We've gone out of our
6 way to comply with a valid court order, which is the
7 last court order we have on record regarding this
8 case.
9 Additionally, I would like to note for the
10 record, what's unreasonable is the conduct of
11 Dr. Faltas towards our office, the attorneys, and
12 our legal assistants. I just counted up quickly,
13 and just since the courts have been closed, as of
14 close of business on Friday, I personally have
15 received over 14 e-mails from Dr. Faltas. And this
16 is the reason why this supreme court order needs to
17 be enforced. She's abusive to members of our staff
18 and she needs to have counsel to prohibit things
19 like this from happening. This is why it's clear
20 that she --
21 DR. FALTAS: Your Honor, I ask her to produce
22 those e-mails. This is false. I ask her to produce
23 those e-mails.
24 MS. JAMESON: Additionally, Your Honor, that is
25 why we think counsel should be appointed. If

1 Mr. Truluck wishes to be relieved and Your Honor
2 wishes to relieve him, new counsel needs to be
3 appointed.
4 Additionally, I did want to note for the record
5 Richardson v. State, which is a 2008 case from our
6 supreme court. The cite is 377 S.C. 103, and the
7 Southeast Reporter is 659 S.E. 2d 493. And that
8 case addresses the situation at hand where counsel
9 moved to be relieved -- or the attorney moved to be
10 relieved from a PCR case.
11 In Richardson v. State, it's clear that there's
12 no constitutional right to PCR counsel, it's a
13 statutory right in South Carolina. And that case
14 cautions that counsel shouldn't be relieved just for
15 delay. And here, I know Your Honor said he doesn't
16 want to entertain that argument, but the State's
17 argument is this is a delay at this point.
18 We do have the e-mail ruling from Judge Sprouse
19 provisionally dismissing without prejudice with
20 leave to re-file. And at this point, this emergency
21 motion is merely a delay tactic.
22 THE COURT: What year was that case?
23 MS. JAMESON: 2008, Your Honor.
24 I do just want to say, just to clarify, there
25 isn't a constitutional right to counsel in a

1 postconviction relief proceeding; it is a statutory
2 right, in that case, as instructed, when dealing
3 with when counsel should be relieved in
4 postconviction relief matters.
5 DR. FALTAS: Your Honor, 2008 precedes the U.S.
6 Supreme Court's rulings in the right to effective
7 PCR counsel when PCR is the first collateral review.
8 And I think it's the Ryan case. So to the extent
9 it's 208, it definitely was superseded by the U.S.
10 Supreme Court because the U.S. Supreme Court said
11 that states that provide PCR have -- have to provide
12 effective PCR counsel in the first collateral
13 review. I'm sorry. I may be blocking on the name
14 of the case, but I think it's Ryan or something.
15 MR. TRULUCK: Your Honor, if I also might
16 briefly add, Ms. Jameson may not be aware of this,
17 but to say that they've gone out of their way to
18 respect Judge Jocelyn Newman's order and that that
19 is -- they take great objection to that, is
20 categorically untrue, Your Honor.
21 On at least two occasions -- and I'm trying to
22 pull up the e-mail right now -- they have tried to
23 refuse to accept me as standby counsel saying that
24 hybridized counsel is not accepted in South
25 Carolina. And Judge Jocelyn Newman herself had to

1 chime in by e-mail and correct that misunderstanding
2 and say that she specifically appointed me as
3 hybridized counsel, and for them, essentially, to
4 recognize that.
5 So, Your Honor, inasmuch as they might take
6 great objection to it, Judge Jocelyn Newman would
7 disagree that they have been recognizing her order
8 for the purposes it was intended initially.
9 MS. JAMESON: Again, for the record, I'm at
10 great disadvantage here on behalf of the State
11 because I am not counsel of record. Lindsey
12 McCallister is counsel of record for the 2018 case.
13 The 2016 and 2017 cases are handled by assistant
14 attorney general Johnny James who is also on
15 preplanned vacation. I'm here on behalf of the
16 State because this was an emergency hearing that was
17 called.
18 Additionally, I was copied on some of those
19 e-mails. Sometimes I'm copied, sometimes I'm not.
20 But our position has consistently been that all
21 communications need to come from Mr. Truluck and go
22 to Mr. Truluck. That's consistently been our
23 position, and I vehemently object to any position
24 that we've wanted to communicate with Dr. Faltas.
25 We were trying to keep in align with this order.

