

STATE OF SOUTH CAROLINA

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IN THE SUPREME COURT

FEB 25 2013

\_\_\_\_\_  
S.C. Supreme Court  
Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge  
\_\_\_\_\_

FREDA ELAINE LUKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212908

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

STATE OF SOUTH CAROLINA, )

PLAINTIFF, )

vs )

FREDA LUKER, )

DEFENDANT. )

IN THE COURT OF GENERAL SESSIONS  
OF THE TENTH JUDICIAL CIRCUIT  
2008-GS-47-09

GUILTY PLEA

JUNE 1, 2010  
ANDERSON, SOUTH CAROLINA

BEFORE: THE HONORABLE J. CORDELL MADDOX

FOR THE STATE:

CARY NICHOLAS GOINGS  
ATTORNEY AT LAW  
OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 11549  
COLUMBIA, SC 29211-1549

FOR THE DEFENSE:

ROBERT A. GAMBLE  
ATTORNEY AT LAW  
ANDERSON COUNTY PUBLIC DEFENDER  
301 CAMSON ROAD  
ANDERSON, SC 29625

FILED-CLERK'S OFFICE  
ANDERSON SC  
2010 DEC 30 A 11:57  
GENERAL SESSIONS AND  
TEAS

JO RICE  
COURT REPORTER

1           **MR. GOINGS:** YOUR HONOR, STANDING BEFORE YOU IS FREDA LUKER.  
2           SHE HAS BEEN CHARGED IN INDICTMENT NUMBER 2008-GS-47-09 IN COUNT  
3           ONE, WHICH IS TRAFFICKING METHAMPHETAMINES, ORIGINALLY INDICTED AS  
4           ONE HUNDRED TO TWO HUNDRED GRAMS. THAT HAS BEEN REDUCED BY THE  
5           STATE AS PART OF THIS PLEA AGREEMENT TO TWENTY-EIGHT TO ONE  
6           HUNDRED GRAMS.

7           SHE'S ALSO BEEN CHARGED IN COUNT THREE OF THE INDICTMENT,  
8           WHICH IS MANUFACTURING METHAMPHETAMINES. SHE'S ALSO BEEN  
9           CHARGED IN COUNT TWELVE OF THE INDICTMENT, WHICH IS TRAFFICKING  
10          METHAMPHETAMINES AND COUNT THIRTEEN OF THE INDICTMENT, WHICH IS  
11          POSSESSION OF PSEUDOEPHEDRINE. AS TO COUNTS THREE, TWELVE,  
12          THIRTEEN, THEY REMAIN AS ORIGINALLY INDICTED. THE RECOMMENDATION  
13          FOR MS. LUKER IS TEN TO TWELVE YEARS. SHE HAS SIGNED A PLEA  
14          AGREEMENT INDICATING HER COOPERATION AS WELL AS EVERYTHING SHE  
15          IS AGREEING HERE TO TODAY.

16          ALSO, YOUR HONOR, AS PART OF THE PLEA DEAL, THE STATE IS  
17          DROPPING COUNT FOURTEEN, WHICH IS POSSESSION OF A FIREARM DURING  
18          THE COMMISSION OF A VIOLENT CRIME.

19          **THE COURT:** OKAY.

20          (MS. LUKER IS ADMINISTERED THE OATH BY JUDGE MADDOX)

21          **THE COURT:** HOW OLD ARE YOU?

22          **MS. LUKER:** FORTY-NINE.

23          **THE COURT:** AND HOW FAR DID YOU GO IN SCHOOL?

24          **MS. LUKER:** TWELVE.

25          **THE COURT:** ALL RIGHT. WHERE DID YOU LAST WORK?

1 MS. LUKER: AT COLLIER'S IN MAULDIN.

2 THE COURT: ALL RIGHT. IT LOOKS LIKE YOU SIGNED A PLEA  
3 AGREEMENT TODAY. IS THAT CORRECT?

4 MS. LUKER: YES, SIR.

5 THE COURT: AND DID YOU DO THAT VOLUNTARILY?

6 MS. LUKER: YES, SIR.

7 THE COURT: DID ANYBODY FORCE YOU INTO SIGNING THIS  
8 AGREEMENT?

9 MS. LUKER: NO, SIR.

10 THE COURT: DID ANYBODY THREATEN YOU WITH ANYTHING IF YOU  
11 DIDN'T SIGN IT?

12 MS. LUKER: NO, SIR.

13 THE COURT: ARE YOU TAKING ANY KIND OF MEDICATION OR  
14 PRESCRIPTIONS FOR ANY KIND OF MEDICAL CONDITIONS TODAY?

15 MS. LUKER: YES, SIR.

16 THE COURT: WHAT ARE YOU TAKING?

17 MS. LUKER: I TAKE CELEXA AND VISTARIL.

18 THE COURT: OKAY. WHAT CONDITION ARE YOU TAKING THOSE FOR?

19 MS. LUKER: IT'S FOR BIPOLAR AND LIKE CLAUSTROPHOBIA AND STUFF.

20 THE COURT: OKAY. BUT YOU UNDERSTAND WHAT YOU ARE DOING  
21 HERE TODAY. IS THAT CORRECT?

22 MS. LUKER: YES, SIR.

23 THE COURT: DO YOU UNDERSTAND THAT IF YOU WANT TO PLEAD  
24 GUILTY YOU HAVE TO WAIVE YOUR CONSTITUTIONAL RIGHTS?

25 MS. LUKER: YES, SIR.

1 THE COURT: AND ARE YOU WAIVING YOUR RIGHT TO A JURY TRIAL?

2 MS. LUKER: YES, SIR.

3 THE COURT: ARE YOU WAIVING YOUR RIGHT TO REMAIN SILENT?

4 MS. LUKER: YES.

5 THE COURT: ARE YOU WAIVING YOUR RIGHT TO CONFRONT THE  
6 WITNESSES THAT THE STATE WOULD BE REQUIRED TO BRING IN TO TESTIFY  
7 AGAINST YOU?

8 MS. LUKER: YES, SIR.

9 THE COURT: AND YOU ALSO ARE WAIVING YOUR RIGHT TO PUT UP A  
10 DEFENSE AGAINST THESE CHARGES?

11 MS. LUKER: YES, SIR.

12 THE COURT: OKAY. HAVE YOU HAD PLENTY OF TIME TO SPEAK WITH  
13 YOUR LAWYER?

14 MS. LUKER: I HAVE ANOTHER LAWYER, TOO, BUT HE'S NOT PRESENT.

15 THE COURT: WHO'S YOUR OTHER LAWYER?

16 MS. LUKER: MISTER CULBERTSON FROM GREENVILLE.

17 THE COURT: WHO REPRESENTS YOU?

18 MS. LUKER: I HAVE TWO LAWYERS. I HAD A D-U-S AND THEN MISTER  
19 CULBERTSON.

20 MR. GAMBLE: SYMMES CULBERTSON, YOUR HONOR, AND I CALLED  
21 OVER THERE THURSDAY AND TOLD HIM IT WAS GOING TO BE TODAY.

22 THE COURT: BUT YOU REPRESENT HER ON ALL THE CHARGES IN  
23 CONJUNCTION WITH MISTER CULBERTSON?

24 MR. GAMBLE: YOUR HONOR, I'VE REPRESENTED HER SINCE  
25 DECEMBER 15TH OF '08. I WENT DOWN TO LEATH CORRECTIONAL AND MET

1 WITH HER DOWN THERE. I MET WITH HER AND SYMMES ON MAY 27TH IN OUR  
2 OFFICE AND THEN I WENT OVER WITH HER TO THE SHERIFF'S OFFICE AND  
3 MET WITH THE ATTORNEY GENERAL'S OFFICE AND SHE AND I AND THEY  
4 WENT OVER WHAT WAS SUPPOSED TO BE HER TESTIMONY IF ANY OF THESE  
5 CASES WENT TO TRIAL. I'VE REPRESENTED HER, OR THEN MET WITH HER ON  
6 SEVERAL OCCASIONS. I HAVE THEM DOWN SOMEWHERE AND HAVE TALKED  
7 WITH SYMMES ABOUT THE CASE. WE WENT OVER A LOT OF POSSIBLE  
8 DEFENSES, NONE OF WHICH WORKED AND WERE LEFT WITH NOTHING BUT  
9 THE PLEA.

