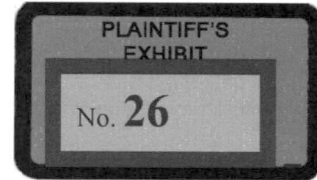


State of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2019-CP-40-0112

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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JUN 16 2023

S.C. SUPREME COURT

I N D E X

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1 THE COURT: Ms. Dixon.

2 MS. DIXON: May it please the court? Danielle Dixon
3 for the State of South Carolina, assistant attorney
4 general. This is the case of Marie Assa'ad-Faltas, docket
5 number 2019-CP-40-00112. This is a post-conviction relief
6 action that arises out of a municipal conviction for a
7 simple assault.

8 In September, September 11, 2009, the City of Columbia
9 served Ms. Faltas with warrant number L66971. She
10 proceeded to a bench trial before the Honorable Carl L.
11 Solomon on April 25, 2013; she was represented by Theodore
12 Lupton. David Hernandez prosecuted this -- the case. She
13 was convicted of simple assault and sentenced to twenty
14 days in jail. She appealed that to the circuit court.
15 That's docket number 2013-CP-40-3522.

16 There was a hearing before the Honorable Alison Lee on
17 December 13, 2013. At that time, Ms. Faltas proceeded pro
18 se. Judge Lee issued an order affirming the municipal
19 conviction on April 17, 2015. Subsequent to that, she did
20 move to reopen the case, I believe based on
21 after-discovered evidence, and that order was denied by the
22 Honorable -- or that motion was denied by the Honorable
23 Jocelyn Newman on January 4, 2018.

24 She filed a direct appeal with the South Carolina
25 Supreme Court. She was represented by John H. Strom, who

1 was an appellate defender at that time. The supreme court
2 affirmed, and that's opinion number 27723. It was filed
3 June 21, 2017. She filed a petition for writ of certiorari
4 to the United States Supreme Court. That was denied
5 October 1, 2018. She filed a petition for rehearing, which
6 was also denied January 27, 2019.

7 While the circuit court appeal was pending, she also
8 filed a motion to reopen or a motion for a new trial. That
9 was heard by the magistrate Philip F. Newman on February
10 the 4, 2019. He denied the motion. There was a circuit
11 court appeal of that order; that's docket number
12 2019-CP-1374. At that time, applicant was represented by
13 Dan Addison. There was an order issued by Your Honor on
14 February, February of 2022 -- or, I'm sorry, March 11,
15 2022, denying the motion to reconsider.

16 She did file a notice of appeal; that was filed March
17 15, 2022. That is appellate case number 2022-000339. That
18 appeal is still pending, and she most recently filed her
19 amended initial provisional brief October 24, 2022. So,
20 they are currently in the initial briefing stage of that
21 appeal.

22 She filed her first application for PCR on April 2,
23 2018. That's docket number 2018-CP-40-1798. The state
24 filed a return and a motion to dismiss. There was a
25 hearing before the Honorable R. Scott Sprouse on December

1 18, 2018. There was an order granting the motion to
2 dismiss without prejudice on January 4, 2019. Her timely
3 59(e) motion from that was denied. She appealed it to the
4 state supreme court, and it was ultimately dismissed as
5 moot due to the current PCR application which was filed
6 while that was pending.

7 So, this application was filed January 7 -- I'm sorry,
8 January 7, 2019, and amended August 25, 2022 -- that would
9 be 2021. The state has filed a return and motion to
10 dismiss in February of 2019, an amended return in August of
11 2021, a second amended return, and partial motion to
12 dismiss in October of 2021, and then most recently a third
13 amended return and partial to -- motion to dismiss on
14 November 10, 2022.

15 There have been prior hearings in this case: February
16 20, 2020; August 10, 2020; and January 27, 2022. There was
17 also an interlocutory appeal of Your Honor's order from
18 January of this year. That has now been dismissed; it was
19 dismissed August 31, 2022. Her petition for rehearing was
20 denied October 12, 2022, and the remittitur was sent that
21 same day. So, it is, I believe, back in this court
22 appropriate to go forward today.

