

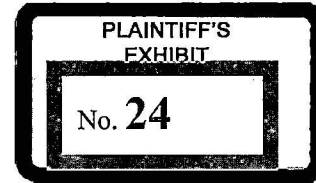
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S.C. SUPREME COURT of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2019-CP-40-2219

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
D. Russell Barlow, II, Assistant Attorney General
Attorneys 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: Danielle Dixon, assistant attorney general
4 for the State of South Carolina. This is the case of *Marie*
5 *Assa'ad-Faltas v. South Carolina*, docket number
6 2019-CP-40-2219.

7 This is a PCR application stemming from a contempt --
8 proceeding where she was held in contempt of court October
9 6, 2010, by municipal judge Marion O. Hanna, who is with
10 the City of Columbia. Well, she's a judge for the City of
11 Columbia Municipal Court. She held applicant in contempt
12 of court and sentenced her to pay a \$50 fine or serve ten
13 days in jail.

14 Applicant appealed that circuit court -- or that
15 municipal court order to the circuit court. That's docket
16 number 2010-CP-40-7063. That notice of appeal was filed
17 October 14, 2010. Thereafter on April 8, 2011, the South
18 Carolina Supreme Court issued an order prohibiting her from
19 filing pro-se actions in South Carolina, in South Carolina
20 courts.

21 Her appeal was called for a hearing on September 16,
22 2011, and she appeared pro se. At that time, the court
23 issued an order granting her thirty days to find counsel.
24 On November 1, 2011, the circuit court dismissed her appeal
25 of that municipal court order for failure to prosecute.

1 She attempted to appeal that to the state supreme court on
2 December 1, 2011.

3 On December 2, 2011, the state supreme court sent her
4 a letter returning her appeal based on its prior order
5 prohibiting her from filing, filing pro-se actions in the
6 state supreme court. She did attempt to resubmit that in
7 January of 2014, but it was not accepted at that time
8 either.

9 Meanwhile, in the circuit court case, on July 11,
10 2013, she filed a motion requesting an appointment of
11 counsel to help her perfect her appeal. That was denied on
12 November 8, 2017. She filed a motion, a partial motion for
13 reconsideration and that was, that was subsequently denied.
14 She did appeal that to the state supreme court, and they
15 issued an opinion affirming -- or I'm sorry. They
16 dismissed her appeal, and that is docket number 2021 -- I'm
17 sorry, appellate case 2021-000047. She filed this current
18 PCR action April 22, 2019, and the state has filed a return
19 and more recently an amended return.

20 And at this time, the state would move to dismiss for
21 two reasons. One, she is not here today to present
22 evidence. Your Honor had previously told her through your
23 law clerk in an email that she would be required to attend
24 this hearing. She had previously requested to attend via
25 WebEx, and on November 22, 2022, Your Honor's law clerk

1 sent the following email to her lawyer, and it reads:

2 Judge Brown has reviewed the documents submitted
3 by Dr. Faltas. However, without medical
4 documentation stating she is unable to physically
5 attend, she will still be required to appear in
6 person for her PCR hearings.

7 And I will say that prior to you sending that, she had
8 sent everyone some sort of a graph, a medical document. It
9 didn't have any sort of interpretation by anyone that any
10 of us non-doctors could understand, and so you had at that
11 time asked her to submit something further, which is this.

12 Anyway, in addition to -- so, it's our understanding
13 that she is not planning to attend today. Her attorney has
14 spoken with her, and I don't know if he would like to speak
15 on that matter right now or...

16 MR. GRIFFITH: What?

17 (COUNSELORS CONFER.)

18 MS. DIXON: All right, in addition to moving to
19 dismiss for her not appearing today to prosecute her PCR
20 case or present any evidence to support it, the state also
21 moves to dismiss based on the statute of limitations. And
22 as to that, the critical date is the circuit court appeal
23 was dismissed November of 2011. Although she did attempt
24 to file a notice of appeal with the supreme court, the
25 state supreme court, they returned that December 2, 2011.

