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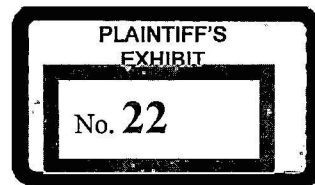
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S.C. SUPREME COURT

State of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2019-CP-40-2217

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



Transcript of Record

November 16, 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

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1 THE COURT: Ms. Dixon.

2 MS. DIXON: May it please the court? This is Danielle
3 Dixon, assistant attorney general for the State of South
4 Carolina. This is the case of *Marie Assa'ad-Faltas v.*
5 *State*, docket number 2019-CP-40-2217. This is a PCR action
6 arising from a contempt of court proceeding in the
7 municipal court.

8 This occurred on March of -- March 28, 2011 -- well,
9 actually, let me back up a little bit. On October 13,
10 2010, the City of Columbia municipal court issued an order
11 directing her to have limited contact with the court. A
12 rule to show cause was subsequently issued, and there was a
13 hearing held March 28, 2011, before the Honorable Marion O.
14 Hanna. She did find her in contempt for violating that
15 order and sentenced her to ten days in jail for one
16 contempt and fifteen days in jail for the second count.
17 Ms. Faltas did appeal that to the circuit court and, let's
18 see, I don't have the docket number here. I apologize.

19 There was a hearing on September 16, 2011, at which
20 she appeared pro se. However, prior to that hearing, our
21 state supreme court had issued an order on April 8, 2011,
22 prohibiting her from appearing pro se in different types of
23 matters in the state courts. And as a result of that, the
24 court actually issued an order giving her an additional
25 thirty days to obtain counsel before ruling on her appeal.

1 And then on November 1, 2011, the court dismissed her
2 appeal for failure to prosecute.

3 She did file an appeal or attempted to file an appeal
4 with the state supreme court. She sent a letter on
5 December 1, 2011. The following day, the clerk basically
6 returned her notice of appeal, reminding her that pursuant
7 to the court's order, she could not proceed pro se. She
8 actually also attempted to resubmit it in January of 2014;
9 it was returned at that time.

10 In addition to that, she filed a motion back in the
11 circuit court July 11, 2013, and I will note that that is
12 about a year and a half after the court dismissed her
13 appeal. She filed a motion requesting appointment of
14 counsel, and the court issued an order denying that motion
15 on November 8, 2017. She did file a motion for partial
16 reconsideration, and that was recently heard and ruled on
17 by Judge Clifton Newman. I believe that's correct, but
18 Judge -- so, that has ultimately been denied.

19 But I will note just for purposes of the record that
20 those motions were not even filed until more than a year
21 after the case was dismissed. So -- and actually our
22 supreme court most recently -- and let me get that order so
23 I am citing to it accurately. Our supreme court most
24 recently in appellate case number 2021-000047, 48, and 49
25 actually addressed this issue and basically wrote, you

1 know:

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

14 Your Honor, this is in relation to the same municipal
15 -- underlying municipal court cases, and our supreme court
16 had noted the statute of limitations has expired. We have
17 raised that as a motion -- as a reason to dismiss.

18 We've also now raised laches.

19 We do believe that this delay, you know, delaying more
20 than a year to file a motion in the circuit court to get a
21 lawyer appointed cannot then toll the statute of
22 limitations that, frankly, had already expired before she
23 ever even filed that motion. So, we would at this time
24 move to dismiss based on laches, based on statute of
25 limitations, based on the other grounds set forth in our

1 returns. And we would also note she's not here today, and
2 to the extent that she's needed, we would move to dismiss
3 for failure to prosecute.

4 THE COURT: All right, anything in response, Mr.
5 Griffith?

6 MR. GRIFFITH: Yes, Your Honor.

7 THE COURT: Happy to hear from you, sir.

8 MR. GRIFFITH: Your Honor, Dr. Faltas, at the last
9 time we had a hearing, of course the state raised issues
10 that it should be dismissed because of the statute of
11 limitations, et cetera. We presented evidence at the last
12 hearing talking about the timeline.

