STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Court of Common Pleas
Marion O. Hanna, Municipal Judge
Allison R. Lee, Circuit Court Judge
Perry H. Gravely, PCR Judge

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S.C. SUPREME COURT

Appellate Case No. 2019-000708

Marie Assa'ad-Faltas,

Respondent,

v.

State of South Carolina,

Petitioner.

AMENDED APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2017-CP-40-06831

On Application for Post-Conviction Relief (PCR)

RICHLAND COUNTY
FILED
2018 MAY 22 PM 4:25
JEANETTE W. GRAM
C.C.P.&G.S.

APPLICANT'S MOTION FOR SUMMARY JUDGMENT IN HER FAVOR
AND FOR PROMPT AND APPROPRIATE RELIEF BASED ON THE STATE'S POST-TRIAL CONDUCT

Dr. Assa'ad-Faltas "Applicant," submits that she was, on 23 March 2018, entitled to judgment in her favor when the Honorable Judge Goldsmith's assessment of the testimony and documentary evidence reached the point of firm persuasion during trial. An order GRANTING PCR in this case was executed on 4 April 2018 and filed on 10 April 2010. Were said ORDER to be vacated over her strong objection, Applicant hereby submits her motion for summary judgment in her favor per **§17-27-70(c), SC Code of Laws:**

> (c) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

The *evidence admitted in the 22-23 March 2018 trial of this case* is strengthened by *McCoy* v. *Louisiana,* No. 16-8255 (14 May 2018), 584 U.S. _ (2018), holding defense counsel may not concede a defendant's guilt over that defendant's objection in the hope of mitigating the sentence. The US Supreme Court cited the long-established Code of Professional Conduct for lawyers to the effect that the client, not the lawyers, decides the objectives of the representation and the lawyer may not overrule the client's wishes.

Unclear as to whether Judge Goldsmith (who tried the case) or another judge will decide this motion, Applicant balances undue repetition in the former case against over-brevity in the latter. In either case, enough of Applicant's cases in the Richland County Court of Common Pleas, now scanned into the Public Index, and of her cases before the U.S. District Court (D.S.C.) and the U.S. Court of Appeals (4th Cir.), now available through PACER, give most, if not all, of the undisputed factual background of this case.

Applicant's former landlady, Dinah Gail Steele ("Steele") was alarmed when Applicant and her mother bought a vacant lot of land immediately south of Steele's two rental quadriplexes in Columbia, SC. Applicant after-discovered that one of Steele's two quadriplexes is not sufficiently set back from the vacant lot and that the sewer lines from both Steele's quadriplexes had been clandestinely and illegally run across the vacant lot without easement, permissive or prescriptive. Applicant sued Steele, her consort Larry Wayne Mason ("Mason") and others to enjoin them to reroute their sewer lines away from Applicant's land and for other relief. In retaliation, Steele instituted eviction against Applicant and started against her a war of false civil and criminal accusations which totaled two General Sessions charges and five charges in Columbia's Municipal Court ("CMC") pretended from 5 September 2009 to 20 October 2011.

After Applicant defended herself ably *pro se* against one the two GS-level charges (the second was never called for trial by the solicitor) and the jury hopelessly deadlocked on 26 February 2010, Applicant demanded speedy retrial or dismissal of that one and speedy trial or dismissal of the other. Instead, the solicitor, over Applicant's objection, *improperly* "remanded" them to CMC. The City of Columbia ("*the* City"), which owns and operates CMC, was added as a defendant in Applicant's civil suit against Steele and Mason by a 5 May 2010 ORDER of then SC-Circuit Judge Childs. Applicant protested that all CMC judges are conflicted as they serve at the pleasure of *the* City, her adversary in civil litigation; but change of venue was denied on 23 July 2010 (transcript attached to 22 October 2010 submission in 2010-CP-40-07063) by Marion Oneida Hanna ("Jurist Hanna"), a CMC judge who, on 6 October 2010, summarily denied Applicant's speedy-trial-or-dismissal motions to devote the hearing to a civil injunction then-Columbia-Assistant-City-Attorney David Fernandez ("CACA Fernandez") sought to bar Applicant from using the phone and e-mail and from entering certain buildings totally unrelated to the pending criminal charges.

Applicant strongly objected that CMC has no civil jurisdiction; but Jurist Hanna held Applicant in contempt of court for having asked one of CACA Fernandez's witnesses (who had admitted to having "zoned out" of the subject of her testimony) if she remained a reliable to testify witness. Jurist Hanna then sentenced Applicant to a fifty-dollar fine (subject to suspension if Applicant were to seek "mental help") or ten days in jail. Applicant paid the fine and perfected an appeal 2010-CP-40-07063 on 11 October 2010.

Despite that appeal's divesting CMC of any jurisdiction it might have had *ab initio*, Jurist Hanna, on 13 October 2010, still issued the civil injunction sought by CACA Fernandez. By March 2011, CMC had made no effort to call Applicant's pending cases for trial; and she again moved to be heard on her motions for their dismissal. She was scheduled to appear before then-CMC-Judge Jenkins at 10:00 am on 28 March 2011. But CACA Fernandez added a request for a Rule-to-Show-cause hearing on Applicant's alleged violations of the civil injunction; and *that* got scheduled before Jurist Hanna at 8:30 am on 28 March 2011.

The transcript of that hearing is in 2011-CP-40-2111. Most relevant here are p 16, line 17 to p 25, line 24, correlating to minutes 30:33 to 43:04 of the audio recording and p 25, line to p 28, line 12, **most specifically p 27, lines 14-17,** which correlate to the times and words quoted hereunder:

[Minute 42:15] Jurist Hanna: (interposing) All right, Dr. Faltas, I find you in contempt of court, both this morning and your attitude before the court today, and also in violation of the court's order of October 13, 2010. I've given you every opportunity to tell me why I shouldn't hold you in contempt of court. Once again, I also note that your communication, particularly looking at this one from the e-mail from you to a list of people, including, uh, the City Attorney's offices or people who work in the City Attorney's office, circuit court judges, people of whom I have no idea who they are but some of them I recognize as attorneys and different folks. And your rantings in here, once again, indicate to me, *and I am not a psychological professional of course,* but it indicates to me because I have been around for quite sometime, done extensive work with mental health, *that you are in need of psychological assistance, that your mental health is unstable.* And I ask you once again, Dr. Faltas, are you willing to get some help? *I have asked you this, I think, every time I've ever seen you.* And I'm asking you again. Stand up! (Dr. Assa'ad-Faltas stands.) *Are you willing to get some help?*

[Minute 44:03] Dr. Assa'ad-Faltas: Ma'am, the standard is *Addington versus Texas.* And it needs to be clear and convincing evidence. *And I told you before that I had a psychiatric evaluation. And there, it found that there, I have no mental illness.* And if you want to do that, you need to, you need first to ---

[Minute 44:15] Jurist Hanna: (interposing) I don't want to do that. I want you to get some help for yourself because you are your worst enemy. Have you ever read the boy that cried wolf?

[Minute 44:26] Dr. Assa'ad-Faltas: No.

[Minute 44:27] Jurist Hanna: You're not familiar with it? I'd suggest you add it to your reading list. All right, Dr. Faltas, as I said, I find you are in contempt of court. There, you know, the violations, eh, brought before me are only two instances, although the, the one e-mail is two, and this is small font here, is three pages long. The notice to whom all this is sent is tremendously long and it's over two-pages long. Uh, without the heading for who [sic] it's sent to, it would be two full pages of very small type. But that and one phone call. I did not consider the other affidavit because the person is not here. There are actually two other affidavits. I'm sorry, just one. This person, that person is not present today, of course. So, that will not be considered. However, and this is, this is not a whole lot. And I was hoping you would, instead of your quoting law to me, I was hoping that you would perhaps have enough to take this opportunity to tell me why I should not hold you in contempt of court. You have failed and refused to do so. I find you in contempt of court for this morning. And the sentence is on this morning's contempt ten days. On the contempt of the order of the court, fifteen days. Thank you.

[Minute 46:20] Dr. Assa'ad-Faltas: Your Honor, may I ask for suspension pending appeal.

[Minute 46:22] Jurist Hanna: Sorry. If you want to talk to me, you need to stand. I didn't hear what you said. I didn't understand it that is.

[Minute 46:30] Dr. Assa ad-Faltas: May I ask for it to be suspended pending appeal, please.

[Minute 46:31] Jurist Hanna: No. No. You need to go with the court officer.

[Minute 46:45] Dr. Assa ad-Faltas: Your Honor, this is not fair.

[Minute 46:47] Officer Hampee: Empty your pockets! Empty your pockets! Everything in here that you have today? Empty your pockets!

[Minute 46:52] Dr. Assa ad-Faltas: Yes, Sir, I will.

[Minute 46:53] Officer Canteen: Consecutive, Your Honor?

[Minute 46:54] Jurist Hanna: Yeah, they run consecutively.

[Minute 46:55] Dr. Assa ad-Faltas: Ma'am, I, I, need to move for suspension ---

[Minute 46:57] Officer Hampee: (interposing) Everything is finished.

[Minute 46:59] Dr. Assa ad-Faltas: Ma'am, I, I, need to move for suspension ---

[Minute 47:02] Officer Hampee: (interposing) She's finished with you. Everything is finished, Dr. Faltas. I'm telling you please be quiet because she's ruled. She's done. We need you to empty your pockets and let us do what we need to do.

[Minute 47:24] Jurist Hanna: Oh! Here it is.

[Minute 47:25] Officer Hampee: Would you please empty your pockets out.

[Minute 47:30] Dr. Assa ad-Faltas: Yes, yes, could, could I, could I sit down please? Could I sit down here? Thank you.

[Minute 47:33] Officer Hampee: Sit down and empty your pockets.

[Minute 47:44] Jurist Hanna: Make sure you know how to spell her name.

[Minute 47:46] Officer Hampee: Place everything in your pockets in your bag!

[Minute 47:58] Dr. Assa ad-Faltas: Ma'am, may I make one phone call to my mother, please?

[Minute 48:03] Jurist Hanna: No, ma'am, not at this time. You need to cooperate.

[Minute 48:15] Dr. Assa ad-Faltas: What do you want me to do?

The foregoing transcript excerpt establishes beyond any genuine issue of material fact that: (1) Jurist Hanna was morbidly obsessed with sending Applicant to "mental help" and had voiced that obsession "every time [Hanna] saw [Applicant]"; (2) Applicant thrice asked for her sentence to be stayed pending appeal but Jurist Hanna refused; and (3) Jurist Hanna stayed in the courtroom and instructed that the ten and fifteen days be "consecutive" and that the officers "kn[e]w how to spell [Applicant's] name."

Thus, even if an application for stay needed *arguendo* to be made to the trial court in the first instance, CMC lost jurisdiction after Applicant's request was denied by CMC and the appeal was docketed in circuit court. Thereafter, CMC had no authority to lengthen Applicant's sentence or to stay its execution, and definitely no jurisdiction to issue mandatory civil injunctions as conditions of a release bond.

Nor is there a genuine issue of material fact that Jurist Hanna's fixation on sending Applicant to "mental help" predated any request by Applicant for a stay of the sentence, or release pending appeal; and thus the imposition of such condition had nothing to do with ensuring Applicant's appearance for her appeal.

Not is there a dispute that Orin G. Briggs' ignorance of the law subjected Applicant to impossible conditions set by Hanna who had no jurisdiction to set a release bond *ab initio* or to impose conditions unrelated to securing Applicant's appearance to defend her appeal to the circuit court.

That ineffectiveness of Orin G. Briggs is the *only and complete* cause of Applicant's contempt convictions on 18 May 2011 for failure to fulfill two impossible conditions accepted by Briggs.

Mr. Briggs had, on 23 March 2011, appeared as Applicant's standby counsel by signing subpoenae in her matters then pending before CMC. He also met Applicant on the morning of 28 March 2011 but refused to attend the hearing with her. During the 28 March 2011 hearing, Jurist Hanna denied Applicant's request for standby counsel, insisted on making her a witness against herself, scolded her violently for asserting that CMC had no jurisdiction, again claimed that Applicant needs mental "help," sentenced her to

consecutive ten (10) days for failure to stand when Jurist Hanna entered the room and fifteen (15) days for violating the 13 October 2010 order, and refused to stay execution of the sentence pending appeal.

Applicant was immediately taken handcuffed but had to be hospitalized overnight before being taken to Alvin S. Glenn Detention Center ("ASGDC"). Applicant was transported from ASGDC to CMC on 30 March 2011 for an appearance related to one of her seven Steele-instigated charges. There and then, Applicant met Mr. Briggs and gave him her hand-written appeal and signature, asking him to have it typed and filed and to secure her immediate release pending the appeal. Mr. Briggs did carry Applicant's *pro se* appeal to the clerk of court and did cause it to be filed but did not secure judicial approval of Applicant's release.

The delay was caused by Briggs' addressing the application to the chief administrative judge for General Sessions instead of Common Pleas where the appeal was docketed then uncritically accepting CACA Fernandez's false claim that CMC not only still had jurisdiction but also had exclusive jurisdiction.

In ASGDC, Applicant sought and was granted trustee status, which added four-days to her good behavior credits and made her release date Monday, 11 April 2011 at 4:00 am. On Monday, 4 April 2011, Mr. Briggs visited Applicant at ASGDC, told her that he knew what her release date is and that a bond hearing is set for Wednesday, 6 April 2011, at CMC, and asked her to sign a blank promise to abide by bond conditions. She responded that the hearing is only four days before the completion of her sentence; and transportation between ASGDC and CMC in vehicles lacking seat restraints for inmates is burdensome; she instructed Mr. Briggs to move the bond hearing to ASGDC, waive it, or waive Applicant's presence ***solely* to avoid what she feared could be a life-threatening round-trip ride, all for four days of advance release at best.** Instead, Mr. Briggs did not communicate Applicant's concerns and she was transported to CMC on 6 April 2011 but was there and then held in isolation from her own proceedings.

Out of an in-chambers meeting with Jurist Hanna and CACA Fernandez, Mr. Briggs took to Applicant's holding cell the hand-written conditions for Applicant's release which she firmly rejected and instructed him to withdraw her bond request or to insist that she appear in the hearing to oppose even consideration of a bond with such conditions. Instead, Mr. Briggs went into a CMC courtroom, acquiesced to proceeding in Applicant's absence, consented to her paying a thousand-dollar ($1,000.^{00}$) cash bond, to her surrendering her passport within ten (10) days of her release, to her seeing a psychiatrist for weekly sessions for a year, all subject to her being held in contempt of court and further incarcerated in case of failure to do so, and to the gratuitous revocation of her work and good-time credits, which changed her release date to Sunday, 24 April 2011 at 4:00 am.

The delay of Applicant's release date was effected by separate secret communication from CMC to ASGDC on 8 April 2011; but the order of Applicant's release was not signed until late afternoon on Monday, 11 April 2011; and Applicant was not released (and then with conditions) until Tuesday, 12 April 2011 at 4:00 pm, thirty-six (36) hours *later than* her unconditional release date without Mr. Briggs' intervention.

Basic arithmetic shows a 2-for-1 25-day sentence to be 16 days minus 4 days of work credit = 12 days, from 28 March 2011 would have been 9 April 2011. Without the impermissible and illegal retroactive revocation of Applicant's work and good-time credits, her sentence was scheduled to be completed, and she would have been released, according to ASGDC policy, in the very early morning of Monday, 11 April 2011, unencumbered by any release bond signed in the late afternoon of that day.

Had Orin Briggs been competent enough to be aware of

> **"SECTION 24-13-260. Failure of officer having charge of inmate to allow deduction in time of serving sentence; penalty.**
> **An officer having charge of an inmate who refuses to allow a deduction in time of serving sentence is guilty of a misdemeanor and, upon conviction, must be imprisoned for not less than thirty days or pay a fine of not less than one hundred dollars."**

and of Applicant's constitutionally-protected property and liberty interest in her earned good-time credits and work credits, *please see, e.g, Hayes v. State*, 413 S.C. 553, 777 S.E.2d 6 (Ct. App. 2015) (and cases cited therein), *certiorari* dismissed as improvidently granted, 9 November 2016, there would have been no need for a release bond from a completed sentence, no bond violation, and no contempt.

On 21 April 2011, Applicant went to the Columbia Area Mental Health Center, explained her situation, and was given the earliest available appointment under that Center's procedures; she also caused that Center to fax to CMC, CACA Fernandez, and Mr. Briggs, reports of the steps taken. CMC nonetheless issued Applicant a Rule to Show Cause to be heard 18 May 2011. Mr. Briggs moved SC's Supreme Court to enjoin that

hearing; but then-Chief Justice Toal issued her findings that Mr. Briggs had consented to the bond conditions, that his consent is binding on his client, and that Mr. Briggs may not now object to that to which he had consented. The hearing proceeded, and there and then Jurist Hanna took from Applicant the only passport she had (an expired one issued in 1979 for her to visit the U.S. as a Fulbright Scholar), convicted Applicant of two *more* acts of contempt of court, sentenced her to a $500.^{00}$ fine or thirty (30) days in jail for failure to surrender that passport within ten (10) days of 11 April 2011 and to thirty (30) *more* days for failure to see a psychiatrist within that time provided that Applicant may purge that last sentence by scheduling herself for twice-weekly sessions at the Christian Counseling Center. Only those last two contempt convictions are subject to the PCR application *sub judice;* but that extensive history is necessary to understand them and assess Mr. Briggs' ineffectiveness in bringing them upon Applicant.

Applicant had taken the audio recordings of her 28 March 2011 appearance before Jurist Hanna to South Carolina's Commission on Judicial Conduct and Office of Disciplinary Counsel ("SCODC"), and therewith initiated a complaint (which SCODC accepted) against Jurist Hanna. Applicant's complaint culminated, in September 2011, in private discipline against Jurist Hanna; but SCODC inadvertently failed to inform Applicant of that result until 28 June 2012, when SCDOC wrote apologizing for the oversight. Applicant contended that SCODC's 28 June 2012 letter (scanned into the Public Index in 2011-CP-2111 as an attachment to Applicant's 12 July 2013 motion for appointment of counsel) constitutes after-discovered evidence of the unconstitutionality of her contempt convictions *sub judice* in that it proves she was tried by a biased jurist; but that proof was not available to Applicant for proceedings predating this PCR case.

In the 22-23 March 2018 PCR trial, the State admitted the relevance of SCDOC's 28 June 2012 letter but objected to its use under an after-discovered-evidence theory. Judge Goldsmith sustained the State's objection but allowed Applicant to link the letter her other PCR theories of Mr. Briggs' failures.

On 12 May 2012, the Honorable Judge Lee heard Applicant's appeal of the two 18 May 2018 CMC contempt convictions and allowed her to speak for herself during that hearing but denied her appeal on 17 September 2012 and denied her timely Rule 59(e) motion on 19 October 2012. At that time, Applicant was not allowed to appeal *pro se* to South Carolina's Court of Appeals or Supreme Court and was not allowed to even seek appointment of counsel. She timely pled, and the State does not deny, that this denial of appellate counsel for her renders her convictions *sub judice* unconstitutional on due process and equal protection grounds. *Douglas v. California*, 372 U.S. 353 (1963); *Evitts v. Lucey*, 469 U.S. 387 (1985).

On 22 March 2018, Applicant opened her PCR case presentation by asking Judge Goldsmith to hear, and rule on, her argument that the very existence of CMC violates the U.S. Constitution which recognizes only two types of sovereignty, federal and state, and allows only a sovereign to criminalize conduct and prosecute crime. Applicant cited *Jinks* v. *Richland County, SC, et al,* 538 U.S. 456 (2003), and argued that, as a non-sovereign, the City of Columbia may not enact ordinances, operate a court, or prosecute crime. The State argued that the same argument is currently before a coordinate circuit judge in another PCR case brought by Applicant. Judge Goldsmith declined to rule on this argument, presumably to avoid unnecessary conflicts of opinions among circuit judges.

Applicant also asked Judge Goldsmith to hold that society has evolved to a point where summary incarceration for up to six months without trial by jury for contempt of court is always cruel and unusual punishment and thus unconstitutional as violative of the Sixth and Eighth Amendments. The State countered that this claim was not pled in the initial PCR application or its amendment and supplement. Judge Goldsmith declined to rule on Applicant's general argument but allowed her to allege and show that Mr. Briggs was ineffective in *inter alia* failing to argue that the punishment *inflicted on Applicant* was cruel and unusual for her case. What remained, then, was Applicant's assertion that her convictions *sub judice* resulted from Mr. Briggs' ineffectiveness as her counsel. Whether the two bond conditions Applicant was held in contempt for violating were a civil injunction ordering Applicant to *prospectively* perform certain acts, or conditions of a bond for release from incarceration pending appeal, Applicant argued in the PCR trial that a South Carolina municipal court has no jurisdiction in either case. If it were a prospective mandatory civil injunction, the statute creating the municipal court unequivocally deprives it of civil jurisdiction. If these were bond conditions for release pending appeal, the statute creating the municipal court also limits its power to impose anything other than a monetary bond "payable to the municipal court." Whether Applicant's interpretation of the statute is ultimately upheld or not, Mr. Briggs testified that he did not make those arguments because "it is never a good idea to disagree with a judge."

The adversary system and the right to appeal guarantee a criminal defendant the right to "disagree" with

a prosecutor at trial and with "a judge" on appeal. Instead, Mr. Briggs testified that, in his mind, a municipal judge may exceed the powers accorded to her by the statute creating the municipal court; and the transcripts of both the 6 April 2011 bond hearing and the 18 May 2011 contempt trial are replete with Mr. Briggs saying "a judge can do what she wants" and "a lawyer cannot help a client avoid a court order."

Mr. Briggs thus admitted he did not subject the contempt allegations, where the judge is basically the prosecutor, to the adversary challenge as required of a minimally competent criminal defense counsel. *Vide In Re Oliver,* 333 US 257, 284-5 (1948) ("But an opportunity to meet a charge of criminal contempt must be a fair opportunity. It would not be fair, if in the court in which the accused can contest for the first time the validity of the charge against him, he comes 285*285 handicapped with a finding against him which he did not have an adequate opportunity of resisting." Statement of Justice Frankfurter).

Regardless of the nature of the requirements imposed on Applicant by Jurist Hanna, defenses to contempt allegations of failure to satisfy an injunction or bond conditions include that the order is invalid or the civil injunction is transparently unconstitutional, that performance was not within the ability of the criminal defendant, and that the defendant made a good-faith effort to satisfy the court's order. The record now leaves no doubt that Mr. Briggs, not only failed to offer *any* of those defenses, but *foreclosed them* ***against compelling facts*** *that those defenses were legitimately available to Applicant.* In other words, at the 6 April 2011 bond hearing and the 18 My 2011 contempt trial, Mr. Briggs acted as if he were Applicant's *prosecutor* not her defense counsel. Further, the 15 June 2011 supplemental appeal filed by Mr. Briggs in No. 2011-CP-40-03547, State's return pp 88-92, includes few of those defenses, only too late. It proves that he had no legitimate grounds for failure to advance them when it mattered.

Specifically, from the 18 May 2011 transcript, Mr. Briggs said, at page 32, line 2 "[Applicant] probably didn't try hard enough[,]" page 15, lines 4-10 " two efforts of Dr. Faltas to find a psychiatrist to give her some counseling[. ...] she should have seen four different people" and page 33, lines 2-3 "she didn't comply with your order. I'm conceding that." **No defense whatsoever, only concession of guilt against Applicant's wishes and in violation of the law stated in *McCoy, supra.***

After hearing Mr. Briggs testify for hours on 22 March 2018, Judge Goldsmith asked the able counsel for the State if she contends CMC had jurisdiction to impose on Applicant the conditions at issue here to stay execution of a sentence pending appeal. The State responded that the only *quasi*-relevant statute it located applies to general sessions court for release of a criminal defendant *pending trial* and allows a bond-setting judge to consider a defendant's mental status. Notably, Applicant was not allowed to attend her bond hearing on 6 April 2011; thus assuming, *but only arguendo,* that Jurist Hanna had any authority to take Applicant's mental status into consideration, no contemporaneous observation of that mental status was made by that jurist. To the contrary, Jurist Hanna admitted that she "is not a psychiatrist" (6 April 2011 Tr. p 4, line 25 to p 5, line 5); does "not know what [Applicant] needs," *id* at p 5, lines 16-22.; "And this I hope you explained to her doesn't mean she has a mental illness. It's just to try and help her with her problems of not being able to act in her own best interests." *Id.* at p 4, lines 13-15; "Sessions with a psychiatrist and that will not imply that she has a mental problem or even an evaluation is needed." *Id.* at 4, lines 18-20; and "**made no diagnosis of the defendant's condition nor claimed that she had a mental illness**" (18 May 211 Tr. p 13, lines 12-14).

Our judicial system does not license any black-robe wearer to impose on a sane adult, under penalty of contempt of court and without more objective proof and due process than followed by CMC, orders to submit herself to psychiatrist under pretext of "her own best interests."

Judge Goldsmith then asked Applicant to list and explain all the manners in which Mr. Briggs was ineffective. Applicant complied. Notably, Mr. Briggs had admitted that he had never read *Addington* v. *Texas*, 414 U.S. 418 (1979), and that he was unaware that the standard for involuntary commitment for psychiatric evaluation and treatment is "clear and convincing evidence." Mr. Briggs' ignorance of the law prevented him from challenging Jurist Hanna's imposition of a condition that Applicant receive weekly psychiatric treatment for a year as unsupported by clear and convincing evidence and exposed Applicant to the contempt conviction at bar because, without that condition, there would have no failure to satisfy it and no contempt. Aggravating his ineffectiveness, during the 18 May 2011 contempt trial, Mr. Briggs was ineffective for failing to object to CMC's enforcing conditions it had no jurisdiction to enter *ab initio.*

Mr. Briggs had no excuse and no strategy. Throughout the transcripts of the 6 April 2011 release-bond-setting hearing, and the 18 May 2011 proceedings, he confesses his ignorance of the law and procedures, he admits that he is going *against* his client's directions, and he sets Jurist Hanna's whims as paramount.

There is no genuine issue that Applicant was held in contempt, and that Jurist Hanna was mad, not because Applicant did not *seek* a psychiatrist (she had) but because no ethical and competent psychiatrist in the world would diagnose Applicant as mentally ill when she is not.

Applicant contends that she was held in contempt of court for failing, within ten (10) days of an 11 April 2011 CMC order, to find a psychiatrist who would see her in *weekly* sessions for a year to treat her for a mental illness she does ***not*** have. *Robinson* v. *California*, 370 U.S. 660, 667 (1962), held **"Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold."** Applicant received two criminal contempt convictions for the "crime" of having **no** mental illness.

The State's return ("State's return") was filed on 19 January 2018; its pp 82-85 are four copies of a notarized one-page letter from Bruce Cannon, Emergency Services Director of the Columbia Area Mental Health Center, certifying that Applicant subjected herself to extensive mental evaluation *before the 18 May 2011 trial* to comply with CMC's 11 April 2011 order. The unanimous assessment was that the mental health professionals "do not find any evidence of a mental health illness that requires treatment," "can only provide treatment for people who do have a chronic and severe mental illness" and "are not in a position to be able to offer [Applicant] the services stipulated by the court order of 4/11/11."

State's return p 93 is a 1 July 2011 letter from CMC to Applicant's then-trial counsel, Orin Gail Briggs ("Mr. Briggs"). The body of that letter reads *in toto* "Please be advised that the City of Columbia Municipal Court will consider attempts by your client Marie Assa'ad Faltas to seek counseling as a good faith effort to comply with the Honorable Marion Hanna's order requiring the same. By copy of this correspondence to the file, the record will so reflect. No hearing is deemed necessary." Yet, Applicant continued to be deprived of her liberty interest in her professional reputation (sullied by two criminal contempt convictions) and of her property (the $500.^{00}$ fine) for the seven years after the 18 May 2011 trial.

Orin G. Briggs admitted ignorance of a cardinal rule of statutory construction: *"expressio unius est exclusio alterius"* or *"inclusio unius est exclusio alterius,"* applied, *e.g.*, in *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000). The maximum any SC statute allows a magistrate/municipal court to impose to stay execution pending appeal is "reasonable sum," "surety to pay the amount of the judgment and costs in the event [s]he fails to susotain such appeal" or "shall pay the fine assessed." *Black's Law Dictionary* defines "surety: one who at the request of another, and for the purpose or securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor." A psychiatrist would neither have served the balance, if any, of Applicant's sentence nor hypothecated property as a security for Applicant's release. Therefore, the "psychiatrist" condition had no real or feigned relationship to Applicant's appearance to serve the balance, if any, of her sentence and thus was not a "surety" permitted by statute. Further, Applicant was required to, and did, post a thousand-dollar *cash* bond; so, no additional surety was required *or permitted*, be it by a psychiatrist or a by bail-bondsman.

Moreover, since 30 March 2011, Appeal No. 2011-CP-40-02111 was pending *from precisely Applicant's sentence of 25 days' incarceration.* Therefore, on 6 April 2011 and thereafter, Columbia's Municipal Court ("CMC") had no jurisdiction to increase that sentence even under a false pretext of "clarifying it." Defendants' Motion's own citation at p 2 of *Wilson v. Walker*, 340 SC 531, 540, 532 S.E.2d 19 (2000), supports this Court's finding that Applicant's sentence was under appeal to the circuit court and that CMC had no jurisdiction to stay it, increase it, or even suspend it pending appeal:

> [T]he December 1997 order was based on the August 1997 order and, therefore, it strains credulity to argue the August 1997 order was not "affected" by appealing the December 1997 order. Accordingly, any argument that the April 1999 order could still enforce the August 1997 order despite Father's appeal is without merit. Because Father timely appealed the December 1997 order the family court lacked jurisdiction to issue the April 1999 order holding Father in contempt. *See* Hooper v. Rockwell, 334 S.C. 281, 291, 513 S.E.2d 358, 364 (1999) (noting a contempt order is immediately appealable).

Nor is this case controlled by state law alone. *Stack* v. *Boyle*, 342 U.S. 1 (1951), had already announced the Eighth Amendment to the U.S. Constitution permits ***only the minimum*** *required to ensure a criminal defendant's appearance.* **Anything above or beyond that is unconstitutional.** Also, *North Carolina* v. *Pearce*, 395 U.S. 711 (1969), had outlawed judicial vindictiveness of the type exhibited by CMC's increasing Applicant's sentence *after* and *solely because* she had appealed it. What CMC "granted" was not a stay of the 25-day sentence, which had been fully served (with good-time and work credits) by the time CMC's 11 April 2011 was signed, but a *retroactive* and illegal increase of the sentence, which CMC had no juris-

diction to impose because it is the legislature, not CMC, who designates the no-parole offenses and the offenses admitting of sentence reduction. Nor does any South Carolina statute empower a magistrate/municipal court to require "sureties" *in addition to* the full cash payment of a reasonable sum.

Thus, as a matter of law, Orin Briggs had several mandatory grounds to object; and his failure to do so was due solely to his own ignorance of the law and hostility to his own client which this Court amply observed from Briggs' testimony and demeanor. Any finding other than that Attorney. Briggs was ineffective and caused Applicant's two 18 May 2011 contempt convictions demeans both bench and bar.

Not only did two courts *before this22-23 March 2018 PCR trial* find that Orin Briggs consented to CMC's conditions, the transcripts of both the 6 April 2011 and 18 May 2011 proceedings display Briggs' *enthusiasm* that Applicant receive "psychiatric treatment" even though she does not need it and that was *solely because* that is "what the [CMC] judge wants."

On 6 April 2011, Mr. Briggs said "The judge can do what she wants to do." (Tr. p 1, line 8), "We intended psychiatrist, we just didn't write it down, Judge. **Let me add to concur in what you are saying.**" (Tr. p 3, lines 23-24), and "I think the three of us agree that if a psychiatrist gives her a full evaluation that psychiatrist is going to decide if she needs **some kind of treatment.**" (Tr. p 4, lines 1-2). "Hallucinations or -- the visions of grandeur or whatever. I mean a psychiatrist is going to figure that out but if you are going to **change the wording to required treatment** instead of his evaluation." (Tr. p 4, lines 6-9) and "Well, say necessary treatment. I'm just trying to help. What do you think, David? **How do we assure that she gets some kind of treatment?"** (Tr. p 5, lines 6-8). **Orin G. Briggs was clearly trying to fulfill Marion Oneida Hanna's, not his client's, wishes.** "What the [CMC] judge" "wanted" is subjecting Applicant to impossible conditions whether justified or not: Hanna said: "If we qualify this the that gives an out and she doesn't have to go. *If we qualify it in any way by saying necessary or what an evaluator says or whatever then she's going to have an out* and she needs this." (Tr. p 5, lines 9-12) **"I really wanted it to be that she would see a psychiatrist on a regular basis and discuss these matters with the psychiatrist, take with her her files concerning all these cases so that she could discuss not necessarily the merits of the case but how she might alter her behavior as a person who appears in court to get a result that's good for her rather than what she's been getting." (Tr. p 2, lines 13-18)** *"I'm not so interested in an evaluation as I am in* ***treatment sessions*** *with a psychiatrist." (Tr. p 4, lines 23-24), "That means with a psychiatrist. And then if the psychiatrist finds that she has a problem the psychiatrist, unlike a psychologist or counselor or somebody in mental health,* ***they can prescribe something and that might help her.*** I don't know what she needs. As you said and it's noted that I am not a psychiatrist. I don't pretend to be." (Tr. p 5, lines 16-22), "require that regular sessions with a psychiatrist be attended by the defendant Faltas for a period of one year or the conclusion of the appeal" (Tr. p 6, lines 15-19), "**So *in addition to the monetary bond*** the conditions are that the defendant Faltas will attend regular sessions with a psychiatrist for a period of one year or the conclusion of the appeal of the order holding her in contempt of court on that date and in contempt of the previous order of the court and the order of that date was I believe October something."(Tr. p 7, lines 5-9), "As part of Condition One, make all litigation files, criminal and civil, if any, available to the psychiatrist upon the first visit." (Tr. p 8, lines 4-8), "that the defendant Faltas engage in regular sessions with a psychiatrist for a period of one year or the conclusion of her appeal of the contempt of court order of March the 28th, 2011, for contempt of court during that proceeding, and the sentence for contempt of court for violation of the order of October 6th, 2010, and the defendant is to make all her litigation files, criminal and/or civil, if any, available to the psychiatrist upon her first visit there." (Tr. p 12, lines 4-11).

Attorney Briggs was clearly ineffective in agreeing that Applicant receive "treatment" *whether necessary or not* and was clearly ineffective in overlooking that ethical professionals cannot give unnecessary treatments. He thus set his client up with impossible conditions that exposed her to contempt of court. A minimally competent counsel would have known to reject such impossible and unnecessary conditions.

Beyond dispute, Orin Briggs *could and should have* "firmly withdrawn" Applicant's release bond request.

First, Orin G. Briggs testified that Applicant was "in a holding cell" outside the CMC courtroom.

Second, during the 22-23 March 2018 PCR trial, Applicant repeatedly certified to Judge Goldsmith that Applicant had not waived her appearance but had asked Mr. Briggs to arrange for the bond hearing to be held at the Alvin S. Glenn Detention Center ("ASGDC") so that Applicant would not be subjected to the physically hazardous and painful transportation process. Instead, Applicant was, on 6 April 2011, trans-

ported to the CMC courthouse, there and then kept "in a holding cell" but never allowed to attend the bond hearing. **Counsel for the State in the 22-23 March 2018 PCR trial did NOT object to Applicant's certification that she did not waive her appearance, and that she was indeed transported to the CMC bond hearing but not allowed to attend it. Further, it was the State's duty to compile a record complete with Applicant's incarceration in ASGDC, including the records of her transportation from ASGDC and back and including her sentence reduction credits due to her total lack of disciplinary infractions and her approval for trustee status and her earning work credits.**

The State should not be allowed to profit from its own failure to compile a complete record.

Third, Mr. Briggs knew *exactly what Applicant wanted: **"her preference would be the Court just not issue a bond based upon her unwillingness to cooperate."*** Thus, far from one unable to divine his client's wishes, Orin Briggs had already shown the proposed conditions to Applicant and had already been instructed to tell ***"the [CMC] Court [to] just not issue a bond."*** Instead of obeying his client's unequivocal directive to withdraw the bond request, Orin G. Briggs merely said, **"And I won't say any more than that." 6** April 2011 Tr. p 9, lines 8-13.

Fourth, still at Tr. P 9, when CMC's Hanna said "[Applicant's] agreement is not necessary, she is still asking for a bond," *Orin Briggs could **and should** have firmly corrected Hanna* thus: "No, Your Honor, her agreement *is* necessary; and she is no longer asking for a bond."

Fifth, the 6 April 2011 hearing transcript opens with the truncated request by Orin G. Briggs that Applicant be brought from the holding cell to the courtroom, CMC's Hanna resisting it, and Orin G. Briggs, as usual, confessing his ignorance and submission and not putting up any advocacy for his client:

> [page 1, lines 1-3] **The Court**: ... A letter here waiving her presence so I don't see that it would be helpful to have her here unless you need her yourself, Mr. Briggs.
>
> [4-8] **Mr. Briggs**: Judge, ***I don't even know how to address that question.*** **I'm not sure. She wants the judge to see what we wrote** and the I've got the same thing with her signature on it already so if we did this I'll tell the judge what I would prefer to do but that's beside the point. **The judge can do what she wants to do.**

Sixth, Briggs *arguendo* could not divine his client's choice, this State's PCR law is that trial counsel must fully inform the criminal defendants before that defendant accepts anything be it a plea deal or a bond deal. *Davie v. State,* 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009) ("[C]ounsel is required to fully communicate with the client so that the client can make an informed decision regarding any proposals by the State."); *Bennett v. State*, 371 S.C. 198, 205 n.6, 638 S.E.2d 673, 676 n.6 (2006) (("[A] deficiency can be cured where the trial court properly informs the defendant about the [possible consequences."); *Davie*, 381 S.C. at 608, 675 S.E.2d at 420 (stating to prove prejudice resulting from counsel's deficient performance, the petitioner must show "there is a reasonable probability that but for counsel's deficient performance, [she] would have [served] the original [sentence without a bond").

Seventh, even if Applicant had *arguendo* "waived her presence," this State's PCR law is that *ex parte* is not permitted even if it is not shown prejudicial. *Irvin v. Dowd*, 366 U.S. 717, 722 (1961) ("The failure to accord an accused a fair hearing violates even the minimal standards of due process.") *Locklear v. Harvey*, 273 S.C. 58, 59, 254 S.E.2d 293, 293 (1979) ("The judge at the Post-conviction hearing found that the meeting did not work to the disadvantage of the applicant and that therefore, no prejudice was demonstrated. . . . Because [Applicant] was excluded from the meeting, and because the discussion was off the record, this Court has no way of knowing whether the rights of [Applicant] were prejudiced. While it is unlikely anything improper was said, it is the possibility of prejudice that we are concerned with."); *Burgess v. Stern*, 311 S.C. 326, 330–31, 428 S.E.2d 880, 883 (1993) ("'It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition is not against 'prejudicial' ex parte communications, but against ex parte communications.'") (quoting *In re: Wisconsin Steel*, 48 B.R. 753 (D. Ill. 1985)). Thus, as a matter of law, Orin Briggs was also ineffective in allowing the off-the-record in-chambers meeting before the transcribed 6 April 2011 proceedings in CMC. Here, there is, not only a probability, but **an absolute certainty** that, absent Mr. Briggs' misdeeds, Applicant would have continued to serve her sentence as a model inmate and would have been released early in the morning of 10 April 2011, unencumbered by any bond, after having served her full sentence.

When asked by Judge Goldsmith to list all alleged grounds of Mr. Briggs' ineffectiveness, Applicant thoroughly complied, emphasizing that the "psychiatric treatment" condition bore no relationship, real or feigned, to assuring her appearance for the appeal; nor did the "passport condition."

As established by *Stack* v. *Boyle, supra,* a bail-setting tribunal is concerned with *ensuring the criminal defendant's appearance* ***but nothing else.*** Here, all the pretexts for the "psychiatric treatment" condition are related to Applicant's alleged behavior *in court,* ***including civil court, not whether she ever failed to show up for criminal court or is likely to not show up for an appeal from a misdemeanor conviction.***

Defendant's Motion pp 5-6 does not even pretend the "psychiatric treatment" condition had anything to do with securing Applicant's appearance *in the Circuit Court, not CMC, for her appeal.* Thus, under *Stack* and the Eighth Amendment, that condition was impermissible; and Mr. Briggs should have objected to it.

Since the bond was to secure Applicant's appearance *before the circuit court,* it was up to that court, not CMC, to decide if Applicant needed to attend charm school, or "weekly psychiatric sessions" or piano lessons or Yoga meditation or whatever *the circuit court* would find necessary to ensure it enjoyed Applicant's appearance *before that court*—assuming *the circuit court* desired enjoyment, not justice.

Further, CMC's Hanna's above-quoted statements from the 6 April 2011 transcript establish that no evaluation was allowed but that Applicant was to force a psychiatrist to treat Applicant in weekly sessions starting within ten days from 11 April 2011 whether Applicant needed that intense treatment or not.

Not only did CMC's Hanna *forbid* an evaluation to determine if Applicant even needed treatment, Hanna reiterated, on 18 May 2011, that the professionals' determination had no weight with Hanna and that Applicant was to be punished for *not* having a mental illness and not falsely admitting she had one. *E.g.,* from the 18 May 2011 transcript, with Applicant having duly appeared and *not* escaped, Hanna still said:

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[page 16, lines 21-23] The Court: **The Court did not order her to go to Columbia Area Mental Health and the Court did not order her to seek an evaluation.**

[page 20, line 22 – page 21, line 5] The Court: **What the Court required is proof within ten days of April the 11th that a psychiatrist had been consulted.** What this letter says is that the defendant, Dr. Faltas, presented herself to the Columbia Area Mental Health Center for an evaluation and that was on May 3rd, 2011. And the letter says pursuant to a court order dated April 11th. Even this going to the Mental Health Center for an evaluation occurred long after the ten days for -- it says that she presented herself on May the 3rd. Ten days after April 11th would have clearly been before that, would it not, Mr. Briggs?

