

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Appeal from Richland County
Perry H. Gravely, Circuit Court Judge

RECEIVED

MAY 08 2019

MARIE ASSA'AD-FALTAS,

S.C. SUPREME COURT
RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER.

CASE NO. 2017-CP-40-06831

MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL OR, IN THE ALTERNATIVE,
RETURN TO MOTION TO RELIEVE APPELLATE DEFENSE

Undersigned counsel makes the following motion to appoint outside counsel and to relieve the Division of Appellate Defense. In the alternative, if respondent has filed a motion to relieve the Division of Appellate Defense, or any of respondent's pleadings are construed to be a motion to relieve the Division of Appellate Defense, undersigned counsel consents to the Division of Appellate Defense being relieved so that outside counsel can be appointed to represent respondent, or she can move to represent herself in this state's appeal.

1. Respondent Dr. Assa'ad-Faltas has made it abundantly clear in her prior filings with this Court that she has previous alleged grievances with the Division of Appellate Defense, and that she does not wish for this office to represent her. Respondent moved to relieve the

Division of Appellate Defense in her PCR action wherein PCR relief was granted by the Honorable Jean Toal. See Marie Assa'ad-Faltas v. State, Appellate Case No. 2018-001290. Undersigned counsel filed a Return to this motion dated July 25, 2018, which did not oppose respondent's motion to relieve the Division of Appellate Defense. Counsel strongly opposed any request to appoint the Division of Appellate Defense as standby counsel to a pro se Respondent Assa'ad-Faltas on appeal in that case. That motion is still pending before this Court as of the date of the filing of this motion.

2. Undersigned counsel understands the present PCR action originated from respondent being convicted on May 18, 2011, of two separate counts of contempt of court, and her being sentenced to twenty-five days in jail by the Honorable Marion O. Hanna, Columbia Municipal Court (CMC) Judge. The details are set forth in an order issued June 15, 2011. Respondent's convictions were affirmed on appeal by the Honorable Allison Lee, Circuit Court Judge, in an order issued on September 17, 2012. After a convoluted procedural PCR history, the Honorable Perry H. Gravely ultimately granted respondent's Motion for Summary Judgment, and granted respondent's application for post-conviction relief in this case, 2017-CP-40-06831, in an order filed November 27, 2018. The state then filed a Motion to Alter/Amend, Reconsider Order, dated November 27, 2018, which was denied in an order issued on March 28, 2019, and received by the state on April 1, 2019. The state then filed a Notice of Intent to Appeal dated April 29, 2019 in the present PCR action

3. Again, Respondent Dr. Assa'ad-Faltas moved to relieve the Division of Appellate Defense in her prior post-conviction relief action wherein PCR relief was granted by now Sitting Circuit Court Judge Jean Toal. See Marie Assa'ad-Faltas v. State, Appellate Case No. 2018-001290. For the same reasons contained in undersigned's counsel's Return to that motion

counsel respectfully requests that this Court appoint outside counsel for respondent in this case. Undersigned counsel does not take a position on any motion for respondent to proceed pro se other than to vehemently oppose any motion appointing the Division of Appellate Defense as standby counsel.

4. Respondent Dr. Assa'ad-Faltas has asserted several reasons she wants the Division of Appellate Defense relieved in her other PCR case pending in this Court. These past alleged grievances include: The fact respondent alleged ineffective assistance of appellate counsel, against then Appellate Defender John H. Strom, in her prior application for post-conviction relief which is also on appeal with this Court.

5. That PCR application followed the affirmance on direct appeal of the Circuit Court's affirmance of the present day respondent'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 then Appellate Defender John H. Strom was her appellate counsel.

6. Respondent also asserted that the Division 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. Dr. Assa'ad-Faltas asserted 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. Dr. Assa'ad-Faltas argued that in the return to the state's petition for rehearing in State v. Samuel, then 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.” In his return to the state’s petition for rehearing in State v. Samuel, 422 S.C. 596, 813 S.E.2d 487 (2018), then 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.” In addition, respondent has also asserted 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.

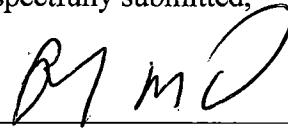
7. Further, respondent has asserted that as Chief Appellate Defender, undersigned counsel is responsible for the actions of the Appellate Defenders that have adversely impacted her. This included her allegation of ineffective assistance by Appellate Defender Strom in City of Columbia v. Assa’ad-Faltas, 420 S.C. 28, 800 S.E.2d 782 (2017), and the aforementioned complaints regarding Appellate Defenders Robert M. Pachak and Susan Barber Hackett.

8. It is apparent that Respondent Dr. Assa’ad-Faltas does not wish for the Division of Appellate Defense to represent her on appeal before this Court given her assertions of prior alleged grievances against its various Appellate Defenders, including the undersigned Chief Appellate Defender. Further, and respectfully, respondent is a constant disruption to the Division of Appellate Defense given her voluminous filings, and contacts, anytime a legal action, such as the present one, is pending. Therefore, the Division of Appellate Defense requests that it be relieved as counsel for respondent in this PCR appeal filed by the state.

WHEREFORE, undersigned counsel respectfully requests that this Court relieve the Division of Appellate Defense from representing respondent in this action and leave the matter of the motion for the appointment of outside counsel to the sound discretion of this Court.

Undersigned counsel would respectfully also request that this Court not appoint the Division of Appellate Defense as standby counsel in the event it chooses to allow Respondent Dr. Assa'ad-Faltas to proceed to pro se.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M D', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

May 8, 2019

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Perry H. Gravely, Circuit Court Judge

RECEIVED

MAY 08 2019

S.C. SUPREME COURT

MARIE ASSA'AD-FALTAS,

RESPONDENT,

V.

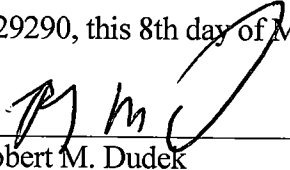
STATE OF SOUTH CAROLINA,

PETITIONER.

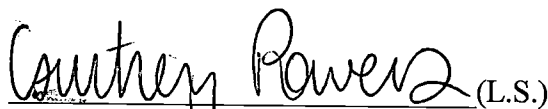
CASE NO. 2017-CP-40-06831

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon Johnny Ellis James, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; Christopher S. Truluck, Esquire, at 1720 Main Street, Suite 104, Columbia, SC 29201; and Marie Assa'ad-Faltas, at P.O. Box 9115, Columbia, SC 29290, this 8th day of May, 2019.


Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 8th day of May, 2019.


Courtney Powers (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 8, 2019

RECEIVED

MAY 08 2019

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Marie Assa'ad-Faltas – Case No. 2017-CP-40-06831

Dear Mr. Shearouse:

Enclosed are an original and six copies of the Motion for Appointment of Outside Counsel in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/ab
Enclosure

cc: Johnny Ellis James, Jr., Esquire
Christopher S. Truluck, Esquire
Marie Assa'ad-Faltas