23 Your Honor, we will say we have been informed that the
24 applicant does not intend to come to this hearing today,
25 and at this time the state would move to dismiss this case

1 for failure to prosecute.

2 THE COURT: Well, let me, let me hear from Mr.
3 Griffith first, and then I'll hear from you on your motion,
4 okay?

5 Mr. Griffith, happy to hear from you, sir.

6 MR. GRIFFITH: Thank you, Your Honor. Your Honor, Dr.
7 Faltas, whether rational or irrational, is fearful that if
8 she shows up at this tribunal, she will be placed in jail.
9 She's not able to be here. However, we have submitted --
10 she submitted her application which the, the court has had
11 opportunity to view. It has forty-five elements, not all
12 of which, of course, would make it through scrutiny. But,
13 Your Honor, we would ask that the case not be dismissed.
14 That you give me the opportunity to talk again to her and,
15 and see if I can convince her that she'll be okay if she
16 comes to court.

17 THE COURT: All right, anything else, Mr. Griffith?

18 MR. GRIFFITH: No, Your Honor.

19 MS. DIXON: And just ---

20 THE COURT: Now I'll hear from Ms. Dixon.

21 MS. DIXON: Sorry, and just quick reply, and I know
22 Your Honor knows this, but obviously anything -- any
23 allegations in the application themselves would not be
24 evidence. She needs to come forward today and produce that
25 evidence.

1 THE COURT: Let me ask this question, Mr. Griffith.
2 We were scheduled to begin this hearing at 9:30 this
3 morning. It is now, according to my watch, 10:02. While
4 waiting for Dr. Faltas, before I took the bench I was in
5 the courtroom, and you conveyed to me before we came on the
6 record that she -- from, from new development was not
7 planning on attending. And, please, if I leave anything
8 out, please correct me or add to it, okay?

9 One, like you said a minute ago, out of fear that she
10 would be put in jail if she appeared. If, if I recall
11 correctly, she has appeared in this courtroom in front of
12 me prior to today and subsequent to any orders that were
13 entered prohibiting her from contacting court personnel, et
14 cetera. I'm not sure there was a subsequent order issued
15 by me about her continuous contact with my office. I'm not
16 sure when that order was issued.

17 Ms. Dixon, you might -- are you aware of that?

18 MS. DIXON: I do, Your Honor. Give me just one
19 moment. Let's see, Your Honor, you issued an order
20 restricting applicant's ability to make pro-se filings and
21 directing the Richland County clerk of court to refuse any
22 filings unless they are filed by counsel of record. That
23 was issued July 12, 2021. And then you issued a global
24 order reemphasizing that Dr. Faltas is not to communicate
25 with any member of the Judicial Branch, its employees or

1 staff, and outlining contempt proceedings should she
2 continue to do so, and that was issued July 12, 2021. So,
3 more than a year ago.

4 THE COURT: And nothing in either one of those orders
5 prohibited her from appearing in court for purposes of any
6 of her hearings.

7 MS. DIXON: I would need a moment to review them, if
8 Your Honor doesn't mind.

9 (A PAUSE.)

10 MS. DIXON: Your Honor, I don't see anything that
11 prohibits her from coming to court to attend a hearing.
12 The, the restrictions involved, she:

13 may not contact any justice, judge, law clerk,
14 clerk of court, administrative assistant, court
15 reporter, or other office or employee of the
16 judicial system in person, writing, by mail,
17 telephone, fax, email, or any other form of
18 electronic communication.

19 The only exception is the Austin Woods case, which I
20 think you're hearing Friday.

21 And that any communication should come through her
22 lawyer, Timothy Griffith, as to these four PCR actions.
23 Dan Addison regarding the, I don't know, the related case
24 involving the new evidence. Let's see: Communications
25 regarding civil action 2018-CP-40-963 should be limited to

1 submitting filings. So, it allows her to submit filings by
2 either hand delivery, which would actually permit her to
3 come into the courthouse, or by US mail. She can also, in
4 light of COVID-19, make filings via fax and email:

5 She may file communications with the court in
6 compliance with the terms of the prefiling
7 injunction filed contemporaneously with this
8 court in this case only. She cannot directly
9 communicate with this ---

10 --- with your office ---

11 --- despite her pro-se status.

