

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

AUG 06 2013

S.C. Supreme Court

In the Matter of Marie Assa'ad-Faltas,

RESPONDENT,

**EXHIBIT**

**No. 3**

Appellate Case No. 2013-00862

**RECEIVED**

**Oct 20 2021**

PETITION FOR REHEARING

**SC Court of Appeals**

Pursuant to Rule 221(a), SCACR, Respondent respectfully petitions this Court for a rehearing of its order dated June 28, 2013. Respondent submits that the Court improperly ordered that Respondent be denied her right to self-representation. To support the Petition, Respondent shows the following:

This Court's order ordered the following:

Respondent may not represent herself *pro se* in any court of this state. Instead, she must be represented by counsel before any court of this state. Respondent is advised that she is not precluded from addressing any grievances she may have in the courts of this State, assuming that she is represented by counsel and such grievances are not frivolous.

Respondent contends that such a restriction is an unwarranted denial of her right to self-representation. *See Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525 (1975). The United States Supreme Court has noted the following:

The counsel provision supplements this design. It speaks of the "assistance" of counsel, and an assistant, however expert, is still an assistant. The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment,

shall be an aid to a willing defendant -- not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master; and the right to make a defense is stripped of the personal character upon which the Amendment insists. It is true that when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to the counsel the power to make binding decisions of trial strategy in many areas. This allocation can only be justified, however, by the defendant's consent, at the outset, to accept counsel as his representative. An unwanted counsel "represents" the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense.

*Id.*, 422 U.S. at 820, 95 S.Ct. at 2533-34 (internal citations omitted). The restrictions put in place by the Order, deny Respondent the ability to defend herself or redress grievances in a way that is her own. Respondent is being forced to be limited to arguments that are chosen and given by her, in most cases *unwanted*,<sup>1</sup> appointed attorneys. Rule 1.2, Rule 407, SCACR (Comment 1) ("A lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so.").

Although the right to self-representation is not<sup>2</sup> absolute. *See State v. Starnes*, 388 S.C. 590, 600, 698 S.E.2d 604, 610 (2010). However, a Defendant's right to self-representation is

---

<sup>1</sup> Respondent asks this Court to take judicial notice of that on August 2, 2013, Respondent moved to relieve Counsel from this matter. Counsel is *not* endorsing the factual assertions made by Respondent in that motion. *See* Rule 3.3(a)(1), Rule 407, SCACR. However, Counsel believes that Respondent's August 2<sup>nd</sup> motion is evidence that Respondent simply does not like having a lawyer. By Counsel's count. Respondent has had assistance of no fewer than seven lawyers since 2010. Very soon after a lawyer is appointed to her case, she has disagreements with the lawyer about how her case should be argued and moves to have them relieved. *See* Rule 1.2, Rule 407, SCACR (Comment 2) ("The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. Conversely, the client may resolve the disagreement by discharging the lawyer.").

<sup>2</sup> Respondent disputes Counsel's belief concerning the state of the law concerning this matter.

generally limited to cases where the Defendant is suffering from a mental disease. *See Indiana v. Edwards*, 544 U.S. 164, 128 S.Ct. 2379 (2008) (*holding* a Defendant may be competent to stand trial, but not competent enough to waive her Sixth Amendment right to counsel).

A Defendant may also lose their right to represent themselves in a *particular* hearing if the Defendant uses that hearing to “deliberately engag[e] in serious and obstructionist misconduct” during that hearing. *See Faretta*, 422 U.S. at 834-25 (*footnote* 46). However, even if the Court finds<sup>3</sup> that in the past Respondent has engaged in such “misconduct,” past misconduct would not forever foreclose Respondent’s right to self-representation. Additionally, Respondent would argue that she has not been given a chance to challenge or explain these alleged instances of misconduct. Respondent has been given no voice in the order.

Furthermore, although many of Respondent’s arguments are complex, they are based upon her interpretation of the law, and Respondent submits that her arguments are delivered in good faith and without breaking decorum. *See United States v. Frazier-El*, 204 F. 3d 553, 569 (“*Faretta* makes abundantly clear that while *pro se* defendants must practice basic decorum with conducting their defense, the tenuousness of their arguments is not a basis for denying them the right to self-representation.”) (Murnaghan, J. *dissenting*) (4<sup>th</sup> Cir. 2000).

For the foregoing reasons, Respondent respectfully requests that this Court grant this petition for rehearing and allow her the right to self-representation.

Respectfully submitted,



---

Tristan M. Shaffer  
140 Gibston Road  
Lexington, SC 29072  
(803) 575-0384  
S.C. Bar # 77565

Attorney for Respondent

August 6, 2013

---

<sup>3</sup> Respondent suggest that such a finding is without a factual basis. Additionally, even if there was a factual basis it could be rebutted. There are examples where members of bench and bar have complimented Respondent both on her decorum and legal analysis.