

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

Appellate Case No. 2022-000145

MARIE ASSA'AD FALTAS,

Petitioner,

v.

THE STATE,

Respondent.

AMENDED MOTION TO DISMISS

The State, through its undersigned counsel, would respectfully show unto this Court the following:

I.

This matter comes before the Court by way of Petitioner Marie Assa'ad-Faltas's application for post-conviction relief (PCR) filed January 7, 2019, and amended August 24, 2021. The underlying conviction in this case involves a simple assault charge by the City of Columbia via warrant number L-066971, issued September 11, 2009. Assa'ad-Faltas was represented by Theodore N. Lupton. On April 25, 2013, Assa'ad-Faltas's case proceeded to a bench trial before the Honorable Carl L. Solomon and a jury in the Columbia Municipal Court. Assa'ad-Faltas was convicted and sentenced by Judge Solomon to confinement for a period of twenty days.

Assa’ad-Faltas filed a notice of appeal in the circuit court on April 25, 2013, and a hearing on the matter c before the Honorable Alison R. Lee on December 13, 2013. Assa’ad-Faltas appeared pro se. She subsequently filed a pro se motion for a new trial based on after-discovered evidence on December 23, 2013.¹ The circuit court affirmed Assa’ad-Faltas’s conviction by order dated April 17, 2015. Assa’ad-Faltas then filed a timely notice of appeal in this 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, this Court affirmed the conviction. *City of Columbia v. Assa’ad-Faltas*, 420 S.C. 28, 800 S.E.2d 782 (2017).

Assa’ad-Faltas then filed a petition for a 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). Assa’ad-Faltas 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, Assa’ad-Faltas filed an application for post-conviction relief (2018-CP-40-1798). The State made its return on May 16, 2018, and moved to dismiss the action without prejudice based on the pending direct appeal. Assa’ad-Faltas filed a pro se amendment to her original application—raising thirty new claims—on September 10, 2018. On November 19, 2018, Assa’ad-Faltas filed a pro se motion for default based on “the State’s failure to timely answer Assa’ad-Faltas’s amended PCR application.” On

¹ The Honorable Jocelyn Newman denied Assa’ad-Faltas’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 Assa’ad-Faltas’s pending motions. Assa’ad-Faltas then submitted a motion to reconsider, which Judge Newsom denied by written order on February 27, 2019.

December 3, 2018, the State filed an amended return and partial motion to dismiss, addressing all the allegations raised in Assa'ad-Faltas's amended application. The State subsequently filed a second amended return and motion to dismiss on December 6, 2018, renewing its earlier motion to dismiss based on both the pending direct appeal and pending Rule 29, SCrimP, motion for a new trial.

The PCR court convened a hearing on Assa'ad-Faltas's motion for default and the State's motion to dismiss 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. Assa'ad-Faltas then filed a timely motion to reconsider pursuant to Rule 59(e), SCRCP, which Judge Sprouse denied by a written order dated January 11, 2019. Assa'ad-Faltas then filed a notice of appeal of the dismissal of her 2018 PCR application. On September 19, 2019, this Court dismissed the appeal as moot due to Assa'ad-Faltas's filing of the current PCR action challenging the same conviction. The remittitur was issued November 20, 2019.

II.

Assa'ad-Faltas commenced the instant PCR action on January 7, 2019, where she set forth thirty grounds for relief. Respondent thereafter moved to strike Assa'ad-Faltas's additional allegations thirty-one through forty-five, contained in a supplemental amendment as an improper pro se filing on August 25, 2021. Assa'ad-Faltas, through PCR counsel, then amended the application on August 27, 2021, to include allegations thirty-one through forty-five.²

² For purposes of judicial efficiency, the State has not included the allegations in this motion. The allegations can be viewed in their entirety in the State's motion pursuant to Rule 59(e), SCRCP.

A hearing into the matter convened via Cisco WebEx Virtual Platform on January 27, 2022, before the Honorable D. Craig Brown.³ Assa’ad-Faltas was present at the hearing and represented by Timothy L. Griffith, Esquire. Assistant Attorney General Yasmeeen E. Klein represented the State.

At the outset of the hearing, Assa’ad-Faltas renewed her motion to relieve counsel and proceed pro se.⁴ Judge Brown again denied Assa’ad-Faltas’s motion, finding she failed to allege

³ By order of Chief Justice Donald W. Beatty, Judge Brown is vested with “exclusive jurisdiction to hear and dispose of the above cases,” including the ability to “decide all matters pertaining to those cases” On April 18, 2022, Assa’ad-Faltas filed a pro se “Motion for SC Chief Justice Beatty to Re-assign the underlying case and all other cases assigned to Circuit Court Judge D. Craig Brown to another judge.” This Court denied Assa’ad-Faltas’s motion by order dated April 20, 2022.

