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S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

February 9, 2022

The Honorable Jeanette W. McBride  
Clerk of Court, Richland County  
Post Office Box 2766  
Columbia, SC 29202-2766

**Re: Marie Assa'ad Faltas v. State of South Carolina**  
**2019-CP-40-0112**

Dear Ms. McBride:

Enclosed please find the original Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(E), SCRPC of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Yasmeen E. Klein  
Assistant Attorney General

YEK/kw  
Enclosure

cc: Timothy L. Griffith, Esquire  
The Honorable D. Craig Brown, Presiding Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Marie Assa'ad Faltas,	)	Case No.: 2019-CP-40-0112
	)	
Applicant,	)	
	)	
v.	)	<b>RESPONDENT'S MOTION TO</b>
	)	<b>RECONSIDER, ALTER, OR AMEND</b>
State of South Carolina,	)	<b>PURSUANT TO RULE 59(e), SCRCF</b>
	)	
Respondent.	)	
	)	

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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 Yasmeeen E. Klein represented the State. At the hearing, Applicant, renewed her motion to relieve counsel and proceed *pro se*. 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, by and through undersigned counsel, making its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCF, would respectfully show unto this Court:

**PROCEDURAL HISTORY**

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).

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

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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.

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.

### **CURRENT ACTION**

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. Applicant’s allegations are summarized as follows:

1. “City is not a sovereign and, as such, may not own or operate a court and may not prosecute crime. This is a jurisdictional claim cognizable on its own merits in

- PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
2. "City's being a defendant in 2009-CP-40-022109 and several federal suits by her, Applicant's trial by a jurist who was appointed and remunerated by, and served at the pleasure of, City's Council, violated Applicant's constitutional right to a disinterested judge in the first instance. This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
  3. "Then-CMC Judge Solomon's serving at the City's Council's pleasure eliminated his judicial independence and denied Applicant due process of law which includes an independent judiciary. This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
  4. "Then Columbia Assistant City Attorney (CAC) Davis A. Fernandez prosecuting Applicant without being CACA Fernandez (sic) being an elected attorney general or circuit solicitor or a deputy of either denied Applicant due process of law which includes being prosecuted only by agents of the sovereign as designated by the sovereign, here, in Title 17, SC Code of Laws. This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
  5. "The three-year-and-seven-month delay between the allegation and Applicant's trial denied her right to speedy trial through no fault of her own. This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
  6. "Denial of Applicant's right to make the final argument denied her due process of law. This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it and, even more egregiously, for ridiculing Applicant when she had asked them to raise it before her position was vindicated in *State v. Beatty*, Opinion 27693, refiled 25 April 2018."
  7. "Applicant's sentence of twenty days' incarceration for having done no more than touching one sheet of paper to Steele's body without ever having caused or threatened to cause any physical injury to Steele and without having had a prior or consequent conviction is cruel and unusual and violative (sic) of the Eighth Amendment to the U.S. Constitution and of the equivalent provisions of SC's constitution. That is 'freakish, arbitrary and wanton.' This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
  8. "Applicant's having been tried on a theory that Steele's 'mental injury' from a paper having been touched to her body constitutes assault by Applicant, when no statute or ordinance had explicitly so stated and no common law or state case law had previously held that 'mental injury' constitutes battery means *ex post facto* law was applied to Applicant. This is a constitutional claim cognizable on its own

- merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
9. "The City ordinance is preempted by state law. Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise this claim. Most egregiously, Lupton admitted that Applicant had asked him to raise it and CACA Fernandez agreed that City's ordinance was preempted by state law. Judge Lee's 17 April 2015 ORDER affirming the conviction specifically states that Lupton's refusal to make a preemption claim made it unpreserved for Applicant's appeal. Also, Retired SC Chief Justice Toal, presiding as an SC senior/active circuit judge over 2016-CP-40-01444 (a PCR action by Applicant related to another conviction of hers in CMC), held Lupton prejudicially ineffective for failing to raise preemption against another City ordinance used to convict Applicant in another case."
  10. "The mixing of administrative and judicial powers in SC's Supreme Court denied Applicant due process of the law and denied her adjudication in a republican form of government which means separation of powers. This is a constitutional claim cognizable on its own merits in PCR. Also, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it; and Applicant's appellate counsel Strom and Dudek were prejudicially ineffective in failing to seek rehearing by SC's Supreme Court of Opinion 27723."
  11. "The exclusion of lawful immigrants from SC's juries, when no U.S. Constitutional provision or U.S. Supreme Court case bars immigrants from serving on local juries, and when several municipalities around the nation allow lawful immigrants to serve on juries, denied Applicant her Sixth Amendment right to a jury of her peers. This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
  12. "City's ordinance is void for vagueness and overbreadth. This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
  13. "City's failure to summon the statutorily-mandated number of forty (40) *venire* jurors violated Applicant's Sixth Amendment right to a jury representative of the community. This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
  14. "City's failure to even provide what few *venire* jurors with tags identifying them as jurors exposes them to comments from City officers and others and denied Applicant's Sixth Amendment right to a jury shielded from improper influences. This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant's trial and appellate counsel were prejudicially ineffective for failing to raise it."
  15. "Lupton served on City discovery requests for all results of medical and mental evaluation of alleged victim, to which City did not respond. Lupton was prejudicially ineffective in failing to follow-up and obtain a positive or negative

response from City before trial.”

16. “Lupton was prejudicially ineffective in failing to object that no evidence to that effect was provided in discovery when Steele falsely testified that she had been ‘on medication for’ the alleged assault from January 2010 to the 25 April 2013 date of trial. The only basis for assault was a false claim of ‘mental injury.’ Had mental injury been proven false, the charge would have been dismissed since absence of physical injury was uncontested.”
17. “Applicant’s appellate counsel were prejudicially ineffective in failing to compare how Applicant had defended herself successfully *pro se* against false criminal charges instigated by Steele with how Applicant was convicted of this Steele-instigated charge when counsel was forced on Applicant. Applicant’s appellate counsel had transcripts they could have used.”
18. “Lupton was prejudicially ineffective in failing to ask Steele to demonstrate how she was allegedly assaulted even after Steele offered to do so. Applicant had explained to Lupton that all Steele’s versions of the event are physically impossible. A simple demonstration would have proven that impossibility. Additionally, Applicant’s appellate counsel were prejudicially ineffective in failing to raise physical impossibility in the appellate brief.”
19. “Lupton was prejudicially ineffective in failing to secure a written order by the trial court denying Applicant’s right to self-representation before. (sic) This is a constitutional claim cognizable on its own merits in PCR. Additionally, Applicant’s appellate counsel were prejudicially ineffective for failing to file an adequate record on appeal showing that, on 24 April 2013, then-CMC Judge Solomon endorsed ‘not granted’ on a proposed order allowing Applicant to proceed *pro se* on 25 April 2013. Also, Applicant’s appellate counsel were prejudicially ineffective for failing to include a transcript of the 24 April 2013 (the day before trial) proceedings in the record to show that then-CMC Judge Solomon orally ruled that Applicant will not be allowed to proceed *pro se* at trial. Applicant urged her appellate counsel several times to supplement the record with that transcript but they refused. Applicant’s requests and appellate counsel’s refusals and non-responses are documented in e-mails.”
20. “Lupton was prejudicially ineffective in failing to investigate the criminal history of Charlene Crouch, who testified against Applicant. Lupton and Applicant’s appellate counsel were further prejudicially ineffective by refusing to move to suspend the appeal so that Applicant’s after-discovered evidence of Charlene Crouch’s having lied about her criminal record may have been shown to the trial court.”
21. “Lupton was prejudicially ineffective in failing to investigate Charlene Crouch’s criminal history before trial and that she had an incentive to testify for Steele and against Applicant so that Steele would allow Crouch to continue to visit Charlie White, a tenant of Steele’s, and receive money from White despite a permanent no-trespass order against Crouch as a result of the conviction about which she lied in Applicant’s trial.”
22. “There is absolutely no strategic reason for failure investigate the full criminal

background of a witness listed to testify against a criminal defendant, specially (sic) when the defense counsel knows that said witness has a criminal history that can be used to impeach her.”