1 And, again, we're only here for this 2018 case.
2 I believe what Mr. Truluck is referring to is the
3 2017 case. Again, her motion only references the
4 2018 case, and the State's position is that we're
5 only here on the 2018 case.
6 DR. FALTAS: No. The e-mail from Judge Jocelyn
7 Newman was in this case. She said, specifically,
8 hybrid. And then also, Your Honor, when she says
9 she's received 14 e-mails from me, that is also a
10 falsehood, and I ask her to produce them.
11 Additionally, this same Ms. McCallister who
12 claims to be away, as soon as Mr. Truluck said that
13 he cannot file something to my detriment, draft
14 something, she chimed in and said, can I file it
15 myself, it can be filed before the weekend. And the
16 reason --
17 THE COURT: All right. And --
18 DR. FALTAS: And the reason -- sorry. The
19 reason they are doing that is that the U.S. Supreme
20 Court is supposed to rule next Friday.
21 THE COURT: Okay.
22 I'm going to have you leave while I hear the
23 issues of Mr. Truluck regarding being anything that
24 might be considered privileged as far as -- on the
25 issue of being relieved as counsel.

1 MS. JAMESON: Would Your Honor prefer me to
2 remain at the courthouse or --
3 THE COURT: Yes, if you would. Hopefully this
4 won't take more than ten minutes.
5 MS. JAMESON: Thank you, Your Honor. I'll wait
6 outside. Thank you.
7 (Ms. Jameson exits the courtroom.)
8 THE COURT: All right. Ma'am on the front row,
9 you are?
10 MR. TRULUCK: Your Honor, this is Desiree Rest.
11 She's my paralegal.
12 THE COURT: Okay. All right. Yes, sir?
13 MR. TRULUCK: May it please the Court, Your
14 Honor. I'll try not to repeat too much of some of
15 what we've already addressed. But, essentially,
16 Your Honor, I've been Dr. Faltas' counsel for ten
17 months. Dr. Faltas' cases and Dr. Faltas, being a
18 client different than any others, have a lot going
19 on with them all the time.
20 Over the course of that time, I think I have
21 dutifully assisted Dr. Faltas -- I certainly hope I
22 have -- and at times she's asked to have me
23 relieved. It's never been any sort of animosity;
24 it's only been because we feel like we can't quite
25 go in the same direction and I don't want to inhibit

1 her case.

2 It's come to a point, Your Honor, where -- and

3 I'm not going to attack the AG's office too much

4 because I know she's not here to defend herself --

5 where I feel that they are essentially -- I do feel

6 they are using me to frustrate her case. I've said

7 that before.

8 And this last instance of them refusing to so

9 much as send a courtesy e-mail to her so that she

10 could review documents, for what reason, I have no

11 idea why they would not --

12 THE COURT: You've said all of that that you've

13 said thus far.

14 MR. TRULUCK: Yes, Your Honor. Pursuant to

15 rule --

16 THE COURT: So whatever is -- whatever is

17 privileged that the AG shouldn't be allowed to hear

18 and anything else bearing on your being relieved

19 that you haven't already said --

20 MR. TRULUCK: Your Honor, pursuant to rule --

21 THE COURT: -- let's hear that.

22 MR. TRULUCK: Pursuant to Rule 1.6, Your Honor,

23 it requires that an attorney, by mandate, shall be

24 relieved in a case where the representation will

25 result in a violation of the rules of professional

1 conduct or the law or the lawyer is discharged.
2 Your Honor, Dr. Faltas has indicated, on many
3 occasions before, but this is -- this occasion
4 appears to be more sincere than ever, such that I'm
5 here before you asking to be relieved. My client,
6 inasmuch as I'm standby counsel, is discharging me.
7 I endorse her request to have me discharged for many
8 reasons, but mostly because I do not believe I'm
9 assisting her in this case. In fact, I feel like I
10 am holding her back by having to perform duties that
11 are duplicate. And, otherwise, she's essentially in
12 control of her case entirely.
13 Similarly, Your Honor, I -- and I've already
14 made the argument about, you know, I think she can
15 represent herself pro se in this PCR case. But
16 because of that, I don't feel I'm giving her the
17 service an attorney should give when all I'm doing
18 is --
19 THE COURT: I'm addressing at this hearing only
20 the questions raised in this motion as it relates to
21 2018-CP-0798 --
22 MR. TRULUCK: Yes, Your Honor.
23 THE COURT: -- which is the motion to relieve
24 you in that case. I'm not going to address other
25 cases, other issues. I'm restricting it to this

1 hearing to that case.

2 MR. TRULUCK: Well, Your Honor, I'll be

3 specific to that as well. When Judge Sprouse asked

4 me to draft the order essentially ruling against my

5 client, I respectfully asked the law clerk to ask

6 the judge not to ask me to do that.