⁴ Although she has been prohibited from “filing anything in the courts of this state in a pro se capacity” since 2011, Assa’ad-Faltas has been prohibited from contacting any judicial officer, their staff, and the employees of the South Carolina Judicial Branch since at least 2012. This Court issued an additional order on September 27, 2017, setting forth further guidelines and reiterating that “[Assa’ad-Faltas] may not represent herself pro se as a plaintiff in a civil action in any court of this State.” By way of background, Assa’ad-Faltas has achieved notoriety for engaging “in a pattern of vexatious and disruptive conduct aimed at courts throughout South Carolina and beyond” over the past two decades. *City of Columbia v. Assa’ad-Faltas*, 420 S.C. 28, 33, 800 S.E.2d 782, 784 (2017); *see also, e.g., Assa’ad-Faltas v. Carter*, No. 1:14CV678, 2014 WL 4566037, at *4–5, *9 (M.D.N.C. Sept. 15, 2014) (listing numerous judicial decisions showing Dr. Assa’ad-Faltas “repeatedly has abused the litigation process[,] both in state and federal courts” and finding the specific claims before that court to be “legally frivolous and malicious”), *report and recommendation adopted sub nom. Assa’ad-Faltas v. Carter*, No. 1:14-CV-678, 2014 WL 5361342 (M.D.N.C. Oct. 21, 2014), *aff’d*, 610 F. App’x 245 (4th Cir. 2015). Her “abuse of the justice system has even reached the United States Supreme Court.” *City of Columbia*, 420 S.C. at 31, 800 S.E.2d at 783 (citing *Assa’ad-Faltas v. Richland Cty. Sheriff’s Dep’t*, 574 U.S. 1148, 135 S. Ct. 1418, 191 L. Ed. 2d 354 (2015)). In *City of Columbia v. Assa’ad-Faltas*, this Court noted that “[f]or many years, [Assa’ad-Faltas] has engaged in a pattern of frivolous filings and inappropriate conduct towards the courts, court officers, and court employees of this State.” *Id.* Her “unrelenting inappropriate conduct in the South Carolina courts necessitated that certain restrictions be placed upon [Assa’ad-Faltas]’s pro se access to the courts to curb her abuse of the judicial process.” *Id.* at 32, 800 S.E.2d at 783. On September 20, 2019, this Court issued an order clarifying that Assa’ad-Faltas may file an initial PCR application pro se. However, the order “prohibited [Assa’ad-Faltas] from “proceeding pro se any further than filing the initial PCR application.” Assa’ad-Faltas nonetheless continued to disobey this Court’s orders, which ultimately resulted in Judge Brown concurrently issuing two orders on July 12, 2021: (1) a “Global

sufficient grounds to relieve counsel. Assa’ad-Faltas then moved for leave to file an interlocutory appeal of the PCR court’s order denying her motion to relieve counsel. The Court granted Assa’ad-Faltas’s request and continued the PCR case pending the resolution of the instant appeal. On February 9, 2022, the State submitted and served its motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRPC. Assa’ad-Faltas thereafter filed her notice of interlocutory appeal on February 10, 2022.

The following day, the State filed a motion to dismiss the appeal pending the PCR court’s resolution of the State’s motion. Subsequently, by order filed April 13, 2022, and received by the State on April 18, 2022, Judge Brown granted the State’s motion to reconsider; reversed his earlier decision granting Assa’ad-Faltas leave to file an interlocutory appeal; and ordered the matter be set for an evidentiary hearing. Consequently, the State’s February 11, 2022, motion to dismiss based on the pending motion to reconsider is now moot. The State hereby withdraws the grounds set forth in the previous motion and amends its motion to dismiss this case on the grounds that it is an invalid interlocutory appeal.

III.

In South Carolina, the right to appeal is conferred by S.C. Code Ann. § 14-3-330. *State v. Miller*, 289 S.C. 426, 426, 346 S.E.2d 705, 705 (1986); *Stone v. Thompson*, 426 S.C. 291, 294, 826 S.E.2d 868, 869 (2019). Ordinarily, an appeal may only be pursued after a party has obtained a final judgment or has otherwise satisfied the terms of section 14-3-330. *Hagood v. Sommerville*,

Order Re-emphasizing that Dr. Faltas is NOT to Communicate with Any Member of the Judicial Branch, Its Employees or Staff, and Outlining Contempt Proceedings Should She Continue To Do So;” and an “Order Restricting Applicant’s Ability to Make Pro Se Filings and Directing the Richland County Clerk of Court to Refuse any Filings From Dr. Faltas Unless They are Filed on Her Behalf by Counsel of Record.”

362 S.C. 191, 194–95, 607 S.E.2d 707, 708 (2005); *see Miller*, 289 S.C. at 426, 346 S.E.2d at 705 (“In order to exercise his statutory right to appeal, a defendant must come within the terms of the applicable statute.”). Pursuant to subsection (2) of section 14-3-330, this Court has jurisdiction to immediately review:

An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]

S.C. Code Ann. § 14-3-330. The provisions of section 14-3-330—including subsection (2)—have been narrowly construed by this Court to “serve the underlying policy favoring judicial economy by avoiding ‘piecemeal appeals.’” *Stone*, 426 S.C. at 295, 826 S.E.2d at 870 (quoting *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709; *see Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000) (noting that the basic policy behind denying immediate review of various orders issued before or during trial “is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted”).

