

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) FOR THE FIFTH JUDICIAL CIRCUIT

Marie Assa'ad-Faltas,  
Applicant,

**RECEIVED**  
**Oct 20 2021**  
**SC Court of Appeals**

**ORDER**

2018 NOV 27 AM 9:19  
JEANETTE M. MCGRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

-vs-

State of South Carolina,  
Respondent.

C.A. No. 2017-CP-40-06831

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

<sup>1</sup> D/H

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, 2011 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

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any other type of Order would not be proper.<sup>1</sup> 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

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<sup>1</sup> 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 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

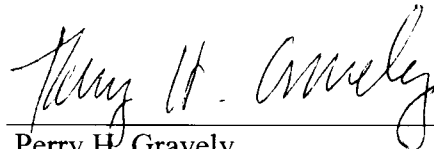
Based on the above findings, this Court finds that there is no genuine issue of material fact on the issues set forth above and the Applicant is entitled to Summary Judgment on her PCR Application. The Bond Order and Contempt Order are declared null and void and vacated and the conviction for contempt 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



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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
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  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: \_\_\_\_\_

RICHLAND COUNTY  
 FILED  
 2018 NOV 27 AM 9:39  
 JEANETTE M. HOBBS  
 C.C.P. & G.S.

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.**

11/27/2018

Circuit Court Judge

Judge Code

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:

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

Lindsey Ann McCallister PO Box 11549 Columbia, SC  
29211-1549  
Hervy B. O. Young PO Box 11433 Columbia, SC  
29211-1433  
Johnny Ellis James Jr. PO Box 11549 Columbia, SC 29211

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

  
Jeannette 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.

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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.

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