10 THE COURT: OKAY. ALL RIGHT, MS. LUKER, HAVE YOU HAD PLENTY OF  
11 TIME, THOUGH, TO SPEAK WITH EITHER ONE OF YOUR ATTORNEYS? I MEAN,  
12 HAVE YOU ASKED THEM ALL THE QUESTIONS THAT YOU NEED TO ASK THEM?

13 MS. LUKER: (NODS HEAD)

14 THE COURT: YOU NEED TO SPEAK UP.

15 MS. LUKER: YES, SIR.

16 THE COURT: DO YOU UNDERSTAND THAT THE RECOMMENDATION HERE  
17 IS TEN TO TWELVE YEARS AND THAT'S SUBSTANTIALLY LESS THAN THE  
18 MAXIMUM YOU COULD RECEIVE?

19 MS. LUKER: YES, SIR. ....

20 THE COURT: DO YOU UNDERSTAND THAT'S JUST A RECOMMENDATION  
21 AND I DON'T HAVE TO GO ALONG WITH IT? I COULD SENTENCE YOU TO THE  
22 MAXIMUM ALLOWED BY LAW?

23 MS. LUKER: YES, SIR.

24 THE COURT: ALL RIGHT. DO YOU WANT TO PLEAD GUILTY TO THESE  
25 FOUR CHARGES TODAY?

1 MS. LUKER: YES, SIR.

2 THE COURT: AND ARE YOU GUILTY OF THOSE CHARGES?

3 MS. LUKER: YES, SIR.

4 THE COURT: ALL RIGHT. YES, SIR.

5 MR. GOINGS: THANK YOU, YOUR HONOR. IF IT PLEASES THE COURT.

6 MS. LUKER, AS YOU PROBABLY HEARD, SHE IS THE SISTER OF JUDY SEXTON.  
7 HER INVOLVEMENT, BASED ON HER STATEMENTS, BEGAN BACK IN 2007  
8 WHEN THE SEXTONS WERE RESIDING AT [REDACTED] IN GREENVILLE  
9 COUNTY. BASED ON THE INVESTIGATION, IT WAS CLEAR THAT MS. LUKER  
10 HAD BEEN TRADING PSEUDOPHED PILLS, SHE INDICATES BY HER  
11 STATEMENT, TO JIMMY SEXTON IN EXCHANGE FOR A CERTAIN AMOUNT OF  
12 METHAMPHETAMINES. THAT INVOLVEMENT CONTINUED OVER TO THE  
13 [REDACTED] IN ANDERSON COUNTY AND IF YOU REMEMBER, YOUR  
14 HONOR, MS. LUKER HAD BEEN RESIDING AT A TRAILER ON ROYS DRIVE PRIOR  
15 TO JUDY AND JIMMY SEXTON BEING BONDED OUT OF JAIL AND COMING AND  
16 MOVING INTO [REDACTED]. FROM THAT POINT ON, YOUR HONOR, BASED  
17 ON THE INVESTIGATION AND THE STATEMENTS PROVIDED BY VARIOUS  
18 OTHER CO-DEFENDANTS AND MS. LUKER HERSELF, IT IS CLEAR THAT  
19 MS. LUKER CONTINUED TO PROVIDE THE PSEUDOPHED PILLS AND OTHER  
20 ITEMS NEEDED FOR THE MANUFACTURE OF METHAMPHETAMINES WHICH  
21 WAS THEN ON HER PROPERTY AT THAT POINT IN TIME WHEN THEY WENT TO  
22 ROYS DRIVE. ACCORDING TO HER STATEMENT ALONE, YOUR HONOR, SHE  
23 INDICATED THAT SINCE 2007, AGAIN SHE HAD BEEN PROVIDING PSEUDOPHED  
24 PILLS TO JIMMY SEXTON IN EXCHANGE FOR ONE-FOURTH TO ONE-HALF  
25 GRAM OF METHAMPHETAMINE AT A TIME AND THIS STATEMENT WAS GIVEN

1 ON MAY 21, 2008, YOUR HONOR. SHE INDICATED AT THAT TIME, FROM LAST  
2 YEAR, SHE HAD RECEIVED APPROXIMATELY TWENTY GRAMS OF  
3 METHAMPHETAMINES PER WEEK FROM EITHER JIMMY SEXTON, JUDY  
4 SEXTON, WESLEY SEXTON OR DONNIE NELSON. SHE ALSO INDICATED THAT  
5 SHE HAD BEEN SELLING AT THAT POINT IN TIME AT LEAST TEN GRAMS OF  
6 METHAMPHETAMINES A WEEK THAT WAS PROVIDED TO HER, SO SHE WOULD  
7 GET IT FROM DONNIE, JIMMY, JUDY OR WESLEY, THEN SELL IT TO SOMEBODY  
8 ELSE AT THAT TIME, YOUR HONOR, FOR, AT LEAST SHE INDICATED AT THAT  
9 TIME, FOR THE LAST SIX MONTHS AND THEN SHE ALSO INDICATED THAT SHE  
10 WAS AWARE THAT THEY WERE MANUFACTURING METHAMPHETAMINES. SHE  
11 INDICATED THAT JIMMY SEXTON WOULD COOK EIGHTY GRAMS AT A TIME AND  
12 THE MOST SHE'S SEEN IS ONE HUNDRED GRAMS. THAT'S HER INVOLVEMENT  
13 IN THE GRAND CONSPIRACY, YOUR HONOR.

14 AS TO THE INDIVIDUAL CHARGES THAT SHE IS PLEADING TO TODAY,  
15 WHICH IS COUNT, WELL ACTUALLY WE COVERED COUNT THREE, WHICH IS  
16 MANUFACTURING METHAMPHETAMINE AT THE ROYS DRIVE LOCATIONS. THE  
17 OTHER COUNTS ARE COUNTS TWELVE AND THIRTEEN, YOUR HONOR. THAT  
18 IS ACTUALLY, I BELIEVE IT WASN'T A SEARCH WARRANT, IT WAS A CONSENT  
19 TO SEARCH. THE ANDERSON COUNTY SHERIFF'S OFFICE WENT OVER TO  
20 HER RESIDENCE BASED ON THE INFORMATION THEY HAD. THEY DID A KNOCK  
21 AND TALK AND DURING THAT KNOCK AND TALK, THEY GOT CONSENT FROM  
22 MS. FREDA LUKER TO SEARCH HER RESIDENCE. DURING THE SEARCH OF  
23 THAT RESIDENCE, LAW ENFORCEMENT FOUND A QUANTITY OF  
24 METHAMPHETAMINES THAT, I DON'T HAVE THE EXACT AMOUNT, BUT I DO  
25 KNOW THAT IT WAS OVER TEN GRAMS OF METHAMPHETAMINES BUT LESS

1 THAN TWENTY-EIGHT GRAMS. THEY ALSO FOUND BOXES OF PSEUDOPHED  
2 THAT WERE EITHER STILL IN THE PACKAGING OR OUT OF THE PACKAGING  
3 WHICH IS THE FACTS THAT SUBSTANTIATE COUNT THIRTEEN, WHICH THE  
4 TOTAL AMOUNT OF PSEUDOEPHEDRINE THEY FOUND AT HER LOCATION WAS  
5 OVER TWELVE GRAMS BUT LESS THAN TWENTY-EIGHT GRAMS.

6 THE COURT: OKAY. DO YOU AGREE WITH THOSE FACTS?

7 MS. LUKER: YES, SIR.

8 THE COURT: ALL RIGHT. YES, SIR.

9 MR. GAMBLE: YOUR HONOR, AS SHE TOLD YOU, SHE IS FORTY-NINE  
10 YEARS OF AGE. SHE WAS EMPLOYED IN MAULDIN. SHE COULDN'T CONTINUE  
11 TO WORK. SHE'S ON DISABILITY AND SHE GOT A DIVORCE. SHE HAD A CHILD  
12 LIVING WITH HER AND ONE LIVING DOWN THE ROAD FROM HER. SHE WAS  
13 TRYING TO MAKE ENDS MEET AND SHE DIDN'T GET HER DISABILITY STARTED  
14 UNTIL, YOU KNOW, HOW THAT GOES, IT WAS LATE, A YEAR OR SO AFTER SHE  
15 WAS LABELED. SHE DID WHAT SHE COULD TO MAKE ENDS MEET TO LIVE IN  
16 HER TRAILER THERE ON ROYS DRIVE.