13 And if it please the court, I have passed up to the
14 court this reply to motion to dismiss, which includes
15 partially the transcript of that last hearing. And if the
16 court would turn to page 18, and so -- I'm sorry, page 17
17 of that, which is the first page in that reply there, Your
18 Honor. We, we did go over the fact that this magistrate
19 case was delayed because the magistrate refused to deal
20 with -- deliver an order. He was then ordered by the
21 appeals court to return, and he never did file a return.
22 So, it continued to be put off because the state system
23 itself was denying her the opportunity to be heard.

24 Your Honor, the issues in the case were never actually
25 completed because she was denied the opportunity to file

1 herself. When she finally got the order saying that she
2 could have -- and she was denied the opportunity to have
3 counsel appointed until finally an order was given that she
4 could hire counsel or have counsel appointed for her. Then
5 she immediately sought to have counsel appointed, and so
6 she's really been -- as soon as the courts have been
7 allowing her to proceed, she's been proceeding.

8 And so she's been moving forward and as that -- as to
9 that, she has -- it -- it's the state who has caused a lot
10 of the delay because in one, in one instance, they waited
11 four years before hearing the case. And so for the state
12 now to argue that the, the statute of limitations is not
13 tolled, or that there is an issue with laches, that doesn't
14 make sense because it's the state that has delayed
15 everything. It's, like, they can't just say okay. Well,
16 we'll hold this off until laches applies and then we'll
17 apply laches.

18 So, Your Honor, we would ask that the case not be
19 dismissed and be heard on, as to the state's return --
20 question to dismiss at this time, and then heard on the
21 merits the next time we come together.

22 THE COURT: Ms. Dixon, anything ---

23 MS. DIXON: Yes, Your Honor.

24 THE COURT: --- in reply?

25 MS. DIXON: I do. First of all, I know there was a

1 discussion about the delay at the municipal level or the
2 circuit court appeal level regarding the magistrate not
3 issuing a return. Now, our response to that is, you know,
4 our statute of limitations and laches defense is based on
5 the time from when the municipal appeal was dismissed until
6 the time that she either filed the PC application -- well,
7 really until the time she filed the PCR application. What
8 happened before is not relevant to whether she timely filed
9 a PCR application once the circuit court dismissed that
10 appeal. So, that -- the statute of limitations for PCR
11 begins to run when the -- you know, whenever there's a
12 conviction and a sentence, which I think -- or whenever
13 there's a remittitur from an appeal.

14 Now, here she had a circuit court appeal. It was
15 dismissed. She did attempt to file an appeal, but for
16 reasons -- to the supreme court. They did not accept the
17 filing without a lawyer. So, they sent it back to her, but
18 the statute of limitations for this PCR action began to run
19 November 1, whenever -- of 2011, whenever the circuit court
20 appeal was dismissed. She didn't file this until 2019. I
21 mean, that's a clear violation of the statute of
22 limitations. We also argue unreasonable delay and,
23 therefore, barred by laches.

24 In terms of the argument that she was prohibited from
25 proceeding because of the restrictions on her pro-se

1 filing, I will note for the record she actually filed this
2 application pro se. I will also note for the record that
3 as recent as 2018, she was arguing to the court that PCRs
4 are hybrid, criminal in nature, and, therefore, the prior
5 supreme court orders did not prohibit her from appearing
6 pro se in PCR actions. And actually the supreme court's
7 2019 order addressed that very issue. So, I'm not sure
8 that that argument explains her delay from the time the
9 circuit court order was dismissed until the time she
10 actually chose to file this PCR action, especially when you
11 consider the fact that she filed this pro se.

12 RULING OF THE COURT:

13 THE COURT: Well, I'm going to grant the state's
14 motion to dismiss for failure to prosecute the matter. If
15 you would get me an order, please, ma'am, to that effect?

