BEFORE SOUTH CAROLINA'S COURT OF APPEALS

Appellate Case No. 2016 - 001730

State of South Carolina, and City of Columbia, SC

v.

Marie Assa'ad-Faltas, MD, MPH

APPEAL from RICHLAND COUNTY Court of Common Pleas/Court of General Sessions
Alison Renée Lee, Circuit Court Judge
Circuit Court Case Nos. 2010-GS-40-11980 and 2010-GS-40-11987,
originated as City of Columbia Warrants Nos. K-613792 and K-613793 (all dismissed WITH prejudice)
AND K-613866 (City of Columbia, dismissed WITH prejudice)

Dr. Assa'ad-Faltas' *EMERGENCY* APPLICATION to Chief Judge Lockemy AND THE COURT *EN BANC*
To: (1) Reconsider and Nullify Chief Judge Lockemy's 1 September 2016 ORDER in This Matter
AS: (A) Fruit of a Poison Tree and (B) Violative of (i) The Fourteenth Amendment,
(ii) Clear and Binding U.S. Supreme Court Precedents; and (iii) Clear State Statute;
AND (2) Recuse This Court's Clerk's from this Case if it Remains in This Court.

Chief Judge Lockemy's 1 September 2016 "extend[s]" a purported 25 August 2016 "order" "of this court."

The Kitchings-signed 25 August 2016 paper is NOT an order of this Court but an *ultra vires judicial* act by Ms. Kitchings, who is allowed to undertake *only* ministerial functions.

The pronouns "we" and "our" in Chief Judge Lockemy's 1 September 2016 ORDER violate SC statutes creating, and designating the powers of, SC's Court of Appeals ("SC's COA") **and undermine the fundamental constitutional separation of powers** in that it: (1) adopts a person not elected by SC's General Assembly to sit on this Court as an issuer of judicial, not ministerial, orders, and (2) speaks for the whole court (or a panel thereof?) without the name(s) or signature(s) of the other judges, if any, involved.

The ***unpublished*** 30 January 2014 SC's Supreme Court's order "in appellate case number 2013-000862" does **not** control this case, does **not** convert an executive employee into a judge, and **does not direct *this* Court's Clerk to do or to refrain from doing anything.** Prior orders of SC's Supreme Court (issued in a failed scheme to intimidate Marie Assa'ad-Faltas, MD, MPH into pleading guilty to false criminal charges of which she was, thank God, eventually exonerated) only directed the clerks of this state to not accept certain papers for filing. ***This appeal was accepted for filing by SC's Supreme Court's Clerk*** (but later erroneously transferred to this Court). **Under no conceivable reading of any SC Supreme Court order, SC state statute, or SC Court Rule was *Ms. Kitchings* empowered to "order" Dr. Assa'ad-Faltas to do anything other than correct the *form* of a brief or other paper to comply with *published rules*** *applicable to **all** litigants before this Court.*

In 2007, Dr. Assa'ad-Faltas orally argued *pro se* **twice** before then-SC Circuit Judge, now-SC's COA Chief Judge, Lockemy. Neither Judge Lockemy nor this Court's opinion affirming his change-of-venue order **ever** held Dr. Assa'ad-Faltas or her submissions "frivolous [or] vexatious." To the contrary, *in transcribed hearings*, Judge Lockemy said to Dr. Assa'ad-Faltas "I applaud you." The Defendant in *Assa'ad-Faltas v. Drye* later filed a confession of judgment and later ***settled.*** All **four** *other* civil cases Dr. Assa'ad-Faltas **ever** brought in SC state courts *pro se* **(except *Assa'ad-Faltas v. Steele et al.*, aborted by Jean Toal's "Administrative Order" halting Dr. Faltas' right to self-advocacy)** also ended with the respective defendant(s) paying Dr. Assa'ad-Faltas and/or her mother for damages Dr. Assa'ad-Faltas had ***meritoriously*** alleged said defendant(s) caused.