[7 - page 23, line 1] The Court: [7 - page 22, line 6] All right. And that pursuant to the Court Order and it says that she initially went to a previous location at 10 Medical Park on 4-20-2011 but discovered that -- and it says "we had moved." Then it says that "you then came to our present location on 4-21-11 as a walk-in but due to the number of patients who were already being seen, waiting there to be seen, and since you were not in acute distress you were asked to return on April 22nd, 2011. You returned On April 22nd, 2011, as requested and met with Allison Norvel (ph) for a preliminary screening only since we do not ordinarily honor court orders such as yours. **After talking with you, Ms. Norvel met with (inaudible) Patel, the medical director for the emergency service program for her recommendation and Dr. Patel recommended that you return on May 3rd, 2011, to see me for a thorough evaluation. I would have seen you sooner but I was on annual leave the entire last week of April. Having conducted a thorough interview and mental status exam, reviewed your record of being evaluated in 2009 under similar circumstances, as well as other legal documents which exonerate you from multiple other allegations, I concur with our previous conclusion from 2009 that I do not find any evidence of a mental illness that requires treatment. Since the Columbia Area Mental Health Center can only provide treatment for people who do have a chronic and severe mental illness, we are not in a position to offer you the services stipulated by the court order of April 11th, 2011.** If I can be of any further service to you, please feel free to call me at this number." [7 - page 23, line 1] **This letter -- this is totally beside the point since the defendant was ordered to see a psychiatrist and to provide proof to the court within ten days of April 11th that she had done so. She was never ordered to go to the Columbia Area Mental Health Clinic for an evaluation or for another talk with the person who had already given her an evaluation at a different date and she was ordered to seek counseling with a psychiatrist.** And there are many good reasons for that which Dr. Faltas knows them as well as I do. And this does not -- this letter does not meet the requirements of the April 11th order in many causes and for many reasons and not just because she went to the Columbia Area Mental Health knowing full well what the result would be and that she was not ordered to go there. But none of this was conveyed to the court by any document from the defendant. She made no effort to show that she had complied with the Court's order by her dodging around the Court's order even. And we haven't had the passport. So your position is that your client believes that she does not have to relinquish the passport due to her being an Egyptian citizen who is controlled only by the Egyptian Embassy and not by this Court or apparently any other.

[20] The Court: What is your name?

[21-22] Defendant Faltas: Marie-Therese (inaudible) Assa'ad-Faltas.

[23 - page 27, line 1] The Court: All right. Thank you. Now, did you turn you passport into this Court as ordered? It's a simple question, ma'am. Answer it. Did you turn your passport over to this Court as ordered on April 11th, 2011?

[2] Defendant Faltas: Your Honor –

[3] Mr. Briggs: Answer the question.

[4] The Court: Did you or not?

[5] Defendant Faltas: I did not.

[6-8] The Court: All right. Thank you. Hold on just a second. We'll get to that. **Now did you fail to file any proof before today even of your cagy quest with the Mental Health –**

[9-11] Mr. Briggs: Your Honor, I'm sorry. I told the Court I would not participate in any kind of subterfuge and she isn't either, Your Honor.

[12] The Court: Oh, well, thank you, Mr. Briggs.

[13] Mr. Briggs: I don't do those kinds of things.

[14-19] The Court: We appreciate your outburst as well but I find this letter and this -- I find it to be in contravention of the Court's order and a -- shall we say -- I think we refer to this type behavior as two cubed by half in the vernacular but at any rate it does not comply with the Court's order, nor did you even file anything until -- this has a date on it of May 9th 2011.

[20-22] Defendant Faltas: **May I answer the Court's question? I did ask them to fax to both Mr. Briggs and Mr. Fernandez and I have the proof and let me tell you, no –**

[23-24] The Court: **Excuse me, ma'am. Was that before May the 9th?**

[25] Defendant Faltas: **Absolutely.**

[page 28, line 1] The Court: When was that?

[2-3] Defendant Faltas: It was on April 22nd. And this is the proof or even that they received 737-4250 –

[4-5] The Court: Pass that over to your attorney and let him look at it.

[6] Defendant Faltas: That's—

[7-8] The Court: Pass it over to your attorney and let him look at it.
[9] Mr. Briggs: I've seen it.
[10-11] The Court: All right, Mr. Briggs. His name is Fernandez. Mr. Fernandez.
[12] Defendant Faltas: And may I say –
[13-14] The Court: Hold on, please. Do not talk at this moment, please.
[15-17] Mr. Fernandez: It does have a transaction report on there for the 22nd to our fax number. It doesn't say what it is. There is some sort of (inaudible).
[18-19] The Court: Any objection to my looking at whatever this is?
[20] Mr. Briggs: No.
[21 - page 29, line 12] The Court: Pass it over to the clerk, ma'am. Pass it over now. And please do not interrupt me while I'm looking at it. All right. This is a certificate for return to work, slash, school which is a common thing that people have in offices of any type and it doesn't fit everyone. All right. This is dated on April 22nd. It says – again this is a form and it **says "has been under my care" but there's a note here which is slightly legible but it says that "Dr. Faltas is attempting to be compliant with the court order from criminal court. She's not been provided with an appointment with our psychiatrist. Writer of note will staff case with director to determine" – actually she says "determine if we can see, slash, criteria for our services or not. I will contact Ms. Faltas with appointments and/or referral to private psychiatrist."** This doesn't indicate who it is from but an address 2715 Colonial Drive, 200-B and there's transaction report April 22nd, 2011. This is a fax, has nothing on it. It's dated April 22nd, 12:21 p.m. And there's a receiver number. It's not a phone number. All right. Thank you.
[13] Defendant Faltas: Your Honor, may I –
[14 - page 30, line 15] The Court: No, ma'am, you may be seated now and if your attorney feels that you need to give further evidence he will let me know. You may be seated now. Thank you, ma'am. You may be seated. Thank you. You may be seated now. All right. Are you going to sit, please? Thank you. All right. This sheds very little, if any, light upon the situation although Dr. Faltas claims that she did try to fax something. We'll certainly take that into consideration. However, there is the failure to surrender the passport. I have not-- we have not received it and we are not being governed by the Egyptian Embassy or any other. I find Dr. Faltas in contempt of court in that regard. **On her failure to provide proof of initial and weekly sessions with a psychiatrist I will note that, as the Supreme Court notes, counsel for the defendant agreed to these negotiated conditions as appropriate with some minor changes and those minor changes as I recall – and you can correct me if I'm wrong, please, or if you believe I am – had to do with the language regarding psychiatric counseling. The Court – I determined at that time that it would be a good idea to put in the order to make it very specific so that the defendant had no difficulty understanding it or complying with it and that would be on a definite time. Rather than regular she was ordered to weekly sessions with a psychiatrist and we had all agreed on psychiatric counseling and also that a report would be made back to the Court within the ten days and regularly after that and that these reports could be made by the psychiatrist in question.** Now Mr. Briggs has asked me to consider allowing Dr. Faltas to go to counseling at First Presbyterian which is on Sumter Street or the front is on Washington?
[15-16] The Court: **Well, I don't want all these ifs in there.** I mean you said if you find a place and if they will see her.
[16-18] Mr. Briggs: Your Honor, it may help a little bit. She was trying to find -- she was trying to get an appointment with the same psychiatrist she saw when Judge –
[19-20] The Court: **That's the same psychiatrist who said she doesn't have any problem.**
[21 - page 33, line 3] Mr. Briggs: No, No. **The psychiatrist she was sent to when Judge Burns asked her to do that. In fact, I took her over there myself, Your Honor, to what was then the Mental Health Clinic or Springs. She was trying to get back to him because she knew that psychiatrist. She wasn't trying to finagle anything.** You can't finagle a competent professional. But she didn't succeed in that, Your Honor, And she didn't comply with your order. I'm conceding that.
[4] The Court: Well, you know –
[5] Defendant Faltas: (inaudible).
[6-19] The Court: Not when I'm talking, ma'am. **Dr. Faltas has been before me many times and has many times indicated to me that the psychiatrist whom she saw after Judge Burns ordered her to do so found that she had no problems, no mental illness and no problems that she reported back to me but no mental illness.** And so I think that that was -- I don't know who that was **and I have not read and I won't read whatever he had to say about it.** But the problem here is that **your client has indicated and demonstrated that she has – she's a very intelligent person and she has all kinds of degrees which she wants respected and acknowledged.** However, she has not been able to perform as a reasonable person under many circumstances and this is to her detriment and as you know that's why we wanted her to follow this order. Now did you bring the passport today, Mr. Briggs?

[20] Defendant Faltas: Your Honor, may I say something?

[21-23] The Court: No, ma'am. You can answer whether you brought it or not. If you brought it, we'll accept it today. Did you bring the passport, ma'am? Yes or no. [24] (PAUSE) [25 - page 34, line 3] The Court: All right. I've been handed a passport from the Republic of Egypt. Of course, a lot of it is in a language that I don't speak or read. However, apparently this passport was issued-- is this your current passport, ma'am? Is it or not?

[4] Defendant Faltas: **I do not have a current passport.**

[5] The Court: **You don't have a current passport?**

[6] Defendant Faltas: This is the one (inaudible).

[7-8] The Court: So this is not your proper passport. It's expired, is it?

[9-10] Defendant Faltas: My older passport is expired and I had to (inaudible) again and that's why I (inaudible).

[11-16] The Court: Ma'am, I'm trying to figure out whether this passport is valid right now and it's -- apparently it was stamped in July, July 15th, 1981, and I don't have -- let's see. This is also stamped 15 October, 1981, for a single journey to the United Kingdom used by -- is excuse me, used by October 15th, 1981, and was stamped July 15th, 1981. And there's a stamp August 22nd, 1979. There is a non-immigration visa here attached. And this passport appears to have expired on the 13th of August and I believe that's 1986, is that correct? It's expired.

[19-23] Defendant Faltas: Your Honor, to answer the question yes. May I also say this is the only passport I have now and two things. **I did not see the order and I did not see the transcript and since the transcript says that you wanted me to see a psychiatrist even though they realize I have no mental illness.**

[24 - page 35, line 4] The Court: **I did not say I realize you have no mental illness. I realize you've never been diagnosed. I'm not making any statement about whether you have a mental illness or not. However, I do know that you need some help and this passport is expired and you are telling me you don't have another one, is that correct?**

[5] Defendant Faltas: Yes, Your Honor.

[6] The Court: All right.

[7-12] Defendant Faltas: And may I say the reason I went there is the first time they took me on a walk-in basis about (inaudible) so the reason I went there is to see if I (inaudible) on a walk-in basis because I got out of jail on the 12th of May. I had to do many things. I had to renew my driver's license. I had to do so many things and also --

[13-16] The Court: All of them more important than complying with the Court's order or going back -- which you knew you could go back to jail if you didn't comply with the Court's order so I don't understand your priorities, ma'am.

[17-21] Defendant Faltas: Well, Your Honor, I couldn't (inaudible) expired driver's license so I'm trying in very good faith to comply with the Court's order and I have no intention of fleeing whatsoever. And if Your Honor looks at the back of the passport. It's in Arabic; but I will be more than happy to translate it –

[22-23] The Court: Well, I can't read it, Ma'am, and you cannot translate for yourself.

[24 - page 36, line 1] Defendant Faltas: Well, (inaudible). **I tried very, very hard to comply with the Court's order. Ma'am, I have excruciating pains in my left knee –**

[2-6] The Court: **Ma'am, I'm not a doctor** and I'm not here to rule on the pain in your knee. It's not going to be before me. I certainly do remember your last attempt to not comply and be under the jurisdiction of the Court **by your medical reasons and don't appreciate it.** Please if you would have a seat.

[7] Defendant Faltas: (inaudible).

[8-14] The Court: I would be pleased if you'd have a seat. Thank you. All right. **I do find the defendant in contempt of court on the issue of the failure to surrender the passport. The fine is five hundred dollars or thirty days.** On this issue of the failure to provide proof of initial and weekly sessions with a psychiatrist there's a fine of one hundred dollars or thirty days and provided that the defendant does go to seek counseling—

[15-16] Mr. Briggs: Submits a scheduled appointment, Your Honor?

[17-25] The Court: I am going to allow her to seek counseling with the First Presbyterian Church and they can provide proof that she's been there within ten days of today's date and this can be either a qualified psychiatrist or other counselor if it's submitted and then approved by the Court. However, if they won't take her there then you are going to have to come back and seek a different solution to this but I don't know -- unless the defendant makes her own provision with them I don't see why they wouldn't see her, do you, Mr. Briggs?

[page 37, lines 1-4] Mr. Briggs: I don't -- it's a very good outfit, Your Honor. I've been impressed with them and I've probably sent three or four clients there but not anything in the last year or so. It's just a very reputable company. Your Honor –

[5-8] The Court: **All right. I'm going to make this with** the First Presbyterian Church or some other qualified counseling center **other than the Columbia Area Mental Health or Richland Springs.**

[9-10] Mr. Briggs: Are we to seek permission from the Court giving you two or three psychiatrists' names, Your Honor?

[11-14] The Court: I just want her to go to one. I'm not going -- no, I want her to go first of all if she must attempt to go to First Presbyterian Church. If that doesn't work out -- and we have to have something showing she did that.

[15] Mr. Briggs: I understand.

[16-18] The Court: If they won't take her for some reason then we need to have that. If that doesn't work out then she's to find another qualified counseling center.

[19-23] Mr. Briggs: Your Honor, just so I understand it. That's acceptable to the Court. She can get in touch with several, get a couple of appointments. Would that purge her of the hundred dollars or not? I don't know whether the court addressed that. I know there is no purging of the five hundred.

[24 - page 38, line 10] The Court: No. All right. Yes, she can purge herself of that. It's going to be thirty days rather than the hundred dollars. So it will just be thirty days. She can purge herself of it by complying with this amended portion of the order that she will seek counseling with the First Presbyterian Church. Failing that we'll have some other qualified counseling center other than Columbia Area Mental Health or Richland Springs and provide within ten days notice to the Court that she has done this and whether -- and if it fails then we need to know that as well and why. The point is she has to attempt this, get it done, get notice back to us within ten days that she has gone to the Presbyterian Church counseling center and attempted to be seen by them.

[11-12] Mr. Briggs: You are requiring a positive or a negative report in ten days?

[13-14] The Court: I am but if it's a negative report we are going to have a hearing on it.

[15] Mr. Briggs: I understand that, Your Honor.

[16] The Court: All right.

[17-18] Mr. Briggs: I just want to make sure we are on the same page.

[19] The Court: Okay. It's within ten days.

[20-22] Mr. Briggs: I am going to go by there right now. I think she's got (inaudible) situation but I am going to go there myself when I leave here, Your Honor.

[23-24] The Court: **And is she prepared to pay the five hundred dollars today because it needs to be done.**

[page 39, lines 1-2] Defendant Faltas: **(inaudible) Could I have until tomorrow, Your Honor, or Wednesday?**

[3] Mr. Briggs: Your Honor, she's got two or three accounts.

[4] Defendant Faltas: (inaudible).

[5-6] The Court: **No, Ma'am. I don't see any point in putting this off because this –**

[7-8] Defendant Faltas: Can the court take a credit card? (inaudible).

[9-10] The Court: I have no idea about that. I think they take checks. Do they take credit cards?

[11] Unidentified Female: Downstairs.

[12-15] The Court: All right. That's fine. I don't have any problem with -- you will have to go with the court officer and he can help you with that better than I can. I don't have anything to do with that portion of it except to make sure that it's done.

That is the epitome of unreasonableness. As to the "psychiatric treatment," there is nothing reasonable about criminalizing someone known free of mental illness *solely because* she could not find a psychiatrist who would violate professional ethics and treat Applicant for a mental illness she does not have.

As to the passport, Applicant was NOT "known to have a passport" she could have used to escape; and in fact did NOT have a passport she could have used to escape. It was also an extreme of fatuity to require her to turn in, within ten days of her release with nothing left in her sentence under the correct calculation, or only nine days left in her sentence under the illegally increased sentence. If she wanted to escape, and had a passport she could have used to escape, she would have escaped within those ten days.

It is thus abundantly clear that both conditions had nothing to do with preventing escape, that Applicant did not escape even without fulfilling those conditions, that the conditions were impossible, that they were designed only to make Applicant suffer, and that a minimally competent counsel would have seen them for what they were and objected to them. But Orin Briggs did not.

Thus, there can be no dispute that the conditions were **unreasonable** and without nexus to the only purpose of bond conditions: assuring Applicant's appearance at the circuit court for her appeal.

Summary judgment for Applicant is supported by Justices Sotomayor, Ginsburg and Kagan's review of the current state of the U.S. Supreme Court's ("SCOTUS") PCR jurisprudence. On 13 November 2017, said Justices dissented from denial of *certiorari* in *Reeves* v. *Alabama,* 583 U.S. __ (2017),[1] and wrote "There can be no dispute that the imposition of a categorical rule that counsel must testify in order for a petitioner to succeed on a[n] ineffective-assistance-of-counsel claim contravenes our decisions requiring an objective inquiry into the adequacy and reasonableness of counsel's performance **based on the full record before the court**. Even [the State, Respondent] does not defend such a rule." *Reeves* Slip Opinion at 2, with emphasis added. The three Justices added:

> This Court has never, however, required that a defendant present evidence of his counsel's actions or reasoning in the form of testimony from counsel, nor has it ever rejected an ineffective-assistance claim solely because the record did not include such testimony. Rather, *Strickland* and its progeny establish that when a court is presented with an ineffective-assistance-of-counsel claim,

[1] SCOTUS denial of *certiorari* implies no opinion on the merits of the case; *U.S.* v. *Carver,* 260 U.S. 482, 490 (1923), quoted in U.S. Chief Justice Roberts' 15 May 2017 statement in No. 16-833.

it should look to the full record presented by the defendant to determine whether the defendant satisfied his burden to prove deficient performance. The absence of counsel's testimony may make it more difficult for a defendant to meet his burden, but that fact alone does not absolve a court of its duty to look at the whole record and evaluate the reasonableness of counsel's professional assistance in light of that evidence.

That *Strickland* does not require testimony from counsel to succeed on an ineffective-assistance claim is clear from past decisions in which this Court has found deficient performance *despite* such testimony, based on review of the full record. For example, in *Wiggins* v. *Smith*, 539 U. S. 510 (2003), the Court considered the decision of two attorneys "to limit the scope of their investigation into potential mitigating evidence." *Id.,* at 521. Counsel justified their limited investigation as reflecting a tactical judgment to pursue an alternative strategy, *ibid.*, but the Court did not simply accept that explanation at face value. Instead, it "conduct[ed] an objective review of their performance." *Id.,* at 523. [....] Based on the record, the Court concluded that the attorneys' conduct was unreasonable, "not reasoned strategic judgment" as they had testified. *Id.,* at 526.

In *Porter* v. *McCollum*, 558 U. S. 30 (2009) (*per curiam*), the Court again addressed a claim of an attorney's alleged failure to investigate and present mitigating evidence. Counsel there also testified at the post-conviction hearing about his preparation for the penalty phase, but the Court still looked at the full record to assess whether the defendant had nevertheless demonstrated deficient performance. [...] [T]he Court [...] observed [...] that counsel had "ignored pertinent avenues for investigation of which he should have been aware." *Id.,* at 40. Again, here, trial counsel's testimony about his reasoning did not defeat the ineffective-assistance-of-counsel claim, given the Court's consideration of the evidence in the record as a whole.

As *Porter* and *Wiggins* illustrate, trial counsel's testimony is not sufficient to find adequate performance when the full record rebuts the reasonableness of the proffered justification. It cannot be, then, that such testimony is necessary in every case. Where counsel does not testify but the defendant offers other record evidence, a court can simply presume that counsel would have justified his actions as tactical decisions and then consider whether the record rebuts the reasonableness of that justification.

Not only is the imposition of a *per se* rule requiring testimonial evidence from counsel inconsistent with our precedent, it is also at odds with the Court's observation in *Massaro* v. *United States*, 538 U. S. 500 (2003), that ineffective-assistance claims need not always be brought on collateral review because "[t]here may be cases in which trial counsel's ineffectiveness is so apparent from the record that appellate counsel will consider it advisable to raise the issue on direct appeal" or an appellate court will address the deficiencies *sua sponte*. *Id.,* at 508. As a challenge on direct appeal is made without any further factual development, *Massaro* necessarily recognized that an ineffective-assistance-of-counsel claim can be proved even absent counsel's testimony.

Lastly, that courts have a duty to look to the whole record when considering whether a defendant has met his burden makes good practical sense. There are many reasons why counsel may be unable or unwilling to testify about his reasoning, including death, illness, or memory loss. Such circumstances should not in and of themselves defeat an ineffective-assistance claim. * * * * * On this point, *Strickland* could not be more clear:

> "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." 466 U. S., at 690.

Id. at Slip Opinion pp 9-11 and 13-14.

Respectfully submitted and, through Mr. Truluck, served on SC's Attorney General and on Judges Brooks Goldsmith, Clifton Newman, and Robert Hood by appropriate means, on 21 May 2018, all God so willing.

Marie-Thérèse Assa'ad-Faltas, MD, MPH, Applicant *pro se* for purposes of this motion
P.O. Box [redacted], Columbia, SC 29290 Phone: [redacted]
e-mail: Marie_Faltas@hotmail.com Cell: [redacted]

Appendix A to Applicant's Motion for Summary Grant of PCR:
Contents of the State's Record on Return to PCR Application

Document Date	Document Description	Page(s)
2017-11-08	Original PCR Application	1-5
2017-11-07-08	Judge Clifton Newman's Order	6-12
2011-05-18	Complete transcript of Rule to Show Cause Hearing in CMC	13-53
2017-12-12	Applicant's motion and proposed orders in 2017-CP-40-06831	54-56
2011-03-30	Cover sheet and Notice of Appeal to Circuit Court in 2011-CP-40-02111	57-61
2011-03-29	Disposition Letter showing sentence imposed on Applicant on 28 March 2011	62
2011-04-01	Letter from Columbia ACA David A. Fernandez to Judge Clifton Newman	63
2011-04-06	Complete transcript of bond hearing in CMC	64-78
2011-04-11	ORDER signed by Marion O. Hanna "Presiding Judge"	79-81
2011-05-09	Notarized certification by Columbia Area Mental Health Center	82-85
2011-04-29	**Then-Chief Justice Toal's ORDER approving the filing of four pleadings by Mr. Briggs in the Circuit Court and Court of Appeals**	**86-87**
2011-06-15	**Supplement to Appeal in 2011-CP-40-03547, signed by Mr. Briggs**	**88-92**
2011-07-01	**Letter from CMC's Chief Administrator admitting Applicant's "good faith effort to comply with [] order require[ments]**	**93**
2012-12-13	Motion and ORDER to refund Applicant's $1,000.^00 bond	94-95
2012-05-09	Complete transcript of hearing in 2011-CP-40-03547	96-125
2012-09-17	**Judge Lee's ORDER denying appeal in 2011-CP-40-3547 and affirming the two contempt convictions subject of this PCR**	**126-130**
2012-10-19	**Form-4 ORDER denying Rule 59(e) motion in 2011-CP-40-03547**	**131-132**
2012-09-27	Applicant's Rule 59(e) motion in 2011-CP-40-03547	**133-140**
2018-01-05	Letter from Mr. Shearouse to Dr. Faltas	141
2017-09-27	ORDER in Appellate Case No. 2013-000682 (SC S Ct)	**142-144**
2018-01-18	Cover letter of State's Return and Motion to Dismiss	145

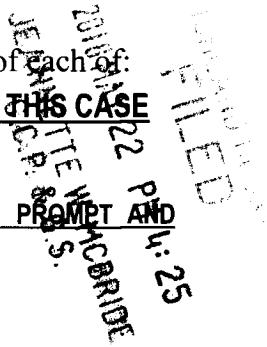
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2017-CP-40-06831

On Application for Post-Conviction Relief (PCR)

Certificate of Service



The undersigned states that on May 22, 2018 he caused a true and correct copy of each of:

***Supplement* to MOTION TO RECONSIDER JUDGE GOLDSMITH'S RECUSAL FROM THIS CASE AND FOR THE COURT TO CONSIDER REMEDIES LESS UNFAIR TO APPLICANT**

and

APPLICANT'S MOTION FOR SUMMARY JUDGMENT IN HER FAVOR AND FOR PROMPT AND APPROPRIATE RELIEF BASED ON THE STATE'S POST-TRIAL CONDUCT

to be served upon the party identified below by U.S. Mail, prepaid:

Johnny James
P.O. Box 11549
Columbia, SC 29211-1549

The undersigned states that on May 22, 2018 he caused a true and correct copy of each of:

***Supplement* to MOTION TO RECONSIDER JUDGE GOLDSMITH'S RECUSAL FROM THIS CASE AND FOR THE COURT TO CONSIDER REMEDIES LESS UNFAIR TO APPLICANT**

and

APPLICANT'S MOTION FOR SUMMARY JUDGMENT IN HER FAVOR AND FOR PROMPT AND APPROPRIATE RELIEF BASED ON THE STATE'S POST-TRIAL CONDUCT

to be served by email on:

The Honorable Brooks Goldsmith
bgoldsmith@sccourts.org

The Honorable Clifton Newman
CNewmanLC@sccourts.org

TRULUCK LAWFIRM, LLC

Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104
Columbia, SC 29201
Tel: (803) 556-7285
Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com
Standby Attorney for Applicant

Columbia, South Carolina
Dated May 22, 2018

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Marie Assa'ad-Faltas, MD, MPH, Applicant(s), vs. State of South Carolina, Respondent(s).	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A NO: 2017-CP-40-06831 NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF RECUSAL SUBMITTED BY STANDBY COUNSEL IN SUPPORT OF APPLICANT'S PREVIOUSLY SUBMITTED MOTION

FILED
PM 2:56

TO: JOHNNY JAMES, ATTORNEY FOR RESPONDENT:

YOU WILL PLEASE TAKE NOTICE that Marie Assa'ad-Faltas, MD, MPH ("Applicant") will, on the tenth (10th) day after service hereof, or as soon thereafter as Applicant may be heard, move before Judge Brooks Goldsmith and the above-referenced Court for an Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure reversing Judge Brooks Goldsmith's order effecting recusal issued on May 16, 2018 and entered on May 21, 2018 ("Order").

This motion is made by Chris S. Truluck ("Standby Counsel") as standby counsel in order to preserve arguments previously submitted by Applicant and where the State of South Carolina ("Respondent") has previously moved to strike motions and/or filings drafted and signed by Applicant by way of motion filed May 4, 2018.

FACTS

On May 21, 2018 Judge Goldsmith's Order recusing himself from the above-listed matter was entered upon *sua sponte* motion and finding that "[i]n as much as [Judge Goldsmith] ruled from the bench prior to hearing all evidence in the [above-listed] case . . . [he] may have pre-judged issues in the case." Order dated May 16, 2018. On May 18, 2018, Standby Counsel caused to be filed Applicant's drafted and executed Motion in Opposition to Recusal ("Motion"). Previously, on May 4, 2018, Respondent had filed a Motion to Strike *Pro Se* Filing of Applicant's motions. By way of email submitted to Judge Goldsmith on May 22, 2018 the Respondent stated, in response to Applicants Motion, "[t]o the extent opposing counsel and Applicant seek that you reconsider your decision to recuse, I defer entirely to the judgment of the

Court." Email from Johnny James, Counsel to Respondent, to Judge Brooks Goldsmith, Presiding Judge (May 22, 2018, 08:21:00 MST) (on file with author). Standby Counsel now submits this Motion for Reconsideration of Recusal individually in support of, and to memorialize, Applicant's previous Motion where the Respondent has previously moved to strike Applicant's drafted and executed motions and/or memorandum.

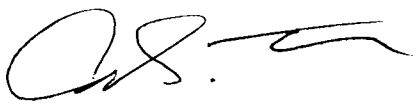
DISCUSSION

> The Court in Simpson v. Simpson provided, in matters of judicial recusal, that:
>
> we find Canon 3B(1) to be controlling, which imposes a "duty to sit." When disqualification is not required, the South Carolina Code of Judicial Conduct holds, "A judge *shall* hear and decide matters assigned to the judge...." Canon 3B(1) of the Code of Judicial Conduct, Rule 501, SCACR (emphasis added). This duty has been recognized and imposed in both state and federal courts. *See McBeth v. Nissan Motor Corp. U.S.A.*, 921 F.Supp. 1473, 1477 (D.S.C.1996) ("No judge, of course, has a duty to sit where his impartiality might be reasonably questioned."); *Barritt v. State,* No. CACR06-1261, 2007 WL 2713593, at *6 (Ark.Ct.App. Sept. 19, 2007) ("When recusal is in issue, this court has held that a judge has a duty to sit on a case unless there is a valid reason to disqualify....") (internal citations omitted); *In re Turney,* 311 Md. 246, 533 A.2d 916, 920 (1987) ("Moreover, a judge's duty to sit where not disqualified is equally as strong as the duty not to sit where disqualified."); *Adair v. State,* 474 Mich. 1027, 709 N.W.2d 567, 579 (2006) ("[W]here the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited.") (internal quotations and citations omitted); *Millen v. Eighth Judicial Dist. ex rel. County of Clark,* 148 P.3d 694, 700 (Nev. 2006) ("Thus, a judge has a general duty to sit, unless a judicial canon, statute, or rule requires the judge's disqualification."); *Tennant v. Marion Health Care Found., Inc.,* 194 W.Va. 97, 459 S.E.2d 374, 385 (1995) ("Also important, however, is the rule that a judge has an equally strong duty to sit where there is no valid reason for recusal.").

Simpson v. Simpson, 660 S.E.2d 274, 278, 327 S.C. 519 (Ct. App. 2008). The Order fails to cite sufficient grounds for Judge Goldsmith's recusal from hearing the above-listed matter at a new trial but rather cites that Judge Goldsmith may have pre-judged issues. Order dated May 16, 2018.

CONCLUSION

The Order should be reconsidered and reversed where there appears to be an insufficiency of evidence requiring Judge Goldsmith's recusal pursuant to judicial canon, statute, or other rule and Judge Goldsmith should remain as the Judge Presiding if the matter is scheduled for a new trial as the most knowledgeable adjudicator to the facts related to the above-listed action.



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ctruluck@trulucklawfirm.com
Standby Counsel for Applicant

Columbia, South Carolina
Dated: May 31, 2018

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Marie Assa'ad-Faltas, MD, MPH, Applicant(s), vs. State of South Carolina, Respondent(s).	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A NO: 2017-CP-40-06831 CERTIFICATE OF SERVICE

FILED
2018 MAY 31 PM 12:56
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The undersigned states that on May 31, 2018 he caused a true and correct copy of Applicant's Notice of Motion and Motion for Reconsideration of Recusal Submitted by Standby Counsel in Support of Applicant's Previously Submitted Motion filing to be served upon the party identified below by first-class U.S. Mail, prepaid and properly addressed to:

Johnny James
P.O. Box 11549
Columbia, SC 29211-1549
Counsel for Respondents

Judge Brooks Goldsmith
P.O. Box 895
Edisto Island, SC 29438

TRULUCK LAW FIRM, LLC

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Standby Attorney for Applicant

Columbia, South Carolina
Dated: May 31, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2017-CP-40-06831

On Application for Post-Conviction Relief (PCR)
(Rule 59, SCRCP)

RICHLAND COUNTY
FILED
2018 MAY 31 PM 2:18
CLERK OF COURT
RICHLAND COUNTY, S.C.

CONSOLIDATED and UPDATED *TIMELY* MOTION TO RECONSIDER 21 May 2018 ORDER
AND FOR THE COURT TO CONSIDER REMEDIES LESS UNFAIR TO APPLICANT.

On 16 May 2018, Dr. Assa'ad-Faltas ("Applicant") and her standby counsel Christopher Stephen Truluck ("Appointee") received by e-mail from the Honorable Judge Goldsmith an **unsigned** order to vacate the order entered in this case on 10 April 2018 and to recuse Judge Goldsmith from further proceedings.

Through Appointee, Applicant immediately suggested changes (one of which was accepted) to the unsigned order; and, on 18 May 2018, filed and served her motion to reconsider Judge Goldsmith's recusal. A supplement was filed and served on 22 May 2018 after an order had been entered on 21 May 2018.

To foreclose objections to prematurity of a motion predating the signed-and-filed order, to present one document with all her *pro se* arguments, and to place on the record the State's position as conveyed by an e-mail from SC Assistant Attorney General James ("SCASG James"), Applicant submits this document.

In submitting it contemporaneously with any other document submitted by Appointee over his own signature, Applicant reasserts her equal protection rights. Specifically, the right to advocate *pro se* includes the right to be the lead of a two-or-more-member team of advocates. Prosecution teams or plaintiffs' teams and defense teams are as common as solo advocates. Advocacy teams are usually required only to designate a lead counsel and to pre-divide the tasks within the team. The U.S. Supreme Court specifically approved such team with a *pro se* defendant as the lead in *McKaskle* v. *Wiggins,* 465 U.S. 168 (1984).

Applicant resubmits that the 21 May 2018 ORDER is contrary to law, unfair to her, and unnecessarily wasteful of judicial resources. Although entitled to reinstatement of the 10 April 2018 ORDER in full force, Applicant resubmits that, should the proceedings need to be reopened, Judge Goldsmith has an obligation to preside over further proceedings and to restore or amend the 10 April 2018 ORDER but not unnecessarily vacate it wholesale.

I. A Judge Has a Duty to Sit Unless His Recusal IS *Absolutely* Necessary.

Canon 3B(1) imposes a "duty to sit." *Simpson v. Simpson* (No. 4340.) 377 S.C. 519, 526, 660 S.E.2d 274 (SC App 2008), collecting cses:

> When disqualification is not required, the South Carolina Code of Judicial Conduct holds, 526 526 "A judge *shall* hear and decide matters assigned to the judge...." Canon 3B(1) of the Code of Judicial Conduct, Rule 501, SCACR (emphasis added). This duty has been recognized and imposed in both state and federal courts. *See McBeth v. Nissan Motor Corp. U.S.A.*, 921 F.Supp. 1473, 1477 (D.S.C.1996) ("No judge, of course, has a duty to sit where his impartiality might be reasonably questioned."); *Barritt v. State*, No. CACR06-1261, 2007 WL 2713593, at *6 (Ark.Ct. App. Sept. 19, 2007) ("When recusal is in issue, this court has held that a judge has a duty to sit on a case unless there is a valid reason to disqualify....") (internal citations omitted); *In re Turney*, 311 Md. 246, 533 A.2d 916, 920 (1987) ("Moreover, a judge's duty to sit where not disqualified is equally as strong as the duty not to sit where disqualified."); *Adair v. State*, 474 Mich. 1027, 709 N.W.2d 567, 579 (2006) ("[W]here the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited.")(internal quotations and citations omitted); *Millen v. Eighth Judicial Dist. ex rel. County of Clark*, 148 P.3d 694, 700 (Nev.2006) ("Thus, a judge has a general duty to sit, unless a judicial canon, statute, or rule requires the judge's disqualification."); *Tennant v. Marion Health Care Found., Inc.*, 194 W.Va. 97, 459 S.E.2d 374, 385 (1995) ("Also important, however, is the rule that a judge has an equally strong duty to sit where there is no valid reason for recusal."),

Please see also Justice Rehnquit's statement in *Laird* v. *Tatum*, 409 U.S. 824 (1973). Absent "deep-seated favoritism or antagonism that would make fair judgement impossible," *Liteky* v. *U.S.,* 510 U.S. 540, 555-6 (1994), opinions formed during judicial proceeding are not grounds for recusal; *Liteky* at 551:

> The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, 551 551 who has been shown to be a thoroughly reprehensible person. But the

> judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task. As Judge Jerome Frank pithily put it: "Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions." *In re J. P. Linahan, Inc.*, 138 F. 2d 650, 654 (CA2 1943). Also not subject to deprecatory characterization as "bias" or "prejudice" are opinions held by judges as a result of what they learned in earlier proceedings. It has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant.

The only opinion Judge Goldsmith formed here is: Orin G. Briggs was ineffective in his representation of Applicant and that such representation caused Applicant's wrongful contempt of court convictions. **That is *precisely* the type of opinion a judge is asked to make in a PCR bench trial.**

Nor did Judge Goldsmith hear a one-sided case. Conduct of trial is largely within the judge's discretion. Judge Goldsmith *constantly* interrupted Applicant's presentation to elicit the State's position on each aspect of it. Indeed, it was counsel for the State who was called to state the case and Applicant was only allowed to correct the State's misstatements. **The State listed no witness other than Orin G. Briggs, had offered *all* its exhibits in return to Applicant's application, and, *most crucially,* did NOT *contemporaneously* OBJECT to closure of all evidence in the middle of *Applicant's* presentation.**

So, it cannot be said that Judge Goldsmith foreclosed the State's evidence; the State just did not have any; *and still does not have any*. Indeed, even in its motion for reconsideration, the State does not name any witnesses it was ready to call *or would in the future call* to counter Applicant's evidence.

II. The Public and Applicant Have a Compelling Interest in *NOT* Vacating Judicial Opinions.

U.S. Bancorp Mortgage Co. v. *Bonner Mall Partnership*, 513 U.S. 18 (1994), held:

> **Judicial precedents are presumptively correct and *valuable to the legal community as a whole*. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur. [emphasis added]**

While Judge Goldsmith's 10 April 2018 ORDER is not reported by a reporter of decisions, it has been on the Public Index for over a month now; and it might become indirectly reported should the matter reach an appellate court or a federal habeas court. Approximately only 10% of PCR applications are granted; and an order granting PCR is valuable to the legal community. **Applicant, *aged 65 and physically disabled,* invested time, health, emotion, *and confidence in Judge Goldsmith,* to present her thorough case. Appointee also invested time and effort for which he was not justly compensated.**

III. Other Solutions Are Mandated by Judicial Economy and Fairness to Applicant.

Applicant insists that: (1) what Judge Goldsmith did was equivalent to summary judgment or a directed verdict in her favor even before the close of her evidence, both of which the PCR Act and South Carolina's ("SC's") Rules of Civil Procedure allow; and (2) SC's PCR Act mandates only that the applicant, not the state, be heard. Also, Applicant's motion for appointment of counsel *in this case* had remained *unheard* for four years (from July 2013 to August 2017) *through no fault of Applicant's*, and most judges are recused for reasons *also not Applicant's fault* such as the presumption of vindictiveness by at least one judge whom Applicant had caused an appellate court to reverse and family/business relationships between a judge and/or his/her relatives and entities/law firms adverse to Applicant. **So, the course judge Goldsmith chose will result in further *unconscionable* delay of justice to Applicant,** all in addition to the public expense to all concerned in having to start from the beginning again.

Without waiving her entitlement to denial of the State's motion to reconsider, Applicant suggests that the record be reopened for the State to present its evidence by affidavits or exhibits; and only if they have a *prima facie* likelihood of changing the outcome, would a live hearing be reconvened with opportunity for Applicant to rebut any State's evidence. Anything else demeans applicant's long suffering and Judge Goldsmith's conscientious work.

IV. The 21 May 2018 ORDER is Internally Inconsistent.

An order deciding a substance of a case *and* recusing the judge who just made that decision form the same case is internally inconsistent and cannot stand. A judge issuing an order is either recused from the case

ab initio, and thereby precluded from ruling on the substance of the case, **or** the judge is *not recused* from the case and thus duty-bound to make a reasoned final decision in the case.

Judge Goldsmith has, more than a "duty to sit" on this case: a duty to promote public confidence in the judiciary and to ensure that all similarly-situated litigants are treated alike. Applicant is realistic about South Carolina's judiciary's imperfections, specially in its treatment of minorities and of politically-powerless immigrants. But courage is the proof of faith; and Applicant has a right and a duty to *demand* that rules elsewhere enforced against her be also here and now enforced against her opponents.

V. The Rule of *Contemporaneous* Objection MUST be Enforced Against the State.

In *Assa'ad-Faltas v. City of Columbia* (No. 27723) 420 SC 28, 800 S.E.2d 782 (2017), Respondent claimed (falsely) that Dr. Faltas had not asserted her *Faretta* rights to the trial court; and it was held:

> In evaluating Appellant's claim that the municipal court infringed upon her constitutional right of self-representation, we must first determine whether Appellant effectively invoked this right during proceedings before the municipal court.

Inarguably here, the State did **NOT *contemporaneously* object** to closure of the evidence *at trial*. The first objection came in the State's Rule 59 motion, three weeks after the trial ended. Had the State objected *before* trial end, the Court could have either kept the trial open for the State to present any evidence it had OR ruled on the record that it was basically granting summary judgment for Applicant.

VI. No Unstated Requirement Should be Imported into the PCR Statute.

Brown v. State (No. 27797, decided 9 May 2018) unanimously reversed Active Senior Judge Toal's importing into the PCR statute "an in-custody requirement" not appearing on the face of the Act:

> We now extend our holding in *Jackson* that the Act contains no "in custody" requirement, and we hold that in PCR cases brought under subsection 17-27-20(A)(1), the plain language of the Act requires only what the subsection clearly states,
>
> > Any person who has been convicted of, or sentenced for, a crime and who claims: (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State . . . may institute . . . a proceeding under this chapter to secure relief.

Similarly, **§17-27-80, quoted in *toto*,** provides only that the "application," not the State, "shall be heard":

> The application shall be heard in, and before any judge of, a court of competent jurisdiction in the county in which the conviction took place. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings are available to the parties. The court may receive proof by affidavits, depositions, oral testimony or other evidence and may order the applicant brought before it for hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to re-arraignment, retrial, custody, bail, discharge, correction of sentence or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

There is no authority to import into the statute a non-existent requirement that the State be heard even when it has no evidence to present. A motion for summary judgment in Applicant's favor, incorporating the testimony and exhibits admitted in the 22-23 March 2018 hearing, was nonetheless filed on 22 March 2018 in this case pursuant to **§17-27-70(c) which provides *in toto:***

> (c) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

VII. Judge Goldsmith's Retention of Jurisdiction is Necessary for the Appearance of Fairness.

Judge Goldsmith's formation of a judgment *based on evidence introduced in the 22-23 March 2018 trial of this case* is what a judge should do, not a reason for recusal. Otherwise, any party seeing that the evidence is strongly against it would refrain from demanding to present evidence at trial only to later engage in judge-shopping by filing a Rule 59 motion and implying that the judge should be recused because he judged the case based in part on the State's failure to demand an opportunity to present evidence *at trial*. **But, if Judge Goldsmith is convinced that he irretrievably lost the appearance of impartiality by having done what the PCR statute allows and expects him to do (grant summary judgment in favor**

of Applicant), *Applicant is entitled to urge that Judge Goldsmith should have recused himself* <u>*BEFORE, NOT AFTER,*</u> <u>GRANTING THE STATE'S RULE 59 MOTION.</u> Now, Applicant is entitled to perceive that grant as an over-reaction and not required by the merits of the case.

