

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

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S.C. SUPREME COURT

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

Dr. Assa'ad-Faltas' THIRS Supplement to her Motion to Relieve Appellate Defense

This third supplement is necessitated by: (1) this Court's Clerk's refusal to submit for court action Dr. Assa'ad-Faltas' motion to dismiss this case for the State's *continuing* failure to file or serve a petition and appendix; (2) Dr. Assa'ad-Faltas' completion of Phase II of her statistical study of how the State's wanton exercise of its power (not right) to schedule PCRs and appeal the few that are granted injures, not only applicants' Sixth Amendment right to speedy retrial, but also this Court's ability to expeditiously dispose of cases; and (3) Mr. Robert Michael Dudek's adamant refusal to discuss with Dr. Assa'ad-Faltas her idea that grant of PCR should be unappealable by the State as a grant of an SC Crim R 29(b) motion unappealable or an acquittal is unappealable by the Prosecution, all despite Mr. Dudek's knowledge that counsel for a PCR applicant, here grantee, must brief all possible issues even if he thinks them frivolous. *Wade v. State*, 348 S.C. 255, 264, 559 S.E.2d 843, (2002); and *Hiott v. State*, 381 S.C. 622, 674 S.E.2d 491 (S Ct. 2009). Dr. Assa'ad-Faltas first re-summarizes this case below:

In October 2011, she set a line of inverted plastic buckets to mark the south boundary of a vacant lot of land she co-owns with her mother. DHEC inspected the arrangement and found no hazard in it; yet, the City of Columbia got her sentenced, on 25 April 2013, to thirty (30) days for that. In February 2016, this Court equitably tolled her time and directed Richland County's Clerk to accept the relevant application. So was 2016-CP-40-01444 filed on 3 March 2016 and begun to be heard on 6 December 2016 but was adjourned with intent to resume promptly. The State interposed its offer to order transcript Part I, which delayed the resumption until 14 June 2017. Retired Chief Justice Toal granted PCR from the bench and requested a draft order from Dr. Assa'ad-Faltas' then-counsel Leah Moody. The State did not *then* order transcript Part II but engaged Ms. Moody in "several rounds of editing" only to refuse to stipulate to the draft she finalized. Retired Chief Justice Toal finally wrote and filed her own order on 14 June 2018. Only after its July 2018 appeal did the State order transcript Part II. Thus, Dr. Assa'ad-Faltas was convicted **with forced trial counsel** of something that should not have been criminalized by the City of Columbia *ab initio* and of which she would have been acquitted had she been allowed to defend herself *pro se*. This State's retired chief justice found forced trial counsel ineffective. The State now uses Dr. Assa'ad-Faltas' forced representation by Appellate Defense, as unwanted as the forced ineffective trial counsel, to delay its appeal and, with it, justice for Dr. Assa'ad-Faltas. Specifically, the State arrogated to itself sixty (60) days from its receipt of the transcript because Dr. Assa'ad-Faltas is represented by Appellate defense in contrast to the thirty (30) days the State would have had had Dr. Assa'ad-Faltas been self-represented. Further, and just for delay, the State is likely to obtain the consent of Appellate Defense, which cares not about Dr. Assa'ad-Faltas' interests, for four extensions to which Dr. Assa'ad-Faltas would have objected had she been representing herself as a respondent which this Court allowed a DISBARRED lawyer to do and prevail, and which this Court allows all convicts.

As to Dr. Assa'ad-Faltas' statistical studies, which she hopes this Court will accept in the spirit in which they are given, Phase I is already filed with this Court and proves the State took to SC's Court of Appeals futile appeals of PCR grants to the delay of PCR grantees. Phase II studied this Court's Dismissed-as-Improviently-Granted cases ("DIGs") and proved: between 1997 and 2018, the State took to this Court at least 43 appeals from PCR grants which were *initially* granted *certiorari* only for

this Court to dismiss the writs as improvidently granted after studying lengthy records and even hearing oral arguments in half those cases. The study also shows that DIGs waste circa 8% of this Court's work.