7 I believe Judge Sprouse was actually trying to

8 create an opportunity to craft it the way that

9 Dr. Faltas might want me to, but my knee-jerk

10 reaction was that I'm going to do something to the

11 detriment of my client. And I believe, as you do,

12 that that is being considered, but we have not

13 received any communication from Judge Sprouse.

14 In those circumstances, Your Honor, I feel that

15 I am put into a position of conflict that may not be

16 in Dr. Faltas' best interest. And, again, she has

17 asked that I be discharged. I agree with that. I

18 feel that I have done all that I can for her. And I

19 feel that, going forward, she is her best counsel.

20 Your Honor, inasmuch as you want me to restrict

21 it to that, I'll stop there. I don't know that I

22 can comment further outside of that. And

23 Dr. Faltas would like to address you with regard to

24 that as well.

25 THE COURT: All right. Yes, ma'am?

1 DR. FALTAS: If it pleases the Court, may I
2 remain seated because --
3 THE COURT: Yes.
4 DR. FALTAS: -- of my knee and breath issues?
5 Thank you, Your Honor. And I'm not addressing
6 the other case, but in the Case No. 17-CP-40-06831,
7 because I won the first time and then the attorney
8 general asked for reconsideration and we had to try
9 it over again, we asked -- and Judge Hood was
10 handling the administrative issues at that time --
11 found that that's basically doing the work twice.
12 And he allowed Mr. Truluck an additional flat fee.
13 And Mr. Herbert Young and Mr. Hugh Ryan from the
14 indigent -- commission on indigent defense, they
15 appeared and they consented to that.
16 I think, in this case, even though there has
17 not been a trial on the merits so far, there is very
18 good grounds to allow, at the very least, an
19 additional flat fee for Mr. Truluck. Number one,
20 he's not a PCR lawyer, he doesn't have a PCR
21 contract --
22 THE COURT: The issue of lawyer fees is not
23 before me.
24 DR. FALTAS: Well, I guess since Your Honor is
25 the administrative --

1 THE COURT: For the next 12 hours.
2 DR. FALTAS: Yes, for the next 12 hours. And
3 that's why I'm --
4 THE COURT: Technically, until midnight
5 tomorrow night.
6 DR. FALTAS: Yes, Your Honor, 36 hours. A lot
7 can happen in 36 hours.
8 THE COURT: Well, there won't be a lot
9 happening at the courthouse, I can assure you that.
10 DR. FALTAS: But Your Honor has seen that the
11 attorney general has said that they interpret it as
12 such to make him do duplicate work, and so I'm
13 making this request. And when Ms. Leah Moody was --
14 THE COURT: Well, I don't think there's an
15 issue or -- I don't think anyone in the judicial
16 system would disagree with the fact that Mr. Truluck
17 has gone beyond the call of duty, he's done a
18 yeoman's job, he has gone beyond, perhaps, what any
19 other lawyer who has ever been in any of these cases
20 has done in attempting to fulfill his
21 responsibility, and he needs to be commended for
22 that. I don't think that's an issue, not for this
23 Court. I mean, I --
24 DR. FALTAS: I'm saying the other cases, even
25 Your Honor has sometimes allowed additional fees for

1 lawyers. And I'm saying this is such a case.
2 THE COURT: But I'm not going to deal with the
3 issue of lawyer fees today. I'm dealing with the
4 issue of this motion which is entitled emergency
5 motion to relieve counsel.
6 DR. FALTAS: Okay. And, again, just at the
7 risk of repeating myself, the emergency is
8 Mr. Truluck's dilemma. But if you would, please,
9 take under advisement for the next 36 hours the
10 motion for fees.
11 And, otherwise, my other cases that are pending
12 in a hearing before Your Honor, I had brought that
13 up before and then filed another reminder and also a
14 motion for certiorari for Your Honor. And I -- I,
15 again, gave the clerk a copy for Your Honor, but if
16 you'd like one, I have it. Does that help?
17 THE COURT: No. None of this -- none of what
18 you're currently saying addresses the issue of his
19 motion --
20 DR. FALTAS: Yes, yes, yes --
21 THE COURT: -- to be relieved --
22 DR. FALTAS: -- yes, yes --
23 THE COURT: -- or your motion --
24 DR. FALTAS: I realize that, but it's other
25 matters before Your Honor and I --