17 I HAVE BEEN OVER WITH HER, HER STATEMENT TO THE GRAND JURY  
18 WHERE SHE GAVE TWENTY SOMETHING PAGES OF TESTIMONY. I READ IT AT  
19 THE ATTORNEY GENERAL'S OFFICE, BUT THEY WOULDN'T SUPPLY ME WITH A  
20 COPY OF IT, BUT I WROTE DOWN SOME NOTES AND WENT OVER THOSE WITH  
21 HER FROM THE NOTES THAT I HAVE FROM WHEN I WENT TO THE ATTORNEY  
22 GENERAL'S OFFICE. SHE ALSO GAVE A STATEMENT OF HER INVOLVEMENT  
23 TO BRAD GOTTFRIED, I THINK HIS NAME IS, AND MISTER BROWN FROM SLED.  
24 SHE'S BEEN COOPERATIVE ALL THE WAY THROUGH.

25 I DISAGREE WITH THE TEN TO TWELVE. I THINK THIS CASE CALLS FOR

1 SEVEN, I'LL TELL YOU, BECAUSE OF HER HELP IN ASSISTING IN ALL THESE  
2 CASES AND BEYOND THAT, YOUR HONOR, SHE HAD PREVIOUSLY PLED TO  
3 POSSESSION IN MAY OF '08 AND RECEIVED A ONE YEAR SENTENCE TO BE  
4 SERVED - WELL, THREE SUSPENDED ON ONE, TO BE SERVED AT HOME ON  
5 HOUSE ARREST. WHEN SHE WAS ARRESTED MAY 21, OF '08, SHE WAS TAKEN  
6 TO JAIL WITH HER ANKLE BRACELET ON. SHE WAS THEN CARRIED BEFORE A  
7 CLOSED CIRCUIT TELEVISION IN GREENVILLE COUNTY, WHEREIN THREE  
8 HUNDRED AND TWENTY-EIGHT DAYS OF A ONE YEAR SENTENCE WERE  
9 IMPOSED ON HER WITHOUT HER PLEADING TO ANYTHING SO, I DON'T KNOW  
10 HOW TO COUNT THAT. SHE DID NOT PLEA TO ANYTHING AND THEY SIMPLY  
11 IMPOSED A ONE YEAR SENTENCE ON HER. I THINK SHE SHOULD BE GIVEN  
12 CREDIT ON THAT ONE YEAR BECAUSE THIS IS WHAT CAUSED IT. SHE WASN'T  
13 FOUND GUILTY OF THIS UNTIL TODAY.

14 THE COURT: WHO IMPOSED THAT ON HER?

15 MR. GAMBLE: I SHOWED HER PICTURES OF THE JUDGES IN  
16 GREENVILLE AND I THINK IT WAS JUDGE MILLER BY CLOSED CIRCUIT  
17 TELEVISION.

18 MR. GOINGS: IT SOUNDS LIKE IT WAS A PROBATION REVOCATION. SHE  
19 VIOLATED HER HOUSE ARREST AND THEN THEY IMPOSED THE YEAR  
20 SENTENCE THAT THEY HAD HANGING OVER HER HEAD.

21 MR. GAMBLE: BUT SEE, THE VIOLATION WASN'T WILLFUL BECAUSE SHE  
22 WAS ARRESTED. THAT WAS THE VIOLATION. SHE COULDN'T CALL IN AND SO  
23 SHE GOT A YEAR WITHOUT BEING FOUND GUILTY ON THIS CASE.

24 THE COURT: I GOTCHA. ALL RIGHT. I'M GOING TO ACCEPT YOUR  
25 PLEAS AND FIND THEM FREELY AND VOLUNTARILY MADE BASED UPON THE

1    **ADVICE OF COUNSEL. THE SENTENCE ON EACH OF THESE IS EIGHT YEARS**  
2    **TO RUN CONCURRENT. CREDIT FOR ANY TIME SERVED. I GUESS IT WOULD**  
3    **BE A YEAR, BECAUSE IT WAS AFTER ---**

4           **MR. GAMBLE: YES, SIR. IT'S A YEAR.**

5           **THE COURT: ALL RIGHT. ONE YEAR. CREDIT FOR ONE YEAR.**


6           **MR. GOINGS: THANK YOU, YOUR HONOR.**

**CERTIFICATE**

**I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TEN PAGED TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA ON JUNE 1, 2010, AT THE ANDERSON COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.**

**I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.**

**DECEMBER 17, 2010**



**JO RICE**

12

FORM 5



STATE OF SOUTH CAROLINA )  
County of Anderson )

IN THE COURT OF COMMON PLEAS

Freda Elaine Luker # 329810 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

2010-CP-04-03328

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Health Correctional Institution
2. Name and location of Court which imposed sentence Anderson Court House  
Anderson, South Carolina 29625
3. Name(s) of co-defendant(s) (if any) none? was sentence  
with family
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2008-GS-47-09

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ANDERSON SC  
2010 SEP 16 A 8:  
COMMON PLEAS AT  
GENERAL SESSION

(b) \_\_\_\_\_  
(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) June 1 2010  
(b) 8 years  
(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓  
(b) after a plea of not guilty \_\_\_\_\_  
(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

no

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. n/a  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. \_\_\_\_\_  
ii. n/a  
iii. \_\_\_\_\_

(c) the date of each such result:

i. n/a  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. n/a  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) was incarcerated at R+E in Columbia SC

- (b) no access to call my attorney
- (c) from June to July R+E pass 10 days

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) arrest made on May 2008 anderson county
- (b) didnt follow legal produces.
- (c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) was on home monitor and Anderson
- (b) County violated my probation by not
- (c) letting them know.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. na
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. na
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No credit 365

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
  - i. none
  - ii. 365 days
  - iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
  - i. 1 year
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Mr. Cuberson didn't come to court
- (b) On the day I was sentence he too
- (c) thought was plea hearing

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? Mr. Gamble
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Mr. Gamble  
Anderson County Public Defender
  - ii. 301 Carmson Rd  
Anderson SC 29625
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. to sign plea  
day of sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

to be properly defended by court of law, and sentence reduction, relief for my family.

20. Are you now under sentence from any other court that you have not challenged?

none

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of Anderson )

VERIFICATION

I, Freda E. Luker, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Freda E. Luker

SWORN to and subscribed before me this 2 day of September, 2010.

Janette R. Dodson (L.S.)  
Notary Public

My Commission Expires: 10-31-2019

FILED-CLERK'S OFFICE  
ANDERSON SC  
2010 SEP 16 A 8:32  
COMMON PLEAS AND  
GENERAL SESSIONS

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Freda E. Luter, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Freda E. Luter  
*Applicant*

SWORN or affirmed to and subscribed before me this  
2 day of September, 2010

David J. Dodds  
*Notary Public*

My Commission Expires: 10-20-2015

FILED-CLERK'S OFFICE  
ANDERSON SC  
2010 SEP 16 A 8:32  
COMMON PLEAS AND  
GENERAL SESSIONS

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ANDERSON )  
 )  
 Freda Elaine Luker, #329810, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 TENTH JUDICIAL CIRCUIT

2010-CP-04-3328

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 16, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was one of ten defendants indicted at the July 23, 2008 term of the State Grand Jury of South Carolina for Trafficking Methamphetamine (Conspiracy), three counts of Manufacturing Methamphetamine, two counts of Possession of Pseudoephedrine, two counts of Possession with Intent to Distribute Methamphetamine (Proximity), two counts of Possession with Intent to Distribute Methamphetamine, two counts of Possession of a Firearm During the Commission of a Violent Crime, four counts of Trafficking Methamphetamine, Possession of Methamphetamine, and Distribution of Methamphetamine (2008-GS-47-09). She was represented by Robert Gamble, Esquire. On June 1, 2010, the Applicant pled guilty. She was sentenced to confinement for a period of eight (8) years. The Applicant did not appeal her guilty plea or sentence.

