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SC Court of Appeals

BEFORE THE SUPREME COURT OF SOUTH CAROLINA
Appellate Case No. 2016

State of South Carolina, and City of Columbia, SC
v.
Marie Assa'ad-Faltas, MD, MPH

Petition for a Writ of Certiorari to Review SC's Court of Appeals' Appellate Case No. 2016 – 001730, Motion to Dispense or Defer the Appendix until the Motion to Appoint Counsel is Decided, And Motion to Appoint Counsel *without waiver of Petitioner's right to proceed* pro se.

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)

Marie Assa'ad-Faltas, MD, MPH timely petitions this Court to issue its writ of *certiorari* to review SC's Court of Appeals' 16 September 2016 ORDER (dismissing this meritorious appeal) and the panel and *en banc* 29 November 2016 denial of Petitioner's timely petition to rehear the order of dismissal and to reinstate the appeal. SC's Court of Appeals' dismissal order cited, but erroneously applied, a U.S. Supreme Court case and also ignored several clear and controlling U.S. Supreme Court precedents, valid SC statutes, and *recent* SC's Supreme Court orders addressing Dr. Assa'ad-Faltas' *pro se* applications for relief, all amplified below, noting that this Court's very order in this very case alluded to Petitioner's rights to seek review of the Court of Appeals' final action. False criminal charges necessitating the defense expenses *sub judice* were brought to prevent Petitioner's building, on her and her mother's land (adjacent to the false accusers' two quadriplexes), a fully solar residence for which Petitioner had invented a novel way of building and sought a patent ***by the Prosecution's own transcribed admission at trial.***

Biblical Commandments to treat the foreigner fairly and obey God, not man, are sampled below.

> **The midwives feared God, and did not do as the king of Egypt had commanded them, but let the boys live.** Exodus 1:17
> ***You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt.*** Exodus 22:21
> You shall not oppress your neighbor, nor rob him. The wages of a hired man are not to remain with you all night until morning. Leviticus 19:13
> You shall rise up before the grayheaded and honor the aged, and you shall revere your God; [...]. When a stranger resides with you in your land, you shall not do him wrong. The stranger who resides with you shall be to you as the native among you, and you shall love him as yourself, for you were aliens in the land of Egypt; Leviticus 19:32-43
> In case a countryman of yours becomes poor and his means [...] falter, you are to sustain him, like a stranger or a sojourner, that he may live with you. Leviticus 25:35
> **Then I charged your judges [...], 'Hear the cases between your fellow countrymen, and judge righteously between a man and his fellow countryman, or the alien who is with him.** Deuteronomy 1:16
> Show your love for the alien, for you were aliens in the land of Egypt. Deuteronomy 10:19
> Cursed is he who distorts the justice due an alien, orphan, and widow. Deuteronomy 27:19

> They brought them in and made them stand before the Sanhedrin, where the high priest interrogated them. "We gave you strict orders not to teach in this name," he said. "Yet you have filled Jerusalem with your teaching and are determined to make us responsible for this man's blood." But Peter and the other apostles replied, "We must obey God rather than men. **Acts 5:27-28**

This Court's 14 December 2016 *Roberston* decision, Opinion No. 27691, Appellate Case No. 2012-205909, **suggests** that SC's Chief Justice's *administrative orders* are not binding law . **Also, on 7 November 2013, this Court acknowledged that it had violated *Faretta* v. *California*** by *ex ante* peremptorily denying Petitioner's right to self-representation in criminal matters. Petitioner now re-submits **that both SC statutes and U.S. Supreme Court controlling precedents *forbid* imposing on her 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 has been, since September 2005, an alien lawfully admitted for permanent residence in the United States, and, since September 2009, eligible 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 11] We note that under prior cases, discrimination by States on the basis of ancestry violates the Equal Protection Clause of the Fourteenth Amendment.