12 Or I assume that's -- it says: with this office. Due
13 to excessive number of emails she has sent in
14 violation of prior orders, she may not email or
15 call my law clerk, administrative assistant, or
16 myself. All communications must go through the
17 clerk of court in the form of filings. While
18 proceeding pro se, she is to conduct herself
19 courteously and professionally. Any instances of
20 harassment, abuse, or excessive communication
21 with the clerk's office should be reported and
22 will subject her to contempt proceedings.

23 Let's see: Violating the restrictions in this order
24 will result in contempt proceedings. I believe that's all
25 the restrictions.

1 So in my mind, I mean, frankly, the order allows her
2 to come to court to make filings. I don't know why it
3 would prohibit her from going to the court to appear in the
4 case where she is a plaintiff.

5 THE COURT: Well, and that order was issued pursuant
6 to the fact that she continuously was reaching out to my
7 law clerk at the time through -- and predominantly via
8 email, when I believe Judge Barber years ago had issued an
9 order, and that was just kind of to reemphasize those
10 restrictions.

11 Mr. Griffith.

12 MR. GRIFFITH: Your Honor, just to clarify, I did
13 speak with her on the phone. I have been speaking with her
14 for the last several days and she was -- of course, we were
15 talking about the cases and, and how we were going to
16 proceed, but today she did talk to me. After not
17 appearing, I contacted her, and she said she just was not
18 going to be coming to the court.

19 THE COURT: Okay. Well, the other thing, too, is --
20 and I want to put this on the record. I think you, Mr.
21 Griffith, prior to today's hearing had asked if she could
22 appear virtually, all right, and in your request that she
23 appear virtually, I think some document was sent to my law
24 clerk showing a heart monitor or something that was shown
25 to me by my law clerk. It was conveyed, I think, by email

1 from Mr. Griffith that Dr. Faltas had conveyed to him that
2 she was afib.

3 MR. GRIFFITH: Your Honor, yes.

4 THE COURT: Okay, and I just want all of this on the
5 record, okay? I looked at whatever was submitted -- I
6 think by Mr. Griffith -- which all it was, was a, like I
7 said, it looked to me as though it was a readout of a heart
8 monitor, which told me nothing, okay? There was no
9 documentation of from any doctors that said that she could
10 not appear personally due to any heart condition or other
11 potential ailments. And, therefore, I denied her request
12 to appear at this hearing today virtually.

13 And I think my law clerk conveyed to you, Mr.
14 Griffith, and probably copied the attorney general's office
15 on it as well, saying that she would need to appear in
16 person for this hearing. Did I accurately state that?

17 MR. GRIFFITH: You did, Your Honor, and I conveyed
18 that to her.

19 RULING OF THE COURT:

20 THE COURT: Okay. All right. Taking into
21 consideration it is now approximately 10 after 10, again
22 when the hearing was supposed to commence at 9:30, and what
23 Mr. Griffith has conveyed to me here today, that his client
24 does not intend to appear, further taking into
25 consideration Mr. Griffith's argument about the

1 allegations, I do not believe under any, under any statute
2 or law that allegations simply alleged in a PCR complaint
3 or application, it is not evidence in the case. It is not
4 evidence in the case. The applicant in this case bears the
5 burden of proving each and every one of her allegations.
6 And with her choosing not to appear here today to go
7 forward to put sworn testimony into the record so that this
8 court could fully consider all the facts and circumstances
9 of the case, the court is, therefore -- or, therefore, I do
10 not believe I have any alternative but to grant the state's
11 motion to dismiss. Okay.

12 MR. GRIFFITH: Thank you, Your Honor.

13 MS. DIXON: And, Your Honor.

14 THE COURT: All right.

15 MS. DIXON: I'm sorry, Your Honor, for purposes of the
16 record -- and I realize that the graph that she sent us is
17 probably protected health information. I do think it might
18 be beneficial, if there is an appeal, for the appellate
19 courts to actually be able to lay eyes on that and see what
20 it is. Would you be willing to -- if we could enter it, I
21 would not object if you wanted to enter it under seal
22 because I do know it is a medical report.