1 So, that was not an appeal that really was ever even
2 perfected.

3 She didn't file anything in -- any, any further action
4 as far as a PCR until 2019. She did attempt in 2013, which
5 was about a year and a half after the circuit court
6 dismissed her case. She did file an untimely motion at
7 that time attempting to get counsel appointed to perfect
8 her appeal.

9 And I will note for the record that our supreme court
10 recently issued an order in appellate case number
11 2021-000047, and it was an appeal from the same orders, the
12 same circuit court orders. And at that time, our supreme
13 court found that:

14 On July 12, 2013, more than eighteen months after
15 the appeals were dismissed and ended, appellant
16 filed a motion in circuit court seeking to have
17 counsel appointed for the purposes of reopening
18 the circuit court appeals or for the purpose of
19 filing applications for post-conviction relief
20 regarding the municipal court convictions. The
21 circuit court did not rule on the tardy motion at
22 that time, apparently because the matter was
23 final, for the time for appeal had long since
24 run, and the one-year statute of limitations for
25 post-conviction matters had passed.

1 And, Your Honor, we just submit that there is no --
2 the statute of limitations bars this action, and there is
3 really no basis to apply any sort of equitable remedy in
4 this matter, and we would also assert that it should be
5 barred by laches.

6 THE COURT: All right, Mr. Griffith, anything in
7 response?

8 MR. GRIFFITH: Your Honor, we would object to
9 dismissal of the case on the -- for failure to prosecute.
10 We would ask for a continuance in that Dr. Faltas -- I did
11 speak to her this morning again, and she said that she's
12 not doing well. Her, her heart stopped for two seconds,
13 she tells me. She didn't provide any documentation or
14 didn't say she had any. Your Honor, we would ask that the
15 case be continued rather than dismissed.

16 As to the statute of limitations, Your Honor, we
17 covered that in a, in a previous hearing in that she was
18 prevented from filing for quite some time and finally, when
19 given leave by the court, she did file, and so the statute
20 of limitations would be tolled.

21 And as to the latest five days ago amended return
22 concerning laches, the state would be hard-pressed to claim
23 laches when they were the ones that were preventing her
24 from being able to go forward in her cases. We would ask
25 that the court continue this case.

1 RULING OF THE COURT:

2 THE COURT: All right, as previously stated,
3 specifically on 2019-CP-40 -- excuse me -- 40-2218, Mr.
4 Griffith brought to the court, I believe, the same issue,
5 brought to the court's attention the same issues, a request
6 for a continuance, as he did again in 2218. For the
7 reasons stated previously, the court is respectfully
8 denying the motion for continuance.

9 Furthermore, as stated previously, Dr. Faltas was
10 advised -- or her attorney, Mr. Griffith, was advised on
11 November the 2nd of this year that Dr. Faltas would be
12 required to attend in person. There's been no medical
13 documentation stating that she could not appear in person.
14 The court is, therefore, going to dismiss the matter for
15 failure to prosecute.

16 In addition, as an additional sustaining ground, the
17 court will dismiss on the statute of limitations issue, and
18 as stated previously on all other matters that have been
19 before this court this week, I do not believe it is
20 necessary to address the laches issue because of the
21 court's ruling as it relates to the failure to prosecute
22 and the statute of limitations. Okay.

23 MR. GRIFFITH: Thank you, Your Honor.

24 MS. DIXON: Your Honor, can we go off the record for a
25 moment?

1 (OFF THE RECORD.)

2 THE COURT: All right, I'd previously ruled on state's
3 motion to dismiss on 2019-CP-40-2219.

4 MS. DIXON: Oh, you're waiting on me? I'm sorry.

5 THE COURT: Ms. Dixon.

6 MS. DIXON: Yes, Your Honor, and at this time, the
7 state would like to move into evidence Court's Exhibit 1,
8 which is the previous email that we had read into the
9 record, along with the medical document that she had sent
10 us by email.

11 Any objection to Exhibit 1?

12 MR. GRIFFITH: I object. I, I, I don't object to, to
13 the document being entered. I do continue to object to the
14 case being dismissed as now she has sent more information
15 concerning her health.