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 CRIMINAL PLEAS AND  
 GENERAL SESSIONS

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- a. "Arrest made on May 2008 Anderson county didn't follow legal procedures."
- b. "Was on home monitor and Anderson County violent (illegible) probation by not letting them know."

III.

Respondent interprets the Applicant's claims as claims of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

#### IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

A. WEST LEE  
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By:   
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November 17, 2010

1 State of South ) In the Court of Common Pleas  
 Carolina )  
 2 County of Anderson ) Case No: 2010-CP-04-03328  
 3 )  
 4 )  
 5 Freda Luker, )  
 Applicant, )  
 6 -vs- ) Transcript of Record  
 7 State of South ) Post-Conviction Relief  
 Carolina, ) Hearing  
 8 Respondent. )  
 9 )

10 June 6, 2012  
 Anderson, South Carolina

11  
 12  
 13

14 B E F O R E:

15 The Honorable Alexander S. Macaulay, Judge.

16  
 17  
 18

19 A P P E A R A N C E S:

20 Hugh M. Welborn, Esq.  
 Attorney for the Applicant

21 Kaelon E. May  
 22 Assistant Attorney General  
 Attorney for the Respondent  
 23

24  
 25

Robin Sue Hild, FCRR, RPR  
 Circuit Court Reporter

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2

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18 Exhibits

19 No. Description ID/EV

20

21 No exhibits were introduced.

22

23

24

25

1 \*\* Start of Requested Certified Transcript of Record \*\*

2 THE COURT: All right. This is Freda Elaine Luker  
3 versus the State, 2010-CP-04-3328; Mr. Welborn for the  
4 Applicant and Ms. May for the State.

5 Is the State ready to proceed?

6 MS. MAY: Yes, Your Honor.

7 THE COURT: Is the Applicant ready to proceed as  
8 well?

9 MR. WELBORN: Yes, Your Honor.

10 THE COURT: All right, Mr. Welborn, what are the  
11 grounds for your application?

12 MR. WELBORN: Your Honor, my client alleges  
13 ineffective assistance of counsel, and to back up those  
14 allegations she's alleging that the arrest in May of  
15 2008 didn't follow legal procedures. Her lawyer should  
16 have been aware of that. She was on home monitor in  
17 Anderson County and probation, and that had some type of  
18 ineffective assistance in that it wasn't brought up and  
19 handled appropriately.

20 That's how I interpret it, Your Honor.

21 THE COURT: All right. So, the grounds are  
22 ineffective assistance of counsel based on not  
23 investigating the lawfulness about the arrest, and then  
24 also the fact that she was on home incarceration.

25 Is that right?

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1 MR. WELBORN: Yes.

2 THE COURT: Or electronic monitoring for probation  
3 which also was not addressed. Is that the grounds?

4 MR. WELBORN: Yes, sir.

5 THE COURT: Very good. Thank you very much.

6 All right. Anything further from the State before  
7 we proceed?

8 MS. MAY: No, Your Honor.

9 THE COURT: You may call your first witness.

10 MR. WELBORN: May it please the Court, we call  
11 Ms. Luker.

12 THE CLERK: Ms. Luker, before you are seated, if  
13 you would please raise your right hand to the best of  
14 your ability.

15 (Whereupon, the witness was sworn.)

16 THE COURT: All right. You may proceed.

17 MR. WELBORN: May it please the Court, Your Honor.  
18 Whereupon,

19 Freda Luker,

20 Having been first duly sworn, was examined and testified  
21 as follows:

22 Direct Examination by Mr. Welborn:

23 Q. Ms. Luker, I'm gonna speak out from here. Can you  
24 hear me okay?

25 A. Yes, sir.

1 Q. You are Freda Luker?

2 A. Yes, sir.

3 Q. Ms. Luker, you were before this Court June 1st of  
4 2010?

5 A. Yes, sir.

6 Q. Is that correct?

7 A. Yes, sir.

8 Q. And at that time you pled guilty to several  
9 charges; is that correct?

10 A. Yes, sir.

11 Q. Now, as a result of those, there were drug charges,  
12 several of which you pled guilty to: I think three  
13 counts of manufacturing methamphetamine, two of  
14 possession of pseudoephedrine, two of possession with  
15 intent to distribute methamphetamine, two of possession  
16 with intent to distribute methamphetamine, two of  
17 possession of a firearm during a violent crime, which  
18 was dismissed, that one was dismissed. Is that correct?

19 A. Yes, sir. But only, I only had four charges that I  
20 had on my sentencing sheet when I got to...

21 Q. Tell the Court what you pled guilty to that day.

22 A. Trafficking, 10 to 28; possession of amphetamine, I  
23 think there was two charges on that. And the others was  
24 an open case that they never took off of my record, so  
25 when I got to the South Carolina Department of

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1 Corrections, I had to write several letters to get all  
2 that took off of my record because it was still an open  
3 case.

4 So I have my sentencing sheets for the only four  
5 charges that I was charged for. And eventually the  
6 charge was dropped because it was in the yard the day  
7 that I was in, I was locked up when the gun was found.

8 Q. Well, for the Court's edification and  
9 understanding, tell the Court what charges you pled  
10 guilty to on that day in June.

11 A. The 10 to 28, the 28 to a hundred grams, and the 72  
12 counts of the Sudafed.

13 Q. As a result of that, there was a recommendation of  
14 you getting 10 to 12 years but you got eight; is that  
15 correct?

16 A. Yes, sir.

17 Q. Now, there is -- you have alleged in your  
18 application that your lawyer -- you had two lawyers; is  
19 that correct?

20 A. Yes, sir, I did.

21 Q. You had Mr. Culbertson and Mr. Gamble; is that  
22 correct?

23 A. Yes, sir.

24 Q. And you have alleged that the arrest that was in  
25 May of 2008 did not, was illegal, it didn't follow legal

1 procedures?

2 A. Yes, sir.

3 Q. Elaborate to the Court what you mean by that.

4 A. Well, from my understanding they were supposed to  
5 call Greenville County. Greenville County was supposed  
6 to -- Anderson County was supposed to let Greenville  
7 County know. They didn't let them know. So I was there  
8 for five days. So when I got out and I did go back to  
9 Greenville County, they locked me up and made me serve  
10 my time because Anderson County didn't tell them where I  
11 were.

12 Q. Let's start over to clarify that for the Court.

13 Were you on probation or were you on some type of  
14 monitoring when you were arrested for these charges?

15 A. I was on a monitor when I got charged with them  
16 charges there.

17 Q. Why were you on a monitor when you got charged with  
18 all of this?

19 A. For Schedule 4 distribution.

20 Q. And so were you on probation, have you pled guilty  
21 to something and that's why you had a monitor on?

22 A. I had pled guilty to the charges before and I had  
23 the monitor for the Greenville County charges.

24 Q. You were sitting in your home in Anderson --

25 A. Yes, sir.

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1 Q. -- and you were arrested --

2 A. Yes, sir.

3 Q. -- on these charges?

4 A. Yes, sir.

5 Q. Now, so the Court can understand this, you have an  
6 allegation about how this particular arrest didn't  
7 follow legal procedures and was illegal. And I want to  
8 make sure the Court understands what you are trying to  
9 say there. So let's go over it.

10 You were already on probation for something else.

11 Is that correct?

12 A. Yes, sir.

13 Q. Now, when you were arrested and taken out of your  
14 home, when you had a monitor on, you went and eventually  
15 were taken before a Judge on a probation revocation  
16 matter; is that correct?

17 A. Yes, sir.

18 Q. And your probation was revoked; was that correct?

19 A. Yes, sir.

20 Q. And you ended up serving about a year, right at a  
21 year on that revocation; is that correct?

22 A. Yes, sir.

23 Q. Now tell the Court then what was illegal about the  
24 arrest on these new charges that you pled guilty on  
25 later?

