

CONFIDENTIAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

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JUN 13 2016

SC Court of Appeals

CITY OF COLUMBIA,

RESPONDENT,

V.

MARIE-THERESE ASSA'AD-FALTAS,

APPELLANT

APPELLATE CASE NO. 2015-000941

INITIAL BRIEF OF APPELLANT

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SC SUPREME COURT

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STATEMENT OF ISSUE ON APPEAL

The circuit court reversibly erred in upholding the municipal court's denial of Dr. Faltas' timely, unequivocal, and intelligently made waiver of her right to counsel when the municipal court had committed an error of law by not conducting a hearing on her request to represent herself and, instead, relied exclusively on orders issued by this Court imposing an unconstitutional blanket prohibition on Dr. Faltas' Sixth Amendment right to self-representation.

STATEMENT OF THE CASE

On September 11, 2009, Dr. Faltas was charged with simple assault in Columbia, South Carolina. On April 25, 2013, she proceeded to a bench trial in Columbia Municipal Court before the Honorable Carl L. Solomon. Ted Lumpton represented her. David Fernandez represented the City of Columbia (herein after "City"). Dr. Faltas was found guilty and sentenced to twenty days imprisonment. Tr. p. 127, l. 6 - 128, l. 14 (April 25, 2013).

She appealed. On December 13, 2013, a hearing was held before the Honorable Alison Lee. Dr. Faltas appeared *pro se* after she successfully motioned to relieve appellate counsel Tristan Schaffer. Tr. p. 3, l. 4 - 11, l. 5 (December 13, 2013). David Fernandez again represented the City. On April, 17, 2015, Judge Lee filed a written order affirming her conviction. R. * (Circuit Court April 17, 2015).

This appeal follows.

STATEMENT OF THE FACTS

Dr. Faltas' case arises out of a September 11, 2009 incident between her and her landlord, Dinah Steele. Tr. p. 49, l. 21 - 65, l. 11 (April 25, 2013). She and Steele had several disagreements regarding Dr. Faltas' ownership of an adjoining lot and other conflicts relating to eviction proceedings Steele had initiated against her. *Id.* As a result of these disputes, Steele had given Dr. Faltas notice that she was going to inspect her apartment.

On September 11, 2009, Steele was doing maintenance work on the apartment building when Dr. Faltas attempted to hand deliver written notice of her objection to the inspection. Tr. p. 17, l. 4 - 21, l. 15 (April 25, 2013). Dr. Faltas attempted to hand Steele the documents, but Steele refused to accept them. Tr. p. 51, l. 21 - 72, l. 13 (April 23, 2013). While attempting to hand Steele the documents, Dr. Faltas "pushed" them into Steele's chest. *Id.* Steele called the police. Dr. Faltas was given a courtesy summons for simple assault.

Pre-Trial Court Orders Limiting Dr. Faltas' Right to Self-Representation

Dr. Faltas has a significant history of self-representation in litigation in both federal and state courts. She also has a history of seeking extraordinary relief from trial court orders.

On December 23, 2009, this Court ordered the Clerk of the Supreme Court to refuse to accept any filings from her seeking "extraordinary writ" or invoking the original jurisdiction of this Court unless the filings were signed by an attorney. R. * (Supreme Court Order, December 23, 2009). On January 6, 2010, the court denied her petition for rehearing regarding the December 23, 2009 order. R. * (Supreme Court Order, January 6, 2010).

On March 31, 2010, the Chief Administrative Judges for the Fifth Judicial Circuit the Honorable G. Thomas Cooper, Jr. (General Sessions) and the Honorable James R. Barber (Common Pleas) limited Dr. Faltas' access to the Richland County Courthouse to scheduled court appearances

and provided a daily two hour window for her to file documents with Clerk of Court. R. * (Fifth Circuit Order, March 31, 2010).

On August 20, 2010, this Court issued an order affirming the limitations imposed by the Fifth Circuit and denying Dr. Faltas' request that this Court reconsider its December 23, 2009 order. R. * (Supreme Court Order, August 20, 2010). However, this Court declined to hold her in contempt for violating its earlier order prohibiting her from filing writs with the Court. *Id.*

April 8, 2011 Supreme Court Order Prohibiting Dr. Faltas from Making *Pro Se* Filings in any State Court.

