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Feb 11 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Richland County  
Honorable D. Craig Brown, Circuit Court Judge

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Appellate Case No. 2022-000145

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MARIE ASSA'AD FALTAS,

Appellant,

v.

THE STATE,

Respondent.

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**MOTION TO DISMISS**

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Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

This matter comes before the Court by way of Applicant Marie Assa’ad Faltas’s application for post-conviction relief (PCR) filed January 7, 2019, and amended August 24, 2021. A hearing convened via Cisco WebEx Virtual Platform on January 27, 2022, at which time Applicant was present and represented by Timothy L. Griffith, Esquire. Assistant Attorney General Yasmeen E. Klein represented the State. At the hearing, Applicant renewed her motion to relieve counsel and proceed *pro se* on her PCR action. After hearing argument, the Court denied Applicant’s motion, finding she had failed to allege sufficient grounds to relieve counsel. Applicant then moved for leave to make an interlocutory appeal of the Court’s denial. The Court granted Applicant’s request

and continued the PCR case, pending Applicant's appeal. Respondent submitted and served its Motion to Reconsider, Alter or Amend pursuant to Rule 59(e), SCRPC, on February 9, 2022. Applicant thereafter filed her notice of interlocutory appeal on February 10, 2022. Respondent hereby moves to dismiss the instant interlocutory appeal due to Respondent's motion to reconsider currently pending in circuit court.

## II.

Applicant was charged with simple assault by the City of Columbia via warrant number L-066971, issued September 11, 2009. Applicant was represented by Theodore N. Lupton. On April 25, 2013, Applicant's case proceeded to a bench trial before the Honorable Carl L. Solomon and a jury in the Columbia Municipal Court. Applicant was convicted and sentenced by Judge Solomon to confinement for a period of twenty days.

Applicant filed a Notice of Appeal in the Circuit Court on April 25, 2013, and a hearing on the matter was held before the Honorable Alison Lee on December 13, 2013. At the hearing, Applicant appeared *pro se*. Applicant then filed a motion for a new trial based on after-discovered evidence on December 23, 2013.<sup>1</sup> The Circuit Court affirmed Applicant's conviction by order dated April 17, 2015. Applicant then filed a timely Notice of Appeal in the South Carolina Supreme Court. John H. Strom, Esquire, formerly of the South Carolina Commission on Indigent Defense – Appellate Division, represented her in that action. Following the submission of briefs, the South Carolina Supreme Court affirmed the conviction. *City of Columbia v. Assa'ad-Faltas*, 420 S.C. 28, 800 S.E.2d 782 (2017).

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<sup>1</sup> The Honorable Jocelyn Newman denied Applicant's motion for a new trial by written order filed January 4, 2018, remanding the case to the Columbia Municipal Court. Magistrate Judge Phillip F. Newsom thereafter held a hearing February 4, 2019, wherein he orally denied Applicant's pending motions. Applicant then submitted a motion to reconsider, which Judge Newsom denied by written order on February 27, 2019.

Applicant then filed a Petition for Writ of Certiorari in the United States Supreme Court (USSC). On October 1, 2018, the USSC denied certiorari. *Assa 'ad-Faltas v. City of Columbia*, 139 S.Ct. 72, 202 L.Ed.2d 48 (2018). Applicant filed a Petition for Rehearing on November 29, 2018. The USSC denied the petition for rehearing on January 7, 2019. 139 S.Ct. 866, 202 L.Ed.2d 633 (2019).

On April 2, 2018, while her appeal was pending in the USSC, Applicant filed an application for post-conviction relief (2018-CP-40-1798). On May 16, 2018, Respondent filed a Return and moved to dismiss the application without prejudice due to the pending direct appeal. Applicant filed a *pro se* amendment to her original application, raising thirty new claims, on September 10, 2018. On November 19, 2018, Applicant filed a *pro se* Motion for Default based on “the State’s failure to timely answer Applicant’s amended PCR application.” On December 3, 2018, Respondent filed an Amended Return and Partial Motion to Dismiss, addressing all the allegations raised in Applicant’s amended application. Respondent then filed a Second Amended Return and Motion to Dismiss on December 6, 2018, renewing its earlier motion to dismiss based on the pendency of the direct appeal, as well as the pendency of a Rule 29 motion for a new trial.

A hearing on Applicant’s Motion for Default and the State’s Motion to Dismiss was convened on December 18, 2018, before the Honorable R. Scott Sprouse. Judge Sprouse granted the State’s motion and dismiss this action without prejudice by order dated January 4, 2019. Applicant then filed a timely motion pursuant to Rule 59(e), SCRCP, which Judge Sprouse denied by a written order dated January 11, 2019. Applicant then filed a notice of appeal of the dismissal of her 2018 PCR application. On September 19, 2019, the Court dismissed Applicant’s appeal as moot due to Applicant’s filing of the current PCR action, challenging the same subject conviction. The remittitur was issued November 20, 2019.

### III.

Applicant commenced this PCR action on January 7, 2019, where she set forth 30 grounds for relief. Respondent thereafter moved to strike Applicant's additional allegations 31-45, contained in a supplemental amendment as an improper *pro se* filing on August 25, 2021. Applicant, through PCR counsel, then amended the application on August 27, 2021, to include the additional allegations 31-45.<sup>2</sup>

Pursuant to Rule 203(b)(1), SCACR, an appellant must serve a notice of appeal on all respondents within ten days after receipt of the order or judgment in a civil case. However, when a timely motion to alter or amend judgment has been made, "the time for appeal for all parties shall be stayed and **shall run from receipt of written notice of entry of the order granting or denying such motion.**" Rule 203(b)(1), SCACR (emphasis added).

In this matter, Respondent submitted its Motion to Reconsider, Alter, or Amend pursuant to Rule 59(e), SCRCRCP, and served it upon Applicant's counsel on February 9, 2022. Applicant then filed her interlocutory appeal February 10, 2022. Due to the fact that the motion to alter or amend had been made and was pending before the circuit judge at the time Applicant's notice of appeal was filed, the time period for properly filing the notice of appeal had not yet begun, and the appellate action Applicant filed was premature. *See* Rule 203(b)(1), SCACR ("When a timely motion to alter or amend judgment has been made, the time to appeal shall be stayed and shall run from receipt of written notice of entry of an order granting or denying such motion.").

The circuit court has not ruled on Respondent's motion and thus retains jurisdiction on this matter until the motion is heard or disposed of. Rule 29(a), SCRCrimP, ("[T]he circuit judge shall

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<sup>2</sup> For purposes of judicial efficiency, Respondent has not copied the allegations for this motion. The allegations can be viewed in their entirety in Respondent's motion pursuant to 59(e).

retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term.”). *See* S.C. Code Ann. 17-27-20(b); *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (“[Our decision] also shall apply to all cases currently pending in circuit court . . .”). As Respondent’s motion to reconsider is currently pending in circuit court, Applicant’s interlocutory appeal is improperly filed and must be dismissed.

**WHEREFORE**, Respondent prays this Court dismiss Applicant’s appeal until the pending motion to reconsider has been resolved by the lower court; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,


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February 11, 2022