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1 A. That I was just, I went to court -- I mean, I  
2 didn't get a chance to go to court and let them know  
3 what happened because of these other charges.

4 Q. Well, in your trial transcript there is some  
5 discussion about -- before Judge Maddox; is that  
6 correct?

7 A. Yes, sir.

8 Q. In that discussion it looks like that you went  
9 before some judge that they thought might be Judge  
10 Miller because of the picture; is that correct?

11 A. Yes, sir.

12 Q. And Judge Maddox concluded that probably was a  
13 probation revocation hearing?

14 A. Yes, sir.

15 Q. And all that is in the transcript; is that correct?

16 A. Yes, sir.

17 Q. So, for the Court to understand, are you  
18 complaining about having your probation revoked without  
19 having a lawyer? Or what are you complaining about?

20 A. Yes, sir. I, really and truly I am, because that  
21 could have been a PTI for me --

22 MS. MAY: Your Honor, I'm gonna object to any  
23 reference to her probation revocation. That is way out  
24 of time and not what she filed her application on. What  
25 she filed her application on is on different charges,

1 and the probation revocation was never mentioned.

2 THE COURT: All right. When was the probation  
3 revocation?

4 MR. WELBORN: She was arrested May 21st, 2008, Your  
5 Honor, and was taken to jail with this monitor on. And  
6 some time thereafter, I'm not sure of the date, there  
7 was a hearing on it whereby there was apparently a  
8 revocation and there is some uncertainty about that, and  
9 the transcript on page 9 references that uncertainty.

10 But it looks like she had a year revoked apparently  
11 and she served that year before she was brought in on  
12 these charges that we're here on today.

13 THE COURT: All right. So the violation was for  
14 failure to report, of the probation was failure to  
15 report?

16 MR. WELBORN: I'm sorry, Your Honor?

17 THE COURT: The violation was for the failure to  
18 report?

19 THE WITNESS: Yes, sir.

20 MR. WELBORN: Yes, sir.

21 THE COURT: But she, the reason she was unable to  
22 report was because she was incarcerated?

23 THE WITNESS: Yes, sir.

24 MR. WELBORN: That's correct, sir.

25 THE COURT: All right. Now, that is a different

1 matter from these Indictments here --

2 MR. WELBORN: It is, Your Honor.

3 THE COURT: -- for the trafficking meth and  
4 manufacturing meth, to which she pled on June the 1st?

5 MR. WELBORN: That's correct. And I'm trying to  
6 help her understand this, Your Honor. She was given  
7 time served for that. She got eight years, but she was  
8 given time for that year that she had already been  
9 incarcerated, and I think that is a misunderstanding  
10 with her and that's why I've gone into some detail with  
11 her.

12 THE WITNESS: I was credited that year. What I'm  
13 saying is that year I couldn't go back to my family.  
14 You know what I'm saying? So why -- my understanding is  
15 the reason why I'm here today is I because I feel like I  
16 wasn't properly defended on the eight years that I got.

17 By Mr. Welborn:

18 Q. We'll talk about that now.

19 A. Okay. I understand they gave me that year, I do  
20 understand that. But I just felt like that was time  
21 that, that -- I don't know how to put it -- that it was  
22 time that I couldn't go back to my family, that Anderson  
23 County made me plead that charge. You know what I'm  
24 saying? They made me have that charge to where I had to  
25 go to jail, in prison for eight years -- I mean, for a

1 year.

2 Q. Ms. Luker, I'm gonna try to help the Court to  
3 understand this. I'm referencing your application and  
4 your application says that there was a legal arrest and  
5 that's why I've gone into all of this background. Tell  
6 the Court what was illegal about your arrest.

7 A. That they took me to court -- I mean, took me to  
8 jail and they, I couldn't go back to Greenville County  
9 and tell them that I, the reason why I could not report  
10 was because I was in jail. Well, he didn't want to hear  
11 about it. He went ahead and sent me to prison.

12 Q. Now, did you tell these things to Mr. Culbertson?

13 A. Mr. Culbertson knowed [sic] that. He's the one  
14 that told the Judge that I was there for that year.

15 Q. Well, what did Mr. Culbertson or Mr. Gamble not do  
16 for you regarding these allegations that you made that  
17 you wish they had done for you that would have given a  
18 different result here?

19 A. I don't understand what you are saying because I  
20 don't think that that's why that I got in this  
21 situation.

22 I mean, I really don't understand what you are  
23 trying to tell me to say.

24 Q. I'll rephrase my question.

25 What complaint do you have about Mr. Culbertson

1 here in this particular plea where you got eight years?

2 A. Mr. Culbertson didn't show up the day of my  
3 sentencing is what I have against, you know, for  
4 Mr. Culbertson. Mr. Gamble was there, but I'm just  
5 saying that I wasn't offered any kind of drug court, I  
6 wasn't offered any kind of rehab. This is my first  
7 offense and I'm getting eight years for it? And all I'm  
8 here today for is just asking for a 65 instead of an 85  
9 fine. Give me a chance to go home. I'm not asking for  
10 no lesser sentence.

11 Q. All right. Now, there was someone here at your  
12 guilty plea hearing in any event. It was Mr. Gamble; is  
13 that right?

14 A. I mean, Mr. Gamble was.

15 Q. And you were represented by both Mr. Culbertson and  
16 Mr. Gamble?

17 A. Yes, sir.

18 Q. So you agree that one of them being here means that  
19 you did have representation?

20 A. I guess I did, but one told me that he could  
21 probably get three, get me three years and the other one  
22 telling me that I got eight years. You know, that's  
23 better than 12.

24 Q. Well, besides your concern about Mr. Culbertson not  
25 being at your guilty plea hearing, for whatever reason

1 he wasn't, what else did he do or not do that you say  
2 was ineffective?

3 A. I just felt like Mr. Culbertson told me he would  
4 get me three years and then he didn't show up the day of  
5 my court.

6 Q. Anything else besides that that you are concerned  
7 about?

8 A. No, sir.

9 Q. Now, you also allege in your application that you  
10 were on home monitoring, and I think that kind of tracks  
11 what we've already talked about. Would you agree with  
12 that?

13 A. Yes, sir.

14 Q. What complaints, if any, do you have against  
15 Mr. Gamble today?

16 A. I feel like that Mr. Gamble should have offered me  
17 at least drug court, maybe rehab. He told me that since  
18 they would drop the gun charge, that at least it would  
19 be a violent, or a lesser violent crime.

20 I haven't seen a lesser violent crime. I'm still  
21 at 85 serious. This is my first time offense. I felt  
22 like that I should just have been offered other things  
23 besides just, Hey, you go to prison.

24 Q. Did you talk to Mr. Gamble about what you want?

25 A. Yes, sir.

1 Q. And do you have any knowledge that he did not talk  
2 to the Solicitor about those requests?

3 A. Not while I was around.

4 Q. Well, is it possible he could have talked with them  
5 and you didn't know about it?

6 A. He could have.

7 Q. Besides what you have just said, what else did  
8 Mr. Gamble not do that you wish he'd done?

9 A. Um, I think that's pretty much it.

10 Q. All right. Is there anything that either one of  
11 your lawyers did that you wish they hadn't done?

12 A. No, sir.

13 Q. What relief are you seeking from the Court today?

14 A. Just for my, from an 85 to a 65. I want to ask the  
15 Court for a chance at parole, to go home to my family  
16 where I should have been instead of letting five months  
17 of stupidity ruin the next eight years of my life.

18 But at the time in 2007, I went through a 17-year  
19 marriage, I had a 12-year job that I lost because of  
20 mental health issues, among other things that I lost by  
21 five months of stupidity. I understand that.

22 All I'm asking for is a chance to 65 and give me a  
23 chance at parole and still doing my time.

24 Q. Let me ask you this, Ms. Luker. Do you understand  
25 that the Court can't, doesn't have jurisdiction over if

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1 it's 85 percent or 65 in this particular --

2 A. Mr. Gamble did.

3 Q. I'm sorry?

4 A. Mr. Gamble did.

5 Q. So you are alleging he should have gotten you a  
6 65-percent sentence?

7 A. A 65 violent because he told me if the gun charge  
8 was dropped, I would get that, but I didn't get that.

9 Q. So you are complaining that you wanted to get out  
10 sooner than what you are getting right now; is that  
11 correct?