VIII. <u>In *Steele v. Faltas*, No. 2009-CP-40-07098, Summary Judgement *at trial* was affirmed.</u>

Then-SC-Circuit-Judge Childs found that what the magistrate granted was, not a directed verdict against there-Defendant Faltas before Dr. Faltas presented any evidence, but summary judgment *within the trial,* **and that the magistrate court rules so allow. This situation is comparable because, like its magistrate court rules, SC's PCR Act allows the grant of summary judgment to "either party" whenever the point of persuasion is reached, be it before *or during* trial.** Summary judgment's availability should not be ignored when it benefits Dr. Faltas but enforced only when it can damage her.

IX. <u>Neither Side of this Case Seeks Judge Goldsmith's Recusal.</u>

On 22 May 2018, SCASG James sent this e-mail:

> From: Johnny James <JJames@scag.gov>
> Date: May 22, 2018 at 11:21:06 AM EDT
> To: "Goldsmith, Brooks" <bgoldsmithj@sccourts.org>
> Cc: "ctruluck@trulucklawfirm.com" <ctruluck@trulucklawfirm.com>
> Subject: RE: Maria Assa'ad Faltas v State (2017 -CP-40- 6831)
> Your Honor,
> To the extent opposing counsel and Applicant seek that you reconsider your decision to recuse, I defer entirely to the judgment of the Court.
> I believe all other elements of the filing are subject to your decision in that regard. In the event you reconsider your recusal and require a position on the part of the State as to the rest, I would respectfully request until June 1, 2018, to formally submit anything Your Honor requires in response to this filing. This is not for delay, but rather I am presently attending to a term in the 15th Circuit through the end of this week, and must immediately thereafter prioritize proposed orders out of the 9th and 5th Circuits, as well as one appellate matter.
> These positions are set forth under objection to the *pro se* filing as impermissible hybrid representation. Opposing counsel, but not Applicant, here included in CC.
> Respectfully,
> Johnny Ellis James Jr.
> Assistant Attorney General
> Post-Conviction Relief, 4th & 15th Judicial Circuits
> Office of the Attorney General
> State of South Carolina
> P.O. Box 11549
> Columbia, SC 29211-1549
> 803.734.3737

Thus, neither side sees a non-waivable conflict; and nothing weighs against the duty to sit.

X. <u>Even if Judge Goldsmith *arguendo* Erred in Foreclosing the State's Evidence, Applicant Did NOT Cause this Alleged Error and Should NOT be Punished for it.</u>

Dissenting in *Buckson v. State,* Opinion 27805 (23 May 2018), Justice Kittredge wrote, "the State did not ask the court of appeals to utilize an incorrect standard of review." Likewise, Judge Goldsmith's allegedly premature closure of the evidence was not at the behest of Applicant, who should not now be punished by the figurative pulling her victory from her mouth and by figuratively returning her to the side of the docket road begging for more years for a non-conflicted judge to hear her case.

WHEREFORE, Judge Goldsmith should retain jurisdiction as there is nothing to defeat His Honor's duty to sit, the 10 April 2018 ORDER should stand, a substitute order GRANTING SUMMARY JUDGMENT IN APPLICANT'S FAVOR SHOULD BE ENTERED, <u>OR</u> the State should be allowed to present affidavits and exhibits of its projected evidence, subject to which a live hearing may or may not be reconvened but always with a fair opportunity for Applicant to rebut the State's evidence, if any. Should the State fail to forecast any evidence to be presented at re-convening, its motion would have been proven to have been merely interposed for delay and Rule 11 sanctions should be imposed on State's counsel.

Respectfully submitted and, through Mr. Truluck, served on SC's Attorney General and on Judges Brooks Goldsmith and Clifton Newman by appropriate means, on 31 May 2018, all God so willing.

Marie-Thérèse Assa'ad-Faltas, MD, MPH, Applicant *pro se* for purposes of this motion
P.O. Box [redacted] Columbia, SC 29290 Phone: [redacted]
e-mail: Marie_Faltas@hotmail.com Cell: [redacted]

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Marie Assa'ad-Faltas, MD, MPH
v.
State of South Carolina, and City of Columbia, SC

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2017-CP-40-06831

On Application for Post-Conviction Relief (PCR)

Certificate of Service

The undersigned states that on May 31, 2018 he caused a true and correct copy of each of Applicant's:

***CONSOLIDATED* and UPDATED *TIMELY* MOTION TO RECONSIDER 21 May 2018 ORDER**
AND FOR THE COURT TO CONSIDER REMEDIES LESS UNFAIR TO APPLICANT

and

CONTINGENT *SUPPLEMENT* to PCR APPLICATION

to be served upon the party identified below by e-mail and by first-class U.S. Mail, prepaid:

Johnny James jjames@scag.gov
P.O. Box 11549
Columbia, SC 29211-1549

FILED
2018 MAY 31 PM 4:55
JEANNETTE W. WALTERS
C.C.P. & G.S.

The undersigned states that on May 31, 2018 he caused a true and correct copy of each of Applicant's:

***CONSOLIDATED* and UPDATED *TIMELY* MOTION TO RECONSIDER 21 May 2018 ORDER**
AND FOR THE COURT TO CONSIDER REMEDIES LESS UNFAIR TO APPLICANT

and

CONTINGENT *SUPPLEMENT* to PCR APPLICATION

to be served upon the honorable judges identified below by e-mail and by personal service on Judge Newman:

to be served by email on:
The Honorable Brooks Goldsmith
bgoldsmith@sccourts.org

The Honorable Clifton Newman
CNewmanLC@sccourts.org

TRULUCK LAWFIRM, LLC

Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104
Columbia, SC 29201
Tel: (803) 556-7285
Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com
Standby Attorney for Applicant

Columbia, South Carolina
Dated May 31, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Marie Assa'ad-Faltas, MD, MPH
v.
State of South Carolina, and City of Columbia, SC

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2017-CP-40-06831

On Application for Post-Conviction Relief (PCR)
Third Supplement to Application (Contingent)

RICHLAND COUNTY FILED 2018 MAY 31 PM 2:54

Dr. Assa'ad-Faltas ("Applicant") and her standby counsel Christopher Stephen Truluck ("Appointee") hereby give timely notice that, should the proceedings develop into reconvening an evidentiary hearing, Applicant shall, God willing, present evidence and argument that punishment for alleged contempt of court by incarceration is cruel and unusual and violates the standards of decency of an evolved society.

Therefore, conviction and sentence for contempt of court without jury and all the due process guaranteed to criminal defendants is no longer tolerable by the Eighth Amendment to the Constitution of the United States and by the equivalent provisions of the Constitution of South Carolina.

Applicant would specifically propose to play the audio recording of Jurist Hanna's presiding over some of Applicant's proceeding and so cruelly yelled at her and so unfairly castigated her that South Carolina's Office of Disciplinary Counsel ("SCODC") found that Hanna, not Applicant, should be sanctioned.

Applicant had, in the 22-23 March 2018 PCR evidentiary hearing, sought to present evidence of the extreme caprice with which she had been treated by Jurist Hanna; but the State claimed lack of sufficient notice of *that* constitutional claim *before* the March 2018 hearing. In addition to notice given in the March 2018 hearing itself, Applicant now gives notice of this constitutional claim cognizable in PCR.

Applicant believes this argument is a good faith effort to extend and advance the law.

The addition of this supplemental claim in no way waives any claim previously made in this case.

Respectfully submitted and, through Mr. Truluck, served on SC's Attorney General and on Judges Brooks Goldsmith and Clifton Newman by appropriate means, on 31 May 2018, all God so willing.

Marie-Thérèse Assa'ad-Faltas, MD, ~~MPH, Applicant~~ *pro se* for purposes ~~of this~~ motion
P.O. Box [redacted] Columbia, SC 29290 Phone: [redacted]
e-mail: Marie_Faltas@hotmail.com Cell: [redacted]

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Marie Assa'ad-Faltas, MD, MPH
v.
State of South Carolina, and City of Columbia, SC

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2017-CP-40-06831

On Application for Post-Conviction Relief (PCR)

Certificate of Service

The undersigned states that on May 31, 2018 he caused a true and correct copy of each of Applicant's:

***CONSOLIDATED* and UPDATED *TIMELY* MOTION TO RECONSIDER 21 May 2018 ORDER**
AND FOR THE COURT TO CONSIDER REMEDIES LESS UNFAIR TO APPLICANT

and

CONTINGENT *SUPPLEMENT* to PCR APPLICATION

to be served upon the party identified below by e-mail and by first-class U.S. Mail, prepaid:

Johnny James jjames@scag.gov
P.O. Box 11549
Columbia, SC 29211-1549

The undersigned states that on May 31, 2018 he caused a true and correct copy of each of Applicant's:

***CONSOLIDATED* and UPDATED *TIMELY* MOTION TO RECONSIDER 21 May 2018 ORDER**
AND FOR THE COURT TO CONSIDER REMEDIES LESS UNFAIR TO APPLICANT

and

CONTINGENT *SUPPLEMENT* to PCR APPLICATION

to be served upon the honorable judges identified below by e-mail and by personal service on Judge Newman:

to be served by email on:
The Honorable Brooks Goldsmith
bgoldsmith@sccourts.org

The Honorable Clifton Newman
CNewmanLC@sccourts.org

FILED
2018 MAY 31 PM 12:55
JEANNETTE W. McBRIDE
C.C.P. G.S.

TRULUCK LAWFIRM, LLC

Chris S. Truluck, (S.C. Bar 77829)
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Columbia, SC 29201
Tel: (803) 556-7285
Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com
Standby Attorney for Applicant

Columbia, South Carolina
Dated May 31, 2018

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Marie Assa'ad-Faltas, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2017-CP-40-06831 **RETURN TO RESPONDENT'S MOTIONS TO RECONSIDER RECUSAL, VACATION, AND FOR SUMMARY JUDGMENT**

RICHLAND COUNTY
FILED
2018 AUG 13 PM 2:04
JEANNETTE W. McBRIDE, C.C.P. & G.S.

In response to Applicant's filings of May 18, 2018, May 22, 2018, and May 31, 2018, Respondent would show this Court:

I.

On April 20, 2018, Respondent moved the Court reconsider its order granting post-conviction relief on a number of different grounds. On May 21, 2018, the Court granted Respondent's motion in part, vacated its grant of relief, and remanded the matter for further proceedings. The Honorable Brooks P. Goldsmith further recused himself from hearing any further issues in the case. A series of motions by Applicant promptly followed and the undersigned.

II.

On May 18, 2018, based upon advance notice of Judge Goldsmith's intent to recuse, Applicant *pro se* and by assistance of counsel as conduit, filed a "Motion to Reconsider Judge Goldsmith's Recusal from This Case and for The Court to Consider Remedies Less Unfair to Applicant." Applicant argues Judge Goldsmith is obliged to retain jurisdiction of the case and must reconsider His Honor's recusal. Applicant also argues, briefly and without a sense of irony, that the Court has a compelling interest in not vacating its own opinions. Applicant stunningly

asserts the State has no right to be heard in a post-conviction relief matter. Applicant further decries the Court's recusal as fundamentally unfair because a large proportion of the South Carolina judiciary is already recused or otherwise has a conflict which prohibits hearing matters relating to Applicant, such that His Honor's recusal will unduly delay proceedings. Applicant finally suggests the State be required to put forth a *prima facie* defense by way of affidavits before scheduling a live hearing.

Respondent respectfully submits to the Court's discretion in determining whether or not recusal is appropriate in the present circumstance. While the Court did appear to pre-judge the matter in the course of a particularly unusual hearing, spread across two days, Respondent remains comfortable with His Honor's broader record of impartiality.

Respondent cannot take a position on how to conduct further proceedings without knowing whether His Honor will retain jurisdiction of the case. In the event a different judge is assigned to this matter, a new evidentiary hearing will almost certainly be required in order for Respondent to present its own case, and for the presiding judge to render valid findings as to credibility and temperament. In the event His Honor reconsiders recusal and retains jurisdiction, in light of His Honor's experience witnessing the character and conduct of both Applicant and witness Orin Briggs, Esq., and because any additional evidentiary hearing is likely to be disrupted, it *may* be advisable for Respondent to present its defense by way of affidavits and memorandum argument. Respondent cannot pass upon which course of action would best utilize scarce judicial resources as it appears either way may be delayed by vexatious interruptions and profligate filings.

As to Applicant's suggestion that the burden be shifted to the State by virtue of the now vacated order granting post-conviction relief, that suggestion is without merit as a matter of law.

"In a post-conviction proceeding, the burden is on the applicant to prove the allegations in his [or her] application." Bannister v. State, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). As the prior order is vacated, the parties are now returned to the position and burdens that existed at the outset of the evidentiary hearing. Put simply, we are back to square one. The State is not required to "forecast" its case to Applicant, and Applicant's ever-present demands for Rule 11 sanctions against the undersigned are entirely frivolous.

III.

On May 22, 2018, Applicant supplemented her May 18, 2018, motion by and through counsel acting as conduit. First, Applicant argues the State did not contemporaneously object to the termination of the evidentiary hearing. Second, Applicant *again* beggars reason to argue the State has no right to be heard in a post-conviction relief matter. Third, Applicant asserts the Court's original grant of relief was functionally equivalent to a grant of summary judgment, accuses Respondent of "judge-shopping" by filing its motion to reconsider, and also argues His Honor should have recused before granting the motion to reconsider. Fourth, Applicant argues she should be entitled to summary judgment. Fifth, Argument reasserts her demand the State be required establish its case by affidavit, with an opportunity for her to rebut at a hearing, and again demands Rule 11 sanctions be imposed on the undersigned for filing its motion to reconsider.

Issue Preservation

The first ground functionally raises an issue preservation argument against Respondent's motion to reconsider which was already raised in Applicant's reply to Respondent's motion to reconsider. In order to be sufficient to preserve an argument, an objection must be specific enough to inform the trial court of the point being urged by the objector and to show the opposite

party the point of the objection, that he or she may obviate the error if possible. Broom v. Se. Highway Contracting Co., Inc., 291 S.C. 93, 105, 352 S.E.2d 302, 309 (1986) (abrogated on other grounds by Davenport v. Cotton Hope Plantation Horizontal Prop. Regime, 333 S.C. 71, 508 S.E.2d 565 (1998)). Issue preservation is intended to give the trial court an opportunity to rule properly and prevent parties from withholding issues to spring on appeal. State v. Passmore, 363 S.C. 568, 584, 611 S.E.2d 273, 281 (Ct. App. 2005) (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000)).

At the end of the evidentiary hearing, the Court stated that, although it would likely be overturned on appeal, it would grant the application for post-conviction relief. When the State asked if it could be heard in argument against relief, the Court curtly declined to grant that opportunity and promptly departed the courtroom.

A party's objection is not anchored by the invocation of the word "objection" as though it is a magic spell; to the contrary, the important element is that the issue is identified and raised to the court and the opposing party. Here, Respondent plainly raised the issue of its opportunity to be heard and was flatly denied by the Court and thereafter physically denied the opportunity to proffer anything because His Honor was no longer on the bench. Indeed, that lack of opportunity was the basis of Part V of Respondent's motion to reconsider and the grant of that motion by the Court. As such, the issue was properly raised to the Court, and properly reconsidered for error by the Court upon timely motion by Respondent.

Due Process

Applicant argues the State has no right to defend itself in a post-conviction relief hearing. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." South Carolina Dept. of Social Services on Behalf of State of

Tex. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995) (quoting S.C.N.B. v. Central Carolina Livestock Market, 289 S.C. 309, 345 S.E.2d 485 (1986)). Though historically limited to criminal prosecutions, the right to confrontation has been applied in the civil context. Id. "Where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Brown v. South Carolina State Bd. Of Educ., 301 S.C. 326, 391 S.E.2d 866 (1990). The import of post-conviction relief proceedings, as it pertains to the fundamental constitutional rights of citizens and the bedrock principles of the criminal justice system, is self-evident. See Mangal v. State, 421 S.C. 85, 99, 805 S.E.2d 568, 575-76 (2017) (encouraging flexibility with procedural requirements in light of the importance of the issues at stake in PCR proceedings). Of course, the greater concern typically is ensuring that applicants are not unfairly foreclosed from seeking relief for technocratic reasons by an overburdened or overzealous prosecution, but the same principles apply to the State as a party in collateral litigation, and to its interest in defending and sustaining validly imposed convictions.

Proceedings in post-conviction relief very simply should not be terminated hastily such that only one side of the proceeding is permitted to "question" a witness on the stand. Respondent was denied any opportunity to adequately and meaningfully respond in a proceeding turned upside down through no error of its own, but due to the caustic interference of Applicant in courtroom procedure and the palpable frustration of the witness. The Court therefore properly reconsidered its grant of relief due to the denial of due process to Respondent.

Summary Judgment and the Rest

Applicant asserts the Court's grant of relief was akin to summary judgment and that she should be entitled to summary judgment. Because Applicant concurrently filed a motion for summary judgment, this issue is addressed separately below. The "judge-shopping" allegation is

entirely without merit, especially in light of the State's position of total deference on the question of recusal.

IV.

By motion filed May 22, 2018, Applicant moves for summary judgment. "Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). "Under Rule 56(c), [SCRCP,] the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." Id.

Regardless of how one chooses to characterize the hearing-that-was-hardly-a-hearing, Applicant is not entitled to summary judgment. The basic facts are still in controversy: (1) the scope of Applicant's instructions and communications to Counsel, (2) whether Counsel consented to bond terms contrary to Applicant's instructions and interests,[1] (3) what Counsel's reasoning and motivations were in the conduct of the hearing, and (4) to what extent Applicant's own abusive treatment of the court and Counsel may have facilitated any confusion in the proceedings, to name just a few. The record, at present, does not adequately provide answers to relevant questions of fact in controversy. The March 2018 evidentiary hearing, to the extent it was probative of anything at all, only demonstrated in part how Applicant's abusive treatment of Counsel could lead Counsel to his own frustrated disregard of courtroom procedure.

Applicant's demand for summary judgment should be denied and the State permitted to submit its case in the regular order. Whether another evidentiary hearing is necessary, or

[1]Applicant herself vociferously argued she, "through her counsel, clearly asserted that she does **not** want a bond under those conditions" in at least one prior filing. See Motion to Reconsider at 2, City of Columbia v. Assa'ad-Faltas, 2011-CP-40-03547 (included with attachments to Respondent's Return).

whether proceeding strictly on affidavits is viable is, as previously noted, contingent largely on whether His Honor reconsiders his recusal as demanded by Applicant.

V.

On May 31, 2018, Applicant filed one motion by and through counsel, one revised motion *pro se* through counsel as conduit, and a supplement to the application. As to the "Motion for Reconsideration of Recusal" seeking reconsideration of the decision to recuse, Respondent simply restates its position of total deference to Judge Goldsmith as to the propriety of recusal. As to the *pro se* "Consolidated and Updated Timely Motion to Reconsider", its substance is largely repetitive of prior filings addressed above. One clarification would be that Respondent has not investigated whether the Court is subject to a conflict in this matter and passes no opinion on whether one exists or not, but rather upon consideration of the totality of the circumstances, the undersigned has determined taking no position on the question is the most prudent course of action. The order granting Respondent's motion to reconsider is not inconsistent, but is properly ordered. As to the "Third Supplement to Application", it appears to be itself contingent on the question of recusal and the nature of further proceedings and, as such, does not appear to be ripe for a response by Respondent at this time.

VII.

Excepting the "Motion for Reconsideration of Recusal" submitted by and through counsel on May 31, 2018, Respondent renews and maintains its objection to the filings of Applicant as impermissible hybrid representation, contrary to South Carolina law and the January 26, 2018, Order of the Honorable Jocelyn Newman, providing for the scope of *pro se* representation. Respondent rejects and denies each motion, request, demand, and argument by Applicant not expressly admitted, qualified, or explained.

VIII.

WHEREFORE, Respondent respectfully defers to the Court's judgment as to the question of recusal, reserves the right to more firmly answer the question of what proceedings would be best suited for final resolution of this matter, and requests the Court deny all of Applicant's other motions, requests, and demands.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

7 June, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2017-CP-40-06831

MARIE ASSA'AD FALTAS

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

RICHLAND COUNTY
FILED
2018 JUN 13 PM 2:04
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return to Respondent's Motion to Reconsider Recusal, Vacation, and for Summary Judgement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Christopher Stephen Truluck
1720 Main Street, Suite 104
Columbia, SC 29201

DATED this the 7th day of June, 2018.

Carmen A. Nord, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2017-CP-40-06831

On Application for Post-Conviction Relief (PCR)
Applicant's Reply to the State's Combined Response
To Applicant's Non-Dispositive and Dispositive Motions

Beyond a duty to sit, a judge has a duty to be shocked in the conscience. From shocks to the conscience spring duties to redress injustice, to advance the law, and to edify the bar. All three duties are here urged.

South Carolina Assistant Attorney General ("SCAAG") Johnny Ellis James Jr. ("James") committed libel *per se* by calling Dr. Assa'ad-Faltas ("Applicant") "profligate" in an e-mail. (Imputation of unchastity, synonym "profligacy," to a lady is libel *per se*.) When Applicant demanded an apology, she received threats instead.

SCAAG James did that because he thinks he can. He purports to respond to Applicant's pending motions in a combined 7 June 2018 document of which the first complete paragraph of p 4 reads [italics added]:

> At the end of the evidentiary hearing, the Court stated that, although it would likely be overturned on appeal, it would grant the application for post-conviction relief. *When the State asked if it could be heard in argument against relief, the Court curtly declined to grant that opportunity and promptly departed the courtroom.*

The italicized sentence is false. SCAAG James' was <u>not</u> in the 23 March 2018 courtroom but was probably emboldened to so pretend while thinking he had successfully misled the Court, Appointee, and Applicant with a false pretense of a transcript order SCAAG James knew had been cancelled. The relevant e-mails quoted below show how Applicant caught SCAAG James' later-self-admitted "inaccuracy."

On 5 June 2018, at 10:17 am, Johnny Ellis James, Jr. e-mailed this to Judge Goldsmith and to Appointee:

> Your Honor, ***** As to the demand that we order the transcript, the State ordered the transcript on March 29, 2018, at my direction. I do not believe we have yet received any transcript and, because it was a two-day affair, I imagine it will take some time to complete. In any event, Applicant's demand is moot.
> Respectfully,
> Johnny Ellis James Jr. Assistant Attorney General Post-Conviction Relief, 4th & 15th Judicial Circuits

RICHLAND COUNTY
FILED
2018 JUN 15 PM 4:19

On 7 June 2018, at 11:40 am, Ms. Ambroziak, RPR, responded to Applicant's inquiry with this e-mail:

> Hello Dr. Faltas,
> The Attorney General's Office did request a copy of the hearing transcript. Per the standard instructions on all of their letters of request for transcripts, I am instructed to inform them if the cost of the transcript will be more than $500 before proceeding with the request. Additionally, they asked that the transcript be expedited. Due to the fact this was a two-day hearing, the estimated cost was in excess of $500. Expediting a two-day hearing while still covering court assignments is not possible. I was then instructed to cancel the transcript request due to its cost and inability to be expedited. Thank you. Karen Ambroziak, RPR

On 7 June 2018, at 12:06 pm, Johnny Ellis James, Jr. e-mailed this to Judge Goldsmith and to Appointee:

> Mr. Truluck, [¶] This office previously ordered a transcript of the proceedings on March 29, 2018. I believed that request was still pending, but we evidently canceled the order upon the learning that it could not be produced in an expedited fashion. We have, consequently, again ordered the transcript as indicated in the prior e-mail. Any inaccuracy in my prior response regarding the transcript was unintentional. I have copied Judge Goldsmith for the sole purpose of clarifying my prior assertion.

Presently, Applicant knows not whether the belatedly-renewed transcript order was cancelled *again* but knows that the transcript, if and when produced, will *completely* belie SCAAG James. The truth is: on 23 March 2018 in this case, **the State**, represented by Jessica Kinard with DeShawn Mitchell as second chair, **did NOT** "ask if it could be heard in argument against relief" **and Judge Goldsmith did NOT** "promptly depart the courtroom" **but stayed to receive Applicant's gratitude and to request a draft order.**

Even SCAAG James does not pretend the State asked to present *evidence*, only "argument," which Judge Goldsmith had already heard on the frequent occasions he had interrupted Applicant's case to invite the State's views on the issues. But as SCAAG James went low, Applicant goes high to advance the law with ideas she evolved in this case:

I. <u>State has NO *Statutory* Right to be Heard in PCR Proceedings *unless the Judge Invites It.*</u>

Applicant previously quoted both SC's PCR Act and case law barring imposition of requirements not appearing on the face of the Act. SCAAG James responded by claiming *the State* has "due process" rights.

<u>First</u>, due process is a right of the people from their government, not of government against its people.

Second, "due process" is not a free-floating right like life, liberty or the pursuit of happiness **but is invoked only where *government* acts to deprive *a person* of life, limb, liberty and/or property.**

Third, in civil litigation, a plaintiff invokes government's judicial power to extract a defendant's property in the form of damages, titles *etc.*, or limit a defendant's liberty to engage in, or refrain from, specified conduct in the form of an injunction. There, due process protects litigants' property/liberty from judicial indolence or overreach. **PCR proceedings do not risk depriving *the state* of any liberty or property** unless SCAAG James sees Applicant as chattel for the state to oppress and unconstitutionally convict.

Fourth, SC's PCR Act is in Title 17 (criminal procedures) of SC's Code of Laws; and in other states, PCR is heard in criminal court; *e.g.,* Criminal Rule 32 in Alabama or Motion for Relief in North Carolina.

Fifth, PCR is figurative worker bees in Queen *Habeas'* hive. *Habeas* was historically heard *ex parte.*

Sixth, government's goal must always be, not to win, but to see justice done in all civil, criminal or administrative fora. In PCR, a judge without a jury decides if constitutional violations reached a point of making a conviction unjust. The State, as party to the pursuit of justice, may assist the judge *only if (s)he asks.*

II. State Cannot Thwart Summary Judgment by Feigning *Immaterial* Controversies of Facts.

SCAAG James' document, at the second complete paragraph of p 6, falsely claims:

> The basic facts are still in controversy: (1) the scope of Applicant's instructions and communication to Counsel, (2) whether Counsel consented to bond terms contrary to Applicant's instructions and interests, (3) what Counsel's reasoning and motivations were in the conduct of the hearing, and (4) to what extent Applicant's own abusive treatment of the court and Counsel may have facilitated any confusion in the proceedings[.]

Even if "basic facts" *were arguendo* "still in controversy," how is that resolved other than by what a judge already did and confirmed *in writing*? The judge heard Orin Briggs' ("Counsel") testimony, compared it to the record and the law, and assessed credibility *and validity* accordingly. *Nothing* will suddenly validate Counsel's acts/failures no matter how many rehearsed do-overs of his testimony he gets. SCAAG James is seeking mere delay; his feigned "controversies" are immaterial or answered conclusively by the record.

Undoubtedly, Counsel *understood, and asserted* to Jurist Hanna, that Applicant "cannot and would not agree to those conditions on the bond, that is, she would not consent to those and [...] her preference would be *the court just not issue a bond* based upon her unwillingness to cooperate." Tr. 6 April 2011 at p 9, lines 8-15.

*But Counsel failed to take the next **obligatory** step:* **withdraw the bond request and terminate the bond hearing.** *Instead, Counsel* immediately *abandons any semblance of faith to his client's directions (*"And I won't say any more than that.*"),* **id.,** *solely because* "The judge can do what she wants to do." ***at* Id. *p 1 lines 4-8.*** The rest of the 6 April 2011 transcript is devoted *entirely* to Counsel ensuring that Hanna's, not Counsel's client's, wishes be carried out.

The "bond terms [being] contrary to Applicant's ... interests" is established by **Counsel's *own* signed 27 May 2011 submission to SC's Supreme Court at p 4:**

> Most crucially, no sound person, much less a competent counsel working for the best interest of his client, would have consented to those conditions. The order was signed on April 11, 2011, circa 4:00 pm. Without it, Dr. Faltas was scheduled to be released on April 11, 2011, circa 4:00 am, twelve hours before the order was signed, and having been deemed to have fully served her sentence and being under no conditions or obligations that would bring her before Columbia Municipal Judge Marion Oneida Hanna who obviously has an extreme bias against her.

Nor is there "confusion" of what Hanna *wanted*: **subject Applicant to *intense* psychiatric *treatment including medication*** *("prescribe her something")* ***without an evaluation of whether she needs any or what that treatment should be.*** Applicant's prior submissions show how often in the 6 April 2011 transcript Hanna asserted being **"not interested in evaluation as much as I am interested in treatment"** and Counsel parroted **"how do we ensure that she gets some treatment?"** and how often in the 18 May 2011 transcript Hanna unabashedly announced that Applicant was being held in contempt *precisely* because she sought evaluation to determine if treatment was needed.

***No strategy concocted by Counsel after the fact could possibly be reasonably deemed beneficial to Applicant* against a record so clear that Hanna wanted Applicant *physically* harmed by medication given *without* evaluation and/or *harmed in her reputation, autonomy, dignity and purse* by forced, unnecessary, unwanted and expensive psychiatric treatment.**

Nor is the record silent on Counsel's "motive." **Again, he so wrote and signed himself in his 24 June 2011 letter to SC's Supreme Court's Chief Deputy Clerk Brenda Shealy** (available through PACER at 3:11-cv-00809-TLW, Date Filed 06/30/11, Entry Number 35-1, pages 9-10 of 21):

> [Applicant] wanted me to raise for the fifth time her argument that the City Court has no civil jurisdiction and that the onerous bond conditions amount to the exercise of civil jurisdiction [....] to [the] point I would [...] risk placing myself in contempt.

In truth, neither transcript (6 April and 18 May 2011) of the only two times Counsel *ever* represented Applicant before Hanna shows Counsel *ever* uttering the phrase "civil jurisdiction."

This record establishes that Counsel forewent one of Applicant's strongest arguments against contempt because he was afraid a biased, temperamental and tyrannical Hanna would hold *Counsel* in contempt.

As shocking as Counsel's conduct was in the 6 April 2011 transcript, it is aggravated by his previously quoted false admissions of Applicant's guilt in the 18 May 2011 transcript, all compounded by his refusal to explain that Hanna was too biased to sit on that hearing *ab initio* because she was being investigated (and later sanctioned) for her intemperate and unseemly conduct towards Applicant.

IN SUM: We now know that the author of the State's 20 April 2018 motion to reconsider falsely claimed that the State had *evidence* yet to be heard, only to now admit that the State only had *arguments* (which are debunked above). We now know that SCAAG James was caught intentionally misleading a judge about a transcript being on order and again intentionally misleading that judge about what same judge himself did on 23 March 2018 *in SCAAG James' absence.*

Applicant asks: "If a court won't now redress such clear long injustice, when will it?" but still hopes that one or more jurists in this system would stand up for right against might.

Respectfully submitted and, through Appointee, served on SC's Attorney General and on the Honorable Judge Clifton Newman by appropriate means, on 15 June 2018, all God so willing.

Marie-Thérèse Assa'ad-Faltas, MD, MPH, Applicant *pro se* for purposes of this motion
P.O. Box [redacted] Columbia, SC 29290 Phone: [redacted]
e-mail: Marie_Faltas@hotmail.com Cell: [redacted]

Certificate of Service

The undersigned states that on June 15, 2018 he caused a true and correct copy of this document to be served by e-mail and by first-class U.S. Mail, prepaid on:

Johnny James jjames@scag.gov
P.O. Box 11549
Columbia, SC 29211-1549

The undersigned states that on June 15, 2018 he caused a true and correct copy of this document to be served on the Honorable Clifton Newman by personal service and by e-mail at CNewmanLC@sccourts.org

TRULUCK LAWFIRM, LLC

Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104, Columbia, SC 29201
Tel: (803) 556-7285 Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com
Standby Attorney for Applicant

Columbia, South Carolina
Dated June 15, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2017-CP-40-06831

On Application for Post-Conviction Relief (PCR)
Motion to Relieve Stand-by Counsel (Contingent)
And for Immediate Hearing on this Motion and others

FILED
2018 JUN 15 P 3:59
JEAN H. TOAL
RICHLAND COUNTY

Dr. Assa'ad-Faltas' ("Applicant") reasons to relieve **from this case *only*** her standby counsel Christopher Stephen Truluck ("Appointee") are unusual but nonetheless compelling: Appointee is too good and the purpose of his appointment ***to this case*** was fulfilled. A trial in this case was held before Active/Retired Circuit Judge Brooks Goldsmith on 22-23 March 2018. Under the Honorable Judge Jocelyn Newman's un-appealed 26 January 2018 ORDER (which *continues* to be the law of *this* case), Applicant was allowed to present evidence and advocate to the court and, thank God, prevailed. An ORDER GRANTING POST-CONVICTION RELIEF was filed on 10 April 2018. But the State timely sought reconsideration (Rule 59).

Under the law of this case, Appointee handled post-trial matters. But (apart from two supplements to the PCR application, all exhibits and testimony admitted in the 22-23 March 2018 trial, and Applicant's pending MOTION FOR SUMMARY JUDGEMENT IN IN HER FAVOR) the result is: the case reverted to its 27 January 2018 status: **still unresolved but long overdue for trial *through no fault of Applicant's.***

Applicant reemphasizes that: (1) her July 2013 motion for appointment of counsel to initiae this case remained *unheard* until August 2017 (four years) and was granted in November 2017; and (2) the convictions challenged in this action were entered in May-June 2011 (seven years ago) by a woman, Marion Onieda Hanna, who was herself later sanctioned by South Carolina's ("SC") Commission on Judicial Conduct for her misbehavior towards Applicant. *Vide* Attachments A-B.

Applicant alleges *inter alia* that her-then attorney, Orin G. Briggs' ("Counsel") ineffectiveness is a *sine qua non* cause of these convictions by his *inter alia* (1) consent to improper release-bond conditions against Applicant's will and (2) ignorance of the applicable law to the point of phoning "seven [other] lawyers" for instructions on how to proceed and attempting to bill Applicant over two-thousand dollars for Counsel's failed efforts to remedy his own ignorance of the law. *Vide* Attachments C, and D-1 to D-7.

Counsel's failures in March 2011 to November 2012 as Applicant's on-again/off-again lawyer are established by the record; Counsel's strange demeanor in the 22-23 March 2018 PCR trial as Applicant's hostile witness prompted Judge Goldsmith to threaten Counsel with contempt of court; and Applicant had, in January and March 2018, given the State a list of 44 questions she intended to ask Counsel in PCR trial.

*Despite all the foregoing and more, the State **still** falsely pretends that some magic secret reason exists to deny Applicant her overdue PCR relief.* **But all the State has yet deployed are its only tools: delay and personal attacks on Applicant (including insulting her virtue) *and now on Appointee's integrity.***

This judicial system yoked on Applicant heavy crosses of false criminal accusations, oppression and delay, which she bore with dignity, competence and love; **but she will not pass her crosses to Appointee.**

WHEREFORE, Appointee should be relieved as his mission has ended; this case should be immediately scheduled for a summary judgment hearing/trial **before a non-conflicted judge willing to promptly create his/her own orders *and stand by them;*** and Applicant should be left to present her evidence and advocacy *pro se* and later, if applicable, defend her own victory as *pro se* appellee, all God so willing.

SC's judicial system has been callously failing Applicant since her 2 December 2009 false arrest on two harassment charges which she, thank God, ultimately defeated *pro se*. The contempt convictions attacked in *this* PCR application was part of a scheme to wear Applicant down and thwart her ultimate exoneration. **The system should now reform itself before its integrity is lost.**

Respectfully submitted and served, by hand-delivery, to the respective offices of each of SC's Attorney General and Mr. Truluck and, by causing the Clerk to deposit a copy in the respective judge's mail slot, on each of Judges Robert Hood, Clifton Newman, and Jocelyn Newman, on 15 June 2018, all God so willing.

Marie-Thérèse Assa'ad-Faltas, MD, MPH, Applicant *pro se* for purposes of this motion
P.O. Box [redacted] Columbia, SC 29290 Phone: [redacted]
e-mail: Marie_Faltas@hotmail.com Cell: [redacted]

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP4006831

Marie Assaad Faltas		State Of South Carolina	City Of Columbia Sc

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2139	6/13/2018
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

6/13/18

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

Christopher Stephen Truluck 1720 Main Street, Suite 104 Columbia, SC 29201

Lindsey Ann McCallister PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W. McBride - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	Case No.: 2017-CP-40-6831
Marie Assa'ad-Faltas,	)	
Applicant	)	
v.	)	ORDER
State of South Carolina	)	
Respondent		

2018 JUN 13 AM 10:14
RICHLAND COUNTY FILED

This matter comes before the court upon Motion of Applicant requesting that the court reconsider its order of May 16, 2018, which order vacated the order of April 10, 2018 and recused the undersigned from participating further in this case. Both sides submitted memorandum.

After reviewing and considering all memoranda submitted in this matter I find no reason to reconsider or alter the prior order of this court.

ACCORDINGLY, the Motion of Applicant is hereby DENIED.

June 5, 2018

Brooks P. Goldsmith
Circuit Judge, Active/Retired

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

Marie Assaad-Faltas
Plaintiff,
vs.
State of South Carolina
Defendant.

IN THE COURT OF COMMON PLEAS
Fifth JUDICIAL CIRCUIT

CASE NO.: 2017-CP-40-06831

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

RICHLAND COUNTY FILED
2018 JUL 31 PM 2:55
JEANETTE W. McBRIDE C.C.P. & G.S.

Plaintiff's Attorney:	Defendant's Attorney:
_____, Bar No. _____	AG, Bar No. 10260
Address:	Address:
_____	_____
Phone: _____ Fax _____	Phone: _____ Fax _____
E-mail: _____ Other: _____	E-mail: _____ Other: _____

☑ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS II and III)**
☑ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

Already set for Aug. 10th

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

John E. James Jr
Signature of Attorney for ☐ Plaintiff/☐ Defendant

31 July 2018
Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Marie Assa'ad-Faltas,	)	Case No.: 2017-CP-40-06831
Applicant,	)	
v.	)	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
State of South Carolina,	)	
Respondent.	)	

RICHLAND COUNTY FILED
2018 JUL 31 PM 2:51
JEANETTE W. McBRIDE C.C.P. & G.S.

Respondent hereby gives notice of its intent to seek summary judgment pursuant to Rule 56, SCRCP, before the Honorable Perry H. Gravely on August 10, 2018, for the following reasons:

I.

Applicant raises numerous grounds for relief from her conviction for contempt of court on May 18, 2011, but all fall into two categories: ineffective assistance of counsel on the part of Orin Briggs, Esq. ("Counsel"), and trial court error. The allegations were summarized by the Honorable Brooks P. Goldsmith in his now vacated Order filed April 10, 2018, as follows:

1. Ineffective assistance of counsel, in that:
    a. Counsel was ineffective for failing to object to impermissible conditions of appeal bond set by the Columbia Municipal Court at a hearing held April 6, 2011;
    b. Counsel was ineffective for failing to properly argue against impermissible conditions of appeal bond set by the Columbia Municipal Court at hearing held April 6, 2011;
    c. Counsel was ineffective for failing to object to the Columbia Municipal Court's *sua sponte* clarification of her two contempt of court sentences that were the subject of her appeal bond set at hearing held April 6, 2011;
    d. Counsel was ineffective for failing to object to the Columbia Municipal Court's two contempt of court sentences that were the subject of her appeal bond set at a hearing held April 6, 2011, as the Columbia

Municipal Court ordered that Applicant be denied credit for good behavior;

e. Counsel was ineffective for failing to file a motion for reconsideration or otherwise objecting to impermissible conditions of appeal bond contained in an order signed April 11, 2011;
f. Counsel was ineffective for failing to object to the holding of a rule to show cause hearing when the hearing was set based on allegations of violations of an appeal bond that contained impermissible conditions;
g. Counsel was ineffective for failing to properly argue against a finding of contempt at a Rule to Show Cause hearing held May 18, 2011;
h. Counsel was ineffective for failing to object to Applicant being held in contempt of court where the Columbia Municipal Court made no finding that the alleged violations of appeal bond were willful violations;
i. Counsel was ineffective for failing to object to impermissible conditions of appeal bond set by the Columbia Municipal Court at a Rule to Show Cause hearing held May 18, 2011;
j. Counsel was ineffective for not advocating for Applicant to not be held in contempt and instead representing to the Columbia Municipal Court that Applicant "probably didn't try hard enough" when Counsel was without factual basis to make such representations.
k. Counsel was ineffective in manners to be elicited in his responses to the questions proposed to be posed to him in the evidentiary hearing, as previously submitted to the State of South Carolina, and to such other questions as the Presiding Judge at the evidentiary hearing may pose and/or allow Applicant to pose to Counsel.

2. Contempt of Court is not the appropriate remedy for violations of conditions of appeal bond and as such violates State statute and as such Applicant being held in contempt for any violations is a violation of Applicant's constitutional rights.
3. Applicant's May 18, 2011 convictions for contempt of court, formalized by order of the Columbia Municipal Court on June 6, 2011, are unconstitutional where Applicant was denied the appointment of appellate counsel to further appeal the Honorable Alison Renee Lee's September 2012 affirmation of those convictions and, subsequent, October, 2012, denial of a timely motion for rehearing.
    a. Applicant was, at the time, barred from filing a notice of appeal without counsel and barred from seeking the appointment of counsel to file such appeal. Applicant alleges that the bar's effect on her ability to file a *pro se* notice of appeal and to seek the appointment of appellate counsel renders her convictions subject to this PCR application unconstitutional as violating the Equal Protection and Due Process Clauses of the U.S. and South Carolina Constitutions generally and more specifically as

announced by the Court in Douglas v. California, 372 U.S. 353 (1963) and Evitts v. Lucey, 469 U.S. 387 (1985).

Subsequent to the vacation of the Order filed April 10, 2018, Applicant amended her application by way of supplement filed May 31, 2018, to include the following additional ground for relief:

4. Constitutional violations, in that:
    a. "[P]unishment for alleged contempt of court by incarceration is cruel and unusual and violates the standards of decency of an evolved society. Therefore, conviction and sentence for contempt of court without jury and all the due process guaranteed to criminal defendants is no longer tolerable by the Eighth Amendment to the Constitution of the United States and by the equivalent provisions of the Constitution of South Carolina."

For the following reasons, Applicant's grounds are either procedurally barred or are without merit as a matter of law.

