

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Alison Renee Lee, Circuit Court Judge

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OCT 17 2016

S.C. SUPREME COURT

CITY OF COLUMBIA,

RESPONDENT,

V.

MARIE-THERESE ASSA'AD-FALTAS,

APPELLANT

APPELLATE CASE NO. 2015-000941

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE CIRCUIT COURT DID NOT ERR IN UPHOLDING THE DENIAL OF APPELLANT'S RIGHT TO SELF-REPRESENTATION BASED ON DR. FALTAS' OUT OF COURT CONDUCT RELATING DIRECTLY TO THIS ASSAULT CASE. THEREFORE, SHE IS NOT ENTITLED TO A NEW TRIAL, AND HER CONVICTION MUST STAND.

STATEMENT OF CASE

On September 11, 2009, Dr. Faltas was charged with simple assault in Columbia, South Carolina. On April 25, 2013, she proceeded with a bench trial in Columbia Municipal Court before the Honorable Carl L. Solomon. Theodore Lupton 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, 1. 6 – 128, 1. 14 (April 25, 2013).

She appealed. On December 13, 2013, a hearing was held before the Honorable Allison Lee. Dr. Faltas appeared *pro se* after appellate counsel Tristan Schaffer successfully motioned to be relieved. Tr. P. 3, 1. 4 – 11, 1. 5 (December 13, 2013). David Fernandez again represented the City. On April 17, 2015, Judge Lee filed a written order affirming Dr. Faltas’ conviction. R. * (Circuit Court April 17, 2015).

This appeal follows.

FACTUAL BACKGROUND

Dr. Faltas' case arises out of a September 11, 2009 incident between her and her landlord, Dinah Steele. Tr. P. 49, 1. 21 – 65, 1. 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 inspection. Tr. P. 17, 1. 4 – 21, 1. 15 (April 25, 2013). Dr. Faltas attempted to hand Steele the documents. Tr. P. 51, 1. 21 – 72, 1. 13 (April 23, 2013). While attempting to hand Steele the documents, Dr. Faltas pushed them into Steele's chest. *Id.* Steele called the police, and Dr. Faltas was subsequently issued a courtesy summons for simple assault on warrant number L-066971. *Id.*

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

Prior to this assault trial, Dr. Faltas repeatedly engaged in conduct highly disruptive to the courts. Through a series of orders, this court noted Dr. Faltas': (1) failure to follow standard judicial procedures, (2) treatment of the courts and court personnel with "rudeness, incivility, and constant harassment," (3) "constant nuisance to the orderly oversight of activity in a very busy courthouse."¹ Those orders were issued in direct response to her disruptive conduct relating to this underlying assault case, and other criminal cases pending at the time.

A. December 23, 2009 Supreme Court Order

This order directed the Clerk of the South Carolina Supreme Court to refuse to accept any filings from Dr. Faltas in this assault case (and other criminal cases currently pending) seeking

¹ See: Supreme Court Order, December 23, 2009; Supreme Court Order, January 6, 2010; Fifth Circuit Order, March 31, 2010; Supreme Court Order, April 8, 2011; Supreme Court Order, October 24, 2012.

“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). It was issued in response to her repeated filings which this court deemed “frivolous... abus[ive] of the judicial process and... a waste of judicial resources.” *Id.*

B. January 6, 2010 Supreme Court Order

This order denied Dr. Faltas’ petition for rehearing on the December 23, 2009 order. R. * (Supreme Court Order, January 6, 2010). This order also cites (1) her “history of engaging in vexatious litigation,” (2) a document she filed in this court entitled “Emergency Motion...” and (3) an incident where she personally served a letter on a member of this court “essentially seek[ing] review” of the December 23, 2009 order. *Id.* Again, she failed to follow judicial procedure and this court had to “construe the motion and letter as petitions for rehearing.” *Id.*

C. March 31, 2010 Fifth Circuit Court Order

In this order, the Chief Administrative Judges for the Fifth Circuit the Honorable G. Thomas Cooper, Jr. (General Sessions) and the Honorable James R. Barber (Common Pleas) restricted Dr. Faltas’ access to the Richland County courthouse, subject to certain caveats, and restrained her from *ex parte* communication with courthouse personnel. R. * (Fifth Circuit Order, March 31, 2010). While this order acknowledges the right of civilian access, it also explains that her disruptive conduct obstructed and even prevented the court from functioning in an orderly manner. *Id.*

D. April 8, 2011 Supreme Court Order

This order added more conditions to the December 23, 2009 Supreme Court order; directing the clerks of court in South Carolina to not accept any filings from Dr. Faltas unless they have been prepared by an attorney, submitted by the attorney to this court first for approval,

and filed by the attorney. R. * (Supreme Court Order, April 8, 2011). These additional restrictions were put in place due to the “frivolous, repetitive and abusive nature of Dr. Faltas’ filings on this assault case, and other criminal charges that were pending at the time this order was issued. *Id.* This court further cautioned that violation of this order would be grounds for contempt. *Id.*