23 THE COURT: Yeah. I mean, that would ---

24 MS. DIXON: But ---

25 THE COURT: That would -- if I recall correctly, it

1 wasn't a report. It was just a readout.

2 MS. DIXON: Correct.

3 THE COURT: It was just a graph.

4 MS. DIXON: And, and my, my motion would be just to
5 enter it into evidence as a court exhibit just for purposes
6 of us being able to get it in the record. If it's not
7 entered into the record here today, we can't enter it in an
8 appeal, and I just don't want the appellate court judges to
9 be scratching their head about what this really might have
10 been. I think we've all seen it, and we know that as non-
11 doctors, it means nothing to us.

12 THE COURT: Well, as you accurately stated, with us
13 being -- you know the old saying that if we were good in
14 math, we'd have gone to law -- gone to med school, okay,
15 and so I wasn't great in math. I can't speak for anybody
16 else in this courtroom, but I didn't go to med school. I
17 went to law school, and the only thing that was submitted
18 was that printout without any further documentation or
19 affidavit from a doctor saying that her health condition
20 prevented her from being here.

21 And again, from what Mr. Griffith has conveyed to me
22 here today on the record, there was nothing that she
23 conveyed to him saying again, for instance, my health
24 condition prohibits me from being here. It was her concern
25 that she might go to jail, and that was it.

1 MR. GRIFFITH: That's correct, Your Honor.

2 THE COURT: Okay, but I will certainly allow that. I
3 tend to agree with you. If this matter is appealed, I want
4 the appellate court to be able to look at what was
5 presented to me in her request to appear virtually, which I
6 denied that request.

7 And having said that, I'm not sure if it was in this
8 case or one of the other matters this week, but the state
9 also requested that one of its witnesses be permitted to
10 appear virtually, and I declined that request as well. So,
11 it wasn't just a situation where I was saying Dr. Faltas
12 can be here. It was I wanted everybody here so I could
13 view them, so everybody in this courtroom could view them
14 and have an opportunity to, to hear them on the record.
15 And my concerns in denying any request to appear virtually
16 here today, I wanted to ensure that the record was full,
17 complete, and that there was no possible issues that could
18 prohibit a clean, clear record being taken of these
19 proceedings, okay? But I will allow that to be put into
20 evidence under seal such so that the appellate courts, if
21 they ---

22 MS. DIXON: Do you ---

23 THE COURT: --- deem necessary.

24 MS. DIXON: --- want me to -- do I need to prepare an
25 order sealing it? Yes? Okay.

1 THE COURT: Yes, if you don't mind.

2 MS. DIXON: Absolutely not.

3 THE COURT: And now -- and I'll be happy to sign that
4 order, and we'll get it submitted and go from there.

5 MS. DIXON: And just procedurally, I guess, can I just
6 bring it tomorrow? We'll be back tomorrow.

7 THE COURT: That's fine.

8 MS. DIXON: And we can enter it then, and do you want
9 the email attached to it or not it? Does anybody have an
10 objection to that or...

11 MR. GRIFFITH: I have no objection to the email.

12 MS. DIXON: We can redact anything you think that ---

13 MR. GRIFFITH: I, I sent the email.

14 MS. DIXON: Okay. Yeah, we can redact anything that
15 you think is not appropriate.

16 THE COURT: All right, I'll grant the state's motion
17 to dismiss this matter.

18 MS. DIXON: Thank you.

19 (WHEREUPON, THE CASE IS AT EASE.)

20 THURSDAY, NOVEMBER 17, 2022

21 THE COURT: Ms. Dixon.

22 MS. DIXON: May it please the court?

23 THE COURT: Yes, ma'am.

24 MS. DIXON: Danielle Dixon, assistant attorney general
25 for the State of South Carolina. We are going to go back

1 on the record briefly for the matter of *Marie*
2 *Assa'ad-Faltas v. State of South Carolina*, docket number
3 2019-CP-40-112.

4 We discussed yesterday entering as a court's exhibit
5 some documentation that she had sent and I do want to read
6 into the record. This is an email that Your Honor sent
7 through your law clerk on November 2 of 2022 that states:

8 Judge Brown has reviewed the document submitted
9 by Dr. Faltas. However, without medical
10 documentation stating that she is unable to
11 physically attend, she will still be required to
12 appear in person for her PCR hearings. Please
13 let me know if you have any questions.