This is a time of *moral* crisis, not only for SC's Judiciary, but also for the entire U.S. Few military generals and CIA leaders had the courage to announce that they will not obey illegal orders from a "President Trump" to commit the war crimes of torturing detainees or carpet-bombing civilian areas.

The real Judge Lockemy, who risked his life in the military to *inter alia* protect Dr. Assa'ad-Faltas' right to be an absolute pacifist, would have had the courage to refuse to obey illegal orders instead of rubber-stamping a clerk-written order which plays dumb to help Ms. Kitchings save face after acting *ultra vires*.

But, if Chief Judge Lockemy chose convenience over courage, *he can do so only under his own name and singular pronoun without making that choice for fellow judges.* This pleading challenges every judge of this court to examine his/her own conscience and decide whether to remain the cowardly by-stander who cheered as a little girl was being gang-raped or become a hero who stops it.

Each judge of this Court *en banc* must now answer for him/herself: If Dr. Assa'ad-Faltas was so intolerably "frivolous and vexatious," why did we not say so in **any of** her appeals before us from 1998 to 2008 and why did we **unanimously rule for her in 2007-UP-193 (decided 26 April 2007), *rehearing en banc*** (sought by her opponent) **DENIED** (June 2007) *certiorari* DENIED (October 2007)? Or are we so incompetent as to not know frivolity when we see it? Or did same Dr. Assa'ad-Faltas, who was praised by presiding trial judge Clifton Newman as "most pleasant and gracious [and] not frivolous at all" *magically* ***become retro-actively "frivolous and vexatious"*** on 8 April 2011 *because* Jean Toal said so?

The series of "orders" Toal issued without a quorum of SC's Supreme (but later rubber-stamped by three of the other four) was so whimsical, illegal, discriminatory and insane, that Toal herself violated it (*e.g.*, by initiating conversation with Dr. Assa'ad-Faltas after the late Judge Perry's funeral and by quietly lifting the requirement that Toal herself pre-screen any papers to be filed on behalf of Dr. Assa'ad-Faltas even by an SC-licensed attorney). **On 7 November 2013, SC's Supreme Court itself acknowledged that it had violated *Faretta* v. *California*** by *ex ante* peremptorily denying Dr. Assa'ad-Faltas' right to self-representation in criminal matters. Dr. Assa'ad-Faltas now re-submits, **and had clearly so explained to Ms. Kitchings *in a scheduled meeting on the morning* of 25 August 2016, that both SC statutes and U.S. Supreme Court controlling precedents *forbid* imposing on Dr. Assa'ad-Faltas' appeals requirements in excess of those imposed on other similarly-situated parties.**

ARGUMENT A: SC State Law Forbids Discrimination by Race

SC's Code of Laws provides in ***§14-1-100***. **Rights in court shall not be affected by race or color:**

> Whenever authority has heretofore been conferred by law upon any free white person or persons to institute any suit or proceedings or to prefer any information or complaint in any matter, civil, penal or criminal, the same rights shall be enjoyed by and the same remedies shall be applicable to all persons whatsoever, regardless of race or color, **subject to the same conditions *and none other***.

Dr. Assa'ad-Faltas is a Coptic Orthodox Christian Egyptian citizen who, since September 2005, has been an alien lawfully admitted for permanent residence in the United States, and, since September 2009, been eligible to apply for U.S. Citizenship. ***Saint Francis College* v. *Al-Khazraji*, 481 U.S. 604 (1987), *unanimously* held that, while now classified as white, Middle Easterners and other "ethnically identifiable subgroups of *homo sapiens*" are protected by §§1981 and 1983:**

> Based on the history of §1981, we have little trouble in concluding that Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics. Such discrimination is racial discrimination that Congress intended §1981 to forbid, whether or not it would be classified as racial in terms of modern scientific theory. [footnote 1:] We note that under prior cases, discrimination by States on the basis of ancestry violates the Equal Protection Clause of the Fourteenth Amendment.

It is therefore illegal and unconstitutional to require Dr. Assa'ad-Faltas to have a lawyer for this appeal when any other similarly-situated "free white person or persons" may prosecute appeals *pro se*.