II.

Each of Applicant's allegations regarding the conditions of her bond pending appeal,[1] set by the Honorable Marion O. Hanna, are without merit because she, not Counsel, accepted the terms. "It is well settled that a release on bail may be subject to reasonable conditions and limitations." Brown v. Fogel, 387 F.2d 692, 695 (4th Cir. 1967); see also Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 344, 713 S.E.2d 278, 284 (2011) (recognizing the power of municipal courts to set bond and punish delinquency on the part of the bonded defendant); Holmes v. State, 344 S.C. 41, 42, 543 S.E.2d 537 (2001) (recognizing the power of the courts to set conditions in granting bond pending appeal). When setting conditions, the Court must impose conditions reasonably necessary to assure the appearance of the bonded individual, as well as those "which are sufficient to protect a victim from harassment or intimidation by the defendant or persons acting on the defendant's behalf." State v. Policao, 402 S.C. 547, 553, 741 S.E.2d 774, 777 (Ct. App. 2013).

[1] See allegations restated as 1.a, 1.b., 1.e, 1.f, and 1.i, above.

After a hearing on April 6, 2011, Judge Hanna set the terms of bond pending appeal as follows:

(1) Pay $1,000 cash bond;
(2) Engage in regular weekly sessions with a psychiatrist for a period of one year or the conclusion of her appeal;
(3) Abide by the Oct. 6, 2010, Order of the Municipal Court constraining Applicant's access to City of Columbia buildings and personnel; and
(4) Surrender her passport.

(Apr. 6, 2011, Tr. 12, ll. 2-12; see attached Ex. 1 – CMC Order dated April 11, 2011). Judge Hanna recognized Applicant's disagreement with the terms but nonetheless set the terms. (Apr. 6, 2011, Tr. 11-12). Applicant thereafter paid the $1,000 bond and made bail on or about April 12, 2011, thereby accepting the terms of her bond. (See attached Ex. 2 – Motion and Order to Refund Appeal Bond). Applicant, in the judgement of Judge Hanna, thereafter failed to comply with the passport and psychiatric conditions of her bond. (May 18, 2011, Tr. 36-38; see attached Ex. 3 – CMC Order dated June 6, 2011).

Applicant cannot accept the terms of her bond by way of compliance with the first term, achieve her release, fail to abide by the later conditions, and then levy the blame for her violation upon Counsel. Any arguable complaint she may have had with the terms as excessive or unjustified was waived upon her acceptance of the terms by paying the $1,000 cash bond. If Applicant wished to maintain her objection to the terms of bond, the appropriate course of action would have been for her to not accept the conditions, not attempt partial performance upon them, and instead stay incarcerated for the remaining few days of her contempt sentence. Applicant's attempt to accept the terms of her bond in part, reject them in part, and thereafter collaterally attack the performance of counsel when the consequences fell upon her is nothing more than the continuation of her pattern of abuse directed at the justice system. See City of Columbia v. Assa'ad-Faltas, 420 S.C. 28, 31, 800 S.E.2d 782, 783 (2017). Therefore, the Court should find

Applicant waived any further challenge to the conditions of her bond when she, not Counsel, accepted the terms by paying the $1,000 and enter summary judgment in favor of Respondent.

III.

The application in its entirety is not cognizable under the Uniform Post-Conviction Procedure Act as it applies to the psychiatric evaluation contempt because it does not challenge a crime, but a finding of civil contempt. Contempt can be either civil or criminal. Ex parte Cannon, 385 S.C. 643, 661, 685 S.E.2d 814, 824 (Ct. App. 2009). "In determining whether the contempt is civil or criminal, the major factor to consider is the purpose for which the power is exercised including the nature of the relief and the purpose for which the sentence is imposed." Id., 385 S.C. at 662, 685 S.E.2d at 824. "The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders." Id. (quotations omitted). "If it is for civil contempt, the punishment is remedial and for the benefit of the complainant." Id. "If it is for criminal contempt, the sentence is punitive and meant to vindicate the authority of the court." Id. "An unconditional penalty is considered criminal contempt because it is solely and exclusively punitive in nature." Id. (quoting Ex parte Jackson, 381 S.C. 253, 258-59, 672 S.E.2d 585, 587 (Ct. App. 2009)). "When sanctions are conditioned on compliance with the court's order, the contempt is civil in nature." Id. (citing Poston v. Poston, 331 S.C. 106, 112, 502 S.E.2d 86, 89 (1998)).

The Uniform Post-Conviction Procedure Act provides potential causes of action for those convicted of, or sentenced for, *crimes*. S.C. Code Ann. § 17-27-20(A)(1); see also Brown v. State, 423 S.C. 56, 58, 814 S.E.2d 146, 146-47 (2018). The fine for failing to surrender the passport was unconditionally punitive and therefore constitutes criminal contempt under the law.

However, the sanctions for the failure to seek weekly psychiatric counseling were conditioned on compliance with the court's order, and as such, were civil in nature. Accordingly, Applicant's challenge of those sanctions are not cognizable under the UPCPA, and to the extent Applicant so challenges the psychiatric sanctions, summary judgment should be entered in Respondent's favor and the application should be dismissed.

IV.

All of Applicant's allegations regarding the performance of counsel are without merit as a matter of law because she had no constitutional entitlement to the assistance of counsel at all. "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defense." U.S. Const. amend. VI. "[A]bsent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." Argersinger v. Hamlin, 407 U.S. 25, 37 (1972). The question of whether the right to counsel attaches is not whether a matter is described as "criminal" or "civil", but rather whether imprisonment must actually occur. Id. at 38 ("The fact that traffic charges technically fall within the category of 'criminal prosecutions' does not necessarily mean that many of them will be brought into the class where imprisonment actually occurs."). The right to counsel *does not* attach where imprisonment is an authorized punishment, but not actually imposed. Glaze v. State, 366 S.C. 271, 274, 621 S.E.2d 655, 656 (2005) (citing Scott v. Illinois, 440 U.S. 367 (1979)). Pre-trial incarceration does not trigger the right to counsel. Id. The right to counsel is the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 686 (1984) (quoting McMann v. Richardson, 397 U.S. 759, 771, n. 14 (1970). Accordingly, the right to effective counsel, along with the concordant right to collaterally attack the assistance of counsel, is derived from the right to counsel attaching at all.

In the present matter, Applicant was found in contempt and sentenced to (1) her option of a $500 fine or 30 days in jail and (2) 30 days in jail *if* she continued to not abide by the psychiatric counseling requirement of the original and thereafter amended order. (May 18, 2011, Tr. 36-38). Neither sentence actually imposed a requirement of incarceration, but rather provided that Applicant must pay a fine and comply with the conditions of bond *or* go to jail. As to the first term, Applicant paid the $500 fine. (See attached Ex. 4 – Receipt from City of Columbia for $500). As to the second term, Applicant complied with the Court's directive and timely submitted a letter from First Presbyterian Church indicating that she did indeed attend weekly counseling. (See attached Ex. 5 – Letter dated May 23, 2011, from First Presbyterian Church). That the Court left the option of jail time open to Applicant is irrelevant given her avoidance of incarceration by compliance with the terms and, in any event, did not give her the ability to choose jail, seize attachment of a right, and thereafter collaterally attack the performance of counsel to which she previously was not entitled.

One caveat is the progression of restrictive orders issued by the Supreme Court of South Carolina which increasingly required Applicant to rely on the assistance of counsel in order to access the courts at all. The Supreme Court first restricted Applicant from submitting *pro se* filings by Order filed April 8, 2011, after the April 6 hearing at which her bond terms were set. (See attached Ex. 6). The Supreme Court further restricted Applicant from proceeding *pro se* in any fashion by Order filed April 29, 2011, and cautioned Counsel against acting as a mere conduit or mere standby counsel. (See attached Ex. 7). These orders, intended to address Applicant's abusive conduct towards the judiciary, did not vest in Applicant additional rights she would not have otherwise possessed—one does not gain additional protections under the law by

abusing the law. Furthermore, as a matter of temporal impossibility, they could not have applied to the proceeding on April 6, 2011, at which time the terms were set by Judge Hanna.

Because Applicant had no constitutional right to counsel, Applicant had no constitutional right to the effective assistance of counsel, and consequently her allegations of ineffective assistance of counsel are without basis in the law. Accordingly, the Court should enter summary judgment in favor of Respondent and all allegations of ineffective assistance of counsel should be dismissed.

V.

Applicant's allegations restated above as grounds two, three, and four, all constitute allegations of trial court error not cognizable in post-conviction relief. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Notwithstanding waiver by acceptance of the bond terms, Applicant's allegations regarding the constitutional validity of her contempt conviction could have been raised at trial and thereafter on appeal. Therefore, Applicant's allegations restated above as grounds two, three, and four should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act, and summary judgment should be entered in favor of Respondent.

VI.

WHEREFORE, Respondent respectfully requests that this Court enter summary judgment in Respondent's favor, and summarily dismiss the application for post-conviction relief for all of the reasons set forth above.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By: Johnny E. James Jr
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

31 July, 2018

Exhibit 1

Columbia Municipal Court
Order dated April 11, 2011

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE MUNICIPAL COURT OF THE CITY OF COLUMBIA
City of Columbia, State, v. Marie Assa'ad Faltas, Defendant.	)	Warrant Nos.: L-066971; L-066954; 38803FK; 37025FK; K-613792; K-613793 **ORDER**

This matter came before the Court on April 6, 2010, on the Defendant's motion for an appeal bond to stay the sentences for convictions of contempt of court and violation of a court Order. The Defendant was represented by Orin G. Briggs and the City of Columbia was represented by David A. Fernandez. The Defendant was transported from the Alvin S. Glenn Detention Center to the City of Columbia Municipal Court but waived, in writing, and through her attorney, her right to attend the appeal bond hearing.

The Court, finding the defendant to be a flight risk due to her status as a resident immigrant, and no familial ties to this area, sets the appeal bond for this matter at One Thousand and 00/100 dollars ($1,000.00) cash, to be deposited with the Clerk of Court for the City of Columbia Municipal Court, as surety for the Defendant promising to "defend the appeal at the next term of the Court of Common Pleas" for the Fifth Judicial Circuit, or at such time thereafter as the matter may be scheduled.

As of the date of this Order, the Defendant's sentence is stayed and she shall be released from the Alvin S. Glenn Detention Center upon payment of the One Thousand and 00/100 dollars ($1,000.00) cash bond, pending conclusion of the appeal for this

matter. The Court further imposes the following three (3) additional requirements as conditions of the appeal bond:

1. The Defendant is to participate in regular weekly sessions with a psychiatrist for a period of one (1) year, or until the conclusion of the pending appeal for this matter, whichever shall come first in time. The Defendant shall make available to the psychiatrist all of her criminal and civil litigation files. The Defendant is to provide this Court with proof of her initial compliance with this condition within ten (10) days of the date of this Order and shall provide to the Court regular monthly proofs of her visits to the psychiatrist. Both of those proof requirements may be made by the psychiatrist's office to this court.

2. The Defendant must abide by the October 6, 2010, Order of the Municipal Court which places constraints upon the Defendant's access to City of Columbia buildings and personnel.

3. The Defendant is to immediately surrender possession of her passport to the City of Columbia Municipal Court pending conclusion of the appeal for this matter.

The Court also takes this opportunity to clarify the original sentence of this Defendant for convictions of contempt of court and violation of a court Order. On March 28, 2011, the Defendant was sentenced to ten (10) days for contempt of court and fifteen (15) days for violation of a court Order, to be served consecutively. The Court hereby instructs the Alvin S. Glenn Detention Center that the Defendant is to serve the entire twenty-five (25) day sentence, with no credit provided for good behavior or for any other reason.

AND IT IS SO ORDERED.

MARION O. HANNA
Presiding Judge

April 11, 2011
Columbia, South Carolina

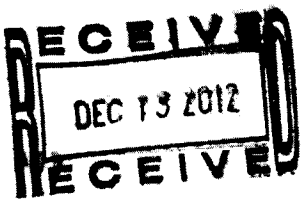
VIOLATION OF THIS ORDER MAY RESULT IN REVOCATION OF THIS APPEAL BOND AND BE PUNISHABLE BY FINE OR IMPRISONMENT.

Exhibit 2

Motion and Order to Refund Appeal Bond

IN THE STATE OF SOUTH CAROLINA'S UNIFIED COURT SYSTEM
BEFORE THE CITY OF COLUMBIA'S MUNICIPAL COURT

City of Columbia — *Plaintiff-Respondent*
v.
Marie Assa'ad-Faltas, MD, MPH, — *Defendant-Appellant*



MOTION TO REFUND APPEAL BOND BECAUSE THE APPEAL TO WHICH THE BOND APPLIED HAS BEEN FINALIZED
Case # 2011-CP-40-02111

Temporary Counsel for Marie Assa'ad-Faltas, respectfully requests that the $1000.00 bond paid to the City of Columbia on April 12, 2011, be returned to Dr. Faltas, now that the need for the bond has expired because the appeal was finalized in September, 2011, eliminating any further need for the bond.

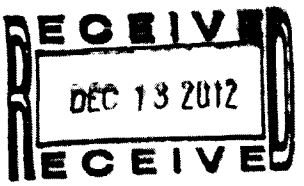
IT IS SO MOVED.

Orin G. Briggs
Attorney for Appellant
240 Heritage Trail
Lexington, SC 29072
803/947-4383

December 11, 2012

IN THE STATE OF SOUTH CAROLINA'S UNIFIED COURT SYSTEM
BEFORE THE CITY OF COLUMBIA'S MUNICIPAL COURT

City of Columbia — *Plaintiff-Respondent*
v.
Marie Assa'ad-Faltas, MD, MPH, — *Defendant-Appellant*



ORDER TO REFUND APPEAL BOND BECAUSE THE APPEAL TO WHICH THE BOND APPLIED Case # 2011-CP-40-02111 CONCLUDED

It appearing to the undersigned that: (1) Marie Assa'ad-Faltas, MD, MPH, on or about Wednesday, March 30, 2011, filed a *pro se* appeal from orders of this Court to the Richland County Circuit of Common Please, which appeal was given case No. 2011-CP-40-0211; (2) on or about Wednesday, April 6, 2011, a hearing was held and it was determined that the appeal bond shall be one thousand dollars ($1,000.00); (3) on or about Tuesday, April 12, 2011, an agent for Dr. Assa'ad-Faltas paid said one thousand dollars ($1,000.00) appeal bond to the City of Columbia's Municipal Court, which continued to hold that appeal bond since then; (4) on or about December 2, 2011, the appeal to which the bond applied concluded; and (5) that bond was not in any way related to the result of the appeal but was only to secure Dr. Assa'ad-Faltas' appearance at the set term of Circuit Court to defend her appeal, which appearance occurred in September 2011; it is therefore ordered, adjudged and decreed that:

(1) the purpose of the monetary bond was fulfilled and Dr. Assa'ad-Faltas is entitled to a full refund of her bond forthwith;
(2) the City of Columbia's Municipal Court shall forthwith refund to Dr. Assa'ad-Faltas the sum of one thousand dollars ($1,000.00); and
(3) this ORDER does not adjudicate any other matter pending in the City of Columbia's Municipal Court.

And it is so ordered on this the 13th day of December 2012 in Columbia, South Carolina.

Honorable Carl L. Solomon,
Judge for the City of Columbia

Copy

Exhibit 3

Columbia Municipal Court
Order dated June 6, 2011

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE MUNICIPAL COURT OF THE CITY OF COLUMBIA
City of Columbia, State, v. Marie Assa'ad Faltas, Defendant.	)	Warrant Nos.: L-066971; L-066954; 38803FK; 37025FK; K-613792; K-613793 **ORDER**

This matter came before me on May 25, 2011 pursuant to an Order and Rule to Show Cause as to why the defendant should not be held in contempt of the Appeal Bond Order of April 11, 2011. Present at the hearing were the defendant along with her attorney, Orin G. Briggs; Assistant City Attorney, David A. Fernandez, and Dedre Fluitt, Jury Trial Scheduling Clerk.

Having heard from the defendant and from Dedre Fluitt, witness for the City, I find that the defendant has violated the Appeal Bond Order in the following particulars, to wit:

1. Prior to the hearing, the defendant failed to surrender her passport to the Columbia Municipal Court; and

2. Prior to the hearing, the defendant failed to provide any indicia of having consulted a psychiatrist for either a first visit, or for subsequent weekly sessions.

Therefore, the defendant is hereby found in contempt of the Order of this Court of April 11, 2011 and shall be punished as follows:

A. For failure to surrender her passport to this court, the defendant shall pay a fine of $500, or shall serve thirty (30) days in the Alvin S. Glenn

Detention Center, which time shall be served on a real-time basis, with no time off for good behavior, or work credits;

B. For failure to provide the court proof of her initial visit to and weekly sessions to a psychiatrist thereafter, the defendant shall serve thirty (30) days in the Alvin S. Glenn Detention Center, which time shall be served on a real-time basis, with no time off for good behavior, or work credits. However, the defendant shall be allowed to purge herself of this contempt by seeking the counseling she needs in order to enable her to act in her own best interests. That is, she shall first seek, as requested by her attorney, the services of a counselor, whether psychiatrist, psychologist, or other counselor at the First Presbyterian Church of Columbia and shall provide this court proof of having done so within ten days of the hearing of May 25, 2011 AND shall provide the court continuous weekly proof of weekly sessions with a counselor at that Church, or another qualified facility. This is not to say, however, that the defendant is free to seek a new counselor on a weekly basis, but must remain with First Presbyterian Church or seek permission to change counselors, in which case a good and valid reason for the requested change must be shown to the court. Failure to comply with any part of this means for the defendant to purge herself of this contempt shall result in the requirement that the defendant serve the entire thirty (30) days in the detention center.

The defendant must continue to abide by all the particulars of this Court's order of April 11, 2011, except as partly and expressly modified by this Order in Item B above.

AND IT IS SO ORDERED.

MARION O. HANNA
Presiding Judge

June 6, 2011

Columbia, South Carolina

Exhibit 4

City of Columbia
Receipt dated May 18, 2011

559

CITY OF COLUMBIA, S.C.

PAYEE COPY
MUNICIPAL COURT

1650073
OFFICIAL RECEIPT NUMBER

TYPE OF RECEIPT

T = TRAFFIC SUMMONS
C = CRIMINAL CHARGES
P = PARKING TICKET
S = STP – A/R – PAYMENT
X = OTHER (MISC.)

TYPE OF PAYMENT

B = BOND POSTED
F = FINE PAID
S = STP – A/R PAID

PAYMENT FOR ITEM BELOW

RECEIPT NUMBER			RECEIPT DATE	NAME OF PAYEE (LAST, FIRST/MIDDLE)	
TYPE OF PAYMENT (B,F,S)	TYPE OF RECEIPT (T,C,P,S,X)	TRF SUMMONS NO CASE NO & CHG-CD PARKING TICKET NO STP ACCT NO		OFFENSE	
			COURT DATE	VEH TAG NO ST WARRANT NO	AMOUNT PAID

PALMETTO COUNSELING ASSOCIATES

Daniel E. Shoultz, M.Div., Ph.D.
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Licensed Professional Counselor

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5637 Bush River Road
Columbia, SC 29212
drshoultz.pca@sc.rr.com
www.palmettocounseling.com

CITY OF COLUMBIA MUNICI
1136 WASHINGTON ST
COLUMBIA, SC 29201-322

TERMINAL I.D.: 00319400080033419600I
MERCHANT #: 800034196

VISA
#############3410
SALE
RECORD #: 17 INV: 000017
DATE: MAY 18, 11 TIME: 12:57
BATCH: 27 AUTH: 045154

TOTAL $500.00

MARIE FALTAS

I AGREE TO PAY ABOVE TOTAL AMOUNT
ACCORDING TO CARD ISSUER AGREEMENT
(MERCHANT AGREEMENT IF CREDIT VOUCHER)

CUSTOMER COPY

Exhibit 5

First Presbyterian Church
Letter dated May 23, 2011



The Christian Counseling Center
of First Presbyterian Church

May 23, 2011

To Whom It May Concern:

Maria Assa'ad-Faltas was seen in our office today for an appointment with Reid Wood, LPCI. She has agreed to continue weekly counseling to address some personal issues.

Sincerely,

Rebecca Jones

Rebecca Jones
Administrative Assistant

W. Reid Wood
Licensed Professional Counselor Intern

Under the supervision of
Thomas Barbian, Ph. D
Director

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND MARIE ASSA'AD-FALTAS Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2017-CP-40-06831 AFFIDAVIT OF SERVICE BY HAND DELIVERY

RICHLAND COUNTY
FILED
2018 JUL 31 PM 2:51
JEANETTE W. McBRIDE
C.C.P. & G.S.

1. I am an employee of the Respondent in the above-captioned action.

2. I have this day served a copy of the **Notice of Motion and Motion for Summary Judgment** in the above-captioned matter on the following person by hand delivery:

Mr. Christopher Stephen Truluck
1720 Main Street, Suite 104
Columbia, SC 29201

DATED this the 31st day of July, 2018.

Johnny E. James, Jr.
Assistant Attorney General

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2017-CP-40-06831

Marie Assa'ad-Faltas, MD, MPH

v.

State of South Carolina, and City of Columbia, SC

APPLICANT'S *TIMELY* Opposition to the State's *UNTIMELY* PURPORTED MOTION for Summary Judgment COMBINED WITH APPLICANT'S RENEWED/SUPPLEMENTED MOTION FOR RULE 11 SANCTIONS ON THE STATE

Dishonesty now joins delay as the State's only tool since Jessica E. Kinard, Esq. left the State's employ on 28 March 2018. Retired/Active Circuit Judge Goldsmith had tried this case on 22-23 March 2018 ("PCR Trial-I") and announced from the bench at Transcript ("PCR-Trial-I Tr.") p 150, lines 10-19:

> As to the order of June 15th, 2011, the Municipal Court of the City of Columbia order that has been the subject of this hearing, I grant the Applicant's motion for Post-Conviction Relief as to that order **on all the grounds argued and stated by the Applicant.**
>
> I'm going to ask her standby attorney to prepare an order consistent with the rulings of the Court, and please submit it to the Attorney General to be reviewed before you submit it to me. Thank you so much. [emphasis added]

RICHLAND COUNTY FILED
2018 AUG 6 PM 4:33

SC Assistant AG Johnny E. James, Jr, ("SCAAG James"), who had attended only Day 1 of PCR Trial-I, and whose PCR assignment is to SC's 4th and 15th judicial circuits only, assumed representation for the State and immediately began sabotaging the result Applicant *pro se* and her standby counsel Christopher S. Truluck, Esq. ("Appointee") had obtained. On 31 July 2018, SCAAG filed a motion cover sheet (which he neither served on Judge Gravely by e-mail nor on Appointee) ***falsely* claiming that *the State's* motion is already scheduled.** SCAAG James then e-mailed Judge Gravely an edict that the State's motion will be heard "at the outset of the" 10 August 2018 hearing. **But the ONLY summary judgment motion scheduled is *APPLICANT'S* Motion for Summary Judgment in *Her* Favor, filed 22 May 2018 and supplemented thereafter, and to which the State has NEVER submitted any *facts* in opposition.**

TO THE CONTRARY, *the State's own 19 January 2018 "Return and Motion to Dismiss" admits, at pages 6 of 9 and 9 of 9, first complete paragraph of the respective pages, respectively:*

> However, the allegation of ineffective assistance of counsel probably *raises questions of fact that the record does not conclusively refute.* Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State,* 279 S.C. 264, 305 S.E.2d 247 (1983).
>
> *****WHEREFORE, [....] *Respondent requests that a hearing be held on the claims of ineffective assistance of counsel,* should the Court not dismiss all claims pursuant to the motions above.

The State's motion to dismiss was ***explicitly WITHDRAWN*** *by Ms. Kinard* at PCR-Trial-I Tr. 5:16-18:

> It was the State's allegation at – at the last term of PCR court that this filing was inappropriate and should be dismissed. **That issue was, more or less, dealt with.**

The State's *own* prior admissions/pleadings FORECLOSE *the State's* last-gasp, factually *false* and bizarre **claim that Applicant was not entitled to counsel *at all,*** which comes too late in any event.

The no-entitlement-to-counsel-at-all claim is so legally frivolous and factually irrelevant, *vide infra,* that Rule 11 sanctions are amply justified for failure of SC's AG's office to act the people's attorney as it must.

Briefly, Applicant's 18 May 2011/15 June 2011 contempt convictions ***could not have been* "CIVIL"** *since* Columbia's Municipal Court ("CMC") has **NO CIVIL JURISDICTION.** CMC's "counselling" order pretends to be *solely* "to enable [Applicant] to act in her own best interests," *i.e,* for the benefit of Applicant *alone.* But Applicant ***never sued herself,*** much less in CMC, to obtain that "benefit." Otherwise, *Ex Parte Jackson,* 381 S.C. 253, 672 S.E.2d 585 (Ct. App. 2009), secured counsel for *civil* contempt as had *Cooke* v. *U.S.,* 267 U.S. 517, 537 (1925), for criminal contempt a century ago. Also, the right to not incriminate oneself **in any and all types of proceedings** is clear in *Maness* v. *Myers,* 419 U.S. 449, 464 (1975):

> In ***Kastigar v. United States,*** 406 U. S. 441 (1972), we recently reaffirmed the principle that the privilege against self-incrimination can be asserted "in any proceeding,

civil or criminal, administrative or judicial, investigatory or adjudicatory." ***Id.*** at 406 U. S. 444; ***Lefkowitz v. Turley,*** 414 U. S. 70, 414 U. S. 77 (1973); ***Murphy v. Waterfront Comm'n,*** 378 U. S. 52, 378 U. S. 94 (1964) (WHITE, J. concurring); ***McCarthy v. Arndstein,*** 266 U. S. 34, 266 U. S. 40 (1924); *United States v. Saline Bank,* 1 Pet. 100 (1828); ***cf. Gardner v. Broderick,*** 392 U. S. 273 (1968).

The Fifth Amendment includes the right to fearless advice of counsel. ("**To hold otherwise is to deny the constitutional privilege against self-incrimination the means of its own implementation.**" *Maness, supra* at 468. The transcripts of the 28 March 2011, the 6 April 2011, and the 18 May 2011 events in CMC are in 2011-CP-40-02111 and 2011-CP-40-03547, respectively. All are available for this Court's judicial notice, *vide infra,* and leave no doubt that Marion Oneida Hanna repeatedly forced Applicant to be a witness against herself. Thus, Applicant was entitled to counsel on that basis alone. If the State *now* pretends that ineligibility for *appointed* counsel means no right to counsel *at all* and/or acceptance of volunteer counsel (Briggs was NOT appointed) forfeits all expectation of effectiveness, and if the State acts as if *Alabama* v. *Shelton,* 535 U.S. 654 (2002), did not exist, **Rule 11 sanctions write themselves.**

The State's *strained* insertion of *City of Columbia v. Assa'ad-Faltas,* 420 SC 28, 800 S.E. 2d 782 (2017), *certiorari* pending before the U.S. Supreme Court No. 17-8688, **has a short answer: *if SC's Supreme Court "right or wrong" FORCED Applicant to speak only through counsel, shouldn't that counsel* a fortiorori *be* as effective *as Applicant would have been in her own* pro se *defense?*** The State asks this Court to force Applicant to *unquestioningly* accept ineffective counsel — counsel so ineffective that the State gave up on defending his performance and is, instead, claiming that Applicant was not entitled to counsel *at all.*

The State's tyrannical bad faith continues pretending *this* PCR application proves Applicant's "abuse of the judicial system." Short answer: a judge of *this* system once granted *this* PCR on ALL Applicant's claims; *i.e.,* none of them is "frivolous/abusive."

That judge NEITHER reversed himself NOR was reversed from above but VACATED his own order to give the State its requested chance to defend Briggs' performance as Applicant's counsel. **What does the State do with its second chance?** It frivolously implies that Briggs did *NOT need* to be effective because he did not to be there *at all!?!?*

Nothing should distract this Court from seeing this case for what it is: a psychiatrist-obsessed non-judge of a non-court imposed on Applicant conditions so impossible as to insure her incarceration while her harmful counsel aided the obsessed non-judge to "do what she wants to do." But Applicant's "conduct [...] does not 'warrant issuance of an order which creates **a duty impossible of performance**, so that punishment can follow.'" *Maggio* v. *Zeitz,* 333 U.S. 56, 64 (1948), which remains good law.

The State's ***false** claim* that Applicant, "not her counsel," paid $1000.00 to be released (and thus accepted all impossible, impermissible additional conditions of the release bond) has **more short answers:** Exhibit 2 to the State's 31 July 2018 motion is a 13 December 2012 ORDER finding "(3) **on or about Tuesday, April 12, 2011, *an agent* for Dr. Assa'ad-Faltas paid said one thousand dollars ($1,000.00) appeal bond to the City of Columbia's Municipal Court which continued to hold that bond since then;"** [italics added]. That "agent" was Briggs, not Applicant who was incarcerated in Alvin S. Glenn Detention Center ("ASGDC") with no access to money or to CMC. **Most crucially,** Applicant was never held in contempt for failure to pay the cash bond; **and never questioned CMC's authority to set a cash bond *only.* Indeed, Applicant always maintained that CMC had no right to impose conditions *in addition* to the cash bond because the controlling statute allows only a "bond *payable* to the municipal court."**

MORE evidence *in Applicant's favor* came *after* Judge Goldsmith affirmed his own *sua sponte recusal:* (1) PCR-Trial-I transcript, (2) Marion Oneida Hanna's second novel *The Road to Mendocino* and (3) ASGDC's records of Applicant's confinement there from 29 March to 12 April 2011.

Attached is Mr. Chris S. Truluck's custodial affidavit with documents regarding Applicant's incarceration received from the Alvin S. Glenn Detention Center as **Exhibit A**."

On 28 March 2011, Marion O. Hanna signed Applicant's initial order of confinement for 25 days. (Applicant was in custody in Palmetto Richland Hospital on 28-29 March 2011; ASGDC wrongly omitted that day from Applicant's completion of her sentence.) **On intake, *and despite failure to credit the hospital day,* ASGDC *initially* endorsed on the confinement order a release date of 15 April 2011 with good time credits. Upon seeking and receiving trustee status, Applicant earned four more work credit days *and her release date was reset to 11 April 2011 at 4:00 am per ASGDC policy.***

BUT a purported "amended" order signed by Marion O. Hanna on 6 April 2011 pretends to "clarify" that no good time or other credits are to be given to Applicant. Applicant's release date was then **ILLEGALLY** reset to 24 April 2011; and she could no longer *physically* or *medically* survive in ASGDC; but there was no release order **or release bond order *until AFTER Applicant's correct release date of 11 April 2011 at 4:00 am had come and gone without her being released.***

Hanna's 6 April 2011 "amended" confinement order to ASGDC is mutiply illegal: (1) CMC has no authority to make a good-time offense a day-for-day offense; (2) Double Jeopardy prohibits retroactive increase of sentence, *Benton* v. *Maryland,* 395 U.S. 784 (1969), and *U.S.* v. *Benz,* 282 US 304 (1931); (3) Applicant's appeal 2011-CP-40-02111 was already docketed in circuit court and divested the municipal court of jurisdiction to increase or "clarify" the sentence; and (4) *North Carolina* v. *Pearce,* 395 U.S. 711 (1969), prohibits vindictiveness if a convict appeal. Hanna announced her intent to lengthen Applicant's sentence after she had perfected her appeal; and her ineffective counsel responded only "the judge can do what she wants to do." Tr. of 6 April 2011 release-bond-setting hearing in CMC at 1:8.

The retroactive intentional lengthening of Applicant's sentence being illegal, that sentence must be deemed completed by 11, if not 10, April 2011 at 4:00 am. Any release bond order after that would be *a nullity at law* and beyond CMC's jurisdiction *regardless of Briggs' performance.*

Legally, after 11 April 2011 at 4:00 **am**, Applicant was no longer a detainee but a hostage at ASGDC; Hanna's 11 April 2011 **pm** writing was not a lawful order but a ransom note; and the $1,000.00 paid to secure the ailing Applicant's release was not bond but a ransom. **Things must be called by their real names.**

Those ASGDC records were served on the State, whose counsel acknowledge their receipt. Thus, the State's argument that Applicant accepted impossible conditions to be released after she had *fully served* her sentence pending appeal, *solely because her counsel paid the cash bond,* is factually and legally frivolous and proves the State HAS NO DEFENSE of Briggs' performance.

In adjudicating the parties' submissions, the state of the record at the time of ruling, not the time motion was made, controls; *Ortiz* v. *Jordan,* 562 U.S. 180, 131 S.Ct. 884 (2011); and includes all judicially-noticeable matter brought to the court's attention; *Tellabs, Inc.,* v. *Makor Issues & Rights, Ltd.,* 551 U.S. 308, 127 S.Ct. 2499, 2509 (2007). *Vide* Now-retired U.S. District Judge G. Ross Anderson's July 2011 article http://mydigitalpublication.com/article/Using_The_Tools_The_Rules_Gave_You/783998/75687/article.htm/ in *South Carolina Lawyer,* The distinguished jurist concluded that article of his thus:

> I believe you will discover that judicial notice will be a very valuable addition to your trial skills. I hope this article will push lawyers to reevaluate their litigation plans and strategies, and I also hope it will encourage judges to take charge when lawyers spin their wheels on indisputable matters. Judicial notice is an essential tool for winnowing out the chaff that prevents parties, judges and juries from focusing on rightfully disputed issues. Early consideration and use of judicial notice will result in saving everyone involved time, money and effort, without compromising the results. You do your part, and I'll do mine.
>
> *The Hon. G. Ross Anderson Jr. Is a Senior U.S. District Judge in Anderson.*
> *Judge Anderson's law clerks, Johanna C. Valenzuela and Andrew R. de Holl, contributed to this article.*

Applicant does her part by seeking judicial notice of these records: (1) Richland County's Circuit Court's records of all her cases (in Public Index under all combinations and misspellings of Assa'ad and Faltas and in hard copies in the Clerk's office); (2) all her cases in the U.S. District Court (DSC) and in the U.S. Court of Appeals (4th Cir.) (all accessible via PACER); (3) SC Appellate cases 2015-000941, 2016-002541, and 2018-001290 (all accessible on C-Track); (4) Petition 17-8688 (accessible on SCOTUS' website); and (5) PCR-Trial-I transcript, to be delivered by Ms. Ambroziak for the Honorable Judge Gravely's review.

Said records establish Applicant's entitlement to PCR-vacation of her challenged contempt convictions.

They also invoke this Court's duty to allow Applicant to create a factual record to support her contention that Society has so evolved, while CMC and "courts" of its ilk have so descended into lawlessness, that, if not totally eliminated, they should be stripped of their often-abuse summary-contempt powers or, at least mandatorily stay all their sentences pending appeals. *See, e.g., Sacher* v. *U.S.*, 343 U.S. 1, 8, 12 (1952):

> **Summary punishment always, and rightly, is regarded with disfavor and, if imposed in passion or pettiness, brings discredit to a court as certainly as the conduct it penalizes. * * * * That contempt power over counsel, summary or otherwise, is capable of abuse is certain. Men [and women] who make their way to the bench sometimes exhibit vanity, irascibility, narrowness, arrogance, and other weaknesses to which human flesh is heir.**

WHEREFORE, Applicant's, not the State's, motion for summary judgment is the one earlier filed, the one supported by serious law and objective true facts, ***the one deserving to be heard first,*** **and the only one deserving to be granted.** Any less would be intellectual laziness and dereliction of duty.

Respectfully submitted and, through Appointee, served on SC's Attorney General and on the Honorable Judge Gravely by appropriate means, on 6 August ~~2018, all God~~ so willing.

Marie-Thérèse Assa'ad-Faltas, MD, MPH, Applicant *pro se* for purposes of this pleading
P.O. Box [redacted], Columbia, SC 29290 Phone: [redacted]
e-mail: Marie_Faltas@hotmail.com Cell: [redacted]

Certificate of Service

The undersigned states that on August 6, 2018 he caused a true and correct copy of this document to be served by e-mail and by first-class U.S. Mail, prepaid on:

Johnny James jjames@scag.gov
P.O. Box 11549
Columbia, SC 29211-1549

The undersigned states that on August 6, 2018 he caused a true and correct copy of this document to be served on the Honorable Perry Gravely by personal service and by e-mail at pgravelylc@sccourts.org **and** pgravelysc@sccourts.org

TRULUCK LAWFIRM, LLC

Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104, Columbia, SC 29201
Tel: (803) 556-7285 Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com
Standby Attorney for Applicant

Columbia, South Carolina
Dated August 6, 2018

and in hard copies in the Clerk's office); (2) all her cases in the U.S. District Court (DSC) and in the U.S. Court of Appeals (4th Cir.) (all accessible via PACER); (3) SC Appellate cases 2015-000941, 2016-002541, and 2018-001290 (all accessible on C-Track); (4) Petition 17-8688 (accessible on SCOTUS' website); and (5) PCR-Trial-I transcript, to be delivered by Ms. Ambroziak for the Honorable Judge Gravely's review.

Said records establish Applicant's entitlement to PCR-vacation of her challenged contempt convictions.

They also invoke this Court's duty to at least allow Applicant to create a full factual record to support her contention that Society has so evolved, while CMC and "courts" of its ilk have so descended into lawlessness, that, if not totally eliminated, they should at the very least be stripped of their often-abuse summary-contempt powers as held in *Sacher* v. *U.S.*, 343 U.S. 1, 8, 12 (1952):

> **Summary punishment always, and rightly, is regarded with disfavor and, if imposed in passion or pettiness, brings discredit to a court as certainly as the conduct it penalizes. * * * * That contempt power over counsel, summary or otherwise, is capable of abuse is certain. Men [and women] who make their way to the bench sometimes exhibit vanity, irascibility, narrowness, arrogance, and other weaknesses to which human flesh is heir.**

WHEREFORE, Applicant's, not the State's, motion for summary judgment is the one earlier filed, the one supported by serious law and objective true facts, the one deserving to be heard first, and the only one deserving to be granted. Anything else would be intellectual laziness and dereliction of duty.

Respectfully submitted and, through Appointee, served on SC's Attorney General and on the Honorable Judge Gravely by appropriate means, on 6 August 2018, all God so willing,

Marie-Thérèse Assa'ad-Faltas, MD, MPH, Applicant *pro se* for purposes of this pleading
P.O. Box [redacted], Columbia, SC 29290 Phone: [redacted]
e-mail: Marie_Faltas@hotmail.com Cell: [redacted]

Certificate of Service

The undersigned states that on August 6, 2018 he caused a true and correct copy of this document to be served by e-mail and by first-class U.S. Mail, prepaid on:

Johnny James jjames@scag.gov
P.O. Box 11549
Columbia, SC 29211-1549

The undersigned states that on July 19, 2018 he caused a true and correct copy of this document to be served on the Honorable Perry Gravely by personal service and by e-mail at pgravelylc@sccourts.org **and** pgravelysc@sccourts.org

TRULUCK LAWFIRM, LLC

Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104, Columbia, SC 29201
Tel: (803) 556-7285 Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com
Standby Attorney for Applicant

Columbia, South Carolina
Dated August 6, 2018

RICHLAND COUNTY
FILED
2018 AUG -6 PM 4:33
JEANETTE W. McBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Marie Assa'ad-Faltas, MD, MPH, Applicant(s), vs. State of South Carolina, Respondent(s).	IN THE COURT OF COMMON PLEAS C/A NO: 2017-CP-40-06831 **CUSTODIAL AFFIDAVIT OF EXHIBITS**

RICHLAND COUNTY FILED
2018 AUG -6 PM 4:33
JEANETTE W. McBRIDE C.C.P. & G.S.

Chris S. Truluck, stand-by counsel to Marie Assa'ad-Faltas, MC, MPH ("Applicant"), personally appeared before me on this day and after being duly sworn, according to law, and upon my oath and states as follows:

That he represents that, pursuant to subpoena issued by him on behalf of Applicant on June 25, 2018 to Ronaldo Myers, Director of Alvin S. Glenn Detention Center ("Subpoena") and delivered by consent to Mrs. Francena Scipio ("Scipio") of the Alvin S. Glenn Detention Center Records Department, he personally retrieved the documents, attached as Exhibit A, from Scipio on or about July 13, 2018. Subsequently, on or about July 19, 2018, he further represents that he received from email address Scipio.Francena@richlandcountysc.gov, and presumptively from Scipio pursuant to Subpoena, the documents attached as Exhibit B.

Truluck Law Firm, LLC
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285

Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff

SWORN TO AND SUBSCRIBED before me on
This 6th day of August, 2018

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2-27-23

EXHIBIT A

ALVIN S. GLENN DETENTION CENTER

RICHLAND COUNTY
201 John Mark Dial Drive υ Columbia, South Carolina 29209 υ Telephone (803) 576-3200 υ Fax (803) 576-3292 υ TDD (803) 748-4999

Mr. Ronaldo D. Myers, MA, CJM, CTT
Director

Mr. D. Shane Kitchen, CJM
Assistant Director

July 10, 2018

Mr. Chris C. Truluck
1720 Main street, Suite 104
Columbia, South Carolina 29201

RE: Faitas Marie Assaad Subpoena

Dear Mr. Truluck,

Please find attached the Booking Report, commitments, color photo, housing activity, incident report, property sheets and discharge/release information concerning the above inmate booked March 29, 2011 to April 12, 2011.

The records attached are certified as true and accurate copies of the originals and as kept in the regular course of ASGDC business.

We have no information concerning applicant's location at the City of Columbia Municipal Court during her hearing held on April 6, 2011. As stated in my email dated June 25, 2018 to your attention, unable to determine visitation with Attorney Briggs, not kept in inmate records.

The Medical portion will be handled by the Medical Department/Correct Care Solutions, please feel free to follow up with the Medical Department for response or update.

If any further information is needed, you may contact me at 803-576-3240 or email Scipio.francena@richlandcountysc.gov.

Sincerely,

Francena H. Scipio
Data Entry Specialist
Records Department

Attachments

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed Francena H Scipio
Date 7-12-18

Francena Scipio

From: ctruluck@trulucklawfirm.com
Sent: Monday, July 02, 2018 12:47 PM
To: Francena Scipio; Marie Assa'ad-Faltas; Marie Faltas
Subject: RE: Subpoena for Faitas Marie Assaad Booked 3/29/2011 to 04/12/2011

Mrs. Scipio,

First, thank you for forwarding on a response to our subpoena so quickly. However, as standby counsel to Dr. Marie Faltas I have been asked to additionally request from you the documents, certified as true copies and as kept in the regular course of ASGDC business. Please let me know if you will be able to comply with this request.