On April 8, 2011, this Court issued an order prohibiting her from “filing anything in the courts of this state in a *pro se* capacity.” R. * (Supreme Court Order, April 8, 2011). In addition, the order stated “Appellant is not precluded from addressing any grievances she may have in the courts of this state, **assuming she is represented by counsel** and such grievances are not frivolous.” *Id.* (*emphasis added*). Again, this Court declined to hold Dr. Faltas in contempt, but warned her that a violation of this order would be grounds for a contempt proceeding. *Id.*

October 24, 2012 Supreme Court Order Prohibiting Dr. Faltas from Representing Herself in any Case Pending in the State Court System.

On October 24, 2012, this Court issued an additional order prohibiting Dr. Faltas from personally contacting any judges, justice, officers or employee of the judicial system. R. * (Supreme Court Order, October 24, 2012). The order reiterated that she must be represented by counsel in “any case pending before a court of this State in which she is a party.” *Id.*

The order also directed trial courts to take “immediate corrective action” in the event that she engaged in disruptive behavior during hearings. *Id.* While declining to hold Dr. Faltas in contempt, the order cautioned “a violation . . . of this order, will be treated as contempt.”

Pre-Trial Hearing on Dr. Faltas' Motion to Relieve Counsel

On February 21, 2013 a hearing was held before the Honorable James R. Barber, III, on defense counsel's motion to be relieved. Tr. p. 8, l. 8 - 11, l. 19 (February 21, 2013). Defense counsel stated that the attorney-client relationship was irreversibly broken. *Id.*

When asked by the trial court, Dr. Faltas affirmed that she wished to represent herself. Tr. p. 14, l. 16 - 17, l. 16 (February 21, 2013). After her unambiguous request, the court noted, "I tend to agree with you, **you have a constitutional right to represent yourself in a criminal matter so long as you understand the ramifications of doing so.**" Tr. p. 15, ll. 2-6 (February 21, 2013).

However, the court then hesitated, "[b]ut there is an Order from the Supreme Court that has set certain requirements relating to you and I'm going to have to look at that Order as well. But your preference is to represent yourself?" *Id.* at ll. 12-16. Dr. Faltas repeated that she wanted to represent herself.

The court took the motion under advisement, after leading Dr. Faltas through an extensive iteration of the *Faretta*¹ colloquy regarding the dangers of self-representation. Tr. p. 20, l. 6 - 23, l. 20 (February 21, 2013). During the colloquy, the court observed that Dr. Faltas' educational level would allow her to understand the consequences of waiving her right to counsel and advised her that she would be required to comply the rules of court. *Id.* Again, the court expressed concern about this Court's order "I'm going to have to find out what I can do and can't do with respect to . . . allowing [you] to represent yourself." Tr. p. 23, ll. 6-14 (Feb. 21, 2013).

On March 7, 2013, Judge Barber denied defense counsel's motion to be relieved by written order. R. * (Circuit Court Order, March 7, 2013). The court did place restrictions on Dr. Faltas' ability to contact defense counsel and advised that "[a]ny violation of this Order will

¹ *Faretta v. v. California*, 422 U.S. 806 (1975).

result in appropriate sanctions.” The court made no findings with regards to the *Faretta* colloquy that it conducted with Dr. Faltas and did not reference any of this Court’s previous orders. *Id.*

March 12, 2013 Municipal Court Hearing

On March 12, 2013, a scheduling hearing was held in the Columbia Municipal Court before the Honorable Carl L. Solomon. Theodore Lupton continued to represent Dr. Faltas and David Fernandez represented the City. At the beginning of the hearing, Dr. Faltas renewed her motion to proceed *pro se*. Tr. p. 1, l. 19 - 3, l. 4 (Mar. 12, 2013). Without undertaking a *Faretta* colloquy and citing to this Court’s orders prohibiting her from representing herself in any state court, the municipal court denied the motion. *Id.*