12 A. Everybody wants to get out sooner. But I'm just  
13 saying from what I've accomplished in there, I have done  
14 the ATU program and graduated the ATU program with  
15 honors. I've gotten my G.E.D. I've done all this and  
16 I'm not getting any credit for it.

17 I've never been one to have drugs in my life and it  
18 was just something stupid that I did.

19 Q. Let me ask you this, Ms. Luker. If your lawyers  
20 hadn't made the errors that you are alleging they made,  
21 would you have insisted on going to trial?

22 A. No, sir. Because I could have gotten a 65 violent  
23 with a chance of parole and that's all I asked for.

24 Q. So you would not have wanted to go to trial?

25 A. I would have went to -- I wouldn't ask for this

1 PCR. I mean, I would have asked for my 65 violent and  
2 went to jail and done my time with parole where I could  
3 have got credit for what I done.

4 MR. WELBORN: Thank you, Ms. Luker. Answer any  
5 questions that opposing counsel may have for you.

6 THE WITNESS: Thank you.

7 Cross-Examination by Ms. May:

8 Q. Ms. Luker, do you recall at your guilty plea the  
9 Judge asking you if you understood that the  
10 recommendation was 10 to 12 years?

11 A. I don't know if it was 10 or 12, but he said I got  
12 eight. I know that it was 12 on the table, but I don't  
13 know, I can't say that I remember that.

14 MS. MAY: Your Honor, may I approach?

15 THE COURT: Certainly.

16 By Ms. May:

17 Q. This is so you can refresh your recollection.

18 A. I probably did. I'm just saying...

19 Q. That's okay. Take your time. It's about halfway  
20 down, lines 12 and down.

21 A. Yes, sir.

22 Q. The Court asked you if you understood there was a  
23 recommendation for 10 to 12 years, and you answered that  
24 you understood?

25 A. Yes, ma'am.

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1 Q. So you understood you couldn't, that you could get,  
2 there was not a promise of eight years, is that correct,  
3 or of three years?

4 A. Well, really I didn't know what to say because I  
5 didn't -- I mean, I had to say yes. I did that because  
6 I thought Mr. Culbertson was gonna be there that day,  
7 and I'm looking at three. And then I didn't know what  
8 to say. I just got all tangled up. I don't know.

9 Q. So, if you thought it was three years, why didn't  
10 you tell the Judge that after he asked you about your  
11 understanding of the recommendation?

12 A. Because from my understanding the day that I did go  
13 to court I wasn't supposed to be sentenced that day, I  
14 was just going through a plea hearing, one that I had --  
15 I hadn't even ever been to a plea hearing before. Even  
16 Mr. Culbertson didn't think I was going to jail that  
17 day.

18 Q. And you acknowledge that you did receive the credit  
19 for the one year time served on the electronic  
20 monitoring?

21 A. Yes, ma'am, I did, I did receive that.

22 Q. Okay. And with regard to your claim about failure  
23 to investigate your arrest. Your main claim is that was  
24 an illegal arrest; is that correct?

25 A. Yes.

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1 MS. MAY: Okay. I have no further questions.

2 THE COURT: Re-exam?

3 MR. WELBORN: No further questions.

4 THE COURT: All right. You may step down. Thank  
5 you, ma'am.

6 (Witness leaves stand.)

7 MR. WELBORN: That's our case, Your Honor.

8 THE COURT: All right. Anything from the State?

9 MS. MAY: Your Honor, the State would like to call  
10 Mr. Culbertson.

11 THE COURT: Very well.

12 THE CLERK: Mr. Culbertson, if you would please  
13 raise your right hand.

14 (Whereupon, the witness was sworn.)

15 THE CLERK: Once you are seated, if you would  
16 please give your full name for the record.

17 THE WITNESS: I'm Symmes Culbertson.

18 THE CLERK: Thank you, sir.

19 Whereupon,

20 Symmes Culbertson,

21 Having been first duly sworn, was examined and testified  
22 as follows:

23 Direct Examination by Ms. May:

24 Q. Mr. Culbertson, how did you become involved in  
25 Ms. Luker's case?

1 A. I don't remember the exact dates, but Ms. Luker and  
2 I believe her husband came by my office in Greenville to  
3 hire me to represent them on various criminal charges.

4 Q. And do you remember if this was prior to  
5 Mr. Gamble's representation or after or at the same  
6 time?

7 A. No. It was -- I'm trying to remember now, but I  
8 believe that Mr. and Mrs. Gamble -- I mean, Mr. and  
9 Mrs. Luker came by, hired me on some charges both that  
10 were pending in Greenville County, and then subsequently  
11 came back the second time to attempt to hire me to  
12 represent them on charges in Anderson County.

13 That representation went only so far. I had a  
14 meeting with Ms. Luker, Mr. Luker, and Mr. Gamble in his  
15 office here in Anderson, at which time the decision was  
16 made that Mr. Gamble would continue to represent them  
17 through the PD's office on the Anderson County charges.

18 Q. Do you recall when that was?

19 A. No, I'm sorry, I do not.

20 Q. And, after that meeting with Mr. Gamble and Mr. and  
21 Mrs. Luker, did you have any contact with Ms. Luker?

22 A. Um, I honestly don't remember. I was trying -- I'm  
23 flipping through the transcript right now from her  
24 guilty plea. I'm trying to remember -- I really don't  
25 remember if I came back over here for the guilty plea or

1 not. I thought I had, but I'm not sure right now if I  
2 did or not.

3 I do know that when I met with Ms. Luker in  
4 Mr. Gamble's office over here in Anderson, that the  
5 decision was made that it was not necessary for me to be  
6 at this plea hearing.

7 Q. Okay. And when they first asked you for  
8 representation on the Anderson County charges, did you  
9 review any type of discovery or...

10 A. Not at that initial meeting I was being hired for  
11 the Anderson charges, but subsequent to being hired I  
12 certainly did.

13 Q. But prior to the meeting with Mr. and Mrs. Luker?

14 A. That is correct. That's right.

15 Q. Can you discuss the discovery materials you  
16 reviewed for the Anderson case?

17 A. I'm sorry. Could you repeat that?

18 Q. Can you discuss the discovery materials that you  
19 reviewed for the Anderson case?

20 A. There were various matters of paperwork that come  
21 through discovery requests from the Solicitor's Office  
22 here in Anderson. I've reviewed that. I've talked with  
23 Mr. Gamble and the Solicitor about some of the  
24 information that had come to light in both my  
25 investigation and Mr. Gamble's investigation.

1           So there was a good bit of discussion between the  
2 three of us at that meeting. So I think we were all  
3 fairly well informed as to what the information was that  
4 the State has.

5 Q. Okay. And did you discuss Ms. Luker's, her version  
6 of the facts with her?

7 A. Yes, ma'am.

8 Q. Okay. And did you discuss the charges, the  
9 elements of the charges with Ms. Luker?

10 A. Yes, ma'am.

11 Q. And did you all discuss the possible sentences that  
12 were, that could be given to her initial charges?

13 A. I generally do, although I don't have any specific  
14 memory of that. It would not have been unusual for me  
15 to have had a discussion about potential sentences with  
16 them.

17 Q. Okay. And did you engage in any plea negotiations  
18 during your representation?

19 A. Yes, I did. Although I can't sit here today and  
20 positively tell you what those discussions were, but  
21 yes.

22 Q. Do you recall the terms of any of the offers?

23 A. No, ma'am.

24 Q. Okay. Would you have discussed any plea  
25 negotiations that you took part in with Ms. Luker?

1 A. Yes. Again, most of my memory now revolves around  
2 the meeting that the three of us had at Mr. Gamble's  
3 office. There was already an offer in from the State  
4 concerning those charges. We discussed those in  
5 Mr. Gamble's office.

6 And it's always a work in progress when you  
7 negotiate with the State. I was somewhat confident  
8 there would be a better offer that would ultimately come  
9 about, but certainly no guarantees were made.