Sincerely,

Chris S. Truluck, Esq.
1720 Main Street, Suite 104
Columbia, SC 29201
Phone: 803-556-7285
Fax: 843-620-0502
TruluckLawFirm.com

PRIVILEGED AND CONFIDENTIAL INFORMATION: This electronic message, including any attachments, is intended solely for the use of the intended recipient(s) and may contain information that is attorney-client privileged, may be confidential work product, or may be proprietary. If you are not the intended recipient, please notify the sender, then delete and destroy all copies of this communication and any attachments. If you have received this e-mail in error, please note that any dissemination, distribution, or copying of this communication is strictly prohibited and may subject you to civil liability.

-------- Original Message --------
Subject: Subpoena for Faitas Marie Assaad Booked 3/29/2011 to 04/12/2011
From: Francena Scipio <Scipio.Francena@richlandcountysc.gov>
Date: Tue, June 26, 2018 12:27 pm
To: "ctruluck@trulucklawfirm.com" <ctruluck@trulucklawfirm.com>
Cc: "tbelton@correctcaresolutions.com"
<tbelton@correctcaresolutions.com>, April Patterson
<Patterson.April@richlandcountysc.gov>

Hi Mr. Truluck,

Please find attached the following booking, commitments dated March 28, 2011 and April 6, 2011, discharge sheet, housing activity, incident report and property sheets for Faitas Marie Assaad.

We have no information concerning applicant's location at the City of Columbia Municipal Court during her hearing held on April 6, 2011. As stated in my email dated June 25, 2018 to your attention, unable to determine visitation with Attorney Briggs, not kept in inmate records.

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Marie Assa'ad-Faltas, MD, MPH, Applicant
V:
State of South Carolina, Respondent

SUBPOENA IN A CIVIL CASE

Case Number: 2017-CP-40-06831

Pending in Richland County

TO: Ronaldo Myers, Director of Alvin S. Glenn Detention Center

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects):

Any and all inmate logs or documentation pertaining to Marie Assa'ad Faltas, MD, MPH's ("Applicant"), a/k/a Marie Assaad Faitas, incarceration on or about March 29, 2011 through April 12, 2011 for contempt at the Alvin S. Glen Detention Center. Specifically, any and all logs or documentation showing Applicant's cell location or location otherwise to specifically include Applicant's location at the City of Columbia Municipal Court during her hearing held on April 6, 2011, medical examination records, documentation of good time or work credits, disciplinary infractions and/or visits from her counsel; Orin Briggs. Applicant's birth date is April 4, 1953 and inmate number is ~~59159~~ 59154 for further reference.

PLACE	DATE AND TIME within 15 days of service of this subpoena.
Truluck Law Firm, LLC 1720 Main Street, Suite 104 Columbia, SC 29201	

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS ISSUED BY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature — Date: 6/25/18 — Print Name: Chris J. Truluck

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number:

1720 Main St. Ste 104
Columbia, SC 29201 803-256-7285

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

6-26-18
Booking & discharge documents only
MEdical Not included
FH Scipio

Clerk of Court/Issuing Officer's Signature Date Print Name

Pro Se Litigant's Name, Address and Telephone Number:



ASSAAD, FAITAS MARIE

Offender ID	59154
Booking ID	1552353
Booking Date	03/29/2011

Address
PO BOX [redacted]
COLA, SC 29290

BirthDate	[redacted]
Social Security	241-41-0682
Race	White
Sex	Female
Eyes	Blue
Hair	Black
Height	65
Weight	200

Offense Description								
Warrant Code	**Bond Court**	**Trial Court**	**Bond Amount**	**Bond Type**	**Sentence**	**Release Date**	**High Code**	**Offense Comments**
Contempt / Contempt of Circuit Court								
	CITY	CITY	$0.00		DISCHARGE - 0	04/12/2011	MGST	AMENDED REL-04/23/2011 NO GTWC BREDMOND 17996 TI 147328

Detainer

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed Frances H Scipio
Date 7-12-18

574

The State of South Carolina
County of Richland

THE STATE
against

Marie Assaad-Faltas Defendant

DISCHARGE

12 April A.D. 2011

RECORDER

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed Vanessa Dykes
Date 7-12-18

Contempt -

The State of South Carolina
County of Richland

By Dana D. Turner RECORDER AND EX-OFFICIO MAGISTRATE

IN AND FOR THE COUNTY AND STATE AFORESAID,

To the Keeper of the Jail for said County, GREETING:

FOR AS MUCH AS Marie Assaad-Faltas

in your custody now for want of his finding sureties to

hath found me sufficient sureties in that behalf.

THESE ARE, THEREFORE, to authorize and require you that if the said defendant do remain in jail for no other cause, then you forbear to detain him any longer, but suffer him to go at large, and that upon the pain will fall therein.

4/1648463
1000 —
4/12/2011

GIVEN under my Hand and Seal, this

12 day of April A.D. 2011

(L.S.) Dana D. Turner RECORDER

Contempt of Court
25 DAYS

The State of South Carolina
County of Richland

By HANNA RECORDER AND EX-OFFICIO MAGISTRATE

IN AND FOR THE COUNTY AND STATE AFORESAID.

TO ANY LAWFUL CONSTABLE AND TO THE KEEPER OF THE COMMON JAIL IS THE SAID COUNTY:

These are to command you for forthwith to convey and deliver into the custody of the said Keeper of the said jail body of MARIE ASSA'AD FALTAS

charged before me on _____ on the oath of _____

with _____

_____ bond to Court of General Sessions.

And you, the said Keeper, are hereby required to receive the said _____

into your custody in the said jail and _____ there safely keep until _____ he _____ be thence delivered by due course of law.

Given under my hand and seal, at Columbia, S.C. this MARCH 28, 2011

IN-3/29/2011
Cont 4-11-11
T/S 4/15/2011 DMB 25945 Medical

Seal
Recorder and Ex-officio Magistrate

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed _____
Date 7-12-18

The State of South Carolina
County of Richland

THE STATE
Vs.

MATTIE ASSA'AD
FALTAS

COMMITMENT

A.D.
MARCH 28,
2011

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed Francena H Scipio
Date 7-12-18

Recorder and ex-Officio Magistrate

Amended Contempt of Court - 10 days

The State of South Carolina
County of Richland

Def must serve all 25 days - no time off for good behavior or any other reason

Contempt for violation of Court order of 10/20/10 - 15 days

By Marion Hanna RECORDER AND EX-OFFICIO MAGISTRATE

IN AND FOR THE COUNTY AND STATE AFORESAID.

TO ANY LAWFUL CONSTABLE AND TO THE KEEPER OF THE COMMON JAIL IS THE SAID COUNTY:

These are to command you for forthwith to convey and deliver into the custody of the said Keeper of the said jail body of Marie Assa'ad Faltas

charged before me on _____ on the oath of _____

with _____

_____ bond to Court of General Sessions.

And you, the said Keeper, are hereby required to receive the said _____

Marie Assa'ad Faltas

into your custody in the said jail and _____ there safely keep until _____ he _____ be thence delivered by due course of law.

Given under my hand and seal, at Columbia, S.C. this 6 April 2011

_____ Seal
Recorder and Ex-officio Magistrate

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed Vincent A Depew
Date 7-12-18

The State of South Carolina
County of Richland

THE STATE
Vs.

Marie Assaad Fattas

COMMITMENT

6 April A.D. 2017

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed Shannon H. Scipio
Date 7-12-18

Marion Hinnant
Recorder and ex-Officio Magistrate

Housing Activity by Inmate

Run Date/Time 6/25/2018 12:57:10 PM

Offender Id: **59154**

Offender Name: **FAITAS MARIE ASSAAD**

Booking Date: **3/29/2011 4:29:00 PM** Release Date: **04/12/2011**

Activity Time	Placement	Housing Dormitory	Activity
3/29/2011 4:29:00 PM	PREBOOKING	INTAKE	Initiated Booking
3/29/2011 4:37:00 PM	PREBOOKING	INTAKE	Confiscated Contraband
3/29/2011 4:44:00 PM	INTAKE	INTAKE	Assigned Placement
3/29/2011 4:52:00 PM	INTAKE	INTAKE	Observation
3/29/2011 4:56:00 PM	LARGE PROPERTY	INTAKE	Assigned Placement
3/29/2011 5:01:00 PM	LARGE PROPERTY	INTAKE	Confiscated Contraband
3/29/2011 9:19:00 PM	LARGE PROPERTY	PAPA	Assigned Housing
3/29/2011 9:19:00 PM	HOUSED	PAPA	Assigned Placement
3/30/2011 4:27:00 PM	HOUSED	PAPA	Assigned Classification
3/30/2011 4:29:00 PM	HOUSED	UNIFORM	Assigned Housing
3/30/2011 4:29:00 PM	HOUSED	UNIFORM	Assigned Placement
4/7/2011 1:08:00 PM	HOUSED	UNIFORM	Assigned Alert
4/12/2011 3:51:00 PM	DISCHARGE	UNIFORM	Assigned Placement

580

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed Maureen M Lepri
Date 7-12-18



ASSAAD, FAITAS

Offender ID: 59154
Booking ID: 1552353
Birth Date: [redacted]
Social Security: [redacted]
Address: PO BOX [redacted]
COLA SC
29290

Race: White
Sex: Female
Eyes: Blue
Hair: Black
Height: 65
Weight: 200

Release Date: 4/12/2011
Release Time: 16:12:40
Release Officer: INGRAM, TANITA

Comments

581

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed Shaneca H Scipio
Date 7-12-18

Offender Name:
ASSAAD, FAITAS MARIE

Date of Birth:
[redacted]

Booking Date:	Booking Time:	Offender ID:
03/29/2011	3/29/2011 4:29:00 PM	59154

Property:
8 FLASH DRIVE;CHAIN AND CROSS;WATCH;KNIFE;BLACK BAG;YELLOW METAL RING 2;

Property Box:

Comments:
14.00 CASH

TF 1473 28
015473

582

The personal property inventoried and described above is an accurate listing of property taken from me for storage. I understand should I have any property values at $50.00 or more, that prior to my 11th day of confinement at the Detention Center I must dispose of the property by either mailing the property home at my own expense or by having an individual of my choosing pick-up the property during designated hours. I further understand that the Detention Center is not responsible for any personal property maintained in my possession and/or that is not listed. I have been informed that I have a blood sample that immediately upon discharge I must take it with me. I understand that upon my discharge from the Detention Center, any personal property I leave behind in my housing and/or holding area will be immediately disposed of by the Detention Center. Any personal property left in storage will be disposed of thirty (30) days after my discharge. I further understand should I have any missing or damaged property from the inventory above, upon discharge I must submit to the Detention Center within seventy-two (72) hours in writing a description of the property and/or damage. When making a property claim I will make every attempt possible to supply the Detention Center with proof of purchase for the property in question.

Bernard Byrd
(Inventorying Officer's Signature)

29 March 2011
(Date)

(Inmate's Signature)

With the exception of any personal property listed above which I released earlier, all of the above inventoried and described property has been returned to me in full and I hereby acknowledge receipt or same.

(Returning Officer's Signature)

4/12/11
(Date)

(Inmate's Signature)

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed Frances M Lupis
Date 7-12-18

Offender Name:
ASSAAD, FAITAS MARIE

Date of Birth:
[redacted]

Booking Date:	Booking Time:	Offender ID:
03/29/2011	3/29/2011 4:29:00 PM	59154

Property:
WHITE GOWN;YELLOW JACKET;PURPLE JACKET;PURPLE SHIRT;UNDERWIRE BRA;
2 pair of Red Socks (Clear)

Property Box:
A414

Comments:
A414

583

The personal property inventoried and described above is an accurate listing of property taken from me for storage. I understand should I have any property values at $50.00 or more, that prior to my 11th day of confinement at the Detention Center I must dispose of the property by either mailing the property home at my own expense or by having an individual of my choosing pick-up the property during designated hours. I further understand that the Detention Center is not responsible for any personal property maintained in my possession and/or that is not listed. I have been informed that I have a blood sample that immediately upon discharge I must take it with me. I understand that upon my discharge from the Detention Center, any personal property I leave behind in my housing and/or holding area will be immediately disposed of by the Detention Center. Any personal property left in storage will be disposed of thirty (30) days after my discharge. I further understand should I have any missing or damaged property from the inventory above, upon discharge I must submit to the Detention Center within seventy-two (72) hours in writing a description of the property and/or damage. When making a property claim I will make every attempt possible to supply the Detention Center with proof of purchase for the property in question.

CWCSt176087
(Inventorying Officer's Signature)

3/29/11
(Date)

Faitas Assaad
(Inmate's Signature)

With the exception of any personal property listed above which I released earlier, all of the above inventoried and described property has been returned to me in full and I hereby acknowledge receipt or same.

(Returning Officer's Signature)

(Date)

(Inmate's Signature)

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed Francesca A Scipi
Date 7-12-18

ALVIN S. GLENN DETENTION CENTER
INCIDENT REPORT

Incident Category: _____

Incident Time: 2119 **Incident Date:** 3/29/11 **Incident Location:** Intake

Staff Member Reporting Incident: C. Dawkins-West

Reporting Staff Member's Narrative and Inmates Involved

1st Inmate Involved: Assad, Feitas Marie **Inmate #:** 59154 **Charge:** _____

2nd Inmate Involved: _____ **Inmate #:** _____ **Charge:** _____

On March 29, 2011 at approximately 2119 detainee Assad, Faitas Marie #59154 was escorted to unit Papa wearing a medical alert bracelet in which she was allowed to have per CMA Charles Nolan.

Reporting Staff Member's Signature: C. Dawkins-West **Report Completion Date:** 3/30/11

Other Staff Members Involved

_____

Medical and/or Use of Force Narrative

Medical Attention Necessary: Yes _____ **No** ✓ **Use of Force Necessary: Yes** _____ **No** ✓

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed
Date 7-12-18

Supervisor's Narrative

On the above Date and approximate time Detainee # 59154 ASSAD Faitts was escorted to Unit Papa wearing a medical Bracelet Approved By CNA Charles Noland.

Supervisor's Signature: Sgt Rebecca Pickard **Date:** 3-30-11

Inmate Movement and Status Information

1st Inmate: _____ **Inmate Number:** _____ **Moved to Unit:** _____

Pre-Hearing: _____ **Cool Down:** _____ **Suicide Watch:** _____ **Medical Watch:** _____ **Protective Custody:** _____

Administrative: _____ **Classification:** _____ **Other Movement Reason:** _____

Property Inventoried By: _____ **Inmate Moved By:** _____

2nd Inmate: _____ **Inmate Number:** _____ **Moved to Unit:** _____

Pre-Hearing: _____ **Cool Down:** _____ **Suicide Watch:** _____ **Medical Watch:** _____ **Protective Custody:** _____

Administrative: _____ **Classification:** _____ **Other Movement Reason:** _____

Property Inventoried By: _____ **Inmate Moved By:** _____

Watch Commander's Review and Narrative

Concur with Action Taken by Staff.

Watch Commander's Signature: Lt Donald Weber **Date:** 3/30/11

Incident Report Distribution

Medical: _____ **Maintenance:** _____ **Operations:** _____ **Classification:** _____ **Professional Standards:** _____ **RCSO:** _____

Administration: _____ **Hearing Officer:** _____ **Other Distribution:** _____

Division Manger's Review and Narrative

Division Manager's Signature: _____

CERTIFIED TRUE COPY OF THE ORIGINAL DOCUMENT
Signed Florence A Kapu
Date 9-12-18

EXHIBIT B

2011

Date	Attorney	Defendant	Dom	Tel	Out
4-1	Pringle Fielding	McGee Frankie	Hotel	1325	1445
4-1	Cochran, Charles	Pickett Ted Murray Rod	Delta Foxtrot	1445	1547
4-1	Thornwell, Denise	Johnson T	X-Ray	1535	1605
4-1	Leon, Timbers	Infk	FT Tech	1536	1551
4-1	Rutherford, Todd		Juliet	1620	1636
4-1	Carson, D.Q.	Richard Otrabanda	Yankee	1810	1910
4-1	Briggs Orin	Fallas, Marie	Uniform	1533	1630
4-3	Jones William Spivey, Fred	Jonathan Holloway " "	Kilo " "	1100 1100	1205 1205
4/3	Sutherland, Travis	Gershwin, Antonio Lake Kentucky	Hotel Juliet	1213	1310
4-3 4-3	Cooper, James Newton, Clarke	Lane, Jesse Lane, Jesse	Kilo Kilo	1338 1338	1423 1423
4-4	Post William	Brown James	Victor	0927	0943
	Mackey Commission	Brown Michael Hayes Lavar	Echo Sierra	1321	1408
4-4	Duncan William	Pearson K Hayes Travis	Victor Juliet	1643 1643	1753
4-4 4-4	Robinson Charles Cain, Rachel	Lucas Lenn Turner Jamie Lawrence Nelson	Golf Kilo Bravo	1124 2001	1830 2036
	Turner Traci	Harris Lonnie	Kilo	0739	0933

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed [signature]
Date 7-18-18

10 a 2011

Dec	Attorney	Defendant	Dom	IN	Out
4/5	Truluck, Christie	Anderson, Corey D		9:45	1117
4/5	Rucklick, Chas	Anderson, Christie E		9:45	1119
4-5	Briggs, Cecil	Assault	Misdem	1224	
4-5	Johns, Theresa	Poss Narc	Cocaine	1242	639
	Prob viol	Johns, Theresa	Poss	1242	639
		Johns, Antonio	Misd	1242	639
	Newton, Joseph	Bynum, Joseph	Charle	1255	834
4-5	Young, Boyd	Nesbitt, Kendall	Felony	1346	1500
	Young, Sandra			1346	1500
4-5	Leonard, Christopher	Nance, Mark	Misd	1356	714
4-5	Moulton, Michael	Moulton, Adam	Felony	1653	719
4-6	Davis, Jennifer	Nelson, Anthony	Alpha	0800	0945
		Harmon, Marlon	Foxtrot	—	—
4-6	Kendricks, Josh	Smith, Michael	SHA	0809	
4-6	Sheely, Luke	Harmon, Kyle	Golf	0815	0930
		Hickman, Michael	Hotel	—	
4-6	McMullen, Michael	Bond ct	—	0910	0947
4-6	Cooper, James	Holmes, Rodney	Alpha	1010	
4-6	Bailey, John	Godwin, James	Foxtrot	1030	1100
		Gett, Craig	Lima	—	
4-6	Burnside, Allen	Dameon, Richard	Golf	1455	1544

CERTIFIED TRUE COPY
OF THE ORIGINAL DOCUMENT
Signed [signature]
Date 7-18-18

State of South Carolina)
)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2017-CP-40-6831

Marie Assa'ad-Faltas,

Applicant,

vs.

The State of South Carolina,

Respondent.

Transcript of Record

August 10, 2018
Columbia, South Carolina

B E F O R E:

The Honorable Perry H. Gravely, Judge

A P P E A R A N C E S:

Marie Assa'ad-Faltas
Self-represented Applicant

Christopher S. Truluck, Esquire
Stand-by Counsel for the Applicant

Johnny E. James, Jr., Esquire, Assistant Attorney General
Attorney for the Respondent

ALSO PRESENT:

Steve D. Dennis, Esquire

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

Witness/Description Page No.

Certificate Page. 49

E X H I B I T S

No. Description Ev.

No exhibits introduced during this portion.

THE COURT: All right, we're ready to proceed with ---

DR. FALTAS: Your Honor.

THE COURT: We're, we're through with that previous hearing, Ms. -- Dr. Faltas. We're now proceeding on the PCR.

DR. FALTAS: I just wanted to show you the ---

THE COURT: We're through with that hearing, Dr. Faltas.

DR. FALTAS: --- my motion to reconsider.

THE COURT: We're here now on your PCR application.

DR. FALTAS: I object to your calling the state. I am the plaintiff, and I get to go first. Please let me make my record on that objection.

THE COURT: All right, we can -- all right, first of all, you have, I believe, have filed a motion for continuance on this PCR.

DR. FALTAS: No, sir. That's where you're mistaken. I filed the motion for continuance on the appeal and that, too, was served.

THE COURT: Okay.

DR. FALTAS: And that's why I wanted to show you. The way I do this ---

THE COURT: All right.

DR. FALTAS: May I ---

THE COURT: We're going to hear -- we're through with

that hearing. We're here now on the ---

DR. FALTAS: May I, may I, may I show ---

THE COURT: No. We're not involved in that appeal anymore. We're only here on -- about your ---

DR. FALTAS: I'll, I'll file a written motion to reconsider.

THE COURT: All right, you can file that with the clerk's office.

DR. FALTAS: Yes. Now, I, I ---

THE COURT: All right, we're here for the appeal.

DR. FALTAS: I ---

THE COURT: Now, okay, let me say a few things on the appeal -- on not the appeal. I'm sorry. The PCR. Both sides have filed motions for summary judgment. So, we need, we need to hear those motions for summary judgment first.

I know you filed a motion for summary judgment first, so I'll hear your argument first, and then I'll hear their argument for their motion for summary judgment.

DR. FALTAS: Thank you.

THE COURT: All right, it's not going to be the whole hearing. This is just going to be on the motion for summary judgment. You, you understand the difference?

DR. FALTAS: Oh, I understand the law better than many people.

THE COURT: Okay.

DR. FALTAS: Believe me.

THE COURT: Well, good.

DR. FALTAS: Judge, federal Judge Joe Anderson said I was ---

THE COURT: All right. That's, that's fine. Let's just get to your ---

DR. FALTAS: --- better than half the lawyers who practiced before him. But, Your Honor, I have knee issues and I get out of breath.

THE COURT: All right.

DR. FALTAS: So, may I ---

THE COURT: Well, let me, let me share my ramifications. I'm going to give each side twenty minutes to argue on their motion for summary judgment, okay? So, I'll be glad to hear from you.

DR. FALTAS: May, may I address the court from a seated position?

THE COURT: That's fine if you need to.

DR. FALTAS: And for the court -- oh, they are back. I wanted to -- if they told you there is no certificate of service, I wanted to show -- Your Honor, I take very seriously that someone says something false concerning court records.

THE COURT: All right.

DR. FALTAS: The way I do my certificate ---

THE COURT: All right, we're here for your PCR, ma'am.

DR. FALTAS: Okay. So, I just need to ask. May I, I pull the microphone ---

THE COURT: Yes.

(A PAUSE.)

DR. FALTAS: Do my twenty minutes start now, Your Honor?

THE COURT: Yes.

DR. FALTAS: Thank you.

THE COURT: Whenever you're, whenever you're ready.

DR. FALTAS: I am ready, and I wanted to say two things at the outset, please. First, I think that even God himself came down and said Dr. Faltas is right. I think you've made up your mind to rule against me, and you've exhibited that in the appeal by denying my motion for counsel without even hearing it, by refusing to even look at the certificate of service, to let me take it out from -- by refusing all of that. So, I'm asking you to please let me make my record. That's one thing.

THE COURT: All right, we're here on the PCR, ma'am. We're through with the appeal. So, I ---

DR. FALTAS: I know, but let me make my, my record on the PCR.

THE COURT: Okay.

DR. FALTAS: Don't ---

THE COURT: I'm sorry.

DR. FALTAS: Don't do this, deny it before I get to ---

THE COURT: I'm not going to do that. I'll listen to ---

DR. FALTAS: You have already done it.

THE COURT: All right. Well ---

DR. FALTAS: There is no reason to do it.

THE COURT: All right. We're here on your PCR. Proceed.

DR. FALTAS: The second, the second thing is do you know of any reason that requires your, your recusal, and let me, let me let me tell you why there might be a reason, okay? Okay.

So, I'm so Christian, I believe that I have a duty to forgive everyone who wrongs me, but the duty to forgive is not a passive, cowardly thing. I forgive you. I have a duty to make people repent, and -- but whenever someone dies, I have no longer the possibility to ask them to repent or to make them repent. So, I try to go to the funeral.

So, recently Judge C. Weston Houck -- by recently, I mean within the past year -- died. So, I wanted to know where the funeral is so I can go and do my prayer for

forgiveness and whatever. So, I discovered that his daughter is in a same-sex marriage. Now, twenty-five years ago ---

THE COURT: All right, you're using, you're using your twenty minutes.

DR. FALTAS: I, I know. I know.

THE COURT: Okay.

DR. FALTAS: But I think that's time well spent if -- if I am going to be before a biased judge, I need to, to preserve my rights.

So, I found out that Judge, the late Judge C. Weston Houck's -- the federal judge's daughter was in a same-sex marriage. Now, twenty-five years ago I had written an article in *The State* newspaper.

THE COURT: Let's get to your PCR, ma'am. I mean, I want to hear from you.

DR. FALTAS: Do you have bias against me? Yes or no.

THE COURT: I do not. I do not have bias against you.

DR. FALTAS: All right. Did you hear of me, or did someone talk to you about me before this hearing?

THE COURT: I have read obviously from looking at the order. I have read the orders from the Supreme Court. So, now let's -- I'm -- I do not ---

DR. FALTAS: Did ---

THE COURT: --- have a bias against you. I will hear

the facts of this ---

DR. FALTAS: Did you make up your ---

THE COURT: --- case and rule on it.

DR. FALTAS: Did you make up an impression because those orders offend me horribly.

THE COURT: I did not make an impression.

DR. FALTAS: Okay.

THE COURT: I want to hear your ---

DR. FALTAS: All right. The next, the next thing in that prior case, you said that you think that Austin Woods is represented by Mr. Anderson. I have no idea who Mr. Anderson is. Did Mr. Anderson contact you ---

THE COURT: No. I, I was looking -- and for clarification there, Mr. Anderson was on the first appeal. I just remembered there was an attorney and that both -- Mr. Anderson, S.R. Anderson, was involved in the first appeal we had this morning, and I was thinking he was on this one. That was all that was.

DR. FALTAS: Okay. So ---

THE COURT: So, that was my mistake there.

DR. FALTAS: So, you've never read my article in the newspaper, and you've never heard me on the radio twenty-five years ago?

THE COURT: No.

DR. FALTAS: You've never heard of my lawsuit against

the University of South Carolina?

THE COURT: No. Haven't heard any of that. I just -- until I got down here, I, I was not aware of you.

DR. FALTAS: Well.

THE COURT: Other than what I read in the Supreme Court. All right, we're going -- let's go forward on your P ---

DR. FALTAS: It was -- the Supreme Court references that case.

THE COURT: All right, I have said I am not recusing myself; I'm not biased. So, I'll be glad to hear your argument on your motion for summary judgment.

DR. FALTAS: Okay. First of all, this is not on a clean slate. This case was tried once before, before the Honorable Judge Goldsmith and after two days of trial, His Honor granted PCR on all the grounds. You have the transcript. Do you have the transcript?

THE COURT: I do, the one you -- I think it was filed earlier this week, and I have got, I've got the transcript.

DR. FALTAS: Did you read it?

THE COURT: I've read portions of it.

DR. FALTAS: Okay. I am, I'm asking that the court take judicial notice of all of it.

THE COURT: All right.

DR. FALTAS: So, this is not something on a blank

slate. There is already evidence in the case. In addition, more evidence came in after the state kicked and screamed and whined and pretended that it had no, it had no chance to make its case, which by statute I think the state has no right to make a case. The statute says the application shall be heard.

And, Your Honor, I think this is an especially apt analogy. I think the relationship between *habeas* and PCR is like the relationship between the queen bee and the worker bee. They are the same species but, but one is bigger and rarer than the other and traditionally, traditionally *habeas* was heard *ex parte*. But in any event, the state is here, but remember I am the plaintiff, so I get to open and close.

But, but in any event, I had three grounds that, that I had initially filed. Then there was an amendment. Then there was a supplement to the amendment. Then there was another supplement, and the first ground at the time that we had the trial before Judge Goldsmith, the state said that it is under advisement by Justice -- retired Chief Justice Toal sitting as a circuit court judge. And at that time, she had not ruled in writing, and I had argued that even if she does rule in writing, it will still be *dictum*.

In any event, since then her order came. She does not rule on that first issue. She, she grant -- she did grant

me PCR and the state appealed, but she did not rule on that first issue on my PCR. And as I said, even if she had ruled, it would be *dictum* and that issue is that the municipal court and all municipal courts are invalid under the federal constitution because the federal constitution recognizes only two levels of sovereignty: the federal and the state.

And there are cases, one unanimous written by Justice Scalia from South Carolina, *certiorari* to the Supreme Court of South Carolina, that municipalities and counties do not partake of sovereign immunity and are not sovereign by their derivation. So, because we know that only a sovereign can prosecute, so only a sovereign can have -- can, can have a court and prosecute crime. So, if you want to put it under the PCR issue, the court had no jurisdiction because it should not exist.

But this is not the issue on summary judgment. The issue on summary judgment is rather very simple. I was held in contempt for alleged violation, not of an appeal bond but for a bond for release from confinement. And two things.

Are you following with me?

THE COURT: Yes.

DR. FALTAS: Are you interested?

THE COURT: I'm very interested.

DR. FALTAS: Thank you.

So, two things. Number one, I cannot be released from confinement if I have already served my sentence. And at the time the order setting conditions was issued, I had already served my sentence, but I was erroneously kept in confinement.

The second thing is that even if municipal -- and, Your Honor, I read you have served as a municipal court judge, so I don't know if that's another reason for bias, but, but in any event, even if the municipal courts can exist within the limited, tiny jurisdiction on petty offenses, they are absolutely stripped of civil jurisdiction. They can't say Dr. Faltas, go jump over a bridge. They can't say Dr. Faltas, go see a psychiatrist. Dr. Faltas, donate a kidney. They cannot do that. That's a civil prospective injunction. So, it was out of their jurisdiction.

Also, there is a constitution in this country and the U.S. Supreme Court interprets the constitution, and in the case of *Stack vs. Boyle*, it said that any bonds or appeal or bail has to do one function and one function only: to secure the person -- the appearance of the person to be released, okay?

THE COURT: Okay.

DR. FALTAS: Anything beyond that violates the Eighth

Amendment.

So, what happened in my case? I was held in contempt for violating a civil injunction which the municipal court had no jurisdiction to issue by statute and also had no jurisdiction to issue because the matter was on appeal. It was -- the written order was issued after the appeal was filed, so she had no jurisdiction. That order said Dr. Faltas, basically you can't, you can't part your hair some way. I mean, totally, totally transparently invalid. Nonetheless, they served on me a rule to show cause and the warrant saying that if I don't show up, they will arrest me and do horrible things to me, so I showed up.

The one time, the one time I asked for a lawyer, she said no. And I asked for a jury trial and she said no. She was wrong on both counts. The case of *Ex Parte Jackson* said that even in civil contempt, one is entitled to a lawyer, and the statute creating the municipal courts guarantees jury trials for everybody, even though they are petty offenses. There is U.S. Supreme Court law that says on petty offenses, you may or may not be entitled to jury trial, but the states can give further guarantees than those required by the constitution. The state has given further guaranty in guarantying trial by jury to all petty offenses in the municipal court, so I was denied both those rights.

And my knee was fractured, and that was later confirmed by MRI. But she held me in contempt for not being able to stand up when her glory entered the room, and her is Marion O. Hanna, who was served with a subpoena and she still did not show up. And later when we get to the PCR itself, I'll ask that she be held in contempt of court.

But, but, so in any event -- and also she kept on trying to make me a witness against myself, and I tried to tell her. Ma'am, you have no civil jurisdiction. And she also held me in contempt for violating her order, her civil injunction. So, it's ten days plus fifteen days. And there was somebody who hates me and he said consecutive, Your Honor. She said yes, consecutive. So, it's twenty-five days.

I had not figuratively, literally almost a heart attack and I was hospitalized. Now, the law is hospitalization counts. So -- but by error, the Alvin S. Glenn Detention Center counted from the -- and that was March 28, 2011, okay? So, they started from March 29, 2011, and because my counsel is totally incompetent, he didn't even address -- and by my counsel, I don't mean Mr. Truluck. I mean Orin Briggs.

So, the rule and the law, and the law is that they do two for one. So, my release was initially April 15th, and then I applied for and was approved for trustee status.

So, I got four more days of work credit. So, my release date was adjusted to April 11th at 4:00 in the morning. That's when they release people, but it should've been April 10th, and I had no infraction whatsoever.

Okay, as soon as she said that during the March 28, 2011, hearing -- and that's also in the records of this court, and I ask judicial notice and I think you should take judicial notice of the records as they are, not as someone mistakenly tells you they are.

So, the -- oh, I gave oral notice of appeal, and then the next day through Mr. Briggs, I wrote the appeal and he filed it. So, there was an appeal, and during that -- when she held me in contempt and she had me taken away, before she did, three times I said I would like to request a stay of the sentence pending the appeal, and that's in the transcript. Three times she said no, so that's over. She loses jurisdiction, and the jurisdiction of the release bond becomes on the appellate court. The rules of appellate procedure say that the filing of an appeal stays the execution of a sentence except that release cannot be effected until someone posts a bond.

So, I asked Mr. Briggs to get me a bond from the circuit court so I can post it and be released. He went all over the place. Never did anything until April 6, 2011, where he met her in chambers and then came up with

horrible conditions, including the revocation of my good-time credits, and I said no, no, no. I cannot agree to that. Just go in and withdraw the request for a bond, and I only have four days left anyway.

So, he goes in there. He does not withdraw the request for the bond. And totally in violation of the Fifth Amendment prohibition against double punishment, Marion Hanna sends to the Alvin S. Glenn Detention Center what she calls an amended order saying that I should not be credited for the good time or for the work. Now, that's not only wrong. There is a statute that makes it a crime. So, we have a woman who pretends to be a municipal judge making the jailer commit a crime.

So, by, by April 11th in the afternoon, twelve hours, she signs an order. On April 12th, Mr. Briggs paid $1,000, and I was released because I was physically almost dying. Then she calls me back and says why didn't you see a psychiatrist and why didn't you surrender your passport. Well, first of all, I don't have a passport. Didn't have a valid passport or a current passport.

Second, I tried to see a psychiatrist and no psychiatrist would see me because medical ethics, and we do have ethics and unlike some professions, we are serious about them. You don't perform unnecessary surgery, and you don't give unnecessary treatment. And I had been

previously evaluated and nothing is psychiatrically wrong with me.

So, she knew she was setting -- and there is a U.S. Supreme Court case about that, *Maggio vs. Zeitz*. It says you cannot even under guise of -- put out conditions or make an order that you know is impossible, that's transparently invalid. The other transparently invalid important case is *In Re* -- or *In the Matter of Providence Journal*, and that's from the First Circuit U.S. Court of Appeals that said anything having to do with the First Amendment is transparently invalid if it regulates speech and it regulates association. I didn't want to be associated with some psychiatrist. I'm a very committed Christian, and Jesus Christ said it's not only the sick who need -- it's the sick do not -- the healthy do not need a physician, only the sick. So, not only medical ethics, not only practical reality, but my religious is that I'm not going to go and tell a psychiatrist treat me because some woman says that I need to see a psychiatrist. So, in any event -- but I had made a good faith effort.

Mr. Briggs goes to that hearing, and he says I concede she didn't try hard enough. Well, I went to the only place that I knew could see me on an emergency basis, so he was ineffective all along. Not only ineffective, but in the state case of, of *Nance*, *State vs. Nance*, the Supreme Court

said that sometimes the lawyer can be harmful and can be as if he is the prosecutor, not the defense.

That is the case here, and that is all supported by transcript, and this is not something I am just saying. This is something that the colleague of yours found. At the end of the transcript, he said I grant you PCR on all the grounds.

THE COURT: And that's Judge Goldsmith's order?

DR. FALTAS: And that's Judge -- now, he did not re -- you have it?

THE COURT: Right. I have his order.

DR. FALTAS: You did -- he did not, he did not reverse himself. He vacated his order to give the state a chance to put any evidence. What does the state do with, with its chance? It claims that I am ineligible for PCR because I'm -- I was ineligible for appointed counsel.

This is not only wrong as a matter of law. This is frivolous. Why? Because the U.S. Supreme Court in *Cuyler vs. Sullivan* said no. Whether the counsel is appointed or *pro bono* or retained, the Sixth Amendment applies and if he is ineffective, it's the state that procured an unconstitutional conviction and, therefore, PCR.

So, I am saying that the state's motion for -- now, we have filed Mr. ---

THE COURT: And I'm going to -- when I hear from them,

since you are the applicant, I will give you a ten-minute response, all right?

DR. FALTAS: And that's only on summary judgment.

THE COURT: That's just on the summary judgement.

DR. FALTAS: If both are denied, we go to the actual ---

THE COURT: Right.

DR. FALTAS: --- merits.

THE COURT: All right. So, you, you got -- I'll let -- give you one more minute to wrap up your -- I'll give you one more minute.

DR. FALTAS: I'll let Mr. Truluck do the wrapping up.

THE COURT: I'm sorry?

DR. FALTAS: I'd let Mr. Truluck do the wrapping up because I tend to get ahead.

THE COURT: All right. All right.

DR. FALTAS: Is that okay?

THE COURT: Well, I'm going to -- okay, I'll -- I'm going to hear from the, the state.

DR. FALTAS: No, the one minute. The one minute.

THE COURT: The one minute.

MR. TRULUCK: Your Honor, I'll be as brief as possible, and I, I certainly did not expect to address the court. Dr. Faltas encouraged me to do that from time to time.

In any event, Your Honor, I agree with my client's recitation. It appears as though in the transcript Mr. Briggs agreed to terms my client did not agree to. Those terms resulted in a rule to show cause where my client was later found in contempt by Judge Hanna. Not only did I observe in the transcript, and I believe Judge Goldsmith observed, that Mr. Briggs entered into terms that would have been prejudicial to Dr. Faltas but were also not what she agreed to.

They also, in my opinion, were violative of the municipal powers for setting bond which, in my opinion, Your Honor, the party appealing shall enter into a bond payable to the municipality. It does not provide for, it does not provide for injunctive powers at a municipal level, Your Honor. And so respectfully, Your Honor, I do believe Mr. Briggs should have objected to those terms.

As a result of not objecting, the issue was not preserved. It actually went up on appeal. Judge Lee and, I believe, Justice Toal -- I know Judge Lee for sure ruled that the appeal was not timely because Mr. Briggs didn't preserve that issue, and now we're before you on a PCR, Your Honor.

I respectfully submit that Judge Goldsmith's order, in my opinion, is as on point as it can get, and obviously that was granted on his observations of testimony that was

attempted to have been given at that hearing, and I'll stop on that, Your Honor.

THE COURT: All right. State, twenty minutes.

MR. JAMES: Your Honor, as a point of clarity, am I responding to her motion for summary judgement, or am I now presenting my own or both at the same time?

THE COURT: You have twenty minutes to do both.

MR. JAMES: All right. Wonderful.

Your Honor, that was a lot of complicated information, but ultimately this is a very simple case. It's a simple matter of a applicant for post-conviction relief who was held in contempt for violating a restrictive contact order in the Columbia Municipal Court. She was convicted of that contempt, and then she sought bond. The terms of that bond were set, and then she performed on those terms of bond by paying the $1,000 through her attorney, through her agent, Orin Briggs. She then violated the remaining terms of that bond and was held in contempt by the Columbia Municipal Court.

Before I proceed into my own motion for summary judgment, to just touch on a few things. There is an indication that PCR is a subset of *habeas*. They are slightly different flavors. If it's the right *habeas* proceeding, there would be some sort of in-custody requirement, and there is no in-custody requirement in PCR.

She mentioned that the municipal court is unconstitutional. That has been raised many times; it has been knocked down many times. Justice Toal rejected it out of hand, and it is a direct appeal issue not cognizable in post-conviction relief action.

She was -- she indicates that she had already served the duration of her sentence. The actual duration of her sentence, Your Honor, I believe would have been a direct appeal issue from the clarification from Judge Hanna during the April 6th proceeding indicating that she was not entitled to any good-time credits but was to serve day for day the entire twenty-five day sentence that was imposed upon her.

As to the municipal court not having any civil jurisdiction, that is correct. However, in this particular circumstance, to the extent that elements of the case before you were of a civil character, it was because that they were in the form of civil contempt. And the contempt power both in its criminal nature and its civil nature is inherent in the power of the court, including the municipal court. So, even the municipal court, though it can't entertain civil actions, can entertain and impose forms of civil contempt in order to ensure compliance with the orders that it issues.

As to any conditions beyond serving -- securing the

presence of the witness -- I'm sorry, securing the presence of the individual on bond are violative of the Eighth Amendment, Your Honor, I would respectfully submit that the terms of bond can also be framed in order to ensure that there is protection from the public in compliance with the other orders of the court. In this case, the other terms of the bond were specifically indicated to be presented to ensure compliance with the prior restrictive contact order imposed on Dr. Faltas which she had violated by continuing to contact employees of Columbia Municipal Court.

She indicates that there is no jurisdiction pending appeal of that issue. My understanding was brought up to the court, and that's how they wound up back in front of the municipal court, and that's how they ended up entertaining the bond pending the appeal.

Your Honor, she indicates that she was entitled to a jury trial. That's a direct appeal issue. I don't think that issue is specifically raised in post-conviction relief application, and it's not -- I don't believe that's true in the case of contempts brought in this petty character.

It's important to note what punishment that she got for the conviction for contempt for violating the terms of bond pending appeal. She received a sentence for failing to surrender her passport of either a $500 fine or thirty days. As to the failure to seek psychiatric counseling,

she received a sentence of thirty days suspended upon further noncompliance with the order.

Ultimately, she paid the $500 fine and she complied with the order. She went to First Presbyterian Church, and attached to the state's motion for summary judgement, exhibit 5 is a letter from the First Presbyterian Church indicating:

> Marie Assa'ad-Faltas was seen in our office today for an appointment with Reid Wood, LPCI. She has agreed to continue weekly counseling to address some personal issues.

So, for the contempt convictions that are actually before the court today, she didn't go to jail. She paid a fine and she went and sought a counselor, and that's important, Your Honor, for a number of reasons.

It is the state's position, Your Honor, that Dr. Faltas was not entitled to the assistance of counsel in the course of these contempt proceedings, or at the very least not in the course of the -- well, in the example of the passport, she was not facing any risk of jail time. The sentence that was imposed was either/or. Whether she went to jail was fundamentally her choice. She could pay the fine and she did pay the fine, and so there was no risk of incarceration, and it's that risk of incarceration that the courts have focused on and the U.S. court has focused on in

determining when the right to counsel must trigger and vest in an individual.