E. October 24, 2012 Supreme Court Order

This order acknowledges that Dr. Faltas had not been represented by an attorney on this assault case, and further states that she “must be represented by counsel in any case pending before a court of this State in which she is a party”, specifically this assault case. R. * (Supreme Court Order, October 24, 2012). This order goes on to detail how Dr. Faltas still failed to follow procedural and substantive law, engaged in conduct that was extremely disruptive, and continued preventing the orderly functioning of the courts in South Carolina. *Id.*

F. March 7, 2013 Circuit Circuit Order

This order was issued after the Honorable James R. Barber conducted a hearing in General Sessions on February 21, 2013 regarding Theodore Lupton’s motion to be relieved of counsel in this assault case. Tr. P. 8, 1. 8 – 11, 1. 19 (February 21, 2013). Dr. Faltas also motioned to court to represent herself in this assault case. *Id.* The court took the motion under advisement after leading Dr. Faltas through an extensive iteration of the *Faretta*² colloquy regarding the dangers of self-representation. Tr. P. 20, 1. 6 – 23, 1. 20 (February 21, 2013). In his order, Judge Barber denied Mr. Lupton’s motion and also denied Dr. Faltas’ request to proceed with this assault case *pro se*. R. * (Circuit Court Order, March 7, 2013). Up to this point, Mr. Lupton was at least the third attorney appointed to handle this case, after the Public Defender’s office was unable to

² *Faretta v. California*, 422 U.S. 806 (1975).

represent her due to a conflict. *Id.* Judge Barber took note of the Supreme Court orders, **and** her conduct that preceded them. *Id.*

G. March 12, 2013 Municipal Court Hearing

This hearing was a scheduling conference held in the City of Columbia Municipal Court by the Honorable Judge Carl L. Solomon. Theodore Lupton continued to represent Dr. Faltas after Judge Barber denied her right to proceed with the assault case *pro se* in the March 7, 2013 Fifth Circuit order.

At this hearing, Appellant never unequivocally stated that she wanted to represent herself in this case:

“I do not recognize Mr. Lupton as my lawyer. I do not want him, I do not trust him. He is forced on me and the last time I was before Judge Barber I reminded him that the U.S. Supreme Court in *Faretta v. California* said that the only tribunal in Anglo American Jurisprudence that forced a lawyer on a Defendant was the [Star] Chamber. The [Star] Chamber, your Honor.” Tr. P. 1, 1. 19 – 3, 1. 4 (Mar. 12, 2013).

The words *pro se* do not appear anywhere in the transcript; and throughout the hearing Dr. Faltas refers to Mr. Lupton as her attorney, Mr. Lupton makes arguments for her, and he refers to her as his client. *Id.*

II. April 25 Municipal Court Trial

On April 25, 2013, Dr. Faltas proceeded with a bench trial in front of Judge Solomon on the 2009 assault charge, and was found guilty and sentenced to twenty (20) days imprisonment. Tr. P. 1. 6 – 128, 1. 14 (April 25, 2013). Dr. Faltas never renewed her request to proceed *pro se*. *Id.* Additionally, she referred to Mr. Lupton as her attorney several times, and never objected when Mr. Lupton referred to her as his client. *Id.*

III. Circuit Court Appeal

The Honorable Judge Allison Lee heard the appeal in circuit court, and found the denial of Dr. Faltas' request to represent herself was not abuse of discretion. R. * (Circuit Court April 17, 2015 p. 3). Additionally, Judge Lee found the denial was not the result of an error of law. *Id.*

ARGUMENT

I. **THE CIRCUIT COURT DID NOT ERR IN UPHOLDING THE DENIAL OF APPELLANT'S RIGHT TO SELF REPRESENTATION BASED ON APPELLANT'S OUT OF COURT CONDUCT RELATING DIRECTLY TO THIS ASSAULT CASE.**