23. “Lupton was prejudicially ineffective in failing to impeach Crouch with what little Lupton knew of Crouch’s record. Lupton compounded his failures by not objecting when CACA Fernandez praised Crouch’s ‘character’ and falsely portrayed her as having no interest in the matter. (Crouch had been sued by Applicant.) Lupton’s failure to investigate Crouch’s prior criminality and failure to object to CACA Fernandez’s[s] false praise of Crouch’s ‘character’ were devastating to Applicant’s defense because then-CMC Judge Solomon based his findings of fact MAINLY on crediting Crouch as neutral and reliable. Had then-CMC Judge Solomon been shown that Crouch had lied about her own criminal record to help Steele against Applicant in return for rewards from Steele to Crouch, then-CMC Judge Solomon would likely have discredited Crouch and acquitted Applicant.”
24. “Lupton had argued that picking two juries from the same pool for two different charges and two different trials of Applicant would be irretrievably prejudicial to Applicant in that it gives each panel the false and prejudicial impression that Applicant is a serial criminal. Yet, Lupton himself brought that prejudice on Applicant by allowing two juries to be selected from the same venire in the afternoon of 24 April 2013, one for the assault to be tried on 25 April 2013, and one for the trespass to be tried in the afternoon of 24 April 2013. Immediately after both panels were selected, Lupton made a successful motion to dismiss the trespass charge. Had Lupton made his motion before the jury panels were to be selected, only one jury panel would have been needed for the assault trial and that panel would have been selected in the morning of 25 April 2014, not the afternoon of 24 April 2014, and would have been selected in Applicant’s presence, not in her absence. There was absolutely no strategic reason for Lupton to delay his motion to dismiss the trespass charge until after a jury was selected but before it was sworn. The dismissal would have been without prejudice either way and was not aided by the fact that a jury was already selected. If anything, it was hindered by that fact.”
25. “Lupton’s prejudicial ineffectiveness in himself moving that the jury hear nothing of Steele’s motives to bring false criminal charges against Applicant, and in selecting a jury for the assault trial from (sic) a *venire* infected by the knowledge that Applicant also had a trespass charge against her without later being told that she was acquitted of it coerced Applicant to waive jury trial. Without Lupton’s unjustified and incompetent acts, Applicant would have chosen to be tried by jury; and a jury properly informed of Steele’s history of, and motives for, bringing false criminal charges against Applicant would have discredited Steele and acquitted Applicant. At the very least, that is reasonably likely and suffices for PCR.”
26. “In Applicant, Lupton had a reputedly-brilliant, highly motivated, and extremely candid and cooperative client with a history of having prevailed every time she

testified to a jury. Lupton also received over ten thousand dollars in compensation for four misdemeanor cases with one defendant and overlapping facts and witnesses, only one of those cases was tried to a jury. Thus, Lupton had no constraints of time, resources or cooperation to excuse his failures to investigate the two witnesses, his failure to make necessary motions, and his failure to make the motion he did make before, not after, selection of two jury panels.”

27. “Other evidence of Lupton’s and of Applicant’s appellate counsel’s ineffectiveness shall, God willing, be adduced from the testimony of Lupton and of Applicant’s appellate counsel at the evidentiary hearing scheduled before the court. That evidence, in addition to any evidence presented by the State which (though not so intended by the State) works in Applicant’s favor, shall be supplements to this PCR application under Rule 15, SCRCP.”
28. “Denial of self-representation was in the abstract a good issue, but for Applicant to prevail it (sic) SC’s Supreme Court would have to admit that its *ex ante* blanket denial of her *Faretta* rights was a grave constitutional error. Applicant’s appellate counsel were grossly prejudicially ineffective in ignoring that reality. No other above-listed preserved appellate issue would have required SC’s Supreme Court to admit it had erred against Applicant; thus, each other issue alone or in combination with any or all of the others would have been far more likely to succeed than the abysmal failure of choosing the *Faretta* issue alone, briefing it very poorly at that, and even there failing to file a record showing that it was preserved at trial.”
29. “Applicant’s appellate counsel Laura (sic) Caudy, John Harrison Strom, and/or Robert Michael (sic) Dudek, all then of SC’s Appellate defense (sic), the office which argued AND WON *State v. Samuel* on the *Faretta* issue were ineffective in failing to move SC’s Supreme Court to consolidate both cases for argument and decision. Had they done so, it would have been impossible for SC’s Supreme Court to deny affirm (sic) Applicant’s conviction while reversing Samuel’s.”
30. “City’s failure to refund interest on Applicant’s cash bond is unconstitutional taking.”
31. “Lupton’s insistence that the 2010 enactment of § 16-3-600 (E)(3), SC Code of Laws, does not preempt the City’s vague and overbroad ordinance for purposes of the 25 April 2013 trial of an incident alleged on 11 September 2009 is incompetence as a matter of law. Section 16-3-600 (E)(3) neither increased punishment for an offense known in common law, statute or ordinance, nor created an offense unknown before September 2009; and thus did not violate the proscription of *ex post facto* laws. Rather, it codified SC’s legislature’s determination that henceforth no one in this State ‘shall be punished’ for assault or battery unless (s)he actually ‘unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so.’ SC’s Legislature’s acting to define ‘assault and battery in the third degree’ represents a finding that, theretofore, sundry ordinances (including the City’s definition-less ordinance) or common law did not give clear notice and/or resulted in denial of equal protection throughout the State. Lupton’s position is as strange as if a