April 24-25, 2013 Municipal Court Trial

On April 24-25, 2013, Dr. Faltas proceeded to trial before Judge Solomon on charges of trespassing and simple assault arising out of separate incidents. Tr. p. 16, l. 12 - 17, l. 14 (April 24, 2013). The court granted the defense’s motion for separate trials. Tr. p. 27, l. 7 - 28, l. 12 (April 24, 2013). Following jury selection, defense counsel objected to drawing the two juries from the same pool as all jurors would obviously be aware that Dr. Faltas was facing two separate criminal charges. Tr. p. 16, l. 12 - 17, l. 14 (April 24, 2013). The court denied the motion, but offered to issue a curative instruction. *Id.*

Defense counsel declined the curative instruction and then motioned to dismiss the trespassing charge arguing that the ticket issuing the charge cited to the wrong code section. *Id.* Following arguments, the Judge Solomon agreed with the defense and dismissed the trespassing charge. Tr. p. 27, l. 7 - 28, l. 12 (April 24, 2013). Court was adjourned for the day.

At the start of the second day, Dr. Faltas decided to proceed with a bench trial “under duress” after being informed that that she would not be permitted to submit evidence of past

arguments and litigation between her and Dinah Steele. Tr. p. 11, ll. 4-19 (April 25, 2013). Following testimony by Dinah Steele, Charlene Curch (a tenant who purportedly witnessed the incident), and Dr. Faltas, the municipal court found her guilty as charged and sentenced her to twenty days of imprisonment. Tr. p. 127, l. 6 - 128, l. 14 (April 25, 2013).

June 28, 2013 Supreme Court Order

On June 28, 2013, this Court issued an order summarizing Dr. Faltas' long history with the state court system. R. * (Supreme Court Order, June 28, 2013). The order, in addition to adding new restrictions on her ability to file documents or contact judges or judicial employees, reiterated that she **“may not represent herself *pro-se* in any court of this state. Instead, she must be represented by counsel before any court of this state.”** *Id.* (*emphasis added*)

The order stated, “[n]othing in this order shall be construed as preventing a lower court from placing such additional restrictions on Dr. Faltas as that court may determine are appropriate.” *Id.* After this order was issued, Dr. Faltas requested that counsel be appointed to represent her in filing a petition for reconsideration. This Court appointed Tristan Schaffer as her attorney. Schaffer filed a petition for rehearing, arguing that June 28, 2013, violated *Faretta*.

June 28, 2013 Motion Denying Dr. Faltas' Request to Proceed *Pro Se*

Following her bench trial, Dr. Faltas filed a motion to proceed *pro se* on her appeal to the circuit court. Judge Manning, in his capacity as chief administrative judge, denied the motion in a written order issued on June 28, 2013. R. * (Circuit Court Order, June 28, 2013).

Judge Manning concluded “I am bound by the Orders of the South Carolina Supreme Court. Therefore, based on the South Carolina Supreme Court’s Orders dated April 8, 2011 and October 24, 2012, Defendant-Appellant’s request to proceed with her appeal *pro se* is hereby denied.” In denying her request the court cited *Indiana v. Edwards*, 544 U.S. 806 (1975),

holding that a defendant can be competent to stand trial without being competent enough to waive the right to self-representation. *Id.*

November 7, 2013 Amended Supreme Court Order

On November 7, 2013, this Court issued an order in response to Dr. Faltas' petition that modified the restrictive terms of its June 28, 2013 order. R. * (Supreme. Court Order, November 7, 2013). Under the amended order she was allowed to:

[P]roceed *pro se* in criminal actions in which she is a defendant. However, [Dr. Faltas] is reminded that her right to proceed *pro se* in a criminal action is not absolute and may be forfeited, on a case-by-case basis, and at the discretion of the court before which [Dr. Faltas] is appearing, if [she] is unable or unwilling to abide by the rules of procedure and courtroom protocol.

Id. (*emphasis added*). However, the order also denied her motion to have Counsel Schaffer relieved.

Appeal to the Circuit Court

On December 13, 2013, Judge Lee presided over a hearing regarding Dr. Faltas' appeal of her municipal court conviction. At the onset, she successfully motioned for Counsel Schaffer, to be relieved and proceeded *pro se*. Tr. p. 4, l. 5 - 9, l. 24 (December 13, 2013).