14 And it's -- at this time, we would move to enter this
15 into evidence, along with the medical document, and I do
16 have an order for Your Honor to seal that.

17 THE COURT: Do you have a hard copy of that email?

18 MS. DIXON: I do, Your Honor.

19 THE COURT: Okay.

20 MS. DIXON: And I've actually handed it up to the
21 court reporter to mark as an exhibit.

22 MR. GRIFFITH: Without objection, Your Honor.

23 THE COURT: Well, and the reason I was asking because
24 if you didn't have one, I was going to ask Judge Hood's
25 administrative assistant print one to be made -- hardcopy

1 be made part of the record.

2 MS. DIXON: Yes ---

3 MR. GRIFFITH: But you ---

4 MS. DIXON: --- Your Honor.

5 MR. GRIFFITH: Excuse me, Your Honor. I'm sorry, but
6 I believe, Your Honor, that she would need to have that
7 verified as being an email from Your Honor.

8 THE COURT: It was sent from my law clerk, Ms.
9 Gregory, at my direction.

10 MR. GRIFFITH: Thank you, Your Honor.

11 MS. DIXON: And, Your Honor, I have the order sealing
12 it. If you'd like to take a look at it, I can bring it up.

13 THE COURT: All right. Also, I told my law clerk
14 yesterday you had -- the state had filed a motion to keep
15 the record open.

16 MS. DIXON: Yeah, yeah, yeah, yeah.

17 THE COURT: And we need to address that ---

18 MS. DIXON: Yeah.

19 THE COURT: --- on the record because I think that the
20 motion applied to one of the matters that was before me
21 yesterday.

22 MS. DIXON: Yes, sir.

23 THE COURT: And in light of what my rulings were
24 yesterday, that matter is now moot and not necessary.

25 MS. DIXON: That is correct. We had filed -- and it's

1 actually this, this case, which is the simple assault case.
2 We had filed a motion to hold the record open through next
3 week so that one of our witnesses who lives in Washington,
4 DC, could come to South Carolina to testify. He works for
5 a senator and was going to be tied up doing work with the
6 senator in Washington, DC, this week, but he was planning,
7 for the record, to come in person to testify for this
8 hearing.

9 THE COURT: That is no longer necessary.

10 MS. DIXON: And I guess the other thing I just want to
11 state for the record, and I had handed up yesterday, I
12 believe, all of the prior supreme court orders. There was
13 a 2022 order, 2019 order, 2017, 2014, and 2011. Those
14 orders all -- I have another copy if you'd like, but those
15 orders all address her -- those are different orders that
16 the supreme court has put out addressing her -- its
17 restrictions to her access on the courts, and I do think
18 they are relevant as to all four of these proceedings, and
19 I would like for them to be part of the record in all four
20 of these cases.

21 THE COURT: Any objection, Mr. Griffith?

22 MR. GRIFFITH: No objection.

23 THE COURT: All right, so submitted as part of the
24 record in these matter.

25 MS. DIXON: And I believe that's all I have. Hold on

1 just a second.

2 THE COURT: Is this the same order, just multiple
3 copies?

4 MS. DIXON: Multiple copies.

5 THE COURT: Have you seen this, Mr. Griffith?

6 MR. GRIFFITH: Yes, I have, Your Honor.

7 THE COURT: Any objections?

8 MR. GRIFFITH: No objections.

9 THE COURT: Okay.

10 MR. GRIFFITH: Your Honor, my client did ask me to ask
11 you. If the hearing for tomorrow is set, what courtroom is
12 it set for, Your Honor?

13 THE COURT: I guess it's 2A.

14 MR. GRIFFITH: Thank you, Your Honor.

15 (A PAUSE.)

16 THE COURT: All right, anything else, I guess, as it
17 relates to matters yesterday?

18 MS. DIXON: Not in this case. I would like to go to
19 the next one quickly just to enter this exhibit.

20 THE COURT: All right.

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

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 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 2ND, 2022

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