1 THE COURT: Well, there are many matters before
2 Your Honor, thousands of matters before me.
3 DR. FALTAS: There is, Your Honor, but it's
4 been several thousands of days of my life --
5 THE COURT: All right.
6 DR. FALTAS: -- that have been taken away with
7 the false criminal charges.
8 THE COURT: Okay. We can have the attorney
9 general come back, because I think we've addressed
10 the issues regarding the motion to relieve counsel.
11 DR. FALTAS: Really, when you count the nine
12 years times 365 days a year, I have suffered
13 thousands of days for false criminal charges.
14 There's no question about that. And my life is
15 worth something and my years are worth something.
16 THE COURT: Dr. Faltas, do you have any other
17 matters pending before the South Carolina Supreme
18 Court?
19 DR. FALTAS: The attorney general appealed
20 judge -- Retired Chief Justice Toal's grant of PCR
21 to me.
22 THE COURT: And, Attorney General, is that
23 before the South Carolina Supreme Court?
24 MS. JAMESON: Yes, I believe that's the 2016
25 postconviction relief action. And we're waiting

1 on -- I'm not counsel of record for that, so I don't
2 want to advise. But we've not filed a petition for
3 certiorari yet.
4 THE COURT: I've heard and considered all of
5 the presentation this morning concerning this issue
6 of Mr. Truluck being relieved as counsel in
7 2018-CP-40-01798. That is the style action that
8 notices the request for emergency hearing is granted
9 on.
10 As stated, there's a -- pending before Judge
11 Sprouse, the case where he's about to issue an order
12 in this case. I'm granting Mr. Truluck's motion to
13 be relieved, and he is relieved upon receipt of
14 Judge Sprouse's order. Regarding the question of
15 whether or not Dr. Faltas can proceed pro se after
16 or upon the release of Mr. Truluck, that -- it
17 presents an interesting question.
18 I believe that the Supreme Court intended to
19 include matters similar to Dr. Faltas', these cases,
20 and the court's order, but the court did not say
21 that in this order. So I believe the supreme court
22 should clarify their position as to the limits in
23 which Dr. Faltas can appear in these court
24 proceedings.
25 I agree with Mr. Truluck's argument that the

1 court's interpretation of the supreme court order
2 should not be limiting -- should not be interpreted
3 beyond what is clearly stated in the order.
4 However, because this is an order issued by the
5 supreme court, the supreme court has the ability to
6 clarify its own orders. This is not a case
7 decision, this is a court order, so the court has to
8 make its own order.
9 I don't know how many times they've amended and
10 revised similar orders in relation -- in regard to
11 Dr. Faltas. And they should clarify whether this --
12 their intent is that she be prohibited from handling
13 PCR matters. But, until such time as that is done,
14 I am going to permit her to proceed pro se upon
15 Mr. Truluck being relieved in this 2018 case.
16 DR. FALTAS: Your Honor, I will be allowed to
17 proceed pro se once Mr. Truluck is relieved? I
18 just --
19 THE COURT: On the 2018 case, unless or until
20 the supreme court further clarifies its order to
21 incorporate or not incorporate the PCR, I request
22 the parties or any desiring party to request that
23 clarification from the supreme court since this is
24 an order. This is not a case that was argued and
25 where the court issues an opinion, this is a supreme

1 court order which they can amend, modify, or
2 clarify, if they so desire.
3 And that addresses the only issue that the
4 Court is entertaining today on this emergency basis.
5 To go beyond this limited issue in the absence of
6 primary counsel for the State upon less than 24
7 hours' notice will not be just.
8 DR. FALTAS: Thank you, Your Honor. Just to
9 reiterate, he's relieved once Mr. -- Judge Sprouse
10 issues --
11 THE COURT: Upon receipt of Judge Sprouse's
12 order, he's done --
13 DR. FALTAS: And I --
14 THE COURT: -- on the 2018.
15 DR. FALTAS: And I represent myself unless the
16 state supreme court says otherwise?
17 THE COURT: Yes. That's it, in a nutshell.
18 DR. FALTAS: Thank you.
19 THE COURT: Thank you all.
20 MR. TRULUCK: Would you like proposed orders?
21 THE COURT: No. We'll issue an order saying
22 that.
23 DR. FALTAS: Thank you, Your Honor. And happy
24 new year.
25 THE COURT: All right. Same to you-all.

1 DR. FALTAS: And just so you know, I wrote a
2 request for Ms. Weiss for special counsel to
3 investigate the perjury --
4 THE COURT: All right.
5 -- END OF TRANSCRIPT OF RECORD --
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1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF LEXINGTON

5

6 I, the undersigned, Bethanie K. Creppon, Circuit
7 Court Reporter for the Eleventh Judicial Circuit of
8 the State of South Carolina, do hereby certify that
9 the foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Circuit
13 Court for Richland County, South Carolina, on the
14 28th of December, 2018.
15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17
18 February 11, 2019
19
20 s/Bethanie K. Creppon
21
22 Bethanie K. Creppon
Circuit Court Reporter
23
24
25