defendant's conviction had been overturned for vagueness of the statute; yet, on remand that very defendant's lawyer insisted on the client being tried under the unclarified statute, not the more precise one. Lupton's contravening his client's desire violated the Sixth Amendment as clarified in *McCoy v. Louisiana*, 585 U.S. \_\_\_ (2018).”

32. “Lupton knew he contravened both his client's wishes and the better practice, as proven by trial.”
33. “Then-CACA Fernandez examined Dr. Faltas' false accuser Dinah Steele thus at trial Tr. pp 20-21. Lupton failed to object to introduction of evidence that was clearly and specifically requested but not provided in discovery. On cross-examination, Lupton never asked Steele what the medication is or who prescribed it. There are only two mutually-exclusive possibilities: (1) Steele was not on medication; cross-examination would have exposed her as a liar and eliminated her credibility; or (2) Steele was on medication which affected her competence to testify. *See, e.g., Riddle v. Ozmint*, 369 SC 39, 45, 63 1 SE 2d 70, (SC 2006) (‘The impeachment value of this statement is clear. Either the brothers were given a lift or they were not: Jason could not have been telling the truth in all his statements.’)”
34. “On 4 February 2019, Steele testified that, in January 2010, she went to an emergency room ‘sobbing uncontrollably, sleepless,’ ‘was given Paxil’ and thereafter went to her ‘primary provider’ who gave her ‘Paxil for years [and] it helped considerably’ but that she stopped it at a date she could not recall after 25 April 2013 (the trial date) but before 4 February 2019 and never took it again.”
35. “Paxil is an anti-depressant with known side effects of drowsiness and memory lapses. It is also indicated for menopausal symptoms of which the 1958-born and biologically childless Steele could plausibly have been suffering in the 2010-2013 period. Had Lupton asked that basic question on cross-examination, Dr. Faltas could have expounded on those facts after having been qualified as an expert.”
36. “Or, were Steele lying, a question on the name of her supposed prescriber would have belied her or exposed the prescriber to professional discipline. Lupton's failure to ask the question was intentional.”
37. “The ‘December, 2009, form’ was relevant: a signed denial by Steele of any link between ‘a nervous breakdown’ and ‘over this’ There was nothing for the defense to lose by securing and offering that form at least for the record. Nor did Lupton's ‘impeachment’ of Steele without that form suffice; CMC's Solomon's conviction of Dr. Faltas proves it. Also, emboldened by Lupton's neglect to secure that form, Steele, on 4 February 2019, pretended to not recall having filled it out and signed it.”
38. “April Sampson was appointed and paid as stand-by counsel for Dr. Faltas on 12 November 2010 and attended the CMC session where Dr. Faltas first saw the ‘two banker's boxes’ of documents but was denied all copies she needed. Sampson was ineffective in refusing to assist Dr. Faltas in obtaining those copies. Sampson had, two days earlier, argued to Judge G. Thomas Cooper, Jr., their importance.”