Dr. Assa'ad-Faltas is thus legally and unconstitutionally *guaranteed pro se* advocacy here and wherever any 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.**

Lawyers generally cost more than a transcript or appeal fee. Any requirement that Petitioner 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 shown above. Other U.S. Supreme Court free-transcript/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* this 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 SC's Court of Appeals, 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 weighty interest in ensuring that, God forbid, were the State to attack her with more false criminal charges in the future, she will have access to "the tools of defense." **She also presented below, and resubmits 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.**

ARGUMENT F: This Case IS an Excellent Vehicle to Curb Prosecutorial Misconduct

Rule 602(g)(6), SCACR, and the Defense of Indigents Act (Act No. 309), passed by SC's General Assembly and approved by SC's Governor on 17 June 1969, require SC's Commission on Indigent Defense to reimburse reasonable indigent *pro se* defense expenses. *Ex parte Brown*, 393 S.C. 214, 711 S.E.2d 899 (2011), held the statutory cap may be exceeded in rare circumstances.

This case passes the rarity test as Dr. Assa'ad-Faltas counted **353 *objectively-provable*** perjuries, forgeries, and fabrications in the Proscecution's evidence and was ***severely punished*** whenever she tried to expose them. The court system also failed Dr. Assa'ad-Faltas in letting shocking pretrial deprivations of her liberty **linger unexamined for years *against compelling evidence that the Prosecution had no intent to try Dr. Assa'ad-Faltas on the first indictment or retry her on the second indictment because the Prosecution had NO TRUTHFUL EVIDENCE against Dr. Assa'ad-Faltas* and all Prosecution fabrications successfully introduced in the 22-26 February 2010 trial** had been researched and detected by Dr. Assa'ad-Faltas after the mistrial as evidenced in the respective trial and hearing transcript excerpts presented to the circuit court.

Marie Assa'ad-Faltas, MD, MPH, was, on 2 December 2009, arrested by the City of Columbia on two counts of harassment in the first degree, one alleging a Dinah Steele"-Mason" to be a victim and the other alleging a Teresa Ingram to be a victim. Dr. Assa'ad-Faltas chose to defend herself *pro se* but requested public stand-by defender. In December 2009, November 2010, May 2011, August 2012, and July 2015, *inter alia*, Dr. Assa'ad-Faltas was screened and found indigent and eligible for Richland County Public Defender's service against the above-listed charges and such others as may surface against her and for the services of South Carolina's Office of Indigent Defense. The 22-26 February 2010 General Sessions jury trial on the harassment count alleged by Ingram alone lasted an entire term of court, generated a circa-1,200 page transcript, included testimony of eighteen (18) witnesses after the Prosecution had listed thirty-six (36) witnesses, and ended in mistrial due to a hopelessly deadlocked jury after six hours of deliberation.

On 11 August 2010, Dr. Assa'ad-Faltas was judicially-determined mentally competent to proceed

pro se. On 30 August 2010, **over Dr. Assa'ad-Faltas strong objections,** the State remanded the first-degree harassment charges to CMC which had no jurisdiction to hear them. The harassment charges were not called for trial at CMC until 13 August 2012, two years after remand, whereupon, Dr. Assa'ad-Faltas *pro se* promptly moved for dismissal with prejudice for lack of jurisdiction and her motion was granted. Then-Columbia-Assistant City Attorney David Fernandez there and then indicated he will try to bring warrants against Dr. Assa'ad-Faltas for alleged second-degree harassment of Ingram and Steele but eventually never did. All judges of Columbia's Municipal Court ("CMC") except the Honorable Carl L. Solomon had recused themselves from Dr. Assa'ad-Faltas' cases or from cases involving Dinah Steele or Larry Mason in or by March 2013.

This Court should therefore conclude that it was reasonable for Dr. Assa'ad-Faltas to continue to research the potential witnesses during the three-year pendency of the harassment charges and after their dismissal.

CONCLUSION

Dr. Assa'ad-Faltas asks this Court to refuse to overrule unconstitutional and illegal orders, which may not control this case anyway, and instead to obey its individual conscience and the binding precedents of the U.S. Supreme Court and therefore to reinstate this appeal and to certify this case back to itself 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 Court of Appeals by hand-delivery on 22 December 2016, all God so willing.

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