

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable Jean H. Toal, Circuit Court Judge

 ORIGINAL

RECEIVED

JUL 26 2018

S.C. SUPREME COURT

MARIE ASSA'AD FALTAS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2018-001290

RETURN TO MOTION TO RELIEVE
APPELLATE DEFENSE AND
TO APPOINT OUTSIDE COUNSEL

Undersigned counsel, makes the following return to the motion to relieve Appellate Defense and to appoint outside counsel:

1. Petitioner Assa'ad-Faltas was granted post-conviction relief (PCR) from her simple assault conviction in the Columbia Municipal Court in the order of the Honorable Jean H. Toal, dated June 14, 2018. See Exhibit A, attached to this return. The State of South Carolina has filed a notice of intent to appeal to this Court from that Circuit Court order granting post-conviction relief.

2. Petitioner filed a motion to relieve Appellate Defense, and to appoint outside counsel with this Court on July 20, 2018. See Exhibit B, attached to this return. Petitioner states, inter alia, the fact that she has alleged ineffective assistance of appellate counsel, Appellate Defender John H. Strom, in her application for post-conviction relief filed with the Richland County Court of Common Pleas on April 2, 2018. See Exhibit C, attached to this return.

3. This PCR application follows the affirmance on direct appeal of the Circuit Court's affirmance of petitioner's municipal court conviction for simple assault. See City of Columbia v. Assa'ad-Faltas, 420 S.C. 28, 800 S.E.2d 782 (2017), wherein Appellate Defender John H. Strom was petitioner's appellate counsel.

4. Petitioner also asserts that the Office of Appellate Defense did not advocate in her interests following this Court's decision in State v. Samuel, 422 S.C. 596, 813 S.E.2d 487 (2018), in which this Court reversed the Court of Appeals and held Petitioner Samuel had the right to represent himself at trial. Petitioner asserts that Petitioner Samuel's Appellate Defender, Robert M. Pachak, should have filed a different return to the state's motion for rehearing in State v. Samuel, arguing that City of Columbia v. Assa'ad-Faltas, 420 S.C. 28, 800 S.E.2d 782 (2017), should be overruled. Petitioner argues that in the return to the state's petition for rehearing in State v. Samuel, Appellate Defender Robert M. Pachak instead "implied" Petitioner Samuel was a "wonderful person" entitled to represent himself, while "Dr. Assa'ad-Faltas is a horrible person deserving of all this Court 'right or wrong' [done] to her." See Exhibit B, attached to this return. In his return to the state's petition for rehearing in State v. Samuel, 422 S.C. 596, 813 S.E.2d 487 (2018), Appellate Defender Pachak quoted from this Court's opinion in City of Columbia v.

Assa'ad-Faltas, 420 S.C. 28, 800 S.E.2d 782 (2017), and concluded “Petitioner [Samuel] did not conduct himself in that manner.” See Exhibit D, the Return to Petition for Rehearing at pp. 2-3, attached to this return.

5. Petitioner also asserts that she was painted in a bad light by another Appellate Defender in a case pending before this Court, State v. Wayne Gary Polite, Appellate Case Number 2017-000728. In Polite, Appellate Defender Susan Hackett referred to City of Columbia v. Assa'ad-Faltas, 420 S.C. 28, 800 S.E.2d 782 (2017), a single time on page twelve of the brief of petitioner. See Exhibit E, attached to this return.

6. In addition, Petitioner has asserted that as Chief Appellate Defender, undersigned counsel is responsible for the actions of the Appellate Defenders that have adversely impacted her. This, of course, includes her allegation of ineffective assistance by Appellate Defender Strom in City of Columbia v. Assa'ad-Faltas, 420 S.C. 28, 800 S.E.2d 782 (2017).

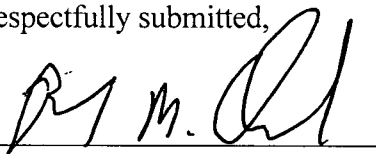
7. Undersigned counsel, on behalf of the Division of Appellate Defense, does not oppose petitioner’s motion to relieve Appellate Defense, and to appoint outside counsel.