A defendant has a constitutional right to self-representation under the Sixth and Fourteenth Amendments. *Faretta v. California*, 422 U.S. 806, 807, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). A defendant's assertion of his right to self-representation must be: “(1) clear and unequivocal; (2) knowing, intelligent and voluntary; and (3) timely.” *United States v. Frazier–El*, 204 F.3d 553, 558 (4th Cir. 2000) (citations omitted). However, the right of self-representation is not absolute. *Id.* at 559. The Supreme Court in *Faretta* noted “The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law.” *Faretta*, 422 U.S. at 834 n. 46, 95 S.Ct. 2525. A trial judge may refuse to permit a criminal defendant to represent himself when he is “ ‘not able and willing to abide by rules of procedure and courtroom protocol.’ ” *United States v. Lopez–Osuna*, 242 F.3d 1191, 1200 (9th Cir.2001) (quoting *Savage v. Estelle*, 924 F.2d 1459, 1463 (9th Cir.1991)). “A trial court must be permitted to distinguish between a manipulative effort to present particular arguments and a sincere desire to dispense with the benefits of counsel.” *Frazier–El*, 204 F.3d at 560. Other case law has held that “Even at the trial level ... the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer.” *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 162, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000). In *United States v. West*, 877 F.2d 281, 287 (4th Cir.1989), the Fourth Circuit held a trial court was not required to make a finding the defendant disrupted a trial to support its removal of him as pro se counsel.

“The question of whether court appointed counsel should be discharged is a matter addressed to the discretion of the trial judge. Only in a case of abuse of discretion will this [court] interfere.” *State v. Sims*, 405 S.E.2d 377, 380 (1991); see *State v. Barnes*, 753 S.E.2d 545, 556 (2014). An abuse of discretion occurs when the decision of the trial judge is based upon an error of law or upon factual findings that are without evidentiary support. *State v. Pagan*, 631 S.E.2d 262, 265 (2006).

A. Invocation of Right to Self-Representation and Denial of the Right Based on Appellant’s Conduct.

The record on appeal shows Dr. Faltas invoked her right to self-representation on February 21, 2013 in front of the Honorable Judge James Barber in General Sessions Court. Once Dr. Faltas invoked her right to self-representation, Judge Barber performed the *Faretta* colloquy, found she understood the ramifications of proceeding *pro-se*, and acknowledged the general constitutional right to represent one’s self in a criminal matter. Tr. P. 20, 1. 6 – 23, 1. 20 (February 21, 2013). At this hearing, Judge Barber was well aware of Dr. Faltas’ long pattern of conduct during the almost three and a half years this assault charge had been pending. That conduct clearly had a significant impact on the core integrity of the underlying prosecution as evidenced by the length of time the charge had been pending; and by the Supreme Court’s orders detailing Appellant’s disruptive conduct leading to that delay. Judge Barber was aware of the numerous Supreme Court Orders that were issued in an attempt to get Dr. Faltas to respect proper judicial procedure and courtroom protocol. Judge Barber took the matter under advisement, and in a March 7, 2013 order, properly denied Dr. Faltas the right to represent herself on the assault charge. R. * (Circuit Court Order, March 7, 2013).

After Judge Barber denied her request, Dr. Faltas never subsequently invoked her right to self-representation in the Municipal Court, thus the court was not required to conduct the *Faretta*

colloquy. (See: Tr. P. 2-4 (Municipal Court Hearing, March 12, 2013); Tr. P. 9-135 (Municipal Court Trial, April 25, 2013). Notwithstanding, Dr. Faltas had already waived that right in this assault case by her out of court disruptive conduct.³

After Appellant was convicted on this assault charge and sentenced to twenty days imprisonment, she appealed her conviction based on the denial of her right to self-representation. On appeal, The Honorable Judge Allison Lee correctly found that Judge Barber and the Municipal Court did not abuse discretion in denying Appellant the right to proceed *pro se* at trial. Additionally, the Supreme Court orders provide the evidentiary support that Appellant was properly denied her *pro se* right based on her unwillingness to comply with procedural and substantive law, as well as abusing the dignity of the courtroom.

The circuit court neither committed any reversible error when Judge Barber denied Dr. Faltas the right to represent herself in this assault case, nor when Judge Allison Lee upheld that decision on appeal. Accordingly, Dr. Faltas is not entitled to a new trial.

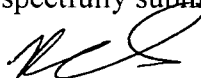
³ Although she waived her right to self-representation in this assault case, if she were to be granted a new trial, she would be able to re-assert that right and the trial court would be required to make a new determination.

CONCLUSION

The Circuit Court properly upheld Judge Barber's denial of Appellant's request to self-representation on this underlying assault case based on Appellant's refusal to comply with procedural and substantive law, as well as her abuse of courtroom dignity. The record on appeal shows that the denial was not an abuse of discretion.

Accordingly, Dr. Faltas is not entitled to a new trial, and her conviction must stand.

Respectfully submitted,



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October 17, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2015-000941


City of Columbia..... Respondent,

v.

Marie-Therese Assa'ad Faltas.....Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that he served a copy of the *Initial Brief of Respondent along with the Designation of Matter* upon the Appellant by placing it in the United States mail, first class postage prepaid to her attorney of record, John H. Strom, Appellate Defender, at his address at the SC Office of Indigent Defense, Division of Appellate Defense, PO Box 11589, Columbia, SC 29211-1589, on this 17th day of October, 2016.



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