16 MS. DIXON: Just as to the failure to prosecute or...

17 THE COURT: And lay out that timeline that you just
18 conveyed to me on the statute of limitations.

19 MS. DIXON: Okay.

20 THE COURT: And I will consider that as an additional
21 sustaining ground to dismiss the matter.

22 MS. DIXON: Okay, and as to laches? Yes? No? It's
23 up to Your Honor.

24 THE COURT: I think the statute of limitations is
25 enough as it relates to that.

1 MS. DIXON: Okay.

2 THE COURT: Because that, that will lay out
3 specifically the timeline, and that should be -- I think
4 that's appropriate, and it doesn't have to get into this
5 additional amended return at this point.

6 MS. DIXON: Absolutely.

7 THE COURT: And Mr. Griffith has argued the lateness
8 of this additional amended return as well. So, I'm not
9 going to consider that, I think. First and foremost, it
10 needs to be dismissed for her not, not being here and
11 prosecuting the matter. She bears the burden of proving
12 her case, and second, the statute of limitations is an
13 additional grounds to grant your motion, too, all right,
14 and I'll take a look at the order once I can see it all
15 out.

16 MR. GRIFFITH: Thank you, Your Honor.

17 MS. DIXON: Thank you.

18 (WHEREUPON, THE CASE IS AT EASE.)

19 THURSDAY, NOVEMBER 17, 2022

20 MS. DIXON: May it please the court? This is Danielle
21 Dixon for the State of South Carolina, assistant attorney
22 general. This is the matter of *Marie Assa'ad-Faltas v.*
23 *State*, docket number 2019-CP-40-2217.

24 We were on the record yesterday with this matter, and
25 she did not attend or submit any evidence to support her

1 allegations, and so Your Honor had ruled yesterday that you
2 were going to dismiss it for her failure to submit any
3 evidence to support her allegations, as well as the statute
4 of limitations defense that the state had raised in its
5 return.

6 We are just back on the record today. We had
7 discussed yesterday entering as an exhibit this medical
8 record that she had sent to us. We, of course, as
9 non-doctors could not interpret it, and Your Honor had
10 requested that if she could not attend in person due to her
11 health reasons, that she submit something else other than
12 this document. And so for purposes of protecting the
13 record of appeal, we had discussed entering the document,
14 along with the attached emails: We are going to have it
15 sealed. I believe Your Honor has signed an order to seal
16 those documents only because it is private medical
17 information. So, we do -- the state does think it's
18 appropriate to seal it.

19 I do want to read into the record the order -- or the
20 email that Your Honor sent to her on November 2, 2022. It
21 was actually not sent to her; it was sent to her attorney.
22 This was after she had requested to attend via WebEx and
23 had sent this document, and your law clerk on your behalf
24 wrote to her lawyer:

25 Judge Brown has received the document submitted

1 by Dr. Faltas. However, without medical
2 documentation stating that she is unable to
3 physically attend, she will still be required to
4 appear in person for her PCR hearings.

5 So, she was notified of the requirement that she
6 attend, attend in person as of November 2, and then of
7 course her lawyer did speak to her yesterday and relayed
8 that same information again.

9 And I don't know if he has anything he would like to
10 add.

11 MR. GRIFFITH: Your Honor, I did view the document,
12 and we did redact a little bit that had to do with her
13 actual condition so that that would not become part of the
14 public record, but I have no objection otherwise, Your
15 Honor.

16 MS. DIXON: And at this time, we would like to move
17 Court's Exhibit 1 into evidence for this case under seal.

18 THE COURT: All right. Very well.

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

21 MS. DIXON: And, Your Honor, we don't have anything
22 further for this matter from the state.

23 THE COURT: All right, anything further, Mr. Griffith?

24 MR. GRIFFITH: Nothing further, Your Honor.

25 THE COURT: All right.

1 MS. DIXON: And then off the record, Your Honor.

2 THE COURT: Well, let me ask you this.

3 MS. DIXON: Okay.

4 THE COURT: While we're still on the record. Are you
5 going to call the cases for today?

6 MS. DIXON: Uh-huh. Uh-huh.

7 THE COURT: Okay.

8 --- 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 16TH AND 17TH DAYS 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 3RD, 2022