10 Mr. Gamble and I decided that it was best for him  
11 to proceed individually and not come forward. But we  
12 were well, both well aware of the fact that it was an  
13 ongoing negotiation process.

14 Q. Okay. Did you ever apprise Ms. Luker that you  
15 could get her a three-year sentence?

16 A. No, ma'am, I would never do that.

17 Q. Do you recall you or Mr. Gamble during your  
18 conversations with Mrs. Luker mentioning a 65-percent  
19 sentence?

20 A. No, ma'am. No, ma'am. That's not something that I  
21 normally would do because it's just not something I have  
22 any control over. That's what the Legislature decides  
23 to do, and God knows I can't tell the Legislature what  
24 to do.

25 Q. And, with regard to the plea hearing, did, was

1 Ms. Luker advised that you would not be there?

2 A. I am fairly confident that in the meeting that took  
3 place in Mr. Gamble's office, the three of us, the  
4 decision was made that there was no need for me to be at  
5 that plea hearing. And based on that conversation and  
6 probably a subsequent conversation Mr. Gamble and I had,  
7 the decision was made that there was just no need for me  
8 to come over; he was well qualified and could handle it.

9 Q. Okay. Now, is there anything else regarding your  
10 representation of Ms. Luker that I haven't touched on  
11 you feel is important?

12 A. No.

13 MS. MAY: Nothing further.

14 MR. WELBORN: No questions.

15 THE COURT: All right. You may step down.

16 THE WITNESS: Thank you, sir.

17 (Witness leaves stand.)

18 THE COURT: You may call your next witness.

19 MS. MAY: Your Honor, the State would like to call  
20 Mr. Gamble.

21 THE CLERK: Mr. Gamble, would you raise your right  
22 hand.

23 (Whereupon, the witness was sworn.)

24 THE CLERK: If you would please state your name for  
25 the record.

1 THE WITNESS: Robert Gamble.

2 Whereupon,

3 Robert Gamble,

4 Having been first duly sworn, was examined and testified  
5 as follows:

6 Direct Examination by Ms. May:

7 Q. Mr. Gamble, do you recall when you became involved  
8 in Ms. Luker's case?

9 A. It was -- I was appointed by the Court in some,  
10 right after her arrest, and I don't recall the dates.

11 Q. Do you recall about how many times you were able to  
12 meet with Ms. Luker?

13 A. Several.

14 Q. And did you discuss with her the charges that were  
15 against her and the State's evidence?

16 A. We went over all of the charges that were listed as  
17 I heard in the court record. They carried up to  
18 somewhere around 80 years total. And I went over each  
19 of those charges and what her involvement was.

20 This was a family affair. The entire family was  
21 manufacturing methamphetamine, and she was acquiring  
22 Sudafed for the manufacture of the methamphetamine.  
23 Frankly and personally, I think she was covering for her  
24 son, but I, I couldn't get her to admit that.

25 Q. And did you file a Brady or Rule 5 motions to

1 obtain discovery?

2 A. I did.

3 Q. I believe Mr. Welborn touched on this briefly. But  
4 do you recall the discovery materials that you received?

5 A. Yes, I did. I had a fight with the Attorney  
6 General's Office because they had -- this was a  
7 Statewide Grand Jury case -- and they said I had to pay  
8 I think it was in the range of \$500 to get a transcript  
9 from the attorney, from the Grand Jury.

10 And I said, Well, under the statute y'all have to  
11 furnish it to me because I'm the Public Defender and we  
12 don't pay for those things.

13 They said, Well, we're not gonna do it.

14 So then I got an Order from the Judge that they  
15 were to furnish me at least her testimony without cost.

16 And they refused to do that, the Attorney General's  
17 Office did, not your office but the Grand Jury Office  
18 did, which is a branch of your office.

19 So I drove down to Columbia for an appointment with  
20 the then Attorney General on this case and I got the  
21 transcript, I could read it in the office without cost,  
22 but other than my gas, which my office paid for. And I  
23 read the transcript and I got significant copies made  
24 there at the office and brought them back and I went  
25 over those with Ms. Luker.

1           And the Attorney General at that time was demanding  
2 15 years on a plea to all counts.

3           Of course, I don't know where the file is. Now, I  
4 haven't been in my office since August the 22nd of last  
5 year. And I think I had the file but I don't know where  
6 it is. I'm doing this from memory.

7 Q.   Okay. Do you recall having any issues or any  
8 particular questions about the discovery materials and  
9 specifically the arrest that Ms. Luker is complaining  
10 about?

11 A.   She complained about the arrest because first she  
12 wasn't read her rights at the time of the arrest. And I  
13 said, Well, did you give any estimates? And she didn't.  
14 So, they didn't ask anything so you don't have to have  
15 your rights read unless you are being questioned.

16           I went over then with all of the physical evidence  
17 that I had gathered. I went over with her the evidence  
18 that I gathered from the Statewide Grand Jury testimony  
19 concerning Ms. Luker. And most of it was not concerning  
20 Ms. Luker, it was concerning her family and relatives  
21 that were in that area.

22           I went over all the photographs of the meth lab  
23 that was right in her backyard so to speak. There was a  
24 shed back there where all the Sudafed packs were and all  
25 of that.

1 I went over the records of the purchases of Sudafed  
2 by Mrs. Luker and another gentleman from up in that area  
3 and I don't recall his name. But those were all  
4 acquired by SLED as part of the investigation, the  
5 record of Sudafed purchases.

6 Then I went over the fact that certain amounts of  
7 methamphetamine were found in her possession or she had  
8 distributed some to an undercover operative.

9 Throughout this entire thing I recognized the fact  
10 that she had a prior record for methamphetamine and was  
11 on probation. And for us to go to trial would be fatal  
12 to her as far as the sentencing went. She would get  
13 probably about 80 years, I would imagine, if we went to  
14 trial and lost. And we would lose.

15 Q. You, earlier you mentioned this Attorney General  
16 offered 15 years for a plea to all counts?

17 A. They were at 15. And when I was in Columbia  
18 raising an issue about them not furnishing me the  
19 transcript, they said, Well, we'll drop it down to 12.

20 And I said, Well, that's real generous, but I think  
21 it's less, worth less than that.

22 I had a feeling that Judge Maddox would not go  
23 above 10. It's one of those gut reactions you get from  
24 practicing law 30, 40 years; knowing the Judge like you  
25 should, you kind of get a feeling for it.

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1           And then I was able at the plea to convince him to  
2     give her credit for the one year because I thought it  
3     was illegally obtained, the one year. In other words,  
4     they charged her with failing to report, I think it was,  
5     but it was because she was arrested. So it wasn't --  
6     and they couldn't hold the arrest against her because  
7     she hadn't pled guilty to it.

8           But at any rate, Greenville County gave her a year,  
9     and I was able to get Judge Maddox to give her credit  
10    for the year on the eight-year sentence, so it was a  
11    washout.

12    Q.    Did you discuss the plea negotiations with  
13    Ms. Luker, inform her of the offers that were presented  
14    to you, the 15 years and the 12 years?

15    A.    I went over the 15 with her and then went over the  
16    12 with her, and I told her in my opinion we could get  
17    under 12, but we would let them recommend 12 and then  
18    with liberty for us to argue for a lower sentence. And  
19    that's what happened. And there was never any  
20    discussion of three years to my knowledge. That was  
21    done in Greenville.

22           Did I anticipate your next question?

23    Q.    You did partly, yes. Did you ever promise her a  
24    certain sentence?

25    A.    I never promise anybody a certain sentence, unless,

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1 unless it's agreed to by the Court, by the Solicitor's  
2 Office, and by me, and by the Defendant. And then only  
3 if the Judge enters into the negotiations would I tell  
4 them this is a sure thing.

5 Q. And she, Ms. Luker received less than the  
6 recommendation, correct, is that what you just stated?

7 A. Basically five years, or six, seven years less. It  
8 started out 15, and then I whittled it down to 12  
9 arguing about the transcript. And then I whittled it  
10 down a little more in negotiations. And I don't go into  
11 that. I just had a gut feeling.