“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*, 362 S.C. at 195, 607 S.E.2d at 709. However, “by its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.” *Id.* (citing *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537–38, 773 S.E.2d 144, 146 (2015)).

Here, Assa’ad-Faltas does not state the grounds upon which she alleges Judge Brown’s order denying her motion to relieve counsel is immediately appealable under section 14-3-330. In fact, her only reference to Judge Brown’s order consists of a mere conclusory statement that PCR

counsel's "refusal to subpoena necessary witnesses for the 27 January 2022 PCR evidentiary hearing assured both the loss of that PCR AND non-preservation of issues for appeal and/or later federal habeas." She provides no supporting facts or specificity regarding who the purported "necessary witnesses" are; how their testimony would affect the allegations set forth in her PCR application; and how the absence of these witnesses would result in the inability to preserve issues on appeal. Therefore, she not only fails to set forth any grounds upon which she believes Judge Brown's order is immediately appealable, she fails to set forth any grounds challenging the court's finding that she failed to state sufficient grounds to relieve counsel.

Rather, her memorandum in support of the instant interlocutory appeal is based entirely on her contention that this Court's September 27, 2017, and September 20, 2019, orders prohibiting her from representing herself are invalid. Assa'ad-Faltas claims she should be allowed to prosecute her post-conviction relief action pro se because this Court "never had jurisdiction to prospectively restrict her pro se advocacy." Likewise, in her return to the State's motion to dismiss, Assa'ad-Faltas purports to challenge this Court's 2017 and 2019 orders by mentioning an anecdotal comment made by a state city judge in December 2010 and referencing an order issued by this Court over a decade ago rejecting her attempt to file an amicus brief but noting that the attempt was made in "good faith." Although the validity of those orders is not the subject of the instant interlocutory appeal and therefore not properly before this Court, Assa'ad-Faltas's claim nonetheless fails based on the doctrine of *res judicata*.

IV.

Res judicata "is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties . . ." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 108 (1999) (quoting J. Flanagan, *South Carolina Civil Procedure* p.

642 (1996)). Under the doctrine of *res judicata*, a final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Cas. Ins. Co.*, 311 S.C. 189, 190–91, 427 S.E.2d 918, 919 (Ct. App. 1993); *see Bell v. Bennett*, 307 S.C. 286, 292, 414 S.E.2d 786, 789 (Ct. App. 1992) (noting that *res judicata* prohibits subsequent actions by the same parties on the same issues). *Res judicata* “ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues.” *Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 108 (emphasis added). To establish *res judicata*, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Carpenter v. S.C. Dep’t of Corr.*, 431 S.C. 512, 525–26, 848 S.E.2d 346, 353 (Ct. App. 2020) (emphasis omitted) (quoting *Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109).

On June 10, 2019, the State petitioned this Court, in its original jurisdiction, to address whether PCR actions are civil actions and whether the circuit court has the authority to allow Assa’ad-Faltas to proceed *pro se* in any PCR action in this State pursuant to Rule 245, SCACR.⁵ By order issued September 30, 2019, this Court granted the State’s petition for original jurisdiction and clarified its September 27, 2017 Order:

This Court is well aware that PCR action are civil actions. As such, we intended for PCR actions to be included in the prohibition against [Assa’ad-Faltas] proceeding *pro se* as a plaintiff in civil actions. Because PCR actions are generally commenced *pro se*, we clarify that [Assa’ad-Faltas] may file an initial PCR application *pro se*. However, [Assa’ad-Faltas] is prohibited from proceeding *pro se* any further than filing the initial PCR application.

⁵ The State’s petition followed an order issued by the Honorable Clifton Newman on December 28, 2018, relieving PCR counsel and allowing Assa’ad-Faltas to proceed *pro se*. Judge Newman noted in the order that Assa’ad-Faltas and PCR counsel argued this Court’s September 27, 2017 Order does not apply to post-conviction relief actions because they are “quasi-criminal.”

Marie Assa'ad Faltas v. State of South Carolina, Appellate Case No. 2019-00036, (Sup. Ct. filed Sept. 30, 2019).

Here, the parties are identical and the subject matter regarding the prohibition against Assa'ad-Faltas proceeding pro se in a PCR action has been fully adjudicated by this Court on the merits. *Cf. Carpenter*, 431 S.C. at 525, 848 S.E.2d at 353 (rejecting “the State’s argument that the supreme court’s denial of Carpenter’s petition for original jurisdiction and a writ of habeas action constitutes res judicata or has any other preclusive effect in this case” where “[t]he denial order was not based on the merits”). Further, the September 2019 Order forecloses any possible challenge to Judge Brown’s denial of Assa’ad-Faltas’s motion to relieve counsel and proceed pro se in the instant post-conviction relief action.

V.

WHEREFORE, the State prays that this Court will dismiss Assa'ad-Faltas's appeal as an improper interlocutory appeal from an order that is not immediately appealable; remand the case to the circuit court; hold this appeal in abeyance pending a ruling on the State's motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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