8. Undersigned counsel respectfully, but vehemently, opposes any request that the Appellate Division be appointed as standby counsel while petitioner proceeds *pro se* before this Court. In State v. Roberts, 364 S.C. 583, 615 S.E.2d 626 (2005), this Court held that Appellant Tyree Roberts had no constitutional right to proceed *pro se* in an appeal from his criminal conviction. In Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002), this Court also held there was no constitutional right to hybrid representation either at trial or on appeal. See, also, Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). Even if there was a right to hybrid representation of this *pro se* petitioner on appeal in this case, undersigned counsel respectfully asserts it would

lead to unnecessary disruptions of the Appellate Division, where that Division is responsible for most of the criminal appeals pending before this Court, and the Court of Appeals.

WHEREFORE, Appellate Defense does not oppose petitioner's motion to relieve the Division of Appellate Defense, and to appoint outside counsel. Appellate Defense strongly opposes any request to appoint the Appellate Division as standby counsel to a *pro se* petitioner on appeal in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. M. Dudek", written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

July 26, 2018

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Honorable Jean H. Toal, Circuit Court Judge

MARIE ASSA'AD FALTAS,

PETITIONER,

V.

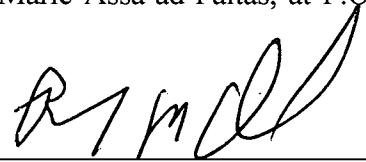
STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2018-001290

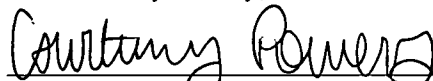
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the return to the motion to relieve appellate defense and to appoint outside counsel in the above-referenced case has been served upon opposing counsel, Johnny E. James, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and upon Marie Assa'ad-Faltas, at P.O. Box 9115, Columbia, SC 29290, this 26th day of July, 2018.



Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 26th day of July, 2018.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Marie Assa'ad-Faltas,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No: 2016-CP-40-01444

Order Granting Post-Conviction Relief

2018 JUL 14 PM 4:10
RICHLAND COUNTY

#1
8/17

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 24, 2014. Applicant sought to overturn her conviction for the violation of a City of Columbia ordinance regulating the storage of rubbish, debris, and trash on Applicant's rental property. A hearing was convened at the Richland County Courthouse on December 7, 2016 and June 14, 2017. Applicant, Maria Assa'ad-Faltas, was present and represented by Leah B. Moody, Esquire. Respondent, State of South Carolina, was represented by Jessica E. Kinard, Esquire. Applicant's previous counsel, Orin Briggs and Theodore Lupton, were present and testified at the hearing. This Post-Conviction Relief hearing only addressed Applicant's charge of violation of the City of Columbia rubbish, trash, and debris ordinance.

At the outset, this Court takes note of the Supreme Court of South Carolina decision regarding Applicant issued on June 21, 2017. In *City of Columbia, Respondent, v. Marie-Therese Assa'ad-Faltas, Appellant*, 420 SC 28, 800 S.E.2d 782 (2017), the Court describes in detail Applicant's persistent abuse of the judicial system by way of excessive filings, abusive behavior, and disruptive actions. In that case, the Supreme Court was reviewing Dr. Faltas' conviction for simple assault arising out of her refusal to allow her landlord to inspect, with City of Columbia officials, her residential rental property. Dr. Faltas' ultimate conviction of the rubbish and trash

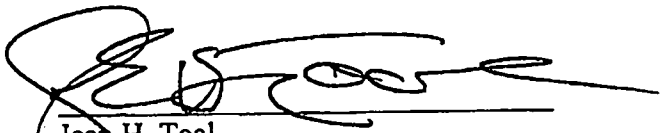
ordinance is the subject of the present matter. In this case, Applicant repeatedly attempted to contact the presiding judge with contentious and invasive communications, all in violation of numerous Supreme Court Orders detailed in the above cited opinion.