Dr. Faltas advanced that, among many other errors, the municipal committed an error of law by denying her request to represent herself. *Id.* She had made a timely motion at the March scheduling hearing and renewed the motion before trial. *Id.* Accordingly, the municipal court reversibly erred by refusing to allow her to proceed *pro se*. In addition, Dr. Faltas argued that the municipal court erred in failing to conduct the required *Faretta* inquiry and instead simply relied on this Court's order prohibiting her from self-representation.

In response the City erroneously claimed that Dr. Faltas never asked to proceed *pro se*. Tr. p. 47, l. 15 - 48, l. 7 (December 13, 2013). The City contended that she never wanted to

proceed *pro se*, but rather was simply requesting that the court appoint different attorneys to represent her. Tr. p. 48, l. 17 - 49, l. 25 (December 13, 2013). Therefore, the municipal court acted within its discretion to deny her motion.

Dr. Faltas then reiterated that she had asked Judge Barber and Municipal Judge Solomon to allow her to proceed *pro se* and that both had refused to allow her to do so based on this Court's orders. Tr. p. 63, ll. 2-22 (December 13, 2013). Throughout the hearing, Dr. Faltas repeatedly voiced her dissatisfaction with the defense conducted by her appointed attorneys.

January 30, 2014 Second Amended Supreme Court Order

On January 30, 2014, this Court issued an order clarifying the restrictions on Dr. Faltas' right to represent herself contained in the June 28, 2013 and November 7, 2013 orders. R. * (Supreme Court Order, January 30, 2014). The order affirmed that she may represent herself in a criminal case in which she is a defendant. *Id.*

The order also repeated that she was not entitled to represent herself on appeal or in any civil filings. *Id.* Dr. Faltas was still barred from contacting any officer or employee of the court system except in writing or during a scheduled hearing. *Id.* Finally, this Court held that, “[n]either this order nor the order of November 7, 2013, shall have any impact on actions previously taken under this Court’s order of June 28, 2013, or the earlier orders of this Court or its Chief Justice referenced in that order.” *Id.* (*emphasis added*).

Circuit Court Order Affirming Conviction

On April 17, 2015, Judge Lee affirmed Dr. Faltas' conviction in a written order. The court noted that she had repeatedly “asserted her right to self-representation and wished to proceed *pro se* at trial.” Nevertheless, the court concluded that the municipal court did not err in denying Dr. Faltas her constitutional right to self-representation:

However, the South Carolina Supreme Court clearly stated in an Order issued on January 30, 2014 that even in criminal matters, Appellant's "right to proceed *pro se* as a criminal defendant is not absolute and may be forfeited, on a case-by-case basis, at the discretion of the trial court." Judge Barber seriously considered allowing Appellant to proceed *pro se* at trial. . . . Based upon the South Carolina Supreme Court's order on Appellant's right to proceed *pro se*, **there is no evidence the Municipal court abused it, discretion in not allowing** Appellant to proceed *pro se* at trial. Therefore, this argument does not present any error of law.

R. * (Circuit Court April 17, 2015 p. 3) (*emphasis added*). Accordingly, the court affirmed her conviction.

ARGUMENT

The circuit court reversibly erred in upholding the municipal court’s denial of Dr. Faltas’ timely, unequivocal, and intelligently made waiver of her right to counsel when the municipal court had committed an error of law by not conducting a hearing on her request to represent herself and, instead, relied exclusively on orders issued by this Court imposing an unconstitutional blanket prohibition on Dr. Faltas’ Sixth Amendment right to self-representation.

In denying Dr. Faltas’ motion to represent herself, the municipal court did not conduct the required *Faretta*¹ colloquy and, instead, relied on three orders from this Court prohibiting her from appearing without an attorney in “any case pending before a court of this State in which she is a party.” Tr. p. 2, l. 19 - 3, l. 18 (March 12, 2013); R. * (Supreme Court Order, April 8, 2011); R. * (Supreme Court Order, October 24, 2012); R. * (Supreme Court Order, June 28, 2013).

