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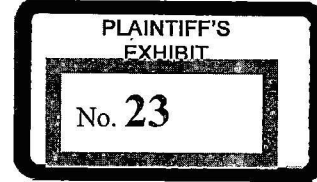
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S.C. SUPREME COURT

State of South Carolina )  
County of Richland )

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

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

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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.

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(OFF THE RECORD.)

(EMAIL MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER

2.)

--- 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