DIGs after oral argument in SC S Ct (published OPINIONS = 93) (out of 27853 - 24572 = 3281; rate 1/35.3)

Cv-Opinion No. 24572 - Cv-Opinion No. 24590 - Cv-Opinion No. 24625 - Cv-Opinion No. 24634 - Cv-Opinion No. 24635 - **Opinion No. 24852** - Opinion No. 24963 - Opinion No. 25338 - Opinion No. 25369 - Cv-Opinion No. 25472 - Cv-Opinion No. 25475 - Cv-Opinion No. 25502 - Cv-Opinion No. 25565 - Cv-Opinion No. 25604 - **Opinion No. 25620** - **Opinion No. 25622** - Cv-Opinion No. 25625 - Cv-Opinion No. 25739 - **Opinion No. 25749** - Cv-Opinion No. 25754 - Cv-Opinion No. 25755 - Cv-Opinion No. 25773 - Cv-Opinion No. 25901 - **Opinion No. 25994** - Cv-Opinion No. 26006 - Cv-Opinion No. 26060 - Cv-Opinion No. 26072 - **Opinion No. 26260** - Cv-Opinion No. 26309 - **Opinion No. 26332** - Cv-Opinion No. 26368 - **Opinion No. 26396** - Cv-Opinion No. 26545 - **Opinion No. 26570** - Cv-Opinion No. 26576 - **Opinion No. 26580** - Cv-Opinion No. 26590 - Cv-Opinion No. 26651 - **Opinion No. 26652** - Cv-Opinion No. 26727 - **Opinion No. 26746** - Cv-Opinion No. 26769 - **Opinion No. 26772** - Cv-Opinion No. 26781 - **Opinion No. 26842** - Cv-Opinion No. 26937 - **FC-Opinion No. 27046** - **Opinion No. 27068** - Cv-Opinion No. 27174 - **Opinion No. 27184** - Cv-Opinion No. 27198 - **FC-Opinion No. 27199** - **Opinion No. 27203** - **FC-Opinion No. 27213** - **MIE-Opinion No. 27216** - **Opinion No. 27221** - Cv-Opinion No. 27321 - Cv-Opinion No. 27326 - **ALC-Opinion No. 27387** - **Opinion No. 27461** - **Opinion No. 27470** - **Opinion No. 27472** - Cv-Opinion No. 27489 - Cv-Opinion No. 27496 - Cv-Opinion No. 27508 - **Opinion No. 27511** - **Opinion No. 27512** - Cv-Opinion No. 27513 - **MIE-Opinion No. 27527** - **Opinion No. 27539** - Cv-Opinion No. 27540 - Cv-Opinion No. 27542 - Cv-Opinion No. 27577 - Cv-Opinion No. 27578 - **Opinion No. 27581** - **FC-Opinion No. 27584** - **WCC-Opinion No. 27588** - **WCC-P-Opinion No. 27590** - **Opinion No. 27591** - **Opinion No. 27595** - Cv-Opinion No. 27597 - **ALC-Opinion No. 27601** - Cv-Opinion No. 27608 - **Opinion No. 27647** - Cv-Opinion No. 27652 - **Opinion No. 27676** - **Opinion No. 27752** - Cv-Opinion No. 27795 - Cv-Opinion No. 27799 - **Opinion No. 27809** - **WCC-Opinion No. 27848** - Cv-Opinion No. 27849 - Cv-Opinion No. 27853 - **TOTAL: Civil = 48; FC = 4; WCC = 3; ALC = 2; MIE = 2; Criminal = 31 (State petitions = 11, Defense petitions = 20) State-initiated PCR reviews = 3**

DISs after oral argument in SC S Ct (Unpublished = 93) - TOTAL: Civil = 37; FC = 7; WCC = 2; MIE = 1; Criminal = 33: State petitions = 1, Defense = 32; PCR = 13; State-initiated reviews = 4; applicant-initiated reviews = 9