The municipal court’s reliance and the circuit court’s affirmance of Dr. Faltas’ conviction based on these orders constituted an error of law. *City of Rock Hill v. Suchenski*, 408 S.C. 536, 540, 759 S.E.2d 879, 880 (Ct. App. 2002) (in criminal cases on appeal from magistrate’s court, appellate court reviews errors of law only).

When Dr. Faltas made a timely, unequivocal assertion of her right to self-representation, the municipal court’s duty was to inform her of the risks of proceeding *pro se* so as to insure that the waiver of her right to counsel was made with “eyes open.” *Faretta*, 422 U.S. at 835, 95 S.Ct. at 2541, 45 L.Ed.2d at 582. If, at a later point in the litigation in the case, Dr. Faltas engaged in disruptive behavior, it would have been within the municipal court’s discretion to, among other possible sanctions, terminate her self-representation if the behavior threatened the integrity of the trial. *Id.* at 835, 95 S.Ct. at 2541, 45 L.E.2d at 582 n. 46.

¹ *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)

Most respectfully, this Court's three orders, prohibiting Dr. Faltas *ex ante* from representing herself in any criminal cases in which she was a defendant, imposed an unconstitutional blanket prohibition on her Sixth Amendment right to self-representation. Dr. Faltas is entitled to a new trial.

Under the Sixth Amendment, a criminal defendant has a constitutional right to represent himself.

A criminal defendant “has the constitutional right to represent herself under both the federal and state constitutions.²” *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) (citing *State v. Starnes*, 388 S.C. 590, 698 S.E.2d 604 (2010)); *see also State v. Winkler*, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010)(explaining “[a]n accused may waive the right to counsel and proceed pro se” and “[t]he request to proceed pro se must be clearly asserted by the defendant prior to trial”).

“The Sixth Amendment does not provide merely that a defense shall be made for the accused; **it grants to the accused personally the right to make his defense.**” *Faretta v. California*, 422 U.S. 806, 819 (1975) (*emphasis added*). “That right must be preserved even if the court believes that the defendant will benefit from the advice of counsel.” *State v. Fuller*, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999) (citing *United States v. Singleton*, 107 F.3d 1091 (4th Cir. 1997)). Even if the decision to proceed *pro se* is to the defendant's detriment, the decision “must be honored out of that respect for the individual which is the lifeblood of the law.” *Faretta*, 422 U.S. at 834; *see also State v. Brewer*, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997).

“So long as the defendant makes his request prior to trial, the **only proper inquiry is that mandated by *Faretta*.**” *Barnes*, 407 S.C. at 35, 753 S.E.2d at 550 (*emphasis added*). “To establish a valid waiver of counsel, *Faretta* requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation.” *Prince v. State*, 301 S.C. 422, 423-

² “Any person charged with an offense shall enjoy the right ... to be fully heard in his defense by himself or by his counsel or by both.” S.C. Const. Art. I, § 14.

424, 392 S.E.2d 462, 463 (1990). The trial judge's only responsibility is to determine whether there is or is not an intelligent and competent waiver. *State v. Dixon*, 269 S.C. 107, 236 S.E.2d 419 (1977).

Denial, termination, or revocation of a criminal defendant's right of self-representation.

The right to self-representation is not absolute. It may be denied in cases where the defendant is suffering from a mental illness to a degree that they are incompetent to stand trial. *State v. Starnes*, 388 S.C. at 600, 698 S.E.2d at 610 (2010). It may also be denied when the request is not unequivocal or when the court believes the request is being made for the purposes of delay on the eve of trial. *State v. Fuller*, 337 S.C. 236, 241, 523 S.E.2d 168, 170-171 (1999).

In addition, **a criminal defendant may, on a case-by-case basis, lose his right to self-representation by “deliberately engage in serious and obstructionist misconduct” during the case.** See *Faretta*, 422 U.S. at 834-35 n. 46; *McKaskle v. Wiggins*, 465 U.S. 168, 177-178 n. 8 (1984). Prior to losing the right to self-representation, a defendant must be warned that such conduct will result in a forfeiture of that right. *United States v. West*, 877 F.2d 281, 287 (4th Cir. 1989) (defendant, who was warned against disrupting the court, was removed from court room and relieved of *pro se* representation following second disruptive outburst); see also *State v. Boykin*, 324 S.C. 552, 556, 478 S.E.2d 689, 691 (Ct. App. 1996) (once a defendant has been warned that misconduct will be treated as a waiver of right to counsel, any subsequent misconduct is treated as a waiver by conduct).