ARGUMENT B: U.S. Supreme Court Binding Precedents Mandate Equal Access to Appeals

Lindsey v. *Normet*, 405 U.S. 56 (1972), and its antecedents and progeny repeatedly held that states need not provide for appeals. But if they do, they cannot discriminate invidiously or irrationally. Also, in *Ake* v. *Oklahoma*, 470 U.S. 68 (1985), explained in Part III at 76-77:

> This Court has long recognized that when a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense. This elementary principle, grounded in significant part on the Fourteenth Amendment's due process guarantee of fundamental fairness, derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake. In recognition of this right, this Court held almost 30 years ago that once a State offers to criminal defendants the opportunity to appeal their cases, it must provide a trial transcript to an indigent defendant if the transcript is necessary to a decision on the merits of the appeal. *Griffin* v. *Illinois*, 351 U. S. 12 (1956). Since then, this Court has held that an indigent defendant may not be required to pay a fee before filing a notice of appeal

of his conviction, *Burns* v. *Ohio*, 360 U. S. 252 (1959), that an indigent defendant is entitled to the assistance of counsel at trial, *Gideon* v. *Wainwright*, 372 U. S. 335 (1963), and on his first direct appeal as of right, *Douglas* v. *California*, 372 U. S. 353 (1963), and that such assistance must be effective. See *Evitts* v. *Lucey*, 469 U. S. 387 (1985); *Strickland* v. *Washington*, 466 U. S. 668 (1984); *McMann* v. *Richardson*, 397 U. S. 759, 771, n. 14 (1970).[3] Indeed, in *Little* v. *Streater*, 452 U. S. 1 (1981), we extended this principle of meaningful participation to a "quasi-criminal" proceeding and held that, in a paternity action, the State cannot deny the putative father blood grouping tests, if he cannot otherwise afford them.

77*77 Meaningful access to justice has been the consistent theme of these cases. We recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process, and that a criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense. Thus, while the Court has not held that a State must purchase for the indigent defendant all the assistance that his wealthier counterpart might buy, see *Ross* v. *Moffitt*, 417 U. S. 600 (1974), it has often reaffirmed that fundamental fairness entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system," *id.*, at 612. To implement this principle, we have focused on identifying the "basic tools of an adequate defense or appeal," *Britt* v. *North Carolina*, 404 U. S. 226, 227 (1971), and we have required that such tools be provided to those defendants who cannot afford to pay for them.

It is a reality that lawyers generally cost more than a transcript or an appeal fee. This Court's requirement that Dr. Assa'ad-Faltas hire a lawyer, when she cannot afford one, or have her appeal dismissed forecloses her participation in the judicial process in violation of the Fourteenth Amendment as explained above.

Other U.S. Supreme Court free-transcript and appeal-fee-waiver cases include: *Mayer* v. *City of Chicago*, 404 U.S. 226 (1971); *Rinaldi* v. *Yeager*, 384 U.S. 305 (1966); and *MLB* v *SLJ*, 519 U.S. 102 (1996).

ARGUMENT C: U.S. Supreme Court Binding Precedents Forbid Orders Beyond a Party's Ability to Comply

Turner v. *Rogers*, 564 U.S. 431 (2011), *vacated* an SC Supreme Court's decision that had affirmed a father's contempt-of-court sentence for non-payment of child support without inquiry into his ability to pay child support. ***Turner's* result and reasoning are inarguably binding on this Court, which *never* inquired into** Dr. Assa'ad-Faltas' ability *vel non* to hire a lawyer.

ARGUMENT D: U.S. Supreme Court Binding Precedents Hold the "Tools of an Effective Defense" to be a Constitutionally-Protected Right of a Criminal Defendant.