This Court conducted a post-conviction relief hearing on this matter and attempted to focus in on the only issue of merit: whether Applicant's counsel was deficient for not addressing the issue of whether the local ordinance was preempted by state law and state Department of Health and Environmental Control (DHEC) regulations. This Court finds Counsel was deficient for not raising this issue at trial. A Motion to Dismiss based on this issue could have changed the outcome of the case and the failure to make said motion prejudiced Applicant. All other issues raised by Applicant are patently without merit.

#2
This Court has grave reservations about whether or not a dispute in Municipal Court regarding the validity of a city rubbish ordinance is a matter for post-conviction relief. Nevertheless, this Court has proceeded on the assumption that the Application for Post-Conviction Relief was proper based on Orders from the Supreme Court of South Carolina assigning this matter to Circuit Court for post-conviction relief, and the failure of the State to present arguments on this ground challenging the propriety of the proceeding. The State did move to dismiss on other grounds, and its motions were denied

On the merits, this Court finds Applicant is entitled to a new trial on the issue of Applicant's conviction for violation of the city's ordinance regarding rubbish.

AND IT IS SO ORDERED.


Jean H. Toal
Chief Justice, Retired
Acting Circuit Court Judge

June 14, 2018

EXHIBIT B

JUL 20 2018

BEFORE THE SUPREME COURT OF SOUTH CAROLINA

Appellate Case No. 2018-001290

On Petition for a Writ of *Certiorari* to RICHLAND COUNTY Court of Common Pleas,
 Jean Hoefler Toal, sitting as Circuit Judge
 Circuit Court Case No. 2016-CP-40-01444

S.C. SUPREME COURT

The State of South Carolina, Petitioner,
 v.
 Marie-Thérèse Assa'ad-Faltas, MD, MPH, Respondent.

**Dr. Assa'ad-Faltas' EMERGEMCY Motion to Relieve Appellate Defense for Conflict
 And to Appoint NON-CONFLICTED Outside Counsel as Stand-by Appellate Counsel here
 Because Dr. Assa'ad-Faltas is the Respondent to this Matter
 And the Proper Balance Should Restore her Right to Defend pro se
 what She Already Won Below, whether pro se or counselled.**

Dr. Assa'ad-Faltas had, in a pending *separate* PCR, named SC's Office of Appellate Defense for its ineffective assistance of appellate counsel in SC Appellate Case 2015-000941, **two months before the written order in her favor** was entered in PCR case 2016-CP-40-01444 and **three months before the State filed its Petition for certiorari in this case**. Not only is that a sufficient conflict of interest, SC's Appellate Defense's performance in *State v. Samuel*, decided and remitted earlier this year, and *State v. Polite*, pending before this Court, indicates a continuing conflict between serving Dr. Assa'ad-Faltas' interests in advocating *pro se* and serving Appellate Defense's other clients' interests. In *Samuel* and *Polite*, instead of arguing that *Assa'ad-Faltas* was wrongly decided and/or should have been overruled by *Samuel*, SC Appellate Defense chose to *imply* that Messers. Samuel and Polite are wonderful people entitled to unfettered self-representation while Dr. Assa'ad-Faltas is a horrible person deserving of all this Court "right or wrong" does to her.

Dr. Assa'ad-Faltas contacted SC's Chief Appellate Defender Dudek to explain these conflicts to him and to explore solutions. Mr. Dudek responded that he will not *initiate* his own motion and did not want to see an advance copy of Dr. Assa'ad-Faltas' motion to relieve SC's Appellate Defense for conflict **but that Mr. Dudek MIGHT consent to it once it is filed and a response is requested**. Mr. Dudek also allowed Dr. Assa'ad-Faltas to represent this part of the conversation to this Court.

