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 Hoefer Toal, sitting as Circuit Judge
Circuit Court Case No. 2016-CP-40-01444

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

Dr. Assa'ad-Faltas' EMERGEMCY REPLY to Retutn to Motion to Relieve Appellate Defense 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, *pro se or counselled*, Already Won Below.

Appellate Defense's return is more proof that Appellate Defense should have nothing more to do with Dr. Assa'ad-Faltas' cases due to, not only its dooming her Appellate Case No. 2015-000941, but also Appellate Defense's not knowing which end is up in *this case 2018-001290,* **where Dr. Assa'ad-Faltas is the respondent, not the petitioner; and that makes all the difference.** ***Vide infra.***

The essence of *Martinez* v. *Court of Appeal of California,* 528 U.S. 152, 158-160, 162-3, and 165 (2000), with footnotes omitted and emphasis added, is:

> Appellate courts have maintained the discretion to allow litigants to "manage their own causes"-and some such litigants have done so effectively. That opportunity, however, has been consistently subject to each court"s own rules. [....] We might, nonetheless, paraphrase *Faretta* and assert: No State or Colony ever forced counsel upon a convicted appellant, and no spokesman ever suggested that such a practice would be tolerable or advisable. 422 U. S., at 832. Such negative historical evidence was meaningful to the *Faretta* Court, because the fact that the "[dog] had not barked" arguably demonstrated that early lawmakers intended to preserve the "long-respected right of self-representation" at trial. *Ibid.* [....] Finally, the *Faretta* majority found that the right to self-representation at trial was grounded in part in a respect for individual autonomy. See 422 U. S., at 834. This consideration is, of course, also applicable to an appellant seeking to manage his own case. As we explained in *Faretta,* at the trial level "[t]o force a lawyer on a defendant can only lead him to believe that the law contrives against him." *Ibid.* On appellate review, there is surely a similar risk that the appellant will be skeptical of whether a lawyer, who is employed by the same government that is prosecuting him, will serve his cause with undivided loyalty. Equally true on appeal is the related observation that it is the appellant personally who will bear the consequences of the appeal. See *ibid.*
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> The status of the accused defendant, who retains a presumption of innocence throughout the trial process, changes dramatically when a jury returns a guilty verdict. We have recognized this shifting focus and noted:
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> > "[T]here are significant differences between the trial and appellate stages of a criminal proceeding. The purpose of the trial stage from the State's point of view is to convert a criminal defendant from a person presumed innocent to one found guilty beyond a reasonable doubt ....
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> > "By contrast, it is ordinarily the defendant, rather than the State, who initiates the appellate process, seeking not to fend off the efforts of the State's prosecutor but rather to overturn a finding of guilt made by a judge or a jury below." *Ross* v. *Moffitt,* 417 U. S. 600, 610 (1974).
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> In the words of the *Faretta* majority, appellate proceedings are simply not a case of "hal[ing] a person into its criminal courts." 422 U. S., at 807. [¶] The requirement of representation by trained counsel implies no disrespect for the individual inasmuch as it tends to benefit the appellant as well as the court. Courts, of course, may still exercise their discretion to allow a lay person to proceed *pro se.* We already leave to the appellate courts' discretion, keeping "the best interests of both the prisoner and the government in mind," the decision whether to allow a *pro se* appellant to participate in, or even to be present at, oral argument. *Price* v. *Johnston,* 334 U. S. 266, 284 (1948). Considering the change in position from defendant to appellant, the autonomy interests that survive a felony conviction are less compelling than those motivating the decision in *Faretta.* Yet the overriding state interest in the fair and efficient administration of justice remains as strong as at the trial level. Thus,

the States are clearly within their discretion to conclude that the government's interests outweigh an invasion of the appellant's interest in self-representation. [....] Our holding is, of course, narrow. It does not preclude the States from recognizing such a right under their own constitutions.

JUSTICE SCALIA, concurring in the judgment.

I do not share the apparent skepticism of today's opinion concerning the judgment of the Court (often curiously described as merely the judgment of "the majority") in *Faretta* v. *California*, 422 U.S. 806 (1975). I have no doubt that the Framers of our Constitution, who were suspicious enough of governmental power-including judicial power-that they insisted upon a citizen's right to be judged by an independent jury of private citizens, would not have found acceptable the compulsory assignment of counsel *by* the government to plead a criminal defendant's case. While I might have rested the decision upon the Due Process Clause rather than the Sixth Amendment, I believe it was correct. [....] Our system of laws generally presumes that the criminal defendant, after being fully informed, knows his own best interests and does not need them dictated by the State. Any other approach is unworthy of a free people. As Justice Frankfurter eloquently put it for the Court in *Adams* v. *United States ex rel. McCann*, 317 U.S. 269 (1942), to require the acceptance of counsel "is to imprison a man in his privileges and call it the Constitution." *Id.*, at 280.

A PCR grantee stands the same as a *Faretta* defendant: presumed innocent until convicted at trial *or in the new trial granted by the PCR*. Dr. Assa'ad-Faltas *now* stands PCR-cleansed, thus presumed innocent, of the City of Columbia Ordinance Summons convictions. *Never did this Court deny any respondent the right to defend her trial court result* pro se. To the contrary, in *Blue Ridge Electric Cooperative, Inc.*, v. *Kathleen J. Gresham*, Appellate Case 2015-001836, this Court allowed a DISBARRED lawyer; *i.e*, one *already proven to have "polluted the administration of justice,"* to still represent herself (and prevail) as the respondent to a civil appeal before this Court.

Dr. Faltas is here a respondent to a civil appeal. If that appeal proves frivolous, the frivolity is imputed to the State which brought it, not to Dr. Faltas.

Nothing in SC's constitution, statutes or court rules bars *pro se* participation in an appeal. To the contrary, the law is, once a right is accorded to one race, it is accorded to all:

SECTION 14-1-100. Rights in court not 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.
HISTORY: 1962 Code Section 15-8; 1952 Code Section 15-8; 1942 Code Section 335; 1932 Code Section 335; Civ. P. '22 Section 291; Civ. C. '12 Section 3924; Civ. C. '02 Section 2821; G. S. 2168; R. S. 2297; 1870 (14) 338.

WHEREFORE, SC's Appellate Defense should be relieved for conflict; a non-conflicted outside counsel should be immediately appointed as stand-by for Dr. 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 27 July 2018 and served on SC's Attorney General by hand-delivery to his office, and on Mr. Dudek at his office at 1331 Lady Street, Columbia, SC 29201, all God so willing.

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