16 MS. DIXON: Yes, Your Honor, and in that vein, we did
17 receive during this proceeding at 10:33 AM today -- well,
18 actually it was sent to Mr. Zelenka, who is a deputy
19 attorney general, at 10:16 AM another email from her
20 conveying that she is physically unable to attend. The
21 email does have, without going into too much detail about
22 her medical issue, it does have what purports to be a study
23 result, but this email itself doesn't -- we will -- we
24 would submit it's not authenticated. We're not sure what
25 this study result is. It's also not signed by a treating

1 physician, but we do want to make Your Honor aware that
2 this was sent to us this morning while this proceeding was
3 going on.

4 THE COURT: All right, after you all made me aware of
5 such, I asked that that email be forwarded to my law clerk.
6 That email was forwarded to my law clerk, who in turn had
7 the email printed. Copies have been provided to Ms. Dixon,
8 Mr. Griffith, as well as two additional copies of that
9 email. I would request that copies of that email be
10 admitted into the record 2019-CP-40-2218 and 2019-2219.

11 I did review the email and, as stated by Ms. Dixon on
12 behalf of the state, that email is not from a treating
13 physician. It is an email from Dr. Faltas herself. And
14 while Dr. Faltas is a doctor, quite frankly, I'm not sure
15 what kind of doctor. I've never, as long as I've had this
16 -- these cases, never heard her referred to as being a
17 cardiologist or any other heart specialist. And again, I'm
18 not sure exactly what kind of doctor she is. If she has a
19 doctorate degree, obviously I don't know what it may be in,
20 or I do not recall, but I, again, never ever recall any
21 documentation of her being a cardiologist or heart doctor
22 to give a diagnosis for such. And again, what has been
23 sent for today, being the graph, as well as the email that
24 she sent today was from her and not any treating physician
25 which spelled out any kind of diagnosis limitations, et

1 cetera, as it relates to what she can and cannot do.

2 Mr. Griffith's objection to the state's motion to
3 dismiss on the grounds of failure to prosecute, as well as
4 the statute of limitations, is so noted for the record.
5 The court's ruling remains the same as it relates to
6 previously rulings on, on the dismissal.

7 Okay, anything else?

8 MS. DIXON: And, Your Honor, just to clarify, you want
9 this entered as Exhibit 2?

10 THE COURT: Yes.

11 MS. DIXON: For the record?

12 THE COURT: If you would.

13 MS. DIXON: And under seal?

14 THE COURT: Yes, ma'am. If you could get me a short
15 order on that as well.

16 MS. DIXON: Yes, sir. Yes, sir.

17 THE COURT: Mr. Griffith, anything else?

18 MR. GRIFFITH: Nothing further, Your Honor.

19 THE COURT: Is that it?

20 MS. DIXON: I think that's all.

21 THE COURT: Okay. Thank you.

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

24 (EMAIL MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER
25 2.)

1 (OFF THE RECORD.)

2 THE COURT: I also want to put this on the record,
3 too. We are concluding these matters in these PCR matters
4 with Dr. Faltas that we've had over the last two days, and
5 she failed to appear. I have standing here with me Mr.
6 Griffith, who is her attorney, and Ms. Dixon. I am
7 instructing Mr. Griffith specifically that if Dr. Faltas
8 intends to appeal these matters, that such transcripts are
9 to be requested by Mr. Griffith and that Dr. Faltas is not
10 specifically to contact the court reporter. That is to be
11 done through Mr. Griffith, her attorney who's been
12 appointed to handle these matters throughout.

13 MR. GRIFFITH: If, if it please the court, Your Honor,
14 after these proceedings, I'll be sending that matter to the
15 Appellate Division, and they'll probably be contacting Mr.
16 Dudek.

17 THE COURT: I'm asking Mr. Griffith today to advise
18 Dr. Faltas that she is instructed not to contact the court
19 reporter, Court Administration. That that is to go through
20 her appointed counsel.

21 MR. GRIFFITH: Thank you, Your Honor.

22 THE COURT: Thank you.

23 --- 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