As explained in *Ake*, *supra*, the "tools of an effective defense" are constitutionally-protected *throughout the criminal process* **and are therefore a *continuing* "critical stage" of the criminal process.** *Ake* left to the states the *mechanisms* of implementation of a criminal defendant's access to the tools and explained in Part III.A. at 78-84, with emphasis added and footnotes omitted:

> **The private interest in the accuracy of a criminal proceeding that places an individual's life or liberty at risk is almost uniquely compelling. Indeed, the host of safeguards fashioned by this Court over the years to diminish the risk of erroneous conviction stands as a testament to that concern.** The interest of the individual in the outcome of the State's effort to overcome the presumption of innocence is obvious and weighs heavily in our analysis. [¶] At the same time, it is difficult to identify any interest of the State, other than that in its economy, that weighs against recognition of this right. **The State's interest in prevailing at trial — unlike that of a private litigant — is necessarily tempered by its interest in the fair and accurate adjudication of criminal cases.** Thus, also unlike a private litigant, a State may not legitimately assert an interest in maintenance of a strategic advantage over the defense, if the result of that advantage is to cast a pall on the accuracy of the verdict obtained. [¶* * * * *] It is in such cases that a defense may be devastated by the absence of a [tool of defense] and testimony; with such assistance, the defendant might have a reasonable chance of success. **In such a circumstance, where the potential accuracy of the jury's determination is so dramatically enhanced, and where the interests of the individual and the State in an accurate proceeding are substantial, *the State's interest in its fisc must yield.* [* * * *

> *A]nd as in the case of the provision of counsel we leave to the States the decision on how to implement this right.

SC decided to implement the right of access to the tools of defense through the Defense of Indigents Act, which *inter alia* recognizes a right of a *pro se* defendant to necessary and reasonable defense expenses after (s)he being judged mentally competent to proceed *pro se* as Dr. Assa'ad-Faltas repeatedly and formally was. *SC chose to promise to reimburse after trial the necessary expenses an indigent criminal defendant or his/her lawyer incur before and during trial.* Where as here, the indigent criminal defendant borrows for the expenses and incurs obligation to repay the loans after trial, **the claim of reimbursement for the expenses is *a critical stage of the trial because property is also constitutionally-protected like life and liberty:*** rights to speedy and public trial by impartial jury of one's peers **are not forfeited even if criminal defendant faces only a fine, not incarceration.**

Dr. Assa'ad-Faltas here appeals *the equivalent* of being sentenced, *despite having been ultimately exonerated of the criminal charges,* to thousands in defense expenses, which SC Circuit Judge Lee found "necessary or helpful for trial." This appeal challenges the critical issue of the State taking the exonerated defendant's property.

ARGUMENT E: Dr. Assa'ad-Faltas Presents an Important Question of First Impression

Dr. Assa'ad-Faltas has a compelling interest in ensuring that, God forbid, were she to be assaulted by the State with more false criminal charges in the future, she will have access to "the tools of defense." **She also presented below, and resubmitted to SC's Supreme Court in *this* appeal, a feasible answer to a question facing most states *in light of the almost daily news of former criminal defendants released and exonerated after prolonged incarcerations attributable to misconduct by prosecutors who act on behalf of the state.***

Dr. Assa'ad-Faltas developed below, and preserved for appeal, a novel and brilliant solution: **import Civil Rule 11 into the criminal context, thus empowering the trial judge who finds that the criminal charges were improperly brought/tried to render the exonerated criminal defendant whole by *sua sponte* ordering defense expenses recovered *from the prosecutor's budget* without a suit by the exonerated defendant.**

CONCLUSION

Dr. Assa'ad-Faltas asks Chief Judge Lockemy and this Court *en banc* to refuse to obey unconstitutional and illegal orders which do not control this case anyway, and instead to obey the individual conscience and the binding precedents of the U.S. Supreme Court and therefore to nullify the Clerk's paper of 25 August 2016, to recuse Ms. Kitchings for her bias against Dr. Assa'ad-Faltas, to certify this case back to SC's Supreme Court because the transfer was erroneous and/or because the case involves important questions, to allow Dr. Assa'ad-Faltas to proceed *pro se* if this Court retains the case, or to otherwise appoint competent non-conflicted counsel for Dr. Assa'ad-Faltas if this Court does not allow her to proceed *pro se*.

Submitted and served on SC's Attorney General and on SC's Supreme Court by hand-delivery on 12 September 2016, all God so willing.

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