39. "Sampson's refusal to assist Dr. Faltas in securing needed copies as evidenced by these passages, transcribed from the audio CMC made of the 12 November 2010 viewing arranged by Judge Cooper."
40. "Mark Schnee is added as ineffective stand-by counsel on the issue of speedy trial. He was paid and present at the 6 October 2010 hearing at CMC where Marion Oneida Hanna threatened Dr. Faltas with incarceration if she asked about the date of her trial; but Schnee did not help secure a date."
41. "CMC's Hanna's shocking tyranny, noted in the Honorable Judge Gavely's 27 November 2018 ORDER in PCR case 2017-CP-40-06831, suffices for PCR here. All cases are placed on some docket, which does not mean scheduled for trial. The Sixth Amendment guarantees speedy trial, not just 'in due course' trial or 'case on the docket.' When Dr. Faltas inquired about a trial date, the answer was a threat of thirty day in jail. The complete 6 October 2010 transcript is in the 2010-CP-40-07063 case file."
42. "The delay in trial was intentional by the Prosecution which feared that Dr. Faltas' acquittal of simple assault would undermine the false harassment charges fabricated by Steele and her tenant. That was specifically admitted by then-Assistant-Solicitor Weiss in the 2 December 2009 bond hearing."
43. "Weiss' failure to produce the 21 December 2009 form filled out and signed by Steele is a clear Brady violation as it would have impeached Steele's claim of 'uncontrollable sobbing and sleeplessness.'"
44. "*Riddle, supra*, at 44 and 46, respectively, grants PCR for prosecutorial misconduct, (*Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1990). We are concerned here [ . . . ] with the question whether prosecutorial misconduct denied petitioner's due process right to a fair trial. Id. ') ('An individual asserting a Brady violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. *Kyles v. Whitley*, 514 U.S. 419 (1995); *Gibson, supra*. If a *Brady* violation is found to have occurred, PCR must be granted. *Gibson, supra*.) ('When determining whether the suppression of more than one item of evidence was material under *Brady*, we consider the collective impact of the undisclosed evidence. *Kyles v. Whitley*, 514 U.S. at 436.') [emphasis added] Therefore, prosecutorial misconduct and Brady violations are added as grounds for this PCR."
45. "It is established that the Prosecution was aware of Charlene Crouch's importance as a witness against Dr. Faltas and that Crouch's conviction was not put by the prosecuting City on the Public Index or transmitted to SLED which would have included it in Crouch's rap sheet which, in turn, would have affected Crouch's sentence for later convictions by decreasing her priors. Plausibly then, the City and its prosecutor offered these benefits to Crouch in return for her false testimony against Dr. Faltas. That violates *Napue v. Illinois*, 360 U.S.264 (1959), and *Giglio v. United States*, 405 U.S. 150 (1979); and Dr. Faltas is entitled to PCR on this added ground or at least entitled to discovery on it."

An evidentiary hearing was held on January 27, 2022, before the Honorable D. Craig Brown. By written order filed January 31, 2022, this Court granted Applicant's request for an interlocutory appeal of the Court's decision to deny her request to relieve counsel and proceed *pro se*. This motion to reconsider, alter, and amend pursuant to Rule 59(e), SCRCP, follows.

### **ARGUMENT IN SUPPORT OF RECONSIDERATION**

Respondent moves this Court to reverse its earlier decision to grant Applicant's request for an interlocutory appeal. The ruling by Judge Brown is not a final judgment; rather, it constitutes an interlocutory order that is not immediately appealable because it does not involve the merits, does not affect a substantial right, and does not prevent appellant from raising any issue in a future appeal after final sentencing.

The right to appeal is controlled by statute. *State v. Wilson*, 387 S.C. 597, 600, 693 S.E.2d 923, 924 (2010). Only final judgments and certain interlocutory orders are appealable. *Burkey v. Noce*, 398 S.C. 35, 37, 726 S.E.2d 229, 230 (Ct. App. 2012). However, an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right. *Id.* Consequently, an order is interlocutory and not final when "there is some further act which must be done by the court prior to a determination of the rights of the parties . . ." *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993). The purpose of this practice is to prevent piecemeal appeals. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000).