As to the order arising out of her failure to seek psychiatric counseling, that was fundamentally a civil contempt in character, and there is no specific right to counsel in a civil action, at least that I am aware of, Your Honor. The order was framed, so it said a sentence of thirty days suspended on further noncompliance. So, in one way it looks like it's a sentence of actual jail time, but in reality it's a warning from the municipal court saying if you continue to not abide by this order, you're going to end up in jail. Dr. Faltas abided by the order, and she didn't end up in jail again.

Your Honor, she indicated that Mr. Briggs is the one who ultimately paid her bond, her $1,000 bond. When she accepted that he was paying that $1,000 bond -- when she left the jail, she accepted the terms of the bond in their entirety. She cannot accept the terms of the bond in part, pay the $1,000, get out, and then refuse to comply with the other terms of bond. If she wanted to reject the terms of the bond, if she wanted to just go ahead and spend out the rest of her sentence in jail, that was in her power. All she had to do was reject the terms.

Just recently in Horry County, I had a hearing where we had to impose terms of bond pending appeal, and the

applicant seeking those terms could not afford the terms, and so he just doesn't pay the money and he stays in jail and continues to serve his term of incarceration. That's exactly what Dr. Faltas could have done. So, in some respect, Dr. Faltas and I are making the exact same argument. She should have just stayed in jail and served out the rest of her sentence.

THE COURT: Can we put on the record y'all have agreed on something?

MR. JAMES: I ---

DR. FALTAS: No. No.

THE COURT: No. I'm just kidding. All right.

DR. FALTAS: No. He's lying.

THE COURT: I'm just kidding. All right.

DR. FALTAS: He is lying.

THE COURT: All right.

DR. FALTAS: And I have an issue with his lying about the facts.

THE COURT: I was just trying to make a humorous comment, so I'm sorry.

DR. FALTAS: No. This is very serious.

THE COURT: All right. Proceed.

DR. FALTAS: Let me interrupt and ---

THE COURT: No.

DR. FALTAS: --- show you something.

THE COURT: No. No.

DR. FALTAS: Okay.

THE COURT: You will get a chance to respond.

DR. FALTAS: All right. Fine.

MR. JAMES: Now, I will admit in the original motion for summary judgement, the state's position was to state that applicant was the one who paid the $1,000 cash bond, and that was my understanding at the time of the drafting of the application. Dr. Faltas takes issue with that and upon consultation with the witness, my understanding is that Mr. Briggs is the one who paid the $1,000 cash bond at her direction. And she indicated that Mr. Briggs paid the $1,000 cash bond and then indicated the reason for it, claiming that she was on the cusp of dying in the jail.

Your Honor, I believe that the application in its entirety as to the psychiatric evaluation contempt is not cognizable under the Uniform Post-Conviction Relief Act because it is a form of civil contempt. The Post-Conviction Relief Act provides a cause of action for those who are challenging crimes. Civil contempt is not a crime. Civil contempt is a civil sanction and, therefore, there is no relief available under the Uniform Post-Conviction Relief Act for sanctions that are civil in character. And whether or not sanctions are civil in character are defined by our case law in the State of South

Carolina:

> The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant, while the primary purposes of criminal contempt are to preserve the court's authority and punish for disobedience of its orders.

And I am referring to *Ex Parte Cannon*, Your Honor, and I have a copy of that I can hand up to you if it would be of any enlightenment to you.

THE COURT: I've got that. We, we can pull it up off -- thank you.

MR. JAMES: And the reason why we have this distinction is that in the case of criminal contempt, additional safeguards come into play, additional protections in order to protect innocent individuals from unjustified terms of incarceration. There was no real potential possibility of incarceration in this case without further contempts on the part of Dr. Faltas.

Because the Uniform Post-Conviction Relief Act provides only relief for crimes, respectfully submit that as to the psychiatric contempt, this matter should be summarily dismissed because there's no basis for bringing it under the PCR Act. As to the psychiatric evaluation, the sanctions were very clearly punitive. So, she can

bring that under the PCR Act, at least as to that line of argument.

Separately, Your Honor, I have also asserted that she did not have the right to counsel in these contempt proceedings:

> Absent a knowing and intelligent waiver, no person may be imprisoned for any offence, whether classified as petty, misdemeanor, or a felony, unless he or she was represented by counsel at his trial.

And that's a quote from *Argersinger vs. Hamlin* under the United States Supreme Court. However, the right to counsel does not attach where imprisonment is merely an authorized punishment but never actually imposed, and for that assertion I would cite *Glaze vs. State*, 366 S.C. 271.

In this case, there was the option that she would be put in jail, but the option was hers. She chose to pay the fine. She never really faced a real risk of being put in jail on the basis of this contempt because she could choose the fine, and so she never actually had the right to counsel in this contempt proceeding. She just happened to have counsel because Orin Briggs, whatever his motivations, had made the decision to represent her *pro se*. She wasn't appointed Orin Briggs; she didn't retain Orin Briggs. Orin Briggs appeared on her behalf out of the charity of his

heart.

Because she didn't actually have a right to counsel in this, she cannot, therefore, challenge the constitutional effectiveness of counsel. The reason why we have PCR, the reason why we have these ---

THE COURT: Do you have any authority for that?

DR. FALTAS: No, he doesn't. That's ---

THE COURT: I, I didn't ask you, Ms. -- Dr. Faltas. I'm -- you'll have a chance to respond. I asked him.

DR. FALTAS: Also ---

THE COURT: Ah, ah, ah.

MR. JAMES: Under *Strickland vs. Washington*, the right to effective assistance of counsel is the right to counsel; they go hand in hand. The reason why we have post-conviction relief actions, the reason why we have actions to adjudicate the ineffective assistance of counsel is to validate the constitutional right to counsel in and of itself.

So, therefore, if there is no right to counsel, there is no right to effective assistance of counsel. And that sounds like a bold claim, but if you think about it in the civil context, again it makes sense. You don't necessarily have a right to effective assistance of counsel in a civil case. So, you don't have the right to go in and challenge the finding of a civil court's ruling against you based on

the ineffective assistance of counsel. The action in that case would be to then bring a malpractice case against the counsel perhaps.

She cited to a case, *Cuyler vs. Sullivan*.

DR. FALTAS: U.S. Supreme Court.

MR. JAMES: A U.S. ---

THE COURT: Ah. Ah.

MR. JAMES: --- Supreme Court case, *Cuyler vs. Sullivan*. It took me a moment to remember the substance of that case. If I recall correctly, *Cuyler vs. Sullivan* pertains to the state's argument that because a criminal, convicted, retained counsel instead of using appointed counsel, that the state had not violated its obligations of providing effective assistance of counsel, and that the burden of having ineffective counsel fell upon the criminal individual for having gone out and hired him.

That's not really the case here. I'm not arguing that she has no right to effective assistance of counsel because she hired -- or in this case, Mr. Briggs appeared *pro bono*. I'm arguing that she didn't have the right to assistance of counsel at all because there was no threat of incarceration because this was fundamentally a very minor act of contempt which was thereafter promptly resolved, and then an act of civil contempt for which there is no right to counsel at all. And so to answer your earlier question, the authority

that I rely on is fundamentally that connection between effective assistance of counsel and the right to counsel at all as explained under *Strickland vs. Washington*.

May I beg a moment of the court's indulgence?

THE COURT: Yes.

(A PAUSE.)

MR. JAMES: I will acknowledge that in the course of the proceedings around these bond terms, that applicant began to incur her restrictive orders that would require her to rely on the assistance of counsel in order to proceed in the various actions in this state. I would respectfully submit to the court that that doesn't change the analysis that I have presented to you in the course of this argument. And, furthermore, I would submit to the court that it would be grossly inappropriate for applicant to earn additional rights and privileges and protections by way of her history of abuses acknowledged by the ---

DR. FALTAS: Objection.

MR. JAMES: --- Supreme Court of South Carolina.

DR. FALTAS: Objection.

THE COURT: We're -- not evidence. He's arguing. You can respond. Do not comment, please.

MR. JAMES: Supreme Court of South Carolina has been very clear that it is abusive to the court in her treatment of the court, in her treatment of witnesses, in her

treatment of the clerks of court, in the treatment of -- her many profligate filings.

DR. FALTAS: Objection again.

THE COURT: All right. It's not evidence. He's just arguing.

DR. FALTAS: But, but he ---

THE COURT: All right.

DR. FALTAS: --- needs to be civil in his arguments.

THE COURT: That's up to me to decide, not you.

DR. FALTAS: Well, I'm asking you to please ---

THE COURT: All right.

MR. JAMES: Your Honor, as to grounds identified as 2, 3, and 4, as we stated in the motion for summary judgment, I respectfully submit those are direct appeal issues, and I touched on this a little bit earlier. Post-conviction relief is not a substitute for direct appeal. Therefore, direct appeal issues are not cognizable in a post-conviction relief action unless they are framed in the context of ineffective assistance of counsel.

As to the constitutionality of the court to impose the sanctions that it did, as to the fundamental constitutionality of the municipal court itself, as to the other freestanding constitutional issues outside of ineffective assistance of counsel, those are not cognizable in any post-conviction relief action.

Your Honor, I've tried to just kind of run through these things briefly.

THE COURT: Well, and ---

MR. JAMES: All ---

THE COURT: Right, and one of the reasons for limiting the time is we have a very extensive record here.

MR. JAMES: Yes, Your Honor.

THE COURT: We also have very extensive motions, and so that's why I just wanted to kind of -- y'all to cap up there. So, is that -- are you concluded then?

MR. JAMES: And just to conclude very briefly, all of these different arguments address different parts of the application. But taken altogether, the sum whole of all of them is that the application for post-conviction relief should and must be dismissed in its entirety on the basis of summary judgment by this court.

THE COURT: All right. Thank you.

All right, Dr. Faltas, I was not trying to be disrespectful. I'm just trying to keep some things going in this courtroom, and that's like -- so now ---

DR. FALTAS: You want me ---

THE COURT: --- I'm not going to let him speak while you have your final ten minutes.

DR. FALTAS: Yes, Your Honor, but profligate, profligate is slander *per se*.

THE COURT: All right. All right, you have ten minutes.

DR. FALTAS: All right. All right.

THE COURT: To respond.

DR. FALTAS: First, PCR does not require incarceration. In fact, recently the U.S. -- the state Supreme Court reversed Justice Toal sitting as a circuit judge when she imported an in-custody requirement, and that case was *Robinson vs. State*.

So, the other thing is that they cannot have it both ways. If it is civil contempt, then the municipal court has no jurisdiction at all because the statute creating the municipal court says it shall have no jurisdiction in civil matters.

Additionally, even *bona fide* civil contempt, the case of *Ex Parte Jackson* which I cited -- and I don't know why you don't read my pleadings. I responded to the motion, to their motion for summary judgment, and I attached Mr. Truluck's custodial ---

THE COURT: I reviewed them. No, I just ---

DR. FALTAS: So I'm, I'm clear, so where -- it's not a bold argument that he's making. It's a frivolous argument because there is *State vs. Jackson* saying you're entitled to a lawyer in civil contempt because the risk of incarceration. Number two, there is U.S. Supreme Court

Cuyler vs. Sullivan, and he is deliberately confusing between the right to appointed counsel and the right to counsel at all. Of course, we know that the right to counsel at all way predated the right to appointed counsel, and the right to appointed counsel came in gradually. First it was only in death penalty. Then it became in felonies. Then it was in federal. Then it was extended to the states via the Fourteenth Amendment. Then under *Alabama vs. Shelton*, it was extended to petty offenses.

Now, do we agree that the right to appointed counsel is different from the right to counsel? Do we agree on that, or are you going to take his frivolous argument?

THE COURT: I'm just listening to your argument.

DR. FALTAS: All right, because -- and I already said that.

Now, he claims that I complied with the psychiatrist. No, I did not. She had said and yelled and banged and hammered. And she was head person, sanctioned by the Commission on Judicial Conduct due to her improper conduct that she wanted me to go to a psychiatrist, and not any psychiatrist. A psychiatrist that would find me in -- without evaluating me and that would see me weekly.

I did not go to a psychiatrist. I went to one non-psychiatrist, and then I went to federal court and tried to seek an injunction because I presented evidence

that that was an impossible condition, and that was in the initial package. They said, okay, she doesn't have to try to go to a psychiatrist. It's enough that she tried and there is no one who would see her.

And may I, may I just -- and that was in their initial package, and that's the letter dated July 1, 2011, from Dana Turner. And it may be helpful if I may just fish that one out unless he dishonestly took it out.

And then in addition, the, the June order that, that found me in contempt for not going to a psychiatrist, she says she needs to go to psychiatric sessions to learn how to act in her own good. What it means, that's for my benefit. In a civil -- for that to be a real civil injunction and real civil contact -- contempt, I would have had to sue myself and in municipal court, which doesn't have jurisdiction, saying municipal court, I am Dr. Faltas asking you to issue an injunction against Dr. Faltas to see a psychiatrist to make her act in her own good. What nonsense is that, and what kind of non-self-respecting court would accept that?

And I'm, I'm trying to show you that he's lying when he said I complied. Lying, not just mistaken. He's intentionally lying and he's intentionally frivolous. He can't have it both ways. Either it's juris -- it's civil, which the municipal court doesn't have civil jurisdiction,

or it's criminal and, therefore, his argument is frivolous. But if he took it out of here, you have it, you have it in the initial return.

THE COURT: Right. I have the complete file that you've had here, so.

DR. FALTAS: Additionally, additionally, in the state's return and motion to dismiss, they never pled that, that I was not entitled to counsel.

Okay, may, may I -- if you're turning to look, do you want ---

THE COURT: I think I've got that. I think I've -- hand it to Mr. --- is it Truluck?

MR. TRULUCK: Can I approach, Your Honor?

THE COURT: I'm pretty sure I've -- because I've seen this letter.

(A PAUSE.)

THE COURT: Yes, that's in our file because I've...

DR. FALTAS: And also may I turn to the actual order of contempt that says for her own good? So, for that, as I said, for that to be civil, I would have had to have sued myself.

THE COURT: Yeah.

DR. FALTAS: So, this is not only wrong. It's frivolously wrong, and Judge Goldsmith was so self-respecting that he had heard enough and he entered

judgment in my favor already on all my grounds. Usually when there is a lawyer, they get two or three grounds or none at all. He granted all my grounds.

And now the state said, oh, we didn't get the chance to present evidence. Do they have any evidence? No, they do not. What they have is frivolous arguments, and again a -- no self-respecting court would let them go away with it -- get away with it.

I'd like to reserve the balance of my time for Mr. Truluck.

THE COURT: All right. Judge Goldsmith's nicer than me, isn't he.

DR. FALTAS: What?

THE COURT: Judge Goldsmith's a lot nicer than me.

DR. FALTAS: Yes. Yes. He's more conscientious, too. I think you just want to finish and leave. He took the time to listen.

THE COURT: All right.

DR. FALTAS: I'm sorry. You, you asked me a question, and I'm an honest person. I don't butter anyone up.

THE COURT: No, I don't -- it doesn't hurt my feelings.

DR. FALTAS: But let me tell you. When you get a compliment from me, you need to treasure it because you know it's very sincere.

THE COURT: All right. All right, you want to ---

DR. FALTAS: I want to say one other thing, okay? He kept on trying to portray me as a horrible person. Well, Chief Justice Toal, who authored all those orders against me when she sat at the head of the South Carolina judiciary, when, as a circuit judge, she heard another PCR of mine also involving Mr. Briggs's ineffectiveness in another case, what did she do? She granted me PCR. She granted it on one ground, but she still granted it. So, even those horrible orders which are now before the Supreme Court on *certiorari*, they don't say Dr. Faltas cannot have her rights. They said so long as they are non-frivolous. You have two coordinate judges, one in another PCR and one in this very PCR, who said this is non-frivolous.

So, he can't just insult me and because he either doesn't know English or doesn't care, the definition of profligate is destitute -- not destitute. Dissolute, of bad moral character. This is libel *per se*, imputation of dishonesty of a lady. And I don't think if you were a self-respecting judge you would let him get away with again calling me profligate.

THE COURT: All right, you want to -- final words if you want to.

MR. TRULUCK: Beg the court's indulgence.

(A PAUSE.)

MR. TRULUCK: Your Honor, I support Dr. Faltas's presentation. That's all I have.

THE COURT: All right. All right, as I said, the -- both sides have filed motions for summary judgment on, on the primary issues on the PCR. We have a very extensive record. I've reviewed a good portion of it before this hearing. Before I make a decision, I want to, on these motions for summary judgment, I want to review these. I'm going to take these under advisement and, therefore, when I make a -- I'll make a decision on these and issue an order. And if it's necessary to reconvene for the PCR, then we'll do so at that time, but I think I need to consider these motions for summary judgment before we proceed.

DR. FALTAS: When? When can we convene? Your Honor isn't scheduled in Richland County for ---

THE COURT: Well, let me -- we'll let, we'll let the -- we'll, we'll talk with the courts about that. But right now I'm going to take the motions for summary judgment under advisement.

DR. FALTAS: When -- may I ask? Do you have...

THE COURT: So.

DR. FALTAS: Do you have, do you have my proposed order denying the state's motion?

THE COURT: I do. I, I received your -- I think Mr. Truluck sent it to us.

DR. FALTAS: And, and do you have my proposed order granting me, granting me PCR?

THE COURT: Yes. I have both orders that Mr. Truluck sent to me, so.

DR. FALTAS: Judge, Judge, there is another thing. Even though you are going to take it under advisement, Marion Hanna was subpoenaed. She was subpoenaed. I, I've copied the ---

THE COURT: Well, we, we've not gotten to that portion of the hearing, so that's, that's ---

DR. FALTAS: So, she gets to, to ignore subpoena and, and have no, no repercussion but I don't -- get, get convicted of contempt because I couldn't ---

THE COURT: Well.

DR. FALTAS: --- do the impossible?

THE COURT: We have not -- we're not going to convene the PCR hearing, so.

DR. FALTAS: Well, but, but it doesn't matter. She was served with a subpoena.

THE COURT: Right.

DR. FALTAS: And she ---

THE COURT: Well, that's not something in front of me for the motion for summary judgment. I'll take the motion for summary judgement ---

DR. FALTAS: Well, can I ---

THE COURT: --- under advisement, and we will reconvene ---

DR. FALTAS: Can you take my oral motion for contempt against her under advisement as well?

THE COURT: Since we've not had a -- we're not having a ---

DR. FALTAS: How can she have known that?

THE COURT: --- a PCR -- all right.

DR. FALTAS: She wasn't clairvoyant.

DEPUTY: Ma'am.

THE COURT: Well, I know that, but I don't know, I don't know what the deal is there, but I -- that's not something properly before me since we're not proceeding forward with the PCR this afternoon. I'll take this under advisement. I'll let y'all know my ruling.

MR. DENNIS: Your Honor, may I take up a matter with the court?

THE COURT: Yes. Thank you.

MR. DENNIS: Your Honor, thank you. I appreciate it. My name is Steve Dennis. I am a licensed attorney, sir. I was subpoenaed by Dr. Faltas. Not her attorney but Dr. Faltas. I know nothing about this case; I have less than zero knowledge about it. I've been sitting here for hours and hours and hours for no good reason at all. I fear that she will continue to subpoena me as long as she's allowed

to issue subpoenas without her attorney.

I trust her attorney. If he were to put his signature on there, he would know I had something relevant to do with it. I would ask you to order her not to be able to subpoena me again without her attorney's signature on the subpoena also.

And if you want me to read the part of Rule 45(c) that says that's supposed to be enforced -- the clerk happily put it on the back of the subpoena so I could read it because, frankly, I didn't know what ---

THE COURT: Yeah.

MR. DENNIS: --- Rule 45 said.

MR. TRULUCK: Beg the court's indulgence, Your Honor?

THE COURT: Yes.

(A PAUSE.)

MR. DENNIS: And, and I wonder -- but she knows in advance I don't know anything because I spoke with her attorney earlier this week ---

THE COURT: Well, if it -- when we reconvene, if that's necessary, we can address that ---

MR. DENNIS: Well, well, Judge ---

THE COURT: --- if you get resubpoenaed.

MR. DENNIS: --- is she going to subpoena me again? I'm going to sit here again for ---

THE COURT: Well, I guess ---

MR. TRULUCK: I have a resolution, Your Honor.

THE COURT: Okay.

MR. TRULUCK: If, if Judge Dennis would allow you to put him under oath right now and testify that he does not know any relevant matter to this proceeding for testimony, I believe my client has informed me that ---

MR. DENNIS: Happily.

MR. TRULUCK: --- would excuse him from future proceedings, Your Honor.

THE COURT: I, I'm not -- I, I -- I mean, I appreciate what you're going for, but since we're not having the PCR hearing ---

MR. DENNIS: Judge, Judge, the subpoena was valid whether you have it or -- and Rule 45(c) says, if I may quote and I'm not familiar with it:

> The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney which -- in breach of this duty an appropriate sanction.

And the duty is not to impose an undue burden or expense on a person subject to the subpoena. It says the court shall enforce that.

DR. FALTAS: Well, Your Honor, I don't know what the undue burden on him is, but you're not addressing the fact that somebody else didn't show up, and now you're going to

punish me for ---

THE COURT: I'm not -- is she allowed to issue a subpoenas under the order of the Supreme Court?

MR. DENNIS: That's debatable.

DR. FALTAS: Your Honor, I didn't issue the subpoena. The clerk issued the ---

MR. DENNIS: She signed and requested it.

THE COURT: Okay.

MR. DENNIS: It was done at her request.

THE COURT: Well, I, I, I -- I think and I realize that it's been an undue burden on you this morning since we're not going forward with the hearing. I, I apologize for that, but ---

MR. DENNIS: How about you swear me in, Judge, and let me say I don't ---

THE COURT: I'm not ---

MR. DENNIS: --- know anything?

THE COURT: Well, that would be getting into the PCR, which I have elected to, to take the motions for summary judgment under advisement. So.

MR. DENNIS: Judge, I'm being abused and, and the, the 45(c) says that you have a duty to see that I'm not abused in this fashion. I'd appreciate ---

DR. FALTAS: Well, I ---

MR. DENNIS: --- it if you would do that.

THE COURT: I'll, I'll review that and see if that -- all right.

DR. FALTAS: I object. I didn't get the chance to respond, and I object to these representations, Your Honor.

THE COURT: All right. Well, I don't think that's something properly before the court. I'm sorry.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 10TH DAY OF AUGUST, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

S/*ELIZABETH B. HARRIS*, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JUNE 30TH, 2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2017-CP-40-06831

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

APPLICANT'S MOTION to RECUSE JUDGE GRAVELY

2018 AUG 23 P 12:08
JEANETTE W. WALTERS
CLERK OF COURT
RICHLAND COUNTY
FILED

Failure by Marie Assa'ad-Faltas, MD, MPH ("Applicant") to file this motion would have evidenced lack of the very courage she expects of her stand-by counsel, Christopher S. Truluck, Esq. ("Appointee") and of judges and other officers of the court. Plainly but politely stated, Judge Gravely's current law clerk has too many personal connections with lawyers in the PCR section of SC's Attorney General's office. That office now has, as one of its senior lawyers, Sara Heather Savitz Weiss, who had falsely and maliciously prosecuted Dr. Assa'ad-Faltas from November 2009 to 13 August 2012, when the latter, thank God, ably fully exonerated herself *pro se* of the false harassment charges Weiss had knowingly confabulated.

During that malicious prosecution, Weiss had *repeatedly* sought **but failed to obtain** some "diagnosis" that Dr. Assa'ad-Faltas is mentally incompetent to represent herself. In addition to Weiss' father profiting from SC's AG's scheme of farming the state's business out to private lawyers, Weiss' paternal uncle is a soccer coach, colleague and friend of the husband of Betsy Goodale, SC's Supreme Court's long-time Chief Staff Counsel. **One *ex parte* conversation suffices; and words have figurative fingerprints.** Dr. Assa'ad-Faltas received back, most recently indirectly from Judge Gravely's office, words with Weiss' unmistakable fingerprints on them. The route these words traveled is immaterial. They got from A to B.

Further, in his handling of *Austin Woods v. Marie Assa'ad-Faltas, MD, MPH*, Judge Gravely showed no appreciation whatsoever that lawyers are not in Applicant's control and the latter is as unable to force a lawyer to represent her as she was unable to have forced a psychiatrist to treat her. That willingness to punish Dr. Assa'ad-Faltas for her inability to do the impossible, without even inquiring into her reasonable efforts or crediting her defense that she achieves the requested ends by with valid means, even if not those preferred by the requestor, no crime or violation can be imputed to Dr. Assa'ad-Faltas.

Judge Gravely's open-court conduct on 10 August 2018 and his rulings then and thereafter were those of a "partisan seeking combat," not of a detached jurist able to hold the balance "nice, clear and true." Dr. Assa'ad-Faltas is ready to testify *in camera* if necessary but believes all understand what she means.

WHEREFORE, for fairness and public confidence in the Judiciary, Judge Gravely should immediately recuse himself from all Applicant's cases and leave the rest to the administrative officers of the courts.

Submitted and, through Appointee, served on SC's Attorney General and Judge Gravely by appropriate means, on 23 August 2018, all God so willing.

Marie-Thérèse Assa'ad-Faltas, MD, MPH, ~~Applicant~~ *pro se* for purposes of this pleading
P.O. Box [redacted] Columbia, SC 29290 Phone: [redacted]
e-mail: Marie_Faltas@hotmail.com Cell: [redacted]

Certificate of Service

The undersigned states that on August 23, 2018 he caused a true and correct copy of this document to be served by e-mail and by first-class U.S. Mail, prepaid on:

Johnny James jjames@scag.gov
P.O. Box 11549
Columbia, SC 29211-1549

TRULUCK LAWFIRM, LLC
Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104, Columbia, SC 29201
Tel: (803) 556-7285 Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com
Standby Attorney for Applicant

Columbia, South Carolina
Dated August 23, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Marie Assa'ad-Faltas,	)	
	)	
Applicant,	)	
	)	**ORDER**
-vs-	)	
	)	
State of South Carolina,	)	C.A. No. 2017-CP-40-06831
	)	
Respondent.	)	
	)	

RICHLAND COUNTY FILED
2018 NOV 27 AM 9:19
JEANETTE W. McBRIDE C.C.P. & G.S.

This matter comes before the Court upon the Petition for Post-Conviction Relief filed by Marie Assa'ad Faltas (Hereinafter "Applicant") arising out of her conviction for contempt by the Columbia Municipal Court (CMC) on May 18, 2011 as set forth in an Order issued June 15, 2011 by Magistrate Marion O. Hanna (hereinafter "Contempt Order"). On August 10, 2018, this Court heard the present Motions for Summary Judgment filed by the Applicant and the State. Present at the hearing were the Applicant along with Christopher S. Truluck, who had been appointed as stand-by Counsel for Applicant and Johnny James, from the Attorney General's office on behalf of the State. Due to the substantial record, the Court needed additional time to consider all of the evidence and applicable law, but now submits this Order.

Motion to Recuse

Before addressing the substantive Motions for Summary Judgment, the Court needs to rule on the Applicant's Motion to Recuse which was filed on August 23, 2018 following the hearing on August 10, 2018. The primary ground for this Motion appears to be the assertion that the Court's "current law clerk has too many personal connections with lawyers in the PCR section of SC's Attorney General's Office." Applicant further states that this judge had improper

communications with someone and could not be fair. The Applicant failed to provide any evidence or basis for these allegations and the Court is not aware of any reason which supports these assertions nor would be a basis for recusal or not considering this matter impartially and pursuant to the Code of Judicial Conduct. Therefore, Applicant's Motion to Recuse is denied.

Procedural History

Now, back to the Motions for Summary Judgment filed by the Applicant and the State. This case has a very tortured procedural history which is outlined below and reminds this author of the fictional case of *Jarndyce v. Jarndyce* in Charles Dickens' *Bleak House*. Unlike Dickens, this author has attempted to mete out the most equitable justice for all involved and bring this case to an abrupt end, so that the parties may pursue other quixotic engagements. But first, let's relive this tortured procedural history and how this case came to this bench.

Procedural History

On March 28, 2011, Applicant was convicted of 2 separate counts of contempt of court by the CMC and was sentenced to a total of 25 days in jail. Applicant appealed her convictions on March 30, 2018 and requested that she be released from jail during the pendency of her appeal. On April 6, 2011 the CMC held a hearing on the Applicant's request to be released and ordered that she be released under conditions set forth in its Order of April 11, 2011(hereinafter "Bond Order") pursuant to which Applicant was released from jail on April 12, 2011. Subsequently, the CMC issued a Rule to Show Cause for Applicant's failure to comply with the conditions of the Bond Order and a hearing was held on May 18, 2011, at which time the Applicant was found in contempt of court for violating the terms of Bond Order which is the basis for the Applicant's PCR. On May 31, 2011, Applicant filed a Notice of Appeal of her contempt conviction, although the Contempt Order was not issued by the Court until June 15,

2011. On May 9, 2012, Applicant's appeal was heard in Circuit Court by Judge Allison Lee who issued an Order on September 17, 2012 denying Applicant's appeal on various grounds. Applicant filed a Motion to Alter Judge Lee's Order on the same day. This Motion to Alter was denied by Order of Judge Lee issued on October 17, 2012. On November 8, 2017, the Applicant filed her Application for Post-Conviction Relief for the proceedings on which the Contempt Order was based and filed an Amendment on January 23, 2018. By Order of Judge Clifford Newman, Christopher S. Truluck was appointed as stand-by Counsel for this PCR. On March 22-23, 2018, Judge Brooks Goldsmith held a full evidentiary hearing. By Order issued April 10, 2018, Judge Goldsmith granted the Applicant's PCR and the State filed a Motion to Reconsider on April 20, 2018. On May 21, 2018, Judge Goldsmith issued an Order granting the State's Motion and vacated his previous Order and remanded for further proceedings. On May 22, 2018, Applicant filed her Motion for Summary Judgment and on July 31, 2018, the State filed its Motion for Summary Judgment and a hearing was held on August 10, 2018 for oral argument on these Motions.

Standard for Motion for Summary Judgment and PCR

The Uniform Post-Conviction Procedure Act (S.C. Code Sec 17-27-10, et. seq.) provides for such matters to be heard by "summary disposition." Under S.C. Code § 17-27-70(c):

> The Court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Further, when considering such a motion under Rule 56(a), SCRCP, the courts have found that summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." "In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can

be reasonably drawn from the evidence must be viewed in the light most favorable to the moving party." Medical University of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747, 749 (2004). Further, Rule 56(e), SCRCP, provides:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Under the Uniform Post-Conviction Procedure Act (S.C. Code Sec 17-27-10, et.seq.), a person may file an application for post-conviction relief as follows:

> (A) Any person who has been convicted of, or sentenced for, a crime and who claims:
> (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
> (2) That the court was without jurisdiction to impose sentence;....

S.C. Code Sec 17-27-20.

The Courts have recognized that one of the grounds for PCR can be the ineffective assistance of counsel and in order to establish this as a basis for relief, the applicant must show that: (1) counsel failed to render reasonably effective assistance under prevailing professional norms, AND (2) that the applicant was prejudiced by counsel's ineffective assistance. Legge v. State, 562 S.E.2d 618. (S.C. Sup Ct 2002). The effective assistance of counsel is a necessary requisite of due process of law, Rogers v. State, 199 S.E.2d 761 (S.C. Sup Ct 1973), thus the ineffective assistance of counsel is a violation of due process of law.

In considering the Motions by both parties, the Court has reviewed a very substantial record which included the pleadings, various exhibits, portions of the transcript from the evidentiary hearing on March 22-23, 2018 and applicable law. Based on this review, the Court has determined that Applicant's Motion for Summary Judgment and PCR should be granted for the reasons outlined below.

1. The validity of CMC's conviction for contempt on May 18, 2011.

The Applicant was previously held in contempt on March 28, 2011 and filed an appeal to Circuit Court. This contempt conviction is not the basis of this PCR application. While this appeal was pending, applicant requested that she be released and a hearing was held on April 6, 2011 at which time Applicant was represented by Counsel, Orin Briggs. Based on the Bond Order, Applicant had waived her right to be present and was not at the hearing. ***See Bond Order, Exhibit 1 to State's Motion for Summary Judgment.*** On April 11, 2011, the CMC issued its Bond Order which contained the following conditions:

1) payment of $1000 cash;
2) requiring the Applicant "to participate in regularly weekly sessions with a psychiatrist for period of one (1) year or until the conclusion of the pending appeal"; and
3) requiring Applicant to surrender her passport.

Under S.C. Code §14-25-95, a party has the right to appeal a sentence of the municipal court, at which time "the party appealing shall enter into a bond, payable to the municipality, to appear and defend the appeal at the next term of the Court of Common Pleas or shall pay the fine assessed." This statute allows an Appeal Bond to be issued by posting a monetary bond or payment of the fine, but does not provide for the imposition of any other conditions. Further, the Court is not aware of any authority which allows a municipal judge to impose additional conditions in an appeal bond from Municipal Court.

The sole purpose of an appeal bond from Municipal Court, under S.C. Code §14-25-95, is to assure a defendant's attendance at the subsequent hearing on the appeal in Circuit Court. The remedy for the failure to appear would be a bench warrant. See Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 344, 713 S.E.2d 278, 284 (2011) (where the Court found in analyzing S.C. Code § 14-25-95 "[i]f an appellant fails to comply with these provisions, the municipality may issue a

bench warrant to address any delinquency on the part of the appellant"). The additional conditions imposed by the Bond Order clearly go beyond assuring that the Applicant will attend her appeals hearing. (The Court would note that based on the review of the record and the Applicant's history with the Court system, the Court finds that there was very little risk that this Applicant would not show up for any hearing.)

The State argues that the Applicant waived her objection to the terms of her Bond Order by consenting to the bond upon her release from jail. First, there is no evidence before this court that such terms were accepted, except a signed receipt of the $1,000 paid to the CMC. But the receipt did not contain the terms of the bond. ***"Receipt", Exhibit 4 to State's Motion for Summary Judgment.*** One of the statutes which applies to the issuance of bonds (i.e. release from jail pending the trial of the case) requires that "the person released shall acknowledge his understanding of the terms and conditions of his release and the penalties and forfeitures applicable in the event of violation thereof on a form to be prescribed by the Attorney General". S.C. § 17-15-40. Other than a receipt for payment, the Court is not aware of any document showing that the Applicant acknowledged her "understanding of the terms and conditions of [her] release." Therefore, the unacknowledged conditions would violate the statute governing bond conditions.

Accordingly, this Court finds that the CMC exceeded its statutory authority in issuing an Appeal Bond which added conditions other than a monetary bond or payment of the fine as required by §14-25-95. Additionally, the State has not presented any evidence that the Applicant acknowledged her "understanding" of the terms of the Bond Order as required by §17-15-40. Thus the Court finds that the CMC did not have jurisdiction to issue the Bond Order and

the Bond Order and subsequent contempt conviction based on the Bond Order is null and void and the conviction vacated. Thus, Summary Judgment is appropriate on this basis.

2. The validity of the bond conditions.

As additional basis for Summary Judgment, the Court finds that the CMC had no authority to issue any conditions relating to psychiatric treatment. The Bond Order issued by the CMC included very specific requirements for the Applicant:

> 1. The Defendant is to participate in regular weekly sessions with a psychiatrist for a period of one (1) year, or until the conclusion of the pending appeal for this matter, whichever shall come first in time. The Defendant shall make available to the psychiatrist all of her criminal and civil litigation files. The Defendant is to provide this Court with proof of her initial compliance with this condition within ten (10) days of the date of this Order and shall provide to the Court regular monthly proofs of her visits to the psychiatrist. Both of those proof requirements may be made by the psychiatrist's office to this court.

This appears to be a very extensive psychiatric treatment plan which the Applicant was Ordered to attend, all of which is contained in an Order for an Appeal Bond for a conviction of contempt. The Court is not aware of any Motions filed requesting such a condition or bringing this matter properly before the Municipal Court, nor any affidavits affidavit or sworn testimony showing that such treatment was needed or even recommended. There is nothing in the record presented to this Court which warrants any such findings or authority to issue such an Order. The Order does not require the evaluation a licensed professional to make a recommendation regarding a treatment plan but imposes its own judgment as to the type of psychiatric treatment which the Applicant needs—all for the purpose of assuring that the Applicant will make it to the hearing on her appeal to Circuit Court. Without statutory authority, such conditions for an Appeal Bond or

any other type of Order would not be proper.[1] Therefore, the Court finds that the CMC did not have jurisdiction or authority to issue such conditions and the Bond Order and the subsequent Contempt Order based on the Bond Order are declared null and void and the conviction is hereby vacated. And thus, Summary Judgment is appropriate on this basis as well.

3. Ineffective assistance of counsel.

Applicant also alleges that her counsel was ineffective at her bond hearing on April 6, 2011 which constituted a violation of her Due Process rights protected by the State and Federal constitutions. First, based on the record before the Court, it does not appear that the Applicant was at the hearing to determine the bond and the Magistrate Court and Circuit Court (on her appeal) found that she had waived her presence. Applicant was represented by counsel, Orin Briggs, who appeared to negotiate an appeal bond on behalf of his client. The record appears to suggest that Applicant's attorney tacitly accepted certain terms offered by the City or at least failed to adequately object to the terms. It appears that the terms as discussed between counsel were altered slightly by the CMC without any further input by the Applicant. Applicant adamantly refutes that she waived her right to allow the Court free rein on approving conditions for her release. The attorney, without specific authority, should not have even conceded or even allowed the consideration of any terms beyond the scope of an appeal bond as provided for in S.C. Code §14-25-95. Although Applicant's counsel raised this argument at the May 18, 2011 hearing, there is no evidence that it was raised or objected to in the underlying hearing on April 6, 2011 from which the Bond Order was issued and these conditions were the foundation for the

[1] The Court is not aware of any authority which would support such a finding by the CMC. The Court is aware of a formal process for Judicial Commitment allowed by S.C. Code Ann. 44-17-510, et. seq. which allows for the Court to order certain out-patient treatment under specific circumstances and after a finding by clear and convincing evidence. And even then, the remedy for failure to follow the treatment plan is a supplemental hearing for further determination by the Court.

downward spiral of constitutional deprivations from which the later appeal and PCR applications were based.

In a PCR action, the "burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." *Frasier v. State*, 570 S.E.2d 172 (2002). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington,* 466 U.S. 668 (1984); *Butler v. State,* 334 S.E.2d 813 (1985). In considering whether Counsel was ineffective in a PCR application, the Court looks at 2 factors: (1) whether the Applicant's counsel failed to render reasonably effective assistance under prevailing professional norms, AND (2) was the applicant was prejudiced by counsel's ineffective assistance. See Legge v. State, 562 S.E.2d 618. (S.C. Sup Ct 2002). Upon review of the record, there appears to be some confusion on how the conditions on the bond came about—whether there was some initial consent by Applicant's attorney or not, but clearly, Applicant's counsel did not assert proper objections to the conditions except to state that Applicant did not consent to the conditions. ***See Transcript of Record for hearing on March 22-23, 2018, pages 53-66.*** The Court finds that counsel's acceptance or failure to adequately object to the improper terms of the Appeal Bond is clearly ineffective and not within prevailing professional norms. And as seen by the subsequent contempt charges, the Applicant was prejudiced by this failure. Thus, the Court finds that there is no genuine issue of material fact as to the ineffective assistance of counsel and as a result, the Applicant's Due Process right were violated and the Applicant is entitled to Summary Judgment on her Application for PCR.

Conclusion

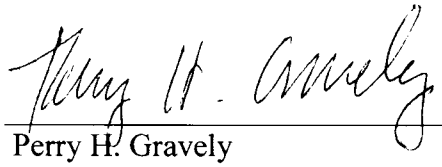
Based on the above findings, this Court finds that there is no genuine issue of material fact on the issues set forth above and the Applicant is entitled to Summary Judgment on her PCR Application. The Bond Order and Contempt Order are declared null and void and vacated and the conviction for contempt is hereby vacated and dismissed. Further, the Court remands the case back to the Columbia Municipal Court to vacate the conviction of contempt of May 18, 2011 and dismiss the charges. In light of this ruling, the State's Motion for Summary Judgment would be denied. The Applicant has requested additional remedies relating to the return of her bond and fines money, but those will need to be addressed to the CMC.

The Courts, parties, municipal court and everyone who has touched this matter has been dealing with this albatross for many years with little or no progress. This Court has adopted the analysis of the late Chief Justice Bruce Littlejohn, one of South Carolina's finest jurist, who with his usual wit and logic, compared the solving of a particularly complex factual and legal issues before the court as "attempting to unscramble an egg. The court strives to do justice which oftentimes must be only approximate. When justice cannot be meted out exactly, we do that which is next best—try to bring an end to the dispute." Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp., 282 S.C. 415, 321 S.E.2d 46 (1984).

Therefore, the Applicant's Motion for Summary Judgment and Application for PCR are granted on the basis set forth above; and the State's Motion for Summary Judgment is denied. It is so Ordered.

November 19, 2018

Pickens, South Carolina



Perry H. Gravely
Presiding Judge

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP4006831

Marie Assaad Faltas		State Of South Carolina	City Of Columbia Sc
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

JEANETTE W. [illegible] C.C.P. & G.S.
2018 NOV 27 AM 9:39
RICHLAND COUNTY FILED

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	11/27/2018 Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **November 27, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

Christopher Stephen Truluck 1720 Main Street, Suite 104 Columbia, SC 29201

Lindsey Ann McCallister PO Box 11549 Columbia, SC 29211-1549
Hervery B. O. Young PO Box 11433 Columbia, SC 29211-1433
Johnny Ellis James Jr. PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Court Reporter

Jeanette W. McBride - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

Marie Assaad-Faltas)
Plaintiff,)
vs.)
State of South Carolina)
Defendant.)

IN THE COURT OF COMMON PLEAS
Fifth JUDICIAL CIRCUIT

CASE NO.: 2017-CP-40-6831

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney: Chris Trulock _____, Bar No. _____ Address: 1720 Main St., Ste. 104, Columbia, SC 29201 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Johnny E. James Jr. _____, Bar No. 101260 Address: P.O. Box 11549 _____ Columbia, SC 29211-1549 Phone: _____ Fax _____ E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

RICHLAND COUNTY FILED
2018 DEC -7 AM 11:08
JEANNETTE W. McBRIDE C.C.P. & G.S.