For conduct outside the courtroom to justify the forfeiture of an accused's right to self-representation, the conduct must impact the core integrity of the underlying prosecution. *Illinois v. Allen*, 397 U.S. 337, 343-344 (1970) (the “constitutional litigation prerogatives of a defendant . . . do not extend so far as to permit subversion of the core concept of a trial”). Witness intimidation

and jury tampering are examples of gross misconduct to a degree that threatens to compromise the court's ability to conduct a fair trial. *Id.* at 345-346.

It is the effect of the misconduct and its impact on the integrity of the ongoing trial that will determine whether a judge may properly terminate a defendant's self-representation or should instead impose some lesser sanction or restriction. *Id.* at 343-344 (“[w]e think there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant . . . (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly.”); *State v. Samuel*, 414 S.C. 206, 212, 777 S.E.2d 398 (Ct. App. 2015) (affirming trial court's refusal to allow defendant to proceed *pro se* where, **after *Faretta* colloquy**, court determined that defendant lacked candor with the court).

Past conduct in other cases cannot indefinitely disqualify a defendant from self-representation. *See State v. Barnes*, 413 S.C. 1, 6-7, 774 S.E.2d 454, 457-458 (2015) (defendant's attempted waiver of right to counsel did not preclude defendant from invoking right to counsel in new trial). The court before which a “disruptive, contumacious, stubbornly defiant” *pro se* defendant is appearing before is the court that the Sixth Amendment empowers to meet and punish such behavior.³

Dr. Faltas' invocation of her Sixth Amendment Right to Self-Representation.

In this case, Dr. Faltas, when given the chance to argue her case, has delivered her arguments in good faith and without breaking courtroom decorum. Neither the circuit court nor the

³ Accordingly, the majority of restrictions placed on Dr. Faltas are constitutionally sound; for example, this Court's prohibition on her representing herself on appeal or in civil matters. R. * (January 30, 2014 Supreme Court Order); *see State v. Roberts*, 364 S.C. 583, 614 S.E.2d 626 (2005) (criminal defendant does not have a federal or state constitutional right to proceed *pro se* in a direct appeal); *see also Holmes v. East Cooper Community Hosp., Inc.*, 408 S.C. 138, 163, 758 S.E.2d 483, 497 (2014) (affirming trial court's imposition of sanctions and enjoining plaintiff from filing any future claims against defendant without posting bond).

municipal court threatened Dr. Faltas with contempt or other sanctions due to her in-court behavior or out of court behavior. Following the issuance of the amended order on November 7, 2013 permitting her to proceed *pro se*, Dr. Faltas was able to argue her case to Judge Lee in a respectful and forthright manner.

Dr. Faltas made multiple timely, unequivocal invocations of her right to self-representation. Tr. p. 2, l. 19 - 3, l. 18 (March 12, 2013). All that remained for the circuit and municipal courts to do was to conduct a *Faretta* colloquy to record that Dr. Faltas was (1) advised of her right to counsel; and (2) adequately warned of the dangers of self-representation.” *Prince*, 301 S.C. at 423-424, 392 S.E.2d at 463. The municipal court failed to do so.

A similar failure occurred at the circuit court level. Notably, at the February 21, 2013 hearing Judge Barber conducted a lengthy *Faretta* colloquy with Dr. Faltas and even conceded that to her that “I tend to agree with you, you have a constitutional right to represent yourself in a criminal matter so long as you understand the ramifications of doing so.” Tr. p. 15, ll. 2-6 (February 21, 2013). Nevertheless, Judge Barber denied the motion to relieve defense counsel in a written order that makes no reference to the Sixth Amendment, *Faretta*, or any other right to self-representation jurisprudence. R. * (Circuit Court Order, March 7, 2013)

Likewise, Judge Manning’s June 28, 2013 order denying another motion by Dr. Faltas to proceed *pro se* cited to this court’s orders and to *Indiana v. Edwards*, 544 U.S. 164 (2008), holding that a state may adopt a higher competency standard for the waiver of right to counsel than for the waiver of other constitutional rights. However, this Court has explicitly declined “to impose a higher competency standard upon an individual who wishes to waive his right to an attorney and represent himself at trial than that required for the waiver of other fundamental constitutional rights afforded to a criminal defendant”. *Barnes*, 407 S.C. at 36, 753 S.E.2d at 550.