Not conceding any validity to this Court's self-admitted "extreme" denials of her rights to *pro se* advocacy, any real or feigned fears of Dr. Assa'ad-Faltas initiating a "frivolous" case do not apply where she is a defendant in a criminal or civil case. This Court *implicitly* so admitted in its 27 September 2017 ORDER restoring Dr. Faltas' right to advocate *pro se* in every civil case where she is a defendant. **The same reasoning applies to every appeal and petition where Dr. Assa'ad-Faltas is the respondent. Nor is there any precedent from this Court or the U.S. Supreme Court denying the right to pro se OPPOSE any State appeal or petition in criminal or civil case.**

WHEREFORE, SC's Appellate Defense should be relieved for conflict; and non-conflicted outside counsel should be immediately appointed as stand-by for Dr. Assa'ad-Faltas' *pro se* opposition both to the State's *certiorari* petition itself and to any relief the State seeks if its petition were granted.

Submitted on 20 July 2018 and served on SC's Attorney General by hand² delivery to his office, and on Mr. Dudek at his office at 1331 Lady Street, Columbia, SC 29201, all God so willing.

Marie-Thérèse Assa'ad-Faltas, MD, MPH, Respondent *pro se* for purposes of this motion
 P.O. Box 9115, Columbia, SC 29290
 Phone: (803) 783 -4536 e-mail: Marie_Faltas@hotmail.com

EXHIBIT C

STATE OF SOUTH CAROLINA

County of Richland County Circuit Court

In the Court of Common Pleas

Marie Assa'ad-Faltas, MD, MPH
Full name and prison number (if any) of Applicant,

vs.
City of Columbia and
Name of Respondent.
State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

CLERK OF COURT
COURT HOUSE
COLUMBIA, SC
MARCH 30 PM 3:30

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- Place of detention N/A but I was erroneously sentenced to thirty days (30 days) which sentence was NEVER affirmed but is stayed on bond.
- Name and location of Court which imposed sentence Washington Street, Columbia, SC 29201 The City of Columbia's Municipal Court,
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - Ordinance Summons # 201301 of the City of Columbia
 - _____
 - _____
- The date upon which sentence was imposed and the terms of the sentence:
 - 25 April 2013 - Thirty days stayed on bond. No
 - other conditions or terms
 - _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty and trial by jury _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes, to the Richland County Circuit Court of Common Pleas

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. Richland County Circuit Court of Common Pleas # 2013CP40-003525
- ii. S.C. Court of Appeals
- iii. S.C. Supreme Court (only on certiorari)

(b) the result in each such Court to which you appealed:

- i. 2013-CP-40-003525 affirmed the conviction ONLY but was silent on the sentence
- ii. S.C. Court of Appeals DISMISSED the appeal SOLELY due to absence of a lawyer.
- iii. S.C. Supreme Court DISMISSED certiorari SOLELY BECAUSE the Court of Appeals had not ruled on rehearing.

(c) the date of each such result:

- i. Circuit Court: 18 August 2014; 24 October 2014; Appeals had not ruled on rehearing and 9 September 2015
- ii. Court of Appeals: January 2015 and December 2015
- iii. SC Supreme Court: ~~February~~ April 2015

(d) if known, citations of any written opinion or orders entered pursuant to such results: None published

- i. _____
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing: N/A

- (a) _____
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) The conviction has severe collateral consequences on me.
- (b) I was forced to have counsel and he was stunningly ineffective and harmful.
- (c) The very existence of Columbia's Municipal Court violates the Federal Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) The conviction can be pulled under my name and prevented me from getting housing, loans, and can be an obstacle to citizenship.
- (b) Please see the Federal habeas case for more details of how ineffective and harmful Orin Briggs was.
- (c) Please see transcript of 13 December 2013 hearing before Judge Lee.

and (d) the ordinance(s) under which I was falsely convicted violate(s) both the federal and SC Constitutions in many ways which my forced counsel was too ineffective to raise

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? Not PCR of THIS conviction; but petition to appoint counsel which was in a sense granted.