Cv-No. 2004-MO-009 - Cv-No. 2004-MO-010 - Cv-No. 2004-MO-026 - **FC-No. 2004-MO-030** - **No. 2004-MO-036** - **No. 2005-MO-003** - Cv-No. 2005-MO-005 - **No. 2005-MO-022** - Cv-No. 2005-MO-023 - Cv-No. 2005-MO-030 - Cv-No. 2006-MO-007 - Cv- No. 2006-MO-021 - **No. 2006-MO-041** - **FC-No. 2007-MO-029** - Cv- No. 2007-MO-038 - **FC-No. 2007-MO-043** - Cv-No. 2007-MO-050 - Cv-No. 2007-MO-074 - **No. 2008-MO-030** - Cv-No. 2008-MO-031 - Cv-No. 2008-MO-033 - Cv-**2008-MO-037** = **No. 26545** - Cv-No. 2009-MO-032 - Cv-No. 2009-MO-042 - Cv-No. 2009-MO-044 - **No. 2009-MO-046** - Cv- No. 2009-MO-056 - **No. 2009-MO-064** - **No. 2009-MO-065** - **No. 2011-MO-005** - Cv-No. 2011-MO-012 - **MIE-No. 2012-MO-011** - **FC-No. 2012-MO-027** - **No. 2012-MO-030** - **No. 2012-MO-037** - **No. 2012-MO-40** - Cv- No. 2012-MO-043 - **No. 2012-MO-050** - **No. 2012-MO-051** - **No. 2012-MO-053** - Cv-No. 2012-MO-056 - **No. 2013-MO-001** - Cv-No. 2013-MO-008 - **No. 2013-MO-020** - Cv-No. 2013-MO-029 - **No. 2014-MO-005** - Cv-No. 2014-MO-010 - **No. 2014-MO-019** - **No. 2014-MO-025** - Cv-No. 2014-MO-029 - **No. 2014-MO-030** - **No. 2014-MO-040** - **WCC-No. 2014-M25O-041** - Cv-No. 2014-MO-046 - **No. 2015-MO-004** - Cv-No. 2015-MO-006 - Cv-No. 2015-MO-010 - **No. 2015-MO-011** - **No. 2015-MO-012** - Cv-No. 2015-MO-013 - Cv-No. 2015-MO-025 - **No. 2015-MO-027** - **No. 2015-MO-028** - **No. 2015-MO-029** - **No. 2015-MO-035** - **No. 2015-MO-036** - Cv-No. 2015-MO-039 - **No. 2015-MO-041** - **WCC-P-No. 2015-MO-059** - **No. 2015-MO-063** - Cv-No. 2015-MO-064 - **No. 2015-MO-067** - **No. 2015-MO-069** - **No. 2016-MO-001** - Cv-No. 2016-MO-003 - **No. 2016-MO-012** - **No. 2016-MO-022** - Cv-No. 2016-MO-030 - **No. 2017-MO-010** - **No. 2017-MO-013** - **No. 2017-MO-014** - **FC-No. 2017-MO-018** - **FC-No. 2017-MO-019** - Cv-No. 2017-MO-020 - Cv-No. 2018-MO-001 - **No. 2018-MO-020** **FC-No. 2018-MO-021** - **No. 2018-MO-022** - Cv-No. 2018-MO-024 - **No. 2018-MO-031** - **No. 2018-MO-032** - **No. 2018-MO-35** - **No. 2018-MO-042**

DIGs after submission to SC S Ct (published OPINIONS = 4): No. 24553 - No. 24716 - No. 26382 - No. 27094

DIGs after submission to SC S Ct (Memorandum OPINIONS = 138) TOTAL: Civil = 3; FC = 1; Criminal = 1 Def. petition; PCR = 133; State-initiated reviews = 27; applicant-initiated reviews = 106

No. 2004-MO-001 - **No. 2004-MO-002** - No. 2004-MO-014 - **No. 2004-MO-018** - No. 2004-MO-039 - No. 2004-MO-043 - No. 2004-MO-045 - No. 2004-MO-052 - No. 2004-MO-054 - No. 2004-MO-066 - **No. 2005-MO-010** - No. 2005-MO-015 - No. 2005-MO-018 - No. 2005-MO-034 - No. 2005-MO-035 - No. 2005-MO-039 - No. 2005-MO-048 - No. 2006-MO-003 - **No. 2006-MO-046** - No. 2007-MO-003 - No. 2007-MO-007 - Cv-No. 2007-MO-013 - No. 2007-MO-026 - No. 2007-MO-032 - No. 2007-MO-035 - **No. 2007-MO-041** - No. 2007-MO-045 - **No. 2007-MO-048** - No. 2007-MO-056 - **No. 2007-MO-061** - No. 2007-MO-062 - **No. 2007-MO-063** - **No. 2007-MO-068** - **No. 2007-MO-069** - **No. 2007-MO-070** - No. 2007-MO-073 - No. 2008-MO-004 - No. 2008-MO-005 - **No. 2008-MO-011** - **No. 2008-MO-019** - No. 2008-MO-022 - No. 2008-MO-032 - No.