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Johnny E. James Jr. 7 Dec. 2018
Signature of Attorney for ☐ Plaintiff ☑ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ _____
☑ EXEMPT:
(check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☑ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Marie Assa'ad-Faltas,	)	Case No.: 2017-CP-40-06831
Applicant,	)	
v.	)	**MOTION TO ALTER/AMEND, RECONSIDER ORDER GRANTING POST-CONVICTION**
State of South Carolina,	)	**RELIEF**
Respondent.	)	

JEANNETTE W. McBRIDE
C.C.P., G.S.
2018 DEC 7 AM 11:08
RICHLAND COUNTY
FILED

In response to the "Order Granting Post-Conviction Relief" filed November 27, 2018, in the above matter, Respondent would respectfully move the court alter or amend the order pursuant to Rule 59(e), SCRCP, for the following reasons:

I.

The Court's grant of relief compares the present matter to the fictional case Jarndyce v. Jarndyce and ultimately notes its intention to "try to bring an end to the dispute." Order at 10 (quoting Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp., 282 S.C. 415, 321 S.E.2d 46 (1984)). Respondent is *exceedingly sympathetic* to this stated goal.

However, Respondent must note that the present matter is not Applicant's only action pending against the state. Applicant is, upon information and belief at the time of this writing, at the Richland County Courthouse arguing some element of 2018-CP-40-01798, an additional post-conviction relief application. Pending before the Supreme Court is an appeal from 2016-CP-40-01444, wherein Former Chief Justice Jean Toal granted relief from a city ordinance pertaining to yard trash. The Supreme Court of South Carolina has noted that "[o]ver the last twenty years, [Applicant] has engaged in a pattern of vexatious and disruptive conduct aimed at courts throughout South Carolina and beyond." City of Columbia v. Assa'ad-Faltas, 420 S.C.

28, 33, 800 S.E.2d 782, 784 (2017). "Since 1997, [Applicant] has been involved in fifty-two matters before [the Supreme Court] and twenty-one matters before the court of appeals, the vast majority of which [Applicant] has initiated and which have been found to be without merit or frivolous." Id., 420 S.C. at 33-34, 800 S.E.2d at 784. Applicant appears to be proud of her litigation history.

Thus, notwithstanding the accelerated track to the Supreme Court it provides, the Court's effort to bring swift end to dispute is doomed. Indeed, by filing in the Supreme Court dated November 30, 2018, Applicant notes her immediate effort to obtain money from the Columbia Municipal Court based upon the order granting relief, despite the order to refund the appeal bond included as Exhibit 2 to Respondent's Motion for Summary Judgment. See Assa'ad-Faltas v. State, App. Case No. 2018-001290. Victory begets litigation. Defeat begets litigation. To quote the Joker from Christopher Nolan's 2008 The Dark Knight: "This is what happens when an unstoppable force meets an immovable object." We are all destined to do this forever, or else concede the laws do not apply to Applicant, or for that matter anybody else of sufficiently vexatious character.[1] Thus, despite Respondent's sympathies to the Court's stated goal, it must respectfully request the Court reconsider its approach because it is unlikely to achieve its stated ends.

II.

To the extent that Sections 1 and 2 of the Order constitute free-standing grounds for relief, the Court errs in granting relief on allegations of trial court error. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C.

[1] Encountering the doorman in Franz Kafka's parable Before the Law, Applicant has found the solution is not to wait patiently or bribe the doorman, but rather accost him until he throws up his hands and moves.

Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997)). Thus, "in PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel." Id. (citing Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999)).

Because the grounds for relief in Sections 1 and 2 of the Order are not framed as ineffective assistance of counsel, but rather constitute of trial court error, the Court errs in its grant of relief in those sections, and Respondent must respectfully request the Court reconsider.

III.

Pursuant to S.C. Code Ann. § 17-27-80, the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. Where an order does not specifically rule upon issues, the appealing party must file a motion pursuant to Rule 59(e), SCRCP, in order to preserve those issues for appeal. Marlar v. State, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007).

The Court summarily dispenses with the majority of the State's Motion for Summary Judgment in the conclusion of its order. Left substantively unaddressed are Respondent's arguments as set forth in Sections III (civil contempt not basis for PCR), IV (no right to counsel in this matter), and V (trial court error and direct appeal issues) of Respondent's Motion for Summary Judgment dated July 31, 2018. Respondent respectfully requests the Court reconsider its grant of relief, and instead grant the State's motion for summary judgment based upon the arguments set forth in the unaddressed sections. Alternatively, in order to preserve these issues for appeal, Respondent must respectfully request the Court alter or amend its order to address those arguments.

IV.

For the reasons above stated, Respondent requests the Court either:

1. Vacate its Order of November 27, 2018, granting relief, and based upon the record currently before the Court, grant the State's Motion for Summary Judgment and deny the application for post-conviction relief for the reasons above stated; *or*
2. Alter or amend its Order of November 27, 2018, granting relief, to address the issues herein noted.

Respectfully submitted,

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By: _____
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7 Dec., 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2017-CP-40-6831
MARIE ASSA'AD-FALTAS	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

RICHLAND COUNT
FILED
2018 DEC -7 AM 11:
JEANNETTE W. McBRIDE
C.C.P. & G.S.

1. I am an employee of the Respondent in the above-captioned action.

2. I have this day served a copy of the clocked and signed **Motion to Alter/Amend, Reconsider Order Granting Post-Conviction Relief** in the above-captioned matter on the following person via hand delivery:

Christopher Stephen Truluck, Esquire
1720 Main Street, Suite 104
Columbia, South Carolina 29201

DATED this the 7th day of December, 2018.

Johnny E. James Jr., Attorney
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT OF COMMON PLEAS
Application for Post-Conviction Relief (PCR) No. ~~2018-CP-~~40-06831

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

Applicant's *Memorandum* in Opposition to the State's Rule 59 Motion, *COMBINED WITH* Applicant's Requests For the Court to Rule on her Additional Sustaining Grounds And to Consider Rule 11 Sanctions on the State's Counsel

I. (of State's Rule 59 motion, introductory)

St. Paul on South Carolina's ("SC") bench, the miracle of Christmas in November, both AKA the truly Honorable Perry Hudson Gravely, are being asked by SC Assistant Attorney General ("SCAAG") Johnny James to **undo a miracle**!?!?! It is like asking St. Paul, on the road *back* from Damascus, to go desecrate the grave of St. Stephen, in whose stoning Saul of Tarsus had assisted, instead of joining the Apostles. **St. Paul in Jerusalem refused to revert to being Saul and so should St. Paul on SC's bench.**

St. Paul in Jerusalem did not just stop persecuting early Christians, he organized the church "in the newness of the spirit, not the oldness of the letter." ***Romans* 7:6 St. Paul on SC's bench knows what fork on the road *back* from Damascus to take.** The road less traveled by makes all the difference.

Many travelled a road of attacks on Marie Assa'ad-Faltas, MD, MPH ("Applicant"); **but the scales have fallen off St. Paul of SC's bench's eyes.** He saw judicial tyranny disguised as a release bond. He read the 22-23 March 2018 full evidentiary hearing transcript before Judge Goldsmith ("Evidentiary Tr.").[1]

St. Paul of SC's bench put his exquisite knowledge of the letter of the law; *e.g.*, § 44-17-510 *et seq.*, SC Code of Laws, and *Town of Mt. Pleasant* v. *Roberts*, 393 S.C. 332, 344, 713 S.E.2d 278, 284 (2011); in the service of the newness of the spirit of justice. **No return to stoning saints after that!** St. Paul answered with Jewish and Roman law. St. Paul of SC's bench has SC law *and the record* buttressing his 27 November 2018 miraculous order. Applicant likewise answers the State's desire to undo miracle.

SCAAG James' 7 December 2018 **MOTION TO ALTER/AMEND, RECONSIDER ORDER GRANTING POST-CONVICTION RELIEF** ("State's Rule 59 motion") opens with feigned *"exceeding sympathy* to the Court's stated goal" and laments of that goal's "doom." **But that "doom" is *solely* SCAAG James' choice.** Applicant never arrested herself on *any of the* ***twenty, YES TWENTY, false criminal charges*** the State and the City of Columbia ("*the* City") brought against her from 1999 to 2010. Applicant never forced ineffective, *or any,* counsel on herself after having, thank God, *ultimately* **prevailed *pro se* on ALL of those charges adjudicated to finality by 13 August 2012. (Appendix A hereto).** Applicant neither appealed her own victory at *the* City's own municipal court ("CMC") in July 2015; ***the* City did**; nor sought *certiorari* from SC's Supreme Court for her own unanimous *pro se* victory in SC's Court of Appeals' 2007-UP-193 - City of Columbia v. Faltas; ***the* City did. (Appendix B hereto).** Applicant did not appeal her own 14 June 2018 victory before Retired SC Chief Justice Toal, sitting as an SC circuit judge in 2016-CP-40-01444; **the State did**.

Applicant never withheld refund of her own bond after her 2016-CP-40-01444 victory **or her own *fine* money** after being ***twice* granted PCR in *this case*. *The* City, apparently on SCAAG James' advice, did.**

SCAAG James insinuates that Applicant tried to double-dip "despite the order to refund the appeal bond included as Exhibit 2 of Respondent's Motion for Summary Judgment." State's Rule 59 motion, p 2. **That is false:**

(1) Applicant's prompt demand for *the* City to refund her fine is NOT new litigation but effeting this Court's at ORDER p 9 "Applicant has requested additional remedies relating to the return of her bond and fines money, but those will need to be addressed to the CMC." She had paid **both a $1,000.00 release bond** on 12 April 2011 **AND a $500.00 fine in lieu of being jailed *again*** on 18 May 2011.

(2) In 2016-CP-40-01444, Applicant sought *inter alia* refund of her bond *with interest. Vide* her 3 March 2016 hand-written PCR application and transcript of Part I of the evidentiary hearing in *that* case ("First PCR-Part I Tr.") pages 78, line 16 to 80, line 18; specifically, p 79, lines 1-2:

[1] At pp 115, line 7 to 116, line 8, Applicant displayed an extracted tooth of hers that had been perfect in shape and health but later broke into two sagittal parts from the involuntary gnashing with the nightmares of jail life and fear of being returned to incarceration for inability to do the impossible in 2011. **That tooth *is but a sample* of what Applicant lost so far.**

[page 78, lines 16-19] BY MS. MOODY: Q. So, *** You're asking the court to give you relief?

[20] A. Yes.

[21-22] Q. And that release is -- relief is to overturn your conviction?

[23-24] **A. To overturn my conviction, to hold that the City of Columbia is not a court ---**

[25] Q. But --

[page 79, lines 1-2] ***A. --- and cannot be a court, to refund my bond, and to hold that that ordinance is unconstitutional.***

[3-6] Q. Well, you do realize that the court here today can only address that your counsel was ineffective --- *** --- and that you were prejudiced in some way?

[7-8] A. Actually, I, I do not realize that. I realize there are several other issues that --

[9-14] THE COURT: Dr. Faltas. *** Let me, let me solve that one for you. *** Just what you told your counsel is what you said in your petition for post-conviction relief.

[15] THE WITNESS: Yes.

[16-20] THE COURT: And what I understand you're saying to me, you want the conviction vacated. You're saying that your counsel was also ineffective in not challenging the legality of the city court, so that's an issue already here. I've got that.

[21] THE WITNESS: Yes, ma'am.

[22-23] THE COURT: So, I think you're protected in terms of raising all these issues.

(3) In her amended PCR *in this case,* Applicant sought refund of her fine *with interest.*

(4) *Nelson* v. *Colorado*, 581 U.S. __, 137 S.Ct. 1249 , 1256 (2017), held a state "may not retain funds taken from [Applicants] solely because of their now-invalidated convictions, see *supra,* at 1253-1254, and n. 3, for [the state] may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions." Once this Court's 27 November 2018 ORDER vacated Applicant's two 18 May 2011 contempt convictions, *the* City had no justification for retaining her $500.00 fine

(5) *Phillips* v. *Washington Legal Foundation*, 524 U.S. 156, 165-72 (1998), held that, as "interest follows principal," interest on client IOLTA funds was the clients' property. And *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U.S. 155, 164-5 (1980), rejected the idea that government was not taking value because the interest itself was government-created and would not have otherwise existed.

(6) The state in *Beckwith* had to disgorge the interest earned to the recipient of the underlying funds.

(7) All interest *the* City collected on Applicant's bonds and fine since 2011 **is: (a) interest Applicant *would have earned for herself* in those seven years had she not had to pay the principal to *the* City under duress** or **(b)** interest Applicant *paid* to borrow those funds and pay them to *the* City, **always under the duress of being incarcerated if not paying.** It follows inexorably that *the* City effected illegal "takings" and must now refund both the principals and the interests.

(8) **The above demand is *still* timely and proper before this Court even if supporting *citations* were given for the first time in this brief.** A ruling thereon is now respectfully requested.

IN SUM: Applicant does NOT seek to be above the law by being supposedly "of sufficiently vexatious character" (State's Rule 59 motion, p 2, and fn 1). **As this Court admirably analyzed,** CMC's Marion Hanna set herself above § 44-17-510 *et seq.,* SC Code, and "impose[d her] own judgment" in lieu of "the evaluation [of] a licensed professional." Hanna did so by colluding with *the* City police employees willing to: (a) physically torture Applicant in court ("lift her up" when she could not stand on a fractured knee when Hanna entered the courtroom on 28 March 2011), (b) extort the lawful contents of Applicant's pockets before she was transported that day, and (c) take her *again* to the dangerous Alvin S. Glenn Detention Center ("ASGDC") on 18 May 2018 had she failed to *immediately* pay the $500.00 fine.

Applicant must decode SCAAG James. "Victory begets litigation" means "Federal §1983 allows the exonerated to sue for compensation. Judge, keep this Applicant *falsely* convicted so she cannot seek compensation from *the* City or State." **Saul of Tarsus would have complied. St. Paul cannot.**

Applicant never chose "her litigation history," but reacted with Christian dignity to two false harassment charges which, **God forbade**, could have thrown her into cells of steel and stone **for six years plus enhancements.** Judge Clifton Newman presided over the 22-26 February 2010 General Sessions jury trial of **the only one of those two charges the Prosecution ever dared to try.** Applicant's *pro se* defense earned Judge Newman's *transcribed* compliments as "not frivolous at all" and always "most pleasant and gracious." It is no sin to treasure such gallant compliments or to treasure a victory, albeit unpublished, earned after a challenging *pro se* oral appellate argument before a panel of the erudite and conscientious Judges Judge Huff and Ralph Kind Anderson, Jr, and now-Chief Justice Beatty.

Applicant's is not sinful pride but conscientious awareness of her intellectual talents **and sense of responsibility to use them for the public good.** That is why she pioneers legal ideas; *e.g.,* unappealability of grant to a criminal defendant of a new trial based on after-discovered evidence. *Vide* Appendix B and 2007-UP-193, *supra.* **She now pioneers unappealability of grant of PCR.** *Vide* 30 November 2018 and 7 December 2018 entries in SC Appellate Case 2018-001290.

II. (of State's Rule 59 motion, "trial error")

SCAAG James ignores this Court's reliance on **§ 17-27-20 (A) (2)** to vacate sentencing court's acts **for *lack of jurisdiction,* not mere trial error.** *Even at that:* (a) SCAAG James omits key word "generally" from his *Al Shabbaz* quotation; (b) Judge Goldsmith found Orin G. Briggs prejudicially ineffective in failing to raise the jurisdictional issues on several occasions before CMC; and (c) no evidence refutes Judge Goldsmith's findings. This Court's grounds for relief in "Sections 1 and 2 of the Order" are correct and sufficiently explained. SCAAG James' demand that the Court *rewrite* them is formalistic at best.

III. (of State's Rule 59 motion "no right to counsel")

"Do you have a case that says that?" a bemused Judge Gravely asked SCAAG James, in the 10 August 2018 hearing on the parties' cross-motions. Applicant interposed "He doesn't. He doesn't."[2] Applicant respectfully refers to her amended proposed order denying the State's motion for summary judgment, invites the Court to sign it as a separate document to be referenced in an order denying State's Rule 59 motion, **and advises the Court of her readiness to draft a meticulous order denying Rule 59.**

Otherwise, Applicant had argued that CMC is clearly stripped of civil jurisdiction by the very statute creating municipal courts. Even at that, Applicant would have had to sue herself in CMC to obtain an order for her to undergo intensive psychiatric treatment "for her own benefit." This Court elegantly accepted Applicant's, and rejected the State's, civil contempt argument by writing, at ORDER pp 7-8:

> The Court is not aware of any Motions filed requesting such a condition or bringing this matter properly before the Municipal Court, nor any affidavits affidavit [sic] or sworn testimony showing that such treatment was needed or even recommended. There is nothing in the record presented to this Court which warrants any such findings or authority to issue an Order. The order does not require the evaluation [of] a licensed professional to make a recommendation regarding a treatment plan but imposes its own judgment as to the type of psychiatric treatment which the Applicant needs—all for the purpose of assuring that Applicant will make it to the hearing on her appeal to Circuit Court. Without statutory authority, such conditions for an Appeal Bond or any other type of Order would not be proper.[1] Therefore, the Court finds that the CMC did not have jurisdiction or authority to issue such conditions and the Bond Order and the subsequent Contempt Order based on the Bond Order are declared null and void and the conviction is hereby vacated.
>
> [fn 1] The Court is not aware of any authority which would support such a finding by the CMC. The Court is aware of a formal process for Judicial Commitment allowed by S.C. Code Ann. 44-17-510, et seq. which allows for the Court to order certain out-patient treatment under specific circumstances and after a finding by clear and convincing evidence. And even then, the remedy for failure to follow the treatment plan is a supplemental hearing for further determination by the Court.

[2] SCAAG James did not then, and still now cannot, cite a case holding that where *appointment of counsel* is not guaranteed, representation by retained, volunteer, or *pro bono* counsel need not be effective. **Indeed, the controlling *Cuyler, infra,* says the *exact* opposite.** Nor did SCAAG James posit policy reasons to ignore or overrule *Cuyler,* even if a state court were could overrule the U.S. Supreme Court.

As inelegantly retold by Applicant, this Court found that there can be no civil contempt without a *valid* civil prospective mandatory injunction; there can be no valid civil injunction without valid affidavit-supported motion to be heard by a court of competent jurisdiction; and this record has no such motion or affidavits; therefore, summary judgment *for Applicant* is appropriate as a matter of law. This amply addresses the State's false pretense that the contempt was civil and unamenable to PCR.

More incorrect is State's claim that Applicant had no right to counsel *ab initio.* All cases ever cited by the State address entitlement to *government-appointed* counsel and predate *Alabama* v. *Shelton,* 535 U.S. 654 (2002), and *Ex Parte Jackson,* 381 S.C. 253, 672 S.E.2d 585 (Ct. App. 2009). "Assistance of Counsel" is guaranteed by the Sixth Amendment to the U.S. Constitution in "all criminal Prosecutions."

Applicant's here-challenged convictions were entered by CMC, a court of exclusive criminal jurisdiction over petty offenses. The very state statute creating CMC strips it of any civil jurisdiction:

> SECTION 14-25-45. Powers, duties, and jurisdiction of municipal courts.
>
> Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.

Also, ***Cuyler* v. *Sullivan,*** 446 US 335, 342-45 (1980) [footnotes omitted, emphasis added], disposes of the State's claim that Applicant is not entitled to PCR if she was not entitled *appointment* of counsel:

> We turn next to the claim that the alleged failings of Sullivan's retained counsel cannot provide the basis for a writ of habeas corpus because the conduct of retained counsel does not involve state action. A state prisoner can win a federal writ of habeas corpus only upon a showing that the State participated in the denial of a fundamental right protected by the Fourteenth Amendment. The right to counsel guaranteed by the Sixth Amendment is a fundamental right. *Argersinger* v. *Hamlin,* 407 U.S. 25, 29 33 (1972). In this case, Sullivan retained his own lawyers, but he now claims that a conflict of interest hampered their advocacy. He does not allege that state officials knew or should have known that his lawyers had a conflict of interest. Thus, we must decide whether the failure of retained counsel to provide adequate representation can render a trial so fundamentally unfair as to violate the Fourteenth Amendment.
>
> This Court's decisions establish that a state criminal trial, a proceeding initiated and conducted by the State itself, is an action of the State within the meaning of the Fourteenth Amendment. See *Lisenba* v. *California,* 314 U.S. 219, 236 -237 (1941); *Moore* v. *Dempsey,* 261 U.S. 86, 90 -91 (1923). The Court recognized as much in *Gideon* v. *Wainwright,* 372 U.S. 335 (1963), when it held that a defendant who must face felony charges in state court without the assistance of counsel guaranteed by the Sixth Amendment has been denied due process of law. Unless a defendant charged with a serious offense has counsel able to invoke the procedural and substantive safeguards that distinguish our system of justice, a serious risk of injustice infects the trial itself. *Id.,* at 344; see *Johnson* v. *Zerbst,* 304 U.S. 458, 467 -468 (1938). When a State obtains a criminal conviction through such a trial, it is the State that unconstitutionally deprives the defendant of his liberty. See *Argersinger* v. *Hamlin,* supra, at 29-33.
>
> Our decisions make clear that inadequate assistance does not satisfy the Sixth Amendment right to counsel made applicable to the States through the Fourteenth Amendment. A guilty plea is open to attack on the ground that counsel did not provide the defendant with "reasonably competent advice." *McMann* v. *Richardson,* 397 U.S. 759, 770 -771 (1970); see *Tollett* v. *Henderson,* 411 U.S. 258, 267 (1973). Furthermore, court procedures that restrict a lawyer's tactical decision to put the defendant on the stand unconstitutionally abridge the right to counsel. *Brooks* v. *Tennessee,* 406 U.S. 605, 612 -613 (1972) (requiring defendant to be first defense witness); *Ferguson* v. *Georgia,* 365 U.S. 570, 593 -596 (1961) (prohibiting direct examination of defendant). See also *Geders* v. *United States,* 425 U.S. 80 (1976); *Herring* v. *New York,* 422 U.S. 853 (1975). **Thus, the Sixth Amendment does more than require the States to appoint counsel for indigent defendants. The right to counsel prevents the States from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance.**
>
> A proper respect for the Sixth Amendment disarms petitioner's contention that defendants who retain their own lawyers are entitled to less protection than defendants for whom the State appoints counsel. We may assume with confidence that most counsel, whether retained or appointed,

will protect the rights of an accused. But experience teaches that, in some cases, retained counsel will not provide adequate representation. **The vital guarantee of the Sixth Amendment would stand for little if the often-uninformed decision to retain a particular lawyer could reduce or forfeit the defendant's entitlement to constitutional protection. Since the State's conduct of a criminal trial itself implicates the State in the defendant's conviction, we see no basis for drawing a distinction between retained and appointed counsel that would deny equal justice to defendants who must choose their own lawyers.**

As Applicant was convicted in a court without civil jurisdiction, her right to effective counsel obtains whether that counsel is state-appointed, *pro bono,* or retained. PCR remains available for her to challenge, *inter alia,* the constitutional adequacy of the representation she received in proceedings that convicted her. All SCAAG James does is ***repeatedly*** **telegraph** to this Court that SC's supreme hates *this* Applicant and will seize any excuse to remand the case. **St. Paul converted his elders, too.**

IV. (Applicant's Additional Sustaining Grounds)

Applicant's additional sustaining grounds are amply preserved on the record; but, since SCAAG James threatens to appeal, Applicant prays this Court to rule on her additional sustaining grounds **or** to state that a ruling on them is either unnecessary or implicit in its miraculous 27 November 2018 ORDER.

Applicant urged that *the* City is not a recognized sovereign and, as a non-sovereign, may not enact criminal statutes, prosecute crime, or even own and operate a court. She further urged that summary incarceration for contempt of court is cruel and unusual by the standards of today's evolved society.

This Court has seen how CMC's Hanna deviated from the law in the absence of sovereign control over CMC and how she despotically abused her contempt powers. This Court is invited to make a ruling.

Applicant also submitted ASGDC's records and cited state statutes and U.S. Supreme Court cases to the effect that, with her good-time and work credits, she was eligible and scheduled to be released, after having served her full sentence, at 4:00 **am** on Monday, 11 April 2011. Hanna ignored SC Statute and the Double Jeopardy Clause, increased Applicant's sentence, and caused ASGDC's warden to illegally delay Applicant's release. The Bond Order was signed at 4:00 **pm**, after Applicant's full sentence had been served with the legally irrevocable credits. As the Bond Order was based on illegal lengthening of Applicant's sentence it is null and void for that reason, too. Additionally, Orin Briggs was ineffective in failing to detect the illegality of the revocation of Applicant's credits and failing to object.

Applicant also extensively demonstrated Briggs' ineffectiveness in the 18 May 2011 hearing. *Vide* Evidentiary Tr *passim* and, more specifically, pages 97, lines 9-19 and 98, lines 2-22, respectively:

> **MS. KINARD:** It's 32, Your Honor.
>
> **DR. FALTAS:** Thirty-two, page 32. So that's my lawyer saying to the Court that I, his client, did not try hard enough, and I was prepared to -- because the defenses to a contempt for failure to obey a court order, one of the possible defenses is that the Court -- the order is invalid or the defendant made good faith attempts to comply and was unable to. And he throws all of that out the window. He says, "She did not try hard enough."
>
> **THE COURT:** Okay.
>
> **DR. FALTAS:** And he does not contest, Your Honor. * * * * *
>
> **DR. FALTAS:** All right. So, Your Honor, basically -basically, there are defenses. The May 18, 2011 was a contempt hearing for violation of the April 11, 2011 order. In addition to the fact that he should not have consented to the issuance of that order, there are valid defenses to a charge of contempt. And those valid defenses, in general, are: The order is invalid; the injunction is transparently unconstitutional; the defendant has no ability to comply; the defendant made a good faith effort to comply. He doesn't -- and all those four defenses were applicable to me. He doesn't raise any of them. In fact, he goes the opposite way. He said --
>
> **MS. KINARD:** Your Honor, this is my understanding ---
>
> **DR. FALTAS:** Stop, Ms. Kinard. Please do not interrupt me. Please. I'm sorry. I'm sorry.

This Court is again invited to find Briggs' 18 May 2011 representation ineffective based on the law, on the transcript of the 18 May 2011 event, and on his failure to justify himself on 22-23 March 2018.

Finally, Applicant could not even file a *pro se* appeal and motion to appoint counsel in October 2012. Restoration of her right to do so did not come until the end of June 2013, whereupon, she filed her July 2013 motion to appoint counsel. That motion lay unheard until Judge Clifton Newman granted it in November 2017. Therefore, Applicant was totally denied appellate counsel to seek review of Judge Lee's September and October 2012 orders denying the first stage of Applicant's appeal from CMC.

V. Unappealability of this Court's Order

In addition to possible general unappealability of grants of PCR relief, this Court's 27 November 2018 ORDER is functionally equivalent to acquittal because if found lack of an element (a valid court order) the Prosecution needs to prove to obtain a contempt conviction for disobedience of a court order.

VI. Rule 11 Sanctions on the State

SCAAG James and SCADAG Jameson repeatedly delayed this case in a pre-***State* v. *Langford*, 400 SC 421, 735 S.E.2d 471 (2012),** mentality. The Judiciary (assisted by clerks), not the Executive, controls the court docket, be it civil, criminal, **or hybrid**.

Wade v. *State*, **348 S.C. 255, 264, 559 S.E.2d 843, (2002),** quoted the U.S. Court of Appeals for the Fourth Circuit's *Smith v. Angelone*, 111 F.3d 1126 (1997), with approval:

> "[H]abeas corpus cases are, in effect, hybrid actions whose nature is not adequately captured by the phrase 'civil action'; they are independent civil dispositions of completed criminal proceedings. The 'civil' label is attached to habeas proceedings in order to distinguish them from 'criminal' proceedings, which are intended to punish and require various constitutional guarantees." *Smith*, 111 F.3d at 1130 (quoting *Santana*, 98 F.3d at 754-55).

SC's Supreme Court thus: (1) joined the view of PCR as civil supplemental proceedings to criminal proceedings; and (2) would *ipso facto* extend *Langford* to PCR. Thus, SCAAG James and SCADAG Jameson, who delayed this case with repeated motions for reconsideration, violated the *Langford* policy.

Also, *Hiott* v. *State*, 375 S.C. 354, 652 S.E.2d 436 (Ct. App. 2007), **reversed,** 381 S.C. 622, 674 S.E.2d 491 (S Ct. 2009), **applies SC's Rules of Civil Procedure to PCR *with exceptions dictated by the Act and/or by public policy.*** The public policy underlying Rule 11 and the Cannon of professional conduct **apply *a fortiori* to the SGAAGs in PCR proceedings, where the State is most potent and the PCR applicants are most vulnerable to the State's lawyers' misconduct.**

Exempting PCR *applicants* from Rule 11 while imposing it on SCAAGs *seems* asymmetric. **But everything in criminal proceedings is asymmetric,** from the burden of proof to Prosecution's inability to appeal an acquittal even where a convict is constitutionally guaranteed a fair appeal. **Conversely, the disproportion between the State's resources and those of the typical criminal defendant is stark.** The same asymmetry of rights, needed to balance the *known* asymmetry of resources, should extend to PCR proceedings, where the asymmetry of resources is augmented.

The State's lawyers delayed, were frivolous, falsely disparaged Applicant, and telegraphed improper ideas to the Court. The State deserves Rule 11 sanctions. If the State will appeal no matter what, this case is an excellent vehicle to test whether *Hiott, supra,* is properly limited to PCR *applicants.*

VII. Conclusion

Applicant's gratitude to Judge Gravely is immense. Applicant asks His Honor to do the additional work of denying State's Rule 59 motion, ruling on Applicant's additional sustaining grounds, ruling on appealability, and ruling on Rule 11 sanctions on the State for three reasons: (1) to advance the law; (2) to protect the monumental work Judges Clifton Newman, Jocelyn Newman, Brooks Goldsmith; and Perry Gravely, in strict chronological order, already did on this case; and (3) Applicant is worn down by the injustice she suffered since 2008 and deserves no-further-delayed justice with finality.

Respectfully verified as to the facts and legal research on 9 and 10 December 2018 and served (in an unedited version) on 9 December 2018 by e-mail to the Honorable Judge Gravely and on SCAAGs James and SCADAG Jameson by the same e-mail at the same time with a copy to Mr. Truluck, and served again (in its final version) on 10 December 2018 on all foregoing persons by hand-delivery of the filed hard copies to the AG's office and, through Mr. Truluck, by appropriate means on the Honorable Judge Gravely, all God so willing, by:

S/Marie-Thérèse Assa'ad-Faltas, MD, MPH, Applicant

P.O. Box [redacted], Columbia, SC 29290 Phone: [redacted]
e-mail: Marie_Faltas@hotmail.com Cell: [redacted]

Appendix A: Dispositions letters of other cases Applicant defended *pro se* and, thank God, prevailed.
Appendix B: Applicant's *pro se* 6 February 2007 oral argument to SC's Court of Appeals.
Appendix C: Draft ORDER denying the State's motion for Summary Judgment in detail.

Read and served by: TRULUCK LAWFIRM, LLC

Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104, Columbia, SC 29201
Tel: (803) 556-7285, Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com, *Standby Attorney for Applicant*

APPENDIX A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS
ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA

Race OTHER Sex FEMALE Age 59
DOB [redacted] SSN [redacted]

vs.

SID SC0139 9029

MARIE FALTAS

Charges were disposed of in the court indicated below:

Magistrate Municipal X General Sessions

AKA MARIE ASSAAD-FALTAS

IT APPEARS that the defendant is entitled to have all records relating to this offense expunged and destroyed according to the applicable section of the South Carolina Code of Laws indicated below:

Warrant/GS No. K613792; K613793 Date of Arrest 12-2-2009 Place of Arrest Richland County, S.C.

Arrest Charge HARASSMENT / 1ST DEGREE HARRASSMENT (2 COUNTS)

X § 17-1-40. The charge was dismissed; *nol prossed* or the defendant was found not guilty **8-13-12**

§ 17-22-150(a). The charge was *nol prossed* on _____ by the Solicitor because the defendant successfully completed the Pre-Trial Intervention Program. (*PTI Director must attest to eligibility for expungement*).

§ 17-22-530(A). The charge was *nol prossed* on _____ by the Solicitor because the defendant successfully completed the Alcohol Education Program Program. (*AEP Director must attest to eligibility for expungement*).

§ 34-11-90(e). The defendant was convicted of a first offense misdemeanor under the Fraudulent Check Law on and no additional criminal conviction as defined by § 34-11-90(e) has taken place in one year from date of conviction.

§ 44-53-450(b). The defendant was charged with first offense simple possession of marijuana or hashish on received a conditional discharge and has successfully complied with the terms as set forth by the court.

§ 22-5-910. The defendant was convicted of a first offense for a crime carrying a penalty of not more than 30 days on that offense did not involve the exceptions enumerated in § 22-5-910, and no additional criminal conviction as defined by § 22-5-910 has taken place within three years from date of conviction or five years from the date of conviction for criminal domestic violence. (*Summary Court Judge must attest to eligibility*).

§ 22-5-920. The defendant was convicted of a first offense as a youthful offender on _____, that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by § 22-5-920 has taken place during a five-year period following the first offense conviction as a youthful offender.

§ 56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on _____ and no additional criminal conviction has taken place for three years after completion of the sentence.

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 AUG 24 PM 3:30

RICHLAND COUNTY
FILED

SLED verifies the offense listed above is eligible for expungement: ☐ Yes ☐ No SLED _____ Date _____

IT IS ORDERED that all records relating to such arrest and subsequent discharge pursuant to the above-referenced section be dismissed, expunged and immediately destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except nonpublic information retained on each person accepted for Pre-Trial Intervention pursuant to § 17-22-130, nonpublic information retained by SC Law Enforcement Division (SLED) pursuant to § 34-11-90(e), nonpublic information retained by the Department of Narcotic and Dangerous Drugs Under SLED pursuant to § 44-53-450, nonpublic information retained by SLED pursuant to § 22-5-910 and § 22-5-920, and nonpublic information retained by SLED and Department of Public Safety pursuant to § 56-5-750 (F).

Solicitor: X Consents

Declines to Consent

Determined ineligible for expungement

D... /vw
Circuit Solicitor

Signed this 23 day of August 2012

Circuit Court Judge

I attest that the defendant is eligible for expungement pursuant to S.C. Code §17-22-150(a) (successful completion of PTI), §17-22-530(A) (successful completion of AEP), § 22-5-910 (summary court conviction) or § 44-53-450(b) (conditional discharge).

Director PTI / Director AEP/Summary Court Judge (circle one)

Marie Assaad Faltas, MD, MPH
Defendant / Attorney for Defendant (Circle One)

Expunged by SLED by:_____ Date: _____ (For SLED internal use only)

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeanette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

SCCA 223A (11/2009)

City Of Columbia Municipal Court

CASE HISTORY FOR CASE K613792

State of South Carolina vs Marie Faltas

FILED DATE: 7/26/2012 | CASE TYPE: CR | STATUS: Disposed

JUDGE: City Of Columbia Municipal Court

ARRESTING AGENCY: Columbia Police Department

CASE PARTIES:

Defendant	Faltas, Marie P O Box [redacted] Columbia, SC 29209
Officer	Inactive, Officer #1 Justice Square, Columbia, SC 29201
Witness	Blanton, Inv. A. #1 Justice Square, Columbia, SC 29201

CASE HISTORY FOR CASE K613792

Faltas, Marie
P O Box [redacted]

Columbia, SC 29209

Age: Unknown
DL#:

DOB: Unknown
SSN: 000-00-0000

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
2403	Harassment / 1st Degree Harassment	2/1/2009	Dismissed No Prosecution	8/13/2012

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
1/2/2012	8:00 AM	Court event: Criminal/Traffic Court
8/7/2012	8:00 AM	Court event: Criminal/Traffic Jury Trial Roster/Jury Term
8/13/2012	8:00 AM	Court event: Criminal/Traffic Jury Trial Day Certain

CERTIFIED TRUE COPY

Print Date: 08/20/2012
Print Time: 2:44:34PM
Requested By: CTYISHMALK

CaseHistory.rpt

CITY OF COLUMBIA, S.C. SUPRA VIRTUTEM REGINA

City Of Columbia Municipal Court

CASE HISTORY FOR CASE K613793

State of South Carolina vs Marie Faltas

FILED DATE: 7/26/2012 | CASE TYPE: CR | STATUS: Disposed

JUDGE: City Of Columbia Municipal Court

ARRESTING AGENCY: Columbia Police Department

CASE PARTIES:

Defendant	Faltas, Marie P O Box [redacted], Columbia, SC 29209
Officer	Inactive, Officer #1 Justice Square, Columbia, SC 29201
Witness	Blanton, Officer A. #1 Justice Square, Columbia, SC 29201

CASE HISTORY FOR CASE K613793

Faltas, Marie
P O Box [redacted]

Columbia, SC 29209

Age: Unknown
DL#:

DOB: Unknown
SSN: 000-00-0000

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
2403	Harassment / 1st Degree Harassment	2/1/2009	Dismissed No Prosecution	8/13/2012

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
1/2/2012	8:00 AM	Court event: Criminal/Traffic Court
8/7/2012	8:00 AM	Court event: Criminal/Traffic Jury Trial Roster/Jury Term
8/13/2012	8:00 AM	Court event: Criminal/Traffic Jury Trial Day Certain

CERTIFIED TRUE COPY

Print Date: 08/20/2012
Print Time: 2:45:47PM
Requested By: CTYISHMALK

CaseHistory.rpt

CITY COLUMBIA S.C. SEMPER VIRTUTUM REGINA

APPENDIX B

[minute 00:00] **The courtroom officer:** Be upstanding before the Court!

[minute 00:08] **The Honorable Judge Anderson:** Thank you. Please be seated. Ms. Clerk, you're recognized.

[minute 00:15] **The Clerk:** Case Number 14567, *City of CoIumbia versus Maria-Teresa* [sic] *Assa'ad-Faltas.*

[minute 00:20] **The Honorable Judge Anderson:** Ms. Faltas, you're recognized.

[minute 00:27] **Appellant pro *se:*** Good afternoon, Your Honors. And may it please the Court, I am Dr. Marie-Therese Assa'ad-Faltas, the very grateful appellant *pro se* before this Court.

Initially, I was the defendant and later the movant before the City of Columbia Municipal Court, which sat in the person of the Honorable Steven Dennis both for the bench trial on April 1st, 2002, and the after-discovered evidence hearing on May 23, 2005.

Judge Dennis issued his ruling on July 26. It was filed July 28, 2005, setting my conviction aside based on after-discovered evidence ---

[minute 01:20] **The Honorable judge Beatty:** Actually he gave you a new trial; he didn't set the conviction aside. Did he?

[minute 01:25] **Appellant *pro se:*** Actually yes, Your Honor, he did set the conviction ---

[minute 01:27] **The Honorable judge Beatty:** Are you suggesting that you were acquitted then?

[minute 01:29] **Appellant *pro se:*** *I think it is functionally,* ***in this case****, constitutionally equivalent to an acquittal.* And I ---

[minute 01:38] **The Honorable judge Beatty:** What's your authority for that?

[minute 01:40] **Appellant *pro se:*** Two, two very clear statements from the U.S. Supreme Court.

It said it's not the form of the judge's action, and that's from *United States versus Martin Linen Company,* but the court looks to whether the judge made a factual finding, correct or not, as to the elements of guilt, or one or more of the elements of guilt or innocence of, of the defendant. And in this case, the judge specifically found, at least in two or three areas in his order, that it is physically impossible, he used the word "impossible," for that for which I was tried to have been true, based on the after-discovered evidence. So, that is a factual finding.

And the Double Jeopardy Clause is not premised on infallibility of the fact finder.

Once a fact is found favorable to the defendant, then it is functionally, constitutionally equivalent to an acquittal. The other ---

[minute 03:05] **The Honorable Judge Anderson:** There may be some disputation as to whether that was a factual finding by the judge because he didn't have the right to make factual findings in terms of a motion for a new trial based on after-discovered evidence. He needed to identify evidence, not make factual findings, in terms of his particular role at that time.

What I would like to ask you in terms of his function at that time: He was looking at the after-discovered evidence, because that was the gist and gravamen of your motion: after-discovered evidence. "I need a new trial based on after-discovered evidence."

In the photograph, when you first had the photograph at the first trial, there is a proposition of law known as "due diligence." Did you exercise due diligence at that time by pointing out to the judge "well, I need more time to deal with this photograph" or was, was the point in regard to the photograph not obvious at that time so that you really could not even determine the need to ask for more time?

[minute 04:31] **Appellant *pro se*:** Actually, Your Honor asked me several questions.

[minute 04:34] **The Honorable Judge Anderson:** I did.

[minute 04:35] **Appellant *pro se*:** And if I may answer all of them, not in the order of importance, but in the order Your Honor posed them.

Yes, I think the new-trial-motion judge is required to make issues related to guilt or innocence because one of the elements he is supposed to look at is whether the new evidence will make a different outcome likely. Put in other words, is that, if in the first trial the defendant was convicted, does the new evidence make it likely that in a new trial the defendant will be acquitted?

So, not only did he have the right to make that finding; that was his duty. The second ---

[minute 05:23] **The Honorable Judge Anderson:** Well, let's, let's go back to that point again now. The two cases. Let's just stick with *State versus Caskey,* which is a State Supreme Court case. It gives these five elements; and in it, the defendant must show that the evidence: (1) would likely change the result if a new trial was granted.

That does not mean the judge is then making factual findings.

The judge is identifying evidence that is being presented within the ambit and aegis of the motion for new trial based on after-discovered evidence. Identifying that evidence, I think, is more correct in terms of saying the judge is finding facts at the time.

[minute 06:05] **Appellant *pro se*:** Respectfully, Your Honor, as a threshold matter, the judge needs to make a factual ruling whether the after-discovered evidence is true or not. And if he does find it is true, then he goes on to find whether it will make a different outcome likely.

So, he is required to find as a threshold matter whether the after-discovered evidence is true. And that is a factual finding, because, if the after-discovered evidence is not true, which happens in a lot of recantation cases that the judge finds as a threshold matter the recantation affidavit is not credible, he doesn't need to go any further than that.

So, yes, once again, not only did he have a right to make the factual finding, but he had a duty to make it because that is the threshold element.

[minute 07:11] **The Honorable Judge Beatty:** Ms. Faltas?

[minute 07:13] **Appellant *pro se*:** Yes, Your Honor.