Once Dr. Faltas waived her right to counsel, all that remained for the circuit and municipal courts to do was to conduct a *Faretta* colloquy. *Prince*, 301 S.C. at 423-424, 392 S.E.2d at 463. Out of reliance on this Court's three orders imposing a blanket prohibition on her representing herself, neither the circuit nor municipal courts conducted this required colloquy, but instead summarily denied Dr. Faltas of her Sixth Amendment right to self-representation.

Denial of Dr. Faltas' Sixth Amendment right to self-representation was a structural error, not subject to harmless error analysis.

Whether this Court's orders prohibiting Dr. Faltas' exercise of her Sixth Amendment right to self-representation "harmed" her in any discernable fashion is likewise irrelevant. The erroneous denial of her right to self-representation is a structural error, not amenable to harmless error review. *Barnes*, 413 S.C. at 7, 774 S.E.2d at 458. "The right to self-representation is either respected or denied, its deprivation cannot be harmless." *McKaskle* 465 U.S. at 177 n. 8.

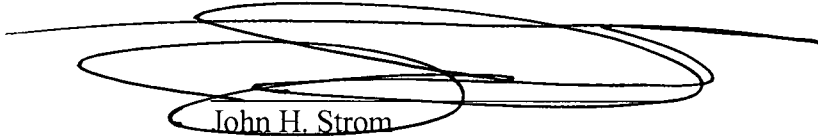
Most respectfully, this Court's orders dated April 8, 2011, October 24, 2012, and June 28, 2013, dictating that Dr. Faltas "may not represent herself *pro se* in any court of this state" and "must be represented by counsel in any case pending before a court of this state," represented an unconstitutional blanket prohibition on her Sixth Amendment right to self-representation. *Faretta*, 422 U.S. at 834; *Allen*, 397 U.S. at 343-344.

In reliance on these orders, the circuit court committed a reversible error in upholding the municipal court's denial of Dr. Faltas' timely, unequivocal, and knowing waiver of her right to counsel where the municipal court failed to conduct the mandated *Faretta* colloquy and, instead, relied solely on this Court's orders. Tr. p. 2, l. 19 - 3, l. 18 (March 12, 2013); *Fuller*, 337 S.C. at 241, 523 S.E.2d at 170 (failure to conduct hearing on defendant's request to represent himself was reversible error). Accordingly, she is entitled to a new trial.

CONCLUSION

Based on the foregoing reason, Appellant Dr. Marie Faltas respectfully requests this Court reverse her conviction and remand her case back to the Columbia Municipal Court for a new trial.

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of June, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

CITY OF COLUMBIA,

RESPONDENT,

V.

MARIE-THERESE ASSA'AD-FALTAS,

APPELLANT

APPELLATE CASE NO. 2015-000941

CERTIFICATE OF SERVICE

RECEIVED

JUN 13 2016

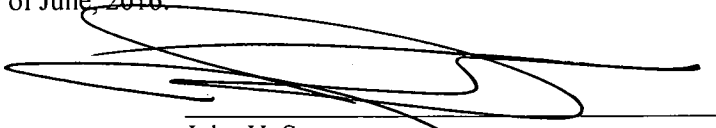
SC Court of Appeals

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SC SUPREME COURT

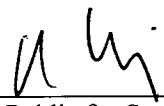
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Bruce Greenberg, Esquire, at The City of Columbia City Attorney, 1401 Main Street, 10th Floor Columbia, SC 29201, and Dr. Marie Assa'ad-Faltas at P.O. Box 9115 Columbia, SC 29290 this 13th day of June, 2016.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of June, 2016.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.