2008-MO-040 - No. 2008-MO-042 - No. 2008-MO-043 - No. 2008-MO-046 - No. 2008-MO-051 - No. 2009-MO-001 - No. 2009-MO-003 - No. 2009-MO-004 - No. 2009-MO-005 - No. 2009-MO-006 - No. 2009-MO-009 - No. 2009-MO-010 - No. 2009-MO-011 - No. 2009-MO-014 - No. 2009-MO-016 - No. 2009-MO-021 - No. 2009-MO-023 - No. 2009-MO-026 - No. 2009-MO-031 - No. 2009-MO-038 - No. 2009-MO-039 - No. 2009-MO-041 - No. 2009-MO-048 - No. 2009-MO-050 - No. 2009-MO-053 - No. 2009-MO-063 - No. 2010-MO-001 - No. 2010-MO-005 - No. 2010-MO-018 - No. 2010-MO-024 - No. 2011-MO-009 - No. 2011-MO-010 - No. 2011-MO-011 - No. 2011-MO-013 - No. 2011-MO-018 - No. 2011-MO-024 - No. 2011-MO-025 - No. 2011-MO-028 - No. 2011-MO-029 - No. 2011-MO-031 - No. 2011-MO-034 - No. 2011-MO-035 - No. 2012-MO-012 - No. 2012-MO-013 - No. 2012-MO-014 - No. 2012-MO-017 - No. 2012-MO-022 - No. 2012-MO-024 - No. 2012-MO-025 - No. 2012-MO-036 - No. 2012-MO-038 - Cv-No. 2012-MO-044 - No. 2012-MO-048 - No. 2013-MO-002 - No. 2013-MO-006 - No. 2013-MO-007 - No. 2013-MO-026 - No. 2013-MO-027 - No. 2013-MO-028 - No. 2013-MO-030 - No. 2014-MO-008 - FC-No. 2014-MO-013 - No. 2015-MO-008 - No. 2015-MO-016 - No. 2015-MO-024 - No. 2015-MO-038 - No. 2015-MO-044 - No. 2015-MO-058 - No. 2015-MO-066 - No. 2015-MO-071 - No. 2015-MO-074 - No. 2016-MO-002 - No. 2016-MO-004 - No. 2016-MO-006 - No. 2016-MO-007 - No. 2016-MO-008 - No. 2016-MO-016 - No. 2016-MO-021 - No. 2016-MO-025 - No. 2016-MO-027 - No. 2016-MO-028 - No. 2016-MO-031 - Cv- No. 2016-MO-032 - No. 2017-MO-017 - No. 2017-MO-021 - No. 2017-MO-022 - No. 2018-MO-002 - No. 2018-MO-003 - No. 2018-MO-004 - No. 2018-MO-005 - No. 2018-MO-006 - No. 2018-MO-007 - No. 2018-MO-008 - No. 2018-MO-033 - No. 2018-MO-036 - No. 2018-MO-037

DIG MOs	Heard/Submitted	MIE	ALC	FC	WCC	Cv	Crim	PCR
Year/Total	93H	138S	1H	7H, 1S	2H	37H, 3S	33H, 1S	13H, 133S
2018 = 42	9H	10S		1H		2H	4H	2H, 10S
2017 = 22	6H	3S		2H		1H	3H	3S
2016 = 32	5H	12S				2H, 1S	2H, 1S	1H, 10S
2015 = 74	19H	9S			1H	6H	7H	5H, 9S
2014 = 49	9H	2S		1S	1H	3H	5H	1S
2013 = 34	4H	7S				2H		2H, 7S
2012 = 56	10H	11S	1H	1H		2H, 1S	5H	1H, 10S
2011 = 40	2H	13S				1H	1H	13S
2010 = 33		4S						4S
2009 = 67	7H	20S				4H	2H	1H, 20S
2008 = 53	4H	11S				3H	1H	11S
2007 = 74	5H	17S		2H		3H, 1S		16S
2006 = 49	3H	2S		1H		1H	1H	2S
2005 = 63	5H	7S				3H	2H	7S
2004 = 72	5H	10S				4H		1H, 10S

Total = 762 (rate 762/237 = 1/3.5)

Total of opinions: $3281 + 762 = 4043$ Total DIGs 351 - 8 duplicates = 343 rate: $4043/343 = 1/11.8$

Futher interpretations of these results shall, God willing, follow as time permits.

WHEREFORE, this Court should take Appellate Defense's failure to zealously advocate against the State's appeal as proof that Appellate Defense's conflict with Applicant prevents adequate representation of her. Appellate Defense should be relieved and this Respondent should be allowed to advocate pro se.

Submitted on 4 January 2019 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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