[minute 07:15] **The Honorable Judge Beatty:** Let me ask you. I am going to ask maybe a series of questions; and they are not difficult to answer. And hopefully they will not be confusing.

In fact, I'll just make a statement. No. Now, you do understand that your trial was held, right? And you were convicted at the trial itself. Is that correct?

[minute 07:29] **Appellant *pro se*:** Well, yes, Your Honor.

[minute 07:31] **The Honorable Judge Beatty:** All right now. The trial was concluded. You had been convicted. That was over and done with. Right? Then you filed the motion for a new trial based on after-discovered evidence.

Do you, are you following me now? That is procedurally what happened. Is that correct?

[minute 07:48] **Appellant *pro se*:** But I also had in the meanwhile filed a lot of motions---

[minute 07:54] **The Honorable Judge Beatty:** Well, but let's talk about the one we're dealing with here. We're dealing with the granting of a new trial based on the after-discovered evidence; and that's what's being appealed here. Now, when that motion is granted, that is not a new trial; that's saying "you can have a new trial."

So, the judge could not have found you not guilty at that hearing. Do you understand that?

[minute 08:04] **Appellant pro *se:*** And here is, this relates to something that I have preserved below and I have tried to preserve before this Court and before the State Supreme Court, which is: it is unconstitutional. Rule 29(b) is unconstitutional in two respects. Number 1: It violates the Sixth Amendment in that it prohibits the hearing of new evidence during pendency of a direct appeal.

Number 2: It does not empower the trial judge, if the after-discovered evidence makes the like, makes guilt impossible, it does not empower the trial judge to enter an acquittal. And that is unconstitutional also on Sixth Amendment grounds and on due process grounds because somebody should not be held to answer to a charge with, without oath or affirmation.

Now, the purpose of the oath or affirmation isn't just that it be utter, uttered; but the person taking it without mental reservation tell and it's three prongs. And they aren't alternate. It's tell the truth, the whole truth, and nothing but the truth.

So, and, and I know that Your Honor asked me. Well, that is all the power that he had; and that's why it was styled "motion for a new trial."

But in the federal system, the equivalent Rule 33 of the Rules of Criminal Procedure provides that if a judge had held a bench trial, and then hears a motion for after-discovered evidence

and decides to grant the new trial, he may go on and take further evidence and decide the issue of guilt or innocence then, because---

[minute 10:28] **The Honorable Judge Beatty:** Well, in effect, he has actually conducted the new trial that he's granted you if he does that.

[minute 10:34] **Appellant *pro se*:** Your Honor, sometime. Yes, I would say that, in effect, yes; but we don't need---

[minute 10:40] **The Honorable Judge Beatty:** But that's not what happened in this case.

[minute 10:42] **Appellant *pro se*:** Well, yes, Your Honor, he, because his. It's very simple. I wasn't being tried before the Consultus of the Vatican for sainthood and it trying to decide whether I ever committed any offense in any part of the world---

[minute 11:01] **The Honorable Judge Beatty:** Ms. Faltas, your time is about running out. I wanted to ask you one other question: whether or not the evidence that you put forward was untruthful? And truthfully was it really after-discovered evidence? We're talking about a photograph that you had access to. And the only new thing that I've seen in the record is that you had it blown up and you deduced some other evidence from the expanded picture.

[minute 11:28] **Appellant *pro se*:** Actually, and I'm glad Your Honor asked me that question because that was a question that the Honorable Judge Anderson asked me and I didn't get around to answering it. And the fact is no, no, no.

Not only did I not have it before trial, I did not even have it during trial. I did not even have it after trial until a judge [sic] by the Honorable Judge Huff allowed me to make a photocopy of it. *And, and this is not only a red herring by the Prosecution, it is straight falsification of the record.*

Specifically on, on March 14th 2002, she wrote to my then-counsel that there, the items are not there; there is a photograph of it. He immediately faxed her, and that's on record page 39, saying "I need to see that photograph ASAP." She essentially faxes him back a one-sentence letter saying essentially "Go to hell. I'm not going to show you the photograph; and do whatever you want." So, what else? And in---

[minute 12:51] **The Honorable Judge Beatty:** What page of the record is that on?

[minute 12:53] **Appellant *pro se:*** Page 39 Your Honor; and this is very important and it was attempted. The, the exchanges are on page 39 and 40. And that's from, from the trial record. And then also, during the after-discovered evidence hearing, Mr. Briggs came and testified.

(Advocate chokes and coughs.) Excuse me.

And I specifically asked him to test, asked him: "Short of breaking into Ms. Thye's office to get that photograph before the trial, was there anything else you could have done?" And he said "I was relying on the discovery process."

Besides, prior to that, there were 10 specific requests for production [sic]. Additionally,---

[minute 13:48] **The Honorable Judge Anderson:** Ms. Faltas, your time is up. Now, we need to let her talk then you can reply. Well give you time in reply.

[minute 13:51] **Appellant *pro se:*** Thank you, Your Honor.

[minute 13:52] **The Honorable Judge Anderson:** All right.

[minute 13:53] **Appellant *pro se*:** May I, may I, however, pick up that thought when---

[minute 14:00] **The Honorable Judge Anderson:** Yes, ma'am.

[minute 14:01] **Appellant *pro se*:** Thank you very much.

[minute 14:02] **The Honorable Judge Anderson**: All light, Counsel. you're recognized.

[minute 14:04] **Counsel for the City**: Thank you, Your Honor. Good afternoon. May I please the Court.

My name is Dana Thye and I represent the City of Columbia in this matter.

This case was decided correctly, first at the trial and on direct appeal, where a panel of this Court affirmed the conviction, and most recently by the Circuit Court in reversing the grant of a new trial. There was simply no manifest injustice done here despite Dr. Faltas' contentions.

[minute 14:29] **The Honorable Judge Beatty:** Was she or was she not denied the photograph that is the basis of the new trial motion?

[minute 14:32] **Counsel for the City:** She had the photograph on the morning of trial, yes, Your Honor.

[minute 14:36] **The Honorable Judge Beatty:** On the morning of trial; but they had requested it sometime before then. Didn't they?

[minute 14:39] **Counsel for the City:** They had requested it. That's correct There was no --

[minute 14:40] **The Honorable Judge Beatty:** It was not given to them.

[minute 14:42] **Counsel for the City:** There was nothing filed but they had requested it in writing. I informed that the Wal-Mart representatives had the photograph and they'd be bringing it to the trial. I then invited them to make whatever motions they needed to make --

[minute 14:52] **The Honorable Judge Beatty:** Actually, your letter doesn't say all that. It just says you (reading from the Record on Appeal) "intend to call the case for trial on" your "next term. You're welcome to make pre-trial motions as you deem necessary."

[minute 14:58] **Counsel for the City:** It was the preceding letter when I told them that the photograph, that there were not actually the folders. They wanted to see the actual folders. I told them the folders didn't exist; it was just the photograph.

[minute 15:06] **The Honorable Judge Beatty:** Well, let me ask you. The photograph, after she got it and used it at the pre-trial, well, excuse me, at the new-trial motion, digitally, I guess, enlarged the photograph and discovered certain things in that photograph. Would you consider that to be after-acquired evidence or not?

[minute 15:20] **Counsel for the City:** *No, Your Honor, I wouldn't consider that. I would consider it after-created.*

[minute 15:24] **The Honorable Judge Beatty:** It's not newly-discovered at all?

[minute 15:26] **Counsel for the City:** The magnification certainly was. I mean, she didn't. The magnification was after the trial. That much is, is true. The photograph itself and the opportunity to do that magnification, she had it at trial and could have made any request to have more time---

[minute 15:39] **The Honorable Judge Beatty:** How, how could she have done that at trial if you did not produce the photograph until the morning of the trial?

[minute 15:44] **Counsel for the City:** She had it the morning of the trial. It came ---

[minute 15:47] **The Honorable Judge Huff:** Are you saying she should have made a motion for continuance based upon the just-recently received photograph and you would have had no objection?

[minute 15:52] **Counsel for the City:** I would have had no objection; it was never made. The motion was never made. I invited them to make any number of motions.

All of the items of production that she indicated, certainly, weren't in our custody or able to get. We needed to have taken those up if necessary. If she had made the motion and the court would have entertained it, she could have had any amount of time she needed to make this photographic manipulation or magnification of the Polaroid.

[minute 16:11] **The Honorable Judge Anderson:** Counsel, I have some concernment about the findings by the municipal judge at the motion for a new trial based on after-discovered evidence.

There is some very serious allegations in regard to the ruling by the municipal judge concerning the New Item stickers; whether the UPC Codes Code in place during this year, 2002, or what the differences between the folders were based on the angled or rounded edges, the clasp.

Whether this photograph is in fact a fabrication is of major concerment to me.

Now, if there is some difficulty in regard to that photograph, I for one would vote for a new trial because I am not going to sit here and let some kind of activity occur in regard to evidence that is presented at trial. Now, can you explain to me this difficulty between the 2002-copy-righted new-item stickers as juxtaposed to the ones that were in place at the time this event occurred so as to eliminate the idea notion that there was some activity within that photograph that is rising to the level of the kind of exhibit that simply cannot be accepted by the Court.

[minute 18:00] **Counsel for the City:** Certainly, I'll certainly try. It's my understanding from Dr. Faltas' argument that the Polaroid photograph, when magnified to such a degree, you can discern the "New Item!" tag in, in some of the pixilated images of this, this photograph, the Polaroid. She

then analogizes that to a new tag item [sic] that she brought in the day of the after-discovered evidence. It had a 2002 copyright date on it.

She argued and contended that, because the one in the picture looked like the one that was a 2002 copyright, that it must have been taken in 2002. But that doesn't answer whether or not the new tag item [sic] sticker from 2001 looks similar to that. These photographic manipulations are suspect at best. You're taking, you're talking about a Polaroid that doesn't contain a negative, blowing it up several times and taking a pixilated image, trying to clean that up to discern distinctions or similarities between that item and something else.

[minute 19:01] **The Honorable Judge Beatty:** But you would agree that they look very similar. Don't you?

[minute 19:02] **Counsel for the City:** *Oh, they look similar. I don't know that they wouldn't look similar to the 2001.*

[minute 19:04] **The Honorable Judge Beatty:** Now, what about her argument about the UPC Codes? Each item in the store has an individual distinct code. And the codes that she checked out with her receipt indicated, I believe, clear folders. The folders in the picture, and that's the only evidence that you all have because you got rid of the picture, of the folders themselves, were colored, folders. Now, doesn't that strike you as being odd?

[minute 19:28] **Counsel for the City:** Well, it strikes me as being odd; but I don't know that it couldn't be explained by the Wal-Mart folks. And that's one of the issues here that we have with this after-discovered evidence trial [sic].

[minute 19:33] **The Honorable Judge Beatty:** If she went to the register with, and was, and purchased, clear folders, and the UPC Codes indicated they're clear folders; yet, you put forth the photograph saying that she was trying to steal colored folders.

[minute 19:53] **Counsel for the City:** That she was attempting to remove labels from color folders and attach them to something else. Now there's, there is no argument that she walked out of the store [sic] with two items yet removed, that there are five folders in the picture removing several labels trying to get one that peeled off correctly at the time.

And that's the problem with this after-discovered evidence being considered a new trial and an acquittal: is that some three years after the case, the procedures---

[minute 20:10] **The Honorable Judge Beatty:** But how do you try and explain the UPC Codes? I mean that's the problem I'm having. If each item has a specific code, whether it's color wise or otherwise. Even different color items had a different code. She checks out with a UPC Code for two clear folders. Yet, the ones you're saying she tried to take the stickers off of are colored folders. And yet, if she had taken those stickers off of the colored folders and used those to purchase the clear folders, wouldn't her receipt show she bought colored folders?

[minute 20:40] **Counsel for the City:** I see where you're coming from, Your Honor. And I don't know---

[minute 20:44] **The Honorable judge Beatty:** But her receipt shows she bought clear folders.

[minute 20:48] **Counsel for the City:** *The receipt has two of the same items, of clear folders.* And that's the problem again with this after-discovered evidence hearing being considered an acquittal and all of that.

We still have to get past all of this, the *Caskey* criteria: discovered since the trial; could not have been discovered prior to the trial; and is it merely cumulative or impeachment evidence?

Again, the purpose behind this Polaroid photo and the magnifications; this isn't a Polaroid photograph of her actually taking the items. It's of the items themselves, which is cumulative in nature to the eye-witness testimony of the folks. The sole purpose for introducing---

[minute 21:22] **The Honorable Judge Anderson:** Well, this eyewitness testimony of these folks was directed toward the photograph. They were contending that the photograph was in essence backing them up and buttressing their testimony. Didn't they contend that at trial?

[minute 21:38] **Counsel for the City:** They contended that it contained all of the photos, or all of the folders that they saw her peel the labels off of and the folders that they took, that they saw her take out of the store [sic].

[minute 21:46] **The Honorable Judge Anderson:** So, what's cumulative about a photograph that is almost the quiddity of the trial? All this evidence is being directed to the photograph: "We can show you. This is exactly what happened."

[minute 21:57] **Counsel for the City:** Well, all the evidence wasn't directed to the photograph. Both of the folks testified at trial about what they saw, about following her around the store, the fact that she removed labels from folders, there's no dispute about that.

Dr. Faltas' testimony indicated she was removing labels. She asked the court to believe it was because there was an error. She knew that they weren't valued right; and so, she was helping Wal-Mart out by making the correction.

They testified to all of this and they merely used the photograph to illustrate the types of folders and the folders. And they said "These are the folders that she was, that we picked up off the stationery shelves that she was removing the labels from. And these are the folders that we saw her walk out of the store [sic] with." So, it was, was cumulative to their eyewitness testimony and also cumulative to a police officer who arrived to transport her that said "I saw everything there. I saw the folders, and binders and the photograph."

So there was a photograph in existence on the day that she was, that she was arrested.

So, it is cumulative; and the sole purpose is to impeach the veracity of these witnesses, to say that it didn't happen the way they said it happened and it didn't happen the time of date.

That was some of, a point that she brought out at trial herself. I would point out to the Court that she had the receipt in evidence, on page 320 of the Record on Appeal, she entered that receipt into evidence. She had that on the day of the trial. She brought it with her as a matter of fact. She testified the binders in the fold, in the photo were not the ones she took.

She had that before the trial court. She made that point before the trial court. That this is---

[minute 23:19] **The Honorable Judge Beatty:** *What about the, the manual, Wal-Mart's manual about their products with, that contained the explanation about the UPC Codes?* She did not have those. Did she?

[minute 23:29] **Counsel for the City:** No, she didn't.

[minute 23:29] **The Honorable Judge Beatty:** *They were not even available to her at that point in time.* In fact, she was told it didn't even exist at that point in time, wasn't she? The manual did not exist?

[minute 23:29] **Counsel for the City:** The manual? Or is the Court referring to the manifest? On direct appeal, there was an issue about a manifest; and it was determined that there was no error.

[minute 23:42] **The Honorable Judge Beatty:** No. That was an evidence manifest, I do believe, that---

[minute 23:49] **Counsel for the City:** That was an evidence manifest.

[minute 23:50] **The Honorable Judge Beatty:** --that supposedly did not exist; and then it showed up. No. I'm talking about the Loss Prevention Manual that talked about all these things and that supposedly did not exist at the time of the trial but was available when, at the motion.

[minute 24:02] **Counsel for the City:** I'm not sure that it didn't exist at the time of the trial. I think Dr. Faltas perhaps didn't request it or, I mean it was, it's a Loss Prevention Manual. It wasn't encompassed in, in that. I don't, I don't read the record as saying it was not in existence at that time.

[minute 24:10] **The Honorable Judge Beatty:** Oh, it was in existence. It was not available to her.

[minute 24:12] **Counsel for the City:** To her; and her counsel certainly could have brought it up in any motion pretrial. Again, this is, it's impeachment evidence. It could have been discovered prior to the trial. It was certainly, some of it was certainly discovered at the trial. And so, this does not rise to a level indicated in the *Caskey* criteria or any of that.

[minute 24:39] **The Honorable Judge Anderson:** All right, Counsel. Your time is up. I am going to give you two minutes to sum up since she had run a little over her time.

[minute 24:49] **Counsel for the City:** Thank you. I appreciate that, Your Honor.

She argued three issues in her brief, all of which should be resolved in the City's favor. That there is, her first issue: there is no authority for us to appeal this. I think the Court has correctly honed in on that: that there is very much a distinction between an argument related to the in-

sufficiency of evidence, finding that the, the government's case should not have proceeded to trial versus a weight of the evidence type of analysis.

This is clearly a weight of the evidence type of analysis; and therefore appealable.

And in anyway, what the Court [sic] seeks to gain here is a reinstatement of the conviction, not a retrial. So, the Double Jeopardy Clause doesn't bar this particular Appeal.

The procedural handling of the Circuit Court was completely within their purview. There is a Code section that determines the municipal court appealability. It's completely within the Circuit Court's purview to, to handle it as such and do it on the briefs.

And furthermore, the Sixth Amendment of the United States Constitution guarantees a fair trial, not a perfect one, but a fair one. She had every opportunity to, below to present this evidence and in fact did present several of, of items of this piece of evidence.

Because she now simply says "I have more ways to illustrate my point" doesn't rise to the level that, that we submit is necessary to gain a trial on after-discovered evidence.

So, we would ask the Court to affirm the Circuit Court. Thank you.

[minute 25:58] **The Honorable Judge Anderson:** Ms. Faltas, reply.

[minute 26:02] **Appellant *pro se*:** *Thank you, Your Honors, and I do very much appreciate the questions you asked.*

But this illustrates why this shouldn't be appealable: Your Honors are trying to compress within 25 minutes what's Judge Dennis took five hours to look at, in addition to his, to his having been the one who tried the case to begin with. So that's.

The second thing is the issue of appealability is very alive and very important. Only yesterday, a, a colleague panel of this Court said: "While there are lingering questions regarding its appealability, the issue ...." And that is on the case of *The State versus Franklin Arthur, Arthur Franklin Smith,* which is a published opinion issued yesterday.

Now, if Your Honors go back, on the record pages 32, I believe, there was, there were 10 specific Requests for Disclosure. And they, they specifically asked for all their procedures and how do they handle evidence and all of that. So, yes, it was asked. She chose not to give anything.

And yes, there was a pretrial motion. But we were entitled to the full measure of relief: not a continuance but dismissal. And the motion for dismissal encompassed everything include, which was specifically the State's, the Prosecution's failure to give the evidence which was specifically, I mean there was; it's in writing; it's specific; it's 10 items; it was timely, way ahead of trial.

The, the second thing is that, again, there is falsification of the record. There were three motions for continuances made; and they were all denied. And I refer them to, in my brief.

The most important thing is that the Polaroid didn't mean anything until a witness took the stand and testified this is what the Polaroid is. And if Your Honors look back at the Record, on page 17, that was initially what Judge, Circuit Judge Barber affirmed, saying it's, "it's okay that they destroyed the folders and binders since the Polaroid says that these are the exact ones."

So, the Polaroid wasn't illustrative; it was the *corpus delecti* according to the Prosecution. And upon magnification, there is no *delecti* in the *corpus.*

So, it is impossible for me to have been convicted.

Additionally, the State, the Prosecution keeps saying "evidence this and evidence that; testimony this and testimony that." Perjury is not testimony. The difference between testimony and a report is that it be given under oath or affirmation, not just uttered, but something without mental reservation. And the three prongs of, of the oath is "the truth, the whole truth, and nothing but the truth." If somebody, a potential witness were to say: "I swear or affirm to give you a little bit of the truth, to suppress that part of the truth which doesn't help my story, and to fabricate things that will fill in the rest of what I suppressed," this person would not have been put on the stand at all, if he refuses to take the oath which is the three items.

Now, it's not the uttering. Since we know, or at least the trial judge found that that picture was fabricated, then those people came with a predetermined mental reservation to take the oath, to utter it while intending to violate it. So, they did not take the oath. Whatever they said is on the record is not testimony because it was not under---

And I'm sorry this may sound a bit convoluted; but it really isn't. The purpose of the oath is to ensure that anyone allowed to testify would respect the three prongs of the oath and --

[minute 30:50]**The Honorable Judge Anderson:** The word "oath" came from the Roman law. The Latin word is "*ius iurandum."* And the oath came from that origin; and we have used it historically. I don't think we need any kind of instruction on the oath. We understand that.

[minute 31:05]**Appellant *pro se:*** No, I'm sorry. I don't mean that. *I meant, I meant the, what the witness promised to do and the trial judge found did not do that.* So, my contention is that that's not a witness at all.

The other very important part of, really, falsification of the record and I'm really disappointed and I think this Court should take this seriously that an off, which I am not an officer of the court even though---

The Prosecution tried to do this three times. First, before Judge Dennis, and at that time I objected. She claimed that the police officers testified that they saw the picture.

That is simply not true. They did not see the picture, they did not identify the picture. One recollected vaguely seeing "pictures" in the plural. But he never identified it, never took custody of it, never anything. And in fact, I, part of my.

And my after-discovered evidence isn't limited to those two points.

Neither is Judge Dennis' order limited to the two points about the date and the UPC Code. He, in three place, he said "along with other evidence" "together with other evidence." These were the two he found most helpful. In fact, I could dispense with one of those two and still win because there were several, seven other proofs within the photograph.

Now, the jeopardy attaches as soon as witness is sworn in a bench trial. And once the, the witness was sworn and identified the photograph under oath, a continuance was tantamount to a motion for dismissal, which is, we had asked for a motion of, for dismissal before the trial began. So, that motion was made.

It was not possible to take the photograph and magnify it before any witness said what that is, because it, we didn't know what they were going to say about it: whether they were going to say "these are the actual items" "these ace something else that we were taking while passing the time." There was no identification of it. But once a witness---

[minute 33:32] **The Honorable Judge Anderson:** Ms. Faltas, your time Is up. I'm going to give you two minutes to sum up.

[minute 33:42] **Appellant *pro se:*** Yes, Your Honors. Additionally, the, the City is now taking a different position before what, different from what it put in judge, Circuit Judge Cooper's mouth because Your Honors need to remember that, first of all, judge Cooper had no right to re-examine the facts, not only under the Sixth Amendment, but also under---

The idea isn't if somebody can sit and fantasize possible explanations. The issue is whether there was enough evidence for Judge, Municipal Judge Dennis to make the ruling that he did, even if

And in fact, in a Freudian slip they said: "it is possible, equally likely that something else." Well, if it is equally likely, if there are two possible inferences, then once the fact-finder chooses one of them, no appellate body has the right just because it is higher in, in the hierarchy to say "No, I, I would have chosen a different inference and you're wrong."

And Your Honors, here, are not - it's very important, Circuit Judge Cooper was not the trial judge. Your Honors are sitting basically in the same position that the U.S. Supreme court sat in when it examined the Fourth Circuit U.S. Court of Appeals' reversal of trial judge McMillan in *Anderson versus City of Bessemer City.*

In that case, the trial judge had found there was discrimination and found for the plaintiff. The Fourth Circuit reversed because it would have drawn a different inference from the facts; and the U.S. Supreme Court unanimously said NO. An appellate body doesn't have that right, so long as there were, there is evidence in the record from which the trial judge could have drawn the inferences, even though the appellate body might have drawn a different inference had it sat in the place of the trial judge. It doesn't work like that. It's the fact-finder.

And, and, and specifically, not only that. The very short letter which is the only, only one of two letter in Judge Cooper's own words, he says: "The evidence in my opinion" "the new trial evidence doesn't merit reversal of the conviction." Well, that's a way he's weighing it and saying

"that's not important enough." But that wasn't even for him to do. The weight of the evidence, what to attach, is for the fact finder; and there was only one fact-finder in this case, both at the bench trial and at the after-discovered evidence hearing; and that is Municipal Judge Dennis.

Your Honors, the question of appealability; and I'm sorry that we had to focus on the facts because the, this happened in 2001. This is 2007. Six years.

If the average life expectancy is now about 72 years, I have spent about one twelfth of my life under the shadow of a conviction for something I did not do. And Justice O'Connor had written, and recently the U.S. Supreme Court quoted her, "it is constitutionally impermissible."

That was a death penalty case; but really life is made of time lived.

And the, the Constitution, the Sixth Amendment prevents that someone would live under the shadow of an accusation of something they didn't do. That's why we need speedy trials. Now, it *a fortiori* prevents someone from living under a conviction that was found to have been procured by fraud. If the Constitution doesn't protect the innocent from being convicted based on fraud, then it doesn't do anything at all.

And the other thing I wanted to say, if it pleases the Court, is that the, Judge Cooper's handling of the matter was very bizarre. He didn't hold. Not only did he not hold a merits hearing, he requested both parties to file by the same date blindly briefs; and did not even let me even reply to the City's brief. Well, "Respondent" is someone who responds. Before Judge Cooper, I was the respondent. He didn't let me respond. It's as if in a trial some---

And he did re-examine the facts, which the U.S. Supreme Court in *Kepner* said that the examination of the facts even by an appellate body, is like a second trial and therefore barred by the Double Jeopardy Clause.

But the bizarre way in which Judge Cooper handled the matter itself would, would warrant reversal of Judge Cooper. He said "On October 10th, both the City and Dr. FaItas will file their briefs."

So, it's as if in a trial the, there was kept two juries in two separate rooms; and the Prosecution was told to present its case in one room and the defendant was told to prevent, to present her defense in a separate room without even seeing what the Prosecution was doing.

The ---

[minute 39:32] **The Honorable Judge Anderson:** Thank you, Ms. Faltas. Thank you very much.

[minute 39:52] **Appellant *pro se:*** Thank you very much, Your Honors, for the opportunity to be heard.

[minute 40:02] **The courtroom officer:** Be upstanding before the Court!

APPENDIX C

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT OF COMMON PLEAS
Application for Post-Conviction Relief ("PCR")
No. 2017-CP-40-06831

Marie Assa'ad-Faltas, MD, MPH

v.

State of South Carolina, and City of Columbia, SC

ORDER DENYING the State's MOTION for Summary Judgment

On July 31, 2018, the State filed a motion for summary judgment and, on August 2, 2018, e-mailed to the undersigned its "intent" to have its motion heard "at the outset of" the August 10, 2018 hearing on Marie Assa'ad-Faltas, MD, MPH's ("Applicant") motion for summary judgment which predates the State's motion by two months. The Court saw no just reason to leapfrog the State's motion over Applicant's and, instead, used a classic 20-20-10-minute format. Applicant was heard first in compliance with § 17-27-80, SC Code of Laws, which provides in relevant part:

> The application shall be heard in, and before any judge of, a court of competent jurisdiction in the county in which the conviction took place. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings are available to the parties. The court may receive proof by affidavits, depositions, oral testimony or other evidence and may order the applicant brought before it for hearing.

Both sides referenced the long record of transcripts, exhibits, and pleadings before the Court. The Court finds that the State's motion neither adds new facts nor disputes any fact(s) submitted before, at, and/or after the March 22-23, 2018 trial ("PCR-II Trial-I") before the Honorable Brooks Goldsmith.[1] Rather, the State's motion for summary judgment is based on three purely legal arguments which the Court finds incorrect as explained below.

This is a merits case which was presented to Judge Goldsmith for trial *without* a motion by the State to dismiss ineffective-counsel claims. Rather, the State's 19 January 2018 "Return and Motion to Dismiss" admits, at pages 6 and 9, respectively [with emphasis added]:

> However, the allegation of ineffective assistance of counsel probably *raises questions of fact that the record does not conclusively refute.* Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State,* 279 S.C. 264, 305 S.E.2d 247 (1983).
>
> WHEREFORE, […,] *Respondent requests that a hearing be held on the claims of ineffective assistance of counsel,* should the Court not dismiss all claims pursuant to the motions above.

The State's motion to dismiss was *effectively* withdrawn at PCR-II-Trial-I Tr. 5:16-18:

> [Ms. Kinard:] It was the State's allegation at – at the last term of PCR court that this filing was inappropriate and should be dismissed. That issue was, more or less, dealt with.

[1] The Honorable Jean Toal, Retired Chief Justice of South Carolina, sat as a circuit judge and heard a PCR application by the same applicant herein but from *a different* conviction, also in Columbia's Municipal Court ("CMC"). See case 2016-CP-40-01444. ("PCR-I"). PCR-I alleged ineffective assistance of Applicant's trial counsel Orin G. Briggs ("Tr. C. Briggs") and Ted Lupton ("Tr. C. Lupton"). By Order dated June 14, 2018, Judge Toal GRANTED PCR and shortly thereafter DENIED reconsideration. The State appealed. See Appellate case 2018-001290. Applicant also has a pending PCR application from her chronologically last standing conviction in CMC. See case 2018-CP-40-01798 ("PCR-III"). These are NOT successive PCR applications of the same conviction(s) but a first PCR application of each respective conviction. The designation "PCR-II, Trial I" is used for proceedings related to the March 22-23, PCR trial in this case, 2017-CP-40-06831. If a retrial is had, it shall be designated "PCR-II-Trial II."

On August 10, 2018, the State orally reiterated its belated written argument that PCR is unavailable to Applicant because she was not entitled to counsel at all. That is incorrect. All the cases cited by the State address entitlement to *government-appointed* counsel; and all predate both *Alabama* v. *Shelton,* 535 U.S. 654 (2002), and *Ex Parte Jackson,* 381 S.C. 253, 672 S.E.2d 585 (Ct. App. 2009). The right to "the Assistance of Counsel" is guaranteed by the Sixth Amendment to the Constitution of the United States in "all criminal Prosecutions." Applicant's here-challenged two contempt-of-court convictions were entered in Columbia's Municipal Court ("CMC"), which is a court of exclusive criminal jurisdiction over petty offenses and is expressly stripped, by the very state statute creating it, of any civil jurisdiction:

> **SECTION 14-25-45.** Powers, duties, and jurisdiction of municipal courts.
>
> Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.

Cuyler v. *Sullivan*, 446 US 335, 342-45 (1980) [with footnotes omitted and emphasis added], disposes of the State's claim that Applicant is not entitled to PCR because she was not entitled to the *appointment* of counsel. *Cuyler's controlling* holding is:

> **III**
>
> We turn next to the claim that the alleged failings of Sullivan's retained counsel cannot provide the basis for a writ of habeas corpus because the conduct of retained counsel does not involve state action. A state prisoner can win a federal writ of habeas corpus only upon a showing that the State participated in the denial of a fundamental right protected by the Fourteenth Amendment. The right to counsel guaranteed by the Sixth Amendment is a fundamental right. *Argersinger* v. *Hamlin*, 407 U.S. 25, 29 -33 (1972). In this case, Sullivan retained his own lawyers, but he now claims that a conflict of interest hampered their advocacy. He does not allege that state officials knew or should have known that his lawyers had a conflict of interest. Thus, we must decide whether the failure of retained counsel to provide adequate representation can render a trial so fundamentally unfair as to violate the Fourteenth Amendment.
>
> This Court's decisions establish that a state criminal trial, a proceeding initiated and conducted by the State itself, is an action of the State within the meaning of the Fourteenth Amendment. See *Lisenba* v. *California*, 314 U.S. 219, 236 -237 (1941); *Moore* v. *Dempsey*, 261 U.S. 86, 90 -91 (1923). The Court recognized as much in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), when it held that a defendant who must face felony charges in state court without the assistance of counsel guaranteed by the Sixth Amendment has been denied due process of law. Unless a defendant charged with a serious offense has counsel able to invoke the procedural and substantive safeguards that distinguish our system of justice, a serious risk of injustice infects the trial itself. *Id.*, at 344; see *Johnson* v. *Zerbst*, 304 U.S. 458, 467 -468 (1938). **When a State obtains a criminal conviction through such a trial, it is the State that unconstitutionally deprives the defendant of his liberty. See *Argersinger* v. *Hamlin*, supra, at 29-33.**
>
> Our decisions make clear that inadequate assistance does not satisfy the Sixth

> Amendment right to counsel made applicable to the States through the Fourteenth Amendment. A guilty plea is open to attack on the ground that counsel did not provide the defendant with "reasonably competent advice." *McMann* v. *Richardson*, 397 U.S. 759, 770 -771 (1970); see *Tollett* v. *Henderson*, 411 U.S. 258, 267 (1973). Furthermore, court procedures that restrict a lawyer's tactical decision to put the defendant on the stand unconstitutionally abridge the right to counsel. *Brooks* v. *Tennessee*, 406 U.S. 605, 612 -613 (1972) (requiring defendant to be first defense witness); *Ferguson* v. *Georgia*, 365 U.S. 570, 593 -596 (1961) (prohibiting direct examination of defendant). See also *Geders* v. *United States*, 425 U.S. 80 (1976); *Herring* v. *New York*, 422 U.S. 853 (1975). **Thus, the Sixth Amendment does more than require the States to appoint counsel for indigent defendants. The right to counsel prevents the States from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance.**
>
> A proper respect for the Sixth Amendment disarms petitioner's contention that defendants who retain their own lawyers are entitled to less protection than defendants for whom the State appoints counsel. We may assume with confidence that most counsel, whether retained or appointed, will protect the rights of an accused. But experience teaches that, in some cases, retained counsel will not provide adequate representation. **The vital guarantee of the Sixth Amendment would stand for little if the often-uninformed decision to retain a particular lawyer could reduce or forfeit the defendant's entitlement to constitutional protection. Since the State's conduct of a criminal trial itself implicates the State in the defendant's conviction, we see no basis for drawing a distinction between retained and appointed counsel that would deny equal justice to defendants who must choose their own lawyers.**

Since Applicant was convicted in a court without civil jurisdiction, her right to effective assistance of counsel obtains whether that counsel was state-appointed, *pro bono*, or retained. PCR remains available to her to challenge, *inter alia*, the constitutional adequacy of the performance of any counsel who represented her in the proceedings that convicted her.

The State argued that Applicant's counsel payment of the $1,000.^{00}$ cash bond for Applicant to be released from incarceration at the Alvin S. Glenn Detention Center ("ASGDC") is an acceptance *by Applicant* of all the conditions of her release bond which she had adamantly rejected. That, too, is incorrect. Applicant had rejected only those conditions which she maintains are of the nature of a civil injunction, have no real or feigned relationship to securing her appearance to defend her appeal from municipal court to circuit court, and/or are beyond the municipal court's subject matter jurisdiction and jurisdiction after an appeal is perfected.

Applicant always maintained that § 14-25-95, SC Code of Laws, permits and prescribes only a monetary bond "payable to the municipality," which echoes Rule 246(a), SCACR, which, in turn implements §§ 18-1-80 and 90, SC Code of Laws. And contrary to the State's arguments, Applicant's payment, by whatever means, of that sum is proof that it was not then excessive *for her* and thus not *per se* violative of the Eighth Amendment. Nothing prevents severance of bond conditions which pass Eighth Amendment tests from those which do not. To the contrary, the valid cash bond condition can stand alone without the challenged others.

Nor was Applicant ever charged with contempt for failure or refusal to post the cash bond, which, under the State's theory of CMC's 11 April 2011 ORDER as a stand-alone, self-enforcing court order, she could have been if she had not posted the cash bond. Rather, her PCR-II challenges: (1) CMC's jurisdiction to impose impossible conditions *in addition to* the cash bond and then punish her with contempt for failure to satisfy them and (2) the constitutional adequacy of the trial counsel who failed to challenge the additional conditions and to raise available defenses for Applicant's inability to satisfy them. Therefore, Applicant's ability/willingness to post the $1000.^{00}$ cash bond does not foreclose her PCR.

The State's last argument (that, *after the convictions challenged in PCR-II*, Applicant was able and willing to see a psychiatrist) is factually incorrect. Local, immediate availability of a competent psychiatrist to give Applicant the very intense "weekly sessions for one year" when she needed none was as impossible *after*, as it was *before*, her contempt-of-court convictions. The difference is that, mainly on her own, Applicant ably *proved that impossibility* after the convictions. See July 1, 2011 letter from CMC to Tr. C. Brigs.[2] Applicant's valiant but inevitably futile efforts to satisfy impossible orders prove her entitlement to, not forfeiture of, PCR because her trial counsel should have adduced that proof of good faith effort to comply and impossibility of compliance *before, **not after,*** the challenged convictions.[3]

The State's motion for summary judgment is, therefore, DENIED on all the grounds argued in the written motion and in the August 10, 2018 hearing. Any efforts by the State to re-argue or resubmit those grounds should be strictly scrutinized for frivolity.

And it is so ordered on this, the _____ day of _____

2018 in _____ , South Carolina.

_____

The Honorable Perry H. Gravely
Presiding Circuit Judge

[2] That letter was in the State's January 19, 2018 return to PCR-II, is appended hereto, and acknowledges that Applicant had, in good faith, attempted to comply with the order she was convicted of violating but that compliance proved impossible.

[3] Even after CMC's written implicit admission that compliance was impossible, Tr. C. Briggs never acted to have Applicant's challenged convictions expunged but left her to suffer their collateral consequences to this day. Tr. C. Briggs' testimony in PCR-II-Trial-I and clamor to testify more *against* Applicant's entitlement to PCR indicate that, at best, Tr. C. Briggs never understood the defenses available to his client.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
Marie Assa'ad-Faltas,)	
)	
Applicant,)	
)	ORDER DENYING MOTION
-vs-)	TO ALTER/AMEND, RECONSIDER
)	ORDER OF 11/27/18
State of South Carolina)	
)	
Respondent.)	C.A. No. 2017-CP-40-06831

2019 APR -1 PM 1:50

This matter comes before the Court upon the State's *Motion to Alter/Amend, Reconsider Order* issued November 27, 2018 granting the Applicant's Motion for Summary Judgment for Post-Conviction Relief. The Order inspired an artfully drafted Motion with eloquent arguments by the State and saintly accolades from the Applicant. After review of all matters and for the reasons stated below, the State's Motion is denied and the underlying Order is affirmed.

The State argues that the findings in Sections 1 and 2 of the Order "constitute free-standing grounds for relief" since the issues should have been addressed on an appeal and not in a PCR Application and the constitutional issues should have been framed as ineffective assistance of counsel. The Court asserts that these grounds are not free standing, but deal with an important cornerstone of our judicial system: whether the underlying court had the authority or jurisdiction to issue a Contempt Order. This Court cannot pass on a Municipal Court's order which is beyond the Municipal Court's constitutional and statutory authority –i.e. subject matter jurisdiction. Subject matter jurisdiction may be raised at any time even in an Application for a PCR when it was not raised in the underlying court or appeal. See Edwards v. State, 372 S. C. 493, 642 S.E.2d 738 (S.C. Sup. Ct. 2007). Further, the Court's analysis of the constitutional issues were framed as ineffective assistance of counsel in Section 3 of the Order and the Court found that the failure of

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Applicant's Counsel to raise and preserve these constitutional issues was ineffective assistance of counsel and a basis for granting the Applicant's PCR.

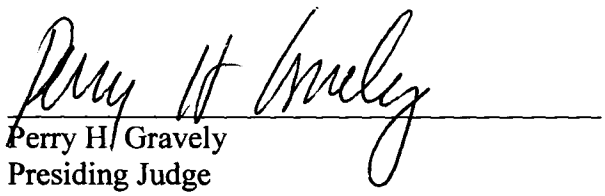
As set forth in the underlying Order, this Court found that the Municipal Court did not have subject matter jurisdiction and stands by this finding as the basis for granting the Applicant's Motion for Summary Judgment.

The State also asserts that the Court erred in not addressing each issue presented by its Motion for Summary Judgment. Since the Court granted the Applicant's Motion for Summary Judgment and found that the Municipal Court lacked subject matter jurisdiction, the State's Motion was moot. As set forth in Ballenger v. Bowen, 313 S.C. 476, 443 S.E.2d 379 (S.C. Sup. Ct. 1994) (footnote 1), Rule 52, SCRCP, does not require findings of fact and conclusions of law in denying a motion for summary judgment. Further, the Court does not find that the requirements of S.C. Code § 17-27-80 and cases interpreting this rule apply to the Court's denial of the State's Motion for Summary Judgment when it was based on the Court's granting of the Petitioner's Motion for Summary Judgment on the grounds set forth above. The case law cited by the State stands for the proposition that a Court cannot summarily deny an Application for PCR since it would not give the appellate courts the basis for addressing the findings of the underlying Court. This is not the case presented in this matter.

The State also argues that the Order of the Municipal Court was based on civil contempt and not criminal contempt, thus not subject to the Uniform Post-Conviction Procedure Act, S.C. § 17-27-10, et. seq. (The PCR Act). In this particular case, the Contempt Order of the Municipal Court was based on a bond condition in a criminal matter and required the Applicant to, among other things, submit to evaluation and treatment by a psychiatrist. Therefore, the nature of the action clearly brings it within the criminal realm and subject to the PCR Act. S.C. Code § 17-27-

20 provides that the PCR Act is available for: "(A) [a]ny person who has ... been sentenced for, a crime and who claims... (2) [t]hat the court was without jurisdiction to impose sentence."

Therefore, this Court denies the Respondent's *Motion to Alter/Amend, Reconsider* and affirms the Order of November 27, 2018 granting Summary Judgment in favor of Applicant and denying Respondent's Motion for Summary Judgment



Perry H. Gravely
Presiding Judge

March 28, 2019
Pickens, S.C.

State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

Perry H. Gravely
Judge

Post Office Box 219
Pickens, SC 29671
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March 28, 2019

The Honorable Jeanette McBride
PO Box 2766
Columbia, SC 29202

Re: 2017-CP-40-06831- Marie Assa'ad-Faltas v State of South Carolina

Dear Ms. McBride:

Please file the enclosed Order signed by Judge Perry H. Gravely regarding the above referenced matter.

Please contact me if you have any questions.

Very truly yours,

Laura D Colwell

Laura D. Colwell
Administrative Assistant to
Judge Perry H. Gravely
13th Judicial Circuit

/ldc

Enclosure

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Case No. 2017-CP-40-06831

2019 MAY -2 AM 8:49

Marie Assa'ad-Faltas, ...Respondent,

v.

State of South Carolina, ...Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the order issued by the Honorable Perry H. Gravely dated November 19, 2018, and filed November 27, 2018, granting post-conviction relief to the Respondent. The State filed a motion to reconsider, which was denied on March 28, 2019, and received by the State on April 1, 2019. A copy of the order on appeal is attached to this notice.

[signature page to follow]

SCANNED

Respectfully submitted,

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General
S.C. Bar #101260

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Post Office Box 11549
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By: JEJ for JEJ
Attorneys for the Petitioner

Columbia, South Carolina

April 29, 2019

Other counsel of record:

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