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? see below

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court? NO
only in federal court but dismissed WITHOUT PREJUDICE

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Please see the 7 January 2016 ORDER of SC's

ii. Supreme Court

iii. Please see PACER for the federal case referenced

iv. in the application which resulted in the 7 January 2016 ORDER

(b) the name and location of the Court in which each was filed:

i. SC's Supreme Court, Columbia, SC

ii. U.S. District Court for South Carolina, Columbia, SC

iii. _____

iv. _____

(c) the disposition thereof:

i. SC's Supreme Court in a sense granted my request to file a motion to appoint counsel

iii. The federal court dismissed WITHOUT PREJUDICE in

iv. part to exhaust state remedies

(d) the date of each such disposition:

i. SC's Supreme Court : 7 January 2016

ii. Federal Courts : please see PACER for case details

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

None published

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Only on direct appeal but the ineffective assistance issue was NOT allowed to be raised on direct appeal.

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented: Vide supra

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised: submissions and 13 December 2013

- i. hearing before Judge Lee in 2013-CP-40-003525
- ii. which was combined with hearing in 2013-CP-40-03522
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective assistance was NOT allowed to be raised on direct appeal.
- (b) Federal Courts did not rule on any substance but
- (c) wanted exhaustion of state remedies first.

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you
 - i. Theodore Nichols Dapton, Lexington, SC
 - ii. Orin G. Briggs, Lexington, SC
 - iii. Tristan Shaffer, Myrtle Beach, SC

- (b) the proceedings at which each such attorney represented you: Trial and appeal to Circuit Court
 - i. _____
 - ii. _____
 - iii. _____

18. State clearly the relief you seek in filing this application.

Vacate my conviction, refund my bond, and declare the relevant ordinances unconstitutional.

19. Are you now under sentence from any other court that you have not challenged?

NO

EXHIBIT D

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Orangeburg County
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 27768

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

PETITIONER.

Appellate Case No. 2015-002401

RETURN TO PETITION FOR REHEARING

The trial judge did everything she could think of to deny petitioner the right to represent himself. She told petitioner that he was bright enough and that the constitution said he was entitled to represent himself. But then she said, "I don't want you to represent yourself, but I can't violate the law." R. 50, ll. 6-9. She admitted, "You don't have a problem that I'm aware of that I can use, in all candor, to keep you from representing yourself." R. 53, ll. 15-17. After taking a break to do some research she cited Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002) and said petitioner was trying to "manipulate" the proceedings and that he was not allowed to "disrupt" the proceedings. R. 71, l. 3 - 75, l. 14.

This Court correctly found that under Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525

(1995) petitioner met the standards to represent himself:

In *Faretta*, the United States Supreme Court held that criminal defendants have a fundamental right to self-representation under the Sixth Amendment. 422 U.S. at 819-21, 95 S.Ct. 2525. In order to effectively invoke this right of self-representation, the defendant must clearly and unequivocally assert his desire to proceed *pro se* and such request must be made knowingly, intelligently, and voluntarily. *United States v. Frazier-El*, 204 F.3d 553, 558 (4th Cir. 2000). Where a defendant invokes his right of self-representation before trial, the only inquiry the circuit judge may undertake is that required by *Faretta*. *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014). Thus, the only basis upon which a circuit judge may deny a defendant's pre-trial motion to proceed *pro-se* is if the court determines the defendant has not knowingly, intelligently, and voluntarily waived his right to counsel. *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). A circuit judge's denial of a defendant's knowing and voluntary request to proceed *pro se* is a structural error requiring automatic reversal and a new trial. *State v. Rivera*, 402 S.C. 225, 247, 741 S.E.2d 694, 705 (2013).

State v. Samuel, ____ S.C.2d ____ (2018).

This Court also found that there was no attempt by petitioner to disrupt or manipulate the process.