The right to an immediate appeal of an interlocutory order in South Carolina is found in S.C. Code Ann. § 14-3-330, which delineates the categories of interlocutory decisions subject to immediate appeal. *See also* Rule 201, SCACR ("Appeal may be taken, as provided by law, from

any final judgment, appealable order or decision.”); *State v. Miller*, 289 S.C. 426, 427, 346 S.E.2d 705, 706 (1986) (“In both state and federal court, the right to appeal is conferred by statute or rule, S.C. Code Ann. § 14-3-330.”). Specifically, § 14-3-330(2) confers jurisdiction upon our appellate courts for the correction of errors of law when the order or ruling affects “a substantial right when such order . . . in effect determines the action and prevents a judgement from which an appeal might be taken . . . .” An order affecting a “substantial right” is defined as one which discontinues an action, prevents an appeal, grants or refuses a new trial, or strikes an action or defense. *Mid-State Distrib., Inc.*, 310 S.C. at 334 n.4, 426 S.E.2d at 780 n.4; *see also Breland*, 339 S.C. at 93, 529 S.E.2d at 13 (stating immediate appeals are permitted where a substantial right could not be vindicated on appeal). Moreover, an order “involving the merits” has been narrowly defined by our Supreme Court as an order that “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” *Id.* at 780 (quoting *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)). An immediate appeal of an interlocutory order is permitted when no appellate review is available to correct the trial court’s error after the final judgment. *Id.* at 93, 529 S.E.2d at 13 (citing *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985)).

It is important to note the South Carolina Supreme Court issued an Order addressing the very same issue that Applicant now seeks to challenge in her interlocutory appeal. Applicant’s desire to reverse the Supreme Court’s prohibitions on her ability to represent herself *pro se* does not satisfy the requirements for an interlocutory appeal as Judge Brown’s order is not a final judgment. “An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.” *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709

(2005) (citing *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002)). Judge Brown's Order dated January 31, 2022, continued the PCR matter and permits Applicant to appeal the court's ruling for the limited purpose of addressing the denial of her motion to relieve counsel and proceed *pro se*. The order does not involve the merits of the case, and does not affect a substantial right; therefore, it is not proper to permit an appeal from the rulings of the court contained therein.

The issue concerning Applicant's ability to represent herself *pro se* in the courts of this state has been widely and thoroughly litigated. The South Carolina Supreme Court has issued several orders governing Applicant's ability to proceed *pro se*, including explicit limitations on Applicant's ability to proceed *pro se* in post-conviction relief (PCR) matters. Indeed, Respondent petitioned the Court to clarify, in its original jurisdiction, whether previous orders prohibit Applicant from appearing *pro se* applies to issues of post-conviction relief. Pursuant to the Court's Order dated September 20, 2019, the Court agreed that PCR matters constitute civil actions and are therefore included in existing prohibitions against Applicant from proceeding *pro se*. The Court further acknowledged PCR actions are traditionally commenced *pro se*, and as such permitted Applicant only to file the initial PCR application *pro se* but prohibited Applicant from proceeding *pro se* any further than filing the initial application.

Therefore, the question of Applicant's ability to proceed *pro se* in PCR has been previously adjudicated and is barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in

the former action. *Id.*; see also *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981). Thus, Applicant should not be permitted to file an interlocutory appeal of the PCR court's order as the order does not provide a basis for appeal pursuant to S.C. Code Ann. § 14-3-330, and further, allowing Applicant to appeal a previously adjudicated and clearly settled issue is wasteful of judicial resources and contrary to the doctrine of *res judicata*.

### CONCLUSION

Based on all the foregoing, Respondent respectfully requests this Court reconsider its prior ruling and deny its previous grant of an interlocutory appeal and remand of this case back to the court of common pleas for a post-conviction relief hearing.

Respectfully submitted,

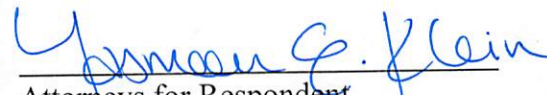
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February 9, 2022

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

2019-CP-40-0112

MARIE ASSA'AD FALTAS )

Applicant, )

vs )

CERTIFICATE OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA, )

Respondent, )  
\_\_\_\_\_ )

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 Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(E), SCRCP of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Timothy L. Griffith, Esquire**  
**2338 Mount Vernon Drive**  
**Sumter, SC 29154**

DATED this 9<sup>th</sup> day of February, 2022.



\_\_\_\_\_  
Katie Wade, Legal Assistant  
For Respondent