In *City of Columbia v. Assa'ad-Faltas*, 420 S.C. 28, 800 S.E.2d 782 (2017) this Court gave examples of disruptive and manipulative conduct that would not allow self-representation:

Additionally, even had the issue been unequivocally and timely raised to the municipal court, we find the municipal court would have been justified in insisting that Appellant proceed with the assistance of **792 counsel. Indeed, Appellant's long history of abusing the judicial process, coupled with her conduct in this case in abusing and harassing courts and court officers; disrupting, delaying, and prolonging proceedings; and persistently disregarding and circumventing the orders of this Court aimed at curbing her improper conduct all underscore the Court's interest in preventing Appellant's further manipulation of the system and "in ensuring the integrity and efficiency of the trial." *Frazier-El*, 204 F.3d at 588; see *State v. Hester*, 324 S.W.3d 1, 33 (Tenn. 2010)

("Disingenuous invocations of the right of self-representation that are designed to manipulate the judicial process constitute an improper tactic by a defendant and are not entitled to succeed.") (citing *United States v. Welty*, 674 F.2d 185, 187 (3d Cir.1982)); *id.* ("A court may deny a manipulative request for self-representation, distinguishing between a genuine desire to invoke a right of self-representation and a manipulative effort to frustrate the judicial process." (citations omitted)); *Tanksley v. State*, 113 Nev. 997, 946 P.2d 148, 150 (1997) (observing "[a] defendant's right to self-representation does not allow him to engage in uncontrollable and disruptive behavior in the courtroom," and finding "the defendant's pretrial activity is relevant if it affords a strong indication that the defendant [] will *48 disrupt the proceedings in the courtroom" (internal quotation marks and citations omitted)).

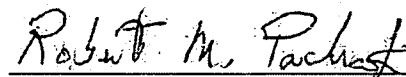
420 S.C. at 47-48; 800 S.E.2d 791-792.

Petitioner did not conduct himself in that manner.

CONCLUSION

The petition for rehearing should be denied.

Respectfully Submitted,



ROBERT M. PACHAK
Appellate Defender

This 29th day of March, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Orangeburg County
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 27768

THE STATE,

RESPONDENT,


V.

LAMONT ANTONIO SAMUEL,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Return to Petition for Rehearing in the above-entitled case has been served upon William Edgar Salter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Lamont Antonio Samuel, #355793, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010; this 29th day of March, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 29th day of March, 2018.

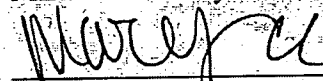
 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.

EXHIBIT E

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Supreme Court County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE GARY POLITE

PETITIONER

APPELLATE CASE NO. 2017-000728

BRIEF OF PETITIONER

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

of the ‘difficulties he would encounter in acting as his own counsel.’” Id. at 919 (quoting United States v. Moya-Gomez, 860 F.2d 706, 733 (7th Cir. 1988)); see also United States v. McBride, 362 F.3d 360, 366 (6th Cir. 2004)(explaining the Sixth Circuit’s “model inquiry” for courts to use when confronted with a request for self-representation).

However, “[t]he ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is the defendant’s understanding.” State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998).

According to the Fourth Circuit Court of Appeals, an assertion of the right to self-representation must be (1) clear and unequivocal, (2) knowing, intelligent, and voluntary, and (3) timely. See United States v. Ductan, 800 F.3d 642, 650 (4th Cir. 2015); United States v. Frazier-El, 204 F.3d 553, 558 (4th Cir. 2000). Recently, this Court adopted this three-part test as well. City of Columbia v. Assa’ad-Faltas, 420 S.C. 28, 45, 800 S.E.2d 782, 791 (2017).

Clear & unequivocal invocation

“The right to appear *pro se* must be clearly asserted by the defendant before trial.” State v. Sims, 304 S.C. 409, 415, 405 S.E.2d 377, 381 (1991); see also Fields v. Murray, 49 F.3d 1024, 1029 (4th Cir. 1995)(invocation of right to self-representation must be clear and unequivocal); United States v. Treff, 924 F.2d 975, 979 (10th Cir. 1991)(explaining the request must be unequivocal to avoid a “cat and mouse” game).

Prior to the trial, Petitioner invoked his constitutional right to self-representation, and the judge agreed he had a right to self-representation. Petitioner clearly and unequivocally requested to exercise his constitutional right to self-representation when the judge told him his only options were to either be represented by trial counsel or to represent himself. Rather than engaging in the proper inquiry as required by law, the judge voiced her opinion that such a choice was not “such a good