12 Q. Was there ever discussion of the 65 percent or 85  
13 percent or any type of parole eligibility?

14 A. I don't go into that at all. It's not -- there was  
15 a violent charge, the manufacture greater than was a  
16 violent charge. And that's, that's up to the, as  
17 Mr. Culbertson said, that's up to the South Carolina  
18 Legislature, whatever they're worth.

19 Q. Okay. And do you recall discussing how the guilty  
20 plea proceeding would work with Ms. Luker so that she  
21 understood it or advise her what the guilty plea hearing  
22 would entail?

23 A. Yeah, I went over that. She, she and her friend,  
24 male friend, came by the office probably three to four  
25 days ahead of this plea and she was very upset and she

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1 , was crying and said she wanted probation, and I told her  
2 that wasn't the case because it was a second offense,  
3 and she's already gotten probation once.

4 I felt sorry for her because she just did not want  
5 to go to the penitentiary, and I understood that. And  
6 she was crying. Her male friend was upset. And I just  
7 didn't see any way out.

8 Q. Did, at any time during the guilty plea hearing did  
9 Ms. Luker indicate to you that she didn't understand  
10 what was going on?

11 A. Not that I recall. If that had been said to me, I  
12 would have stopped the proceeding and gone into the back  
13 room and gone over it with her again. But I had the  
14 habit of not doing a plea if somebody says, I don't  
15 understand it.

16 Q. Is there anything else that you would like to tell  
17 the Court that I may have skipped over?

18 A. No, I don't think so.

19 MS. MAY: Thank you. I have no further questions.

20 THE COURT: Cross-exam?

21 MR. WELBORN: No questions.

22 THE COURT: All right. You may step down.

23 (Witness leaves stand.)

24 THE COURT: You may call your next witness.

25 MS. MAY: Nothing further from the State, Your

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1 Honor.

2 THE COURT: Any Reply?

3 MR. WELBORN: No, sir.

4 THE COURT: All right. Argument? Mr. Welborn?

5 MR. WELBORN: Your Honor, my client stands by her  
6 original contention, and I just ask the Court to view  
7 what she stated and make the appropriate ruling.

8 THE COURT: State? Anything from the State?

9 MS. MAY: May it please the Court, Your Honor, I  
10 just rely on Ms. Luker's testimony in the guilty plea as  
11 well as the testimony provided by Mr. Culbertson and  
12 Mr. Gamble here today about their representation. I  
13 don't think the Applicant showed that any of their  
14 performance was deficient in any of their performance in  
15 any way that would result in any prejudice.

16 THE COURT: All right, Mr. Welborn, anything else?

17 MR. WELBORN: No, sir.

18 The Court's Ruling:

19 THE COURT: All right. I looked at the transcript,  
20 and first of all I note that Judge Maddox did find that  
21 the plea was freely and voluntarily made.

22 And as far as the sentence, which seems to be  
23 really the crux of the application, it starts off at, it  
24 starts off that the Attorney General advised the Court  
25 that the recommendation was Ms. Luker receive 10 to 12

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1 years, she had signed a plea agreement indicating her  
2 cooperation as well as everything she's agreeing to  
3 today, which, as I say, the Court found was done freely  
4 and voluntarily.

5 And then, if you go through the plea, or the  
6 sequence of the plea of what happened in the process,  
7 that started with 15 to, 15 years by the Attorney  
8 General. Then, as Mr. Gamble says, he whittled it down  
9 to 12 years. Finally, as I say, it was recommended to  
10 the Court 10 to 17 -- I mean 10 to 12.

11 And Mr. Gamble tried to get the Court to go to  
12 seven. The ultimate sentence was eight, with one year's  
13 credit for time served, which is about as good a case as  
14 you can get on that many charges with prior offenses.

15 So I find that the Applicant has failed to sustain  
16 the burden of proof to establish that her plea was not  
17 freely, voluntarily, knowingly and intelligently made  
18 and that there is no showing of ineffective assistance  
19 of counsel by either Mr. Gamble or Mr. Culbertson. So  
20 the application will be dismissed with prejudice.

21 MR. WELBORN: Thank you, Your Honor.

22 THE COURT: All right. Good luck to you, ma'am.

23 (Discussion off the record.)

24 THE COURT: Oh, and I also should note -- just a  
25 moment -- for the record, Mr. Culbertson is absolutely

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1 right, that parole is not consideration in a plea  
2 because no one can tell when, if ever, or under what  
3 conditions she might be eligible for parole, and it's a  
4 matter left up to the Legislature and the Department of  
5 Corrections. All right.

6 MR. WELBORN: Thank you, sir.

7 (Whereupon, the hearing was concluded at  
8 approximately 11:18 a.m.)

9 \*\* End of Requested Certified Transcript of Record \*\*

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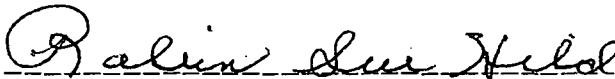
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## Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina, on the 6th day of June, 2012.

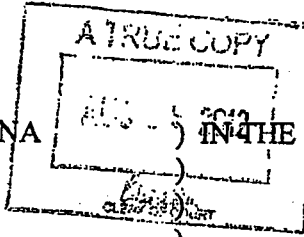
I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 24, 2012



Robin Sue Hild, FCRR, RPR  
Circuit Court Reporter

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON



IN THE COURT OF COMMON PLEAS

2010-CP-04-3328

Freda Elaine Luker, #329810,  
Applicant,  
  
v.  
  
State of South Carolina,  
Respondent.

**ORDER OF DISMISSAL**

COMMON PLEAS AND  
GENERAL SESSIONS

2012 AUG 29 P 1:09

FILED-CLERK'S OFFICE  
ANDERSON SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 16, 2010. Respondent made its Return on November 17, 2010. An evidentiary hearing into the matter was convened on June 6, 2012, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of Robert Gamble, Esquire (Mr. Gamble) Applicant's plea counsel and Symmes W. Culbertson, Esquire. This Court also had before it the records of the Anderson County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

**I. PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was one of ten defendants indicted at the July 23, 2008 term of the State Grand Jury of South Carolina for

Trafficking Methamphetamine (Conspiracy), three counts of Manufacturing Methamphetamine, two counts of Possession of Pseudoephedrine, two counts of Possession with Intent to Distribute Methamphetamine (Proximity), two counts of Possession with Intent to Distribute Methamphetamine, two counts of Possession of a Firearm During the Commission of a Violent Crime, four counts of Trafficking Methamphetamine, Possession of Methamphetamine, and Distribution of Methamphetamine (2008-GS-47-09). She was represented by Robert Gamble, Esquire. On June 1, 2010, the Applicant pled guilty to trafficking methamphetamines 28g-100g (count 1), manufacturing methamphetamines (count 3), trafficking methamphetamines (counts 12), and possession of pseudoephedrine (count 13). The Honorable J. Cordell Maddox, Jr. sentenced the Applicant to confinement for a period of eight (8) years. The Applicant did not appeal her guilty plea or sentence.

In her current Application, the Applicant alleges that she is being held in custody unlawfully for the following reasons:

- a. "Arrest made on May 2008 Anderson county didn't follow legal procedures."
- b. "Was on home monitor and Anderson County violent (illegible) probation by not letting them know."

## II. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the

application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

### **Ineffective Assistance of Counsel**

Applicant asserts that her plea counsel was ineffective for failing to investigate the events surrounding her arrest as well as promising Applicant she would receive a three (3) year sentence. At the PCR hearing Applicant testified that Mr. Culbertson was not present at Applicant's guilty plea hearing and that he promised Applicant a three year sentence. Applicant testified that Mr. Gamble promised Applicant a twelve year sentence and that Applicant would serve 65% of her sentence.

At the PCR hearing Mr. Gamble testified that he was appointed to represent Applicant directly after her arrest, that counsel met with the Applicant several times, and that counsel discussed the Applicant's charges and what the State was required to prove. With regard to Applicant's arrest, Mr. Gamble testified that Applicant was not read her Miranda rights, but that Applicant did not give a statement so Miranda was not required. Mr. Gamble testified that Applicant was initially offered a fifteen year plea deal, that later counsel was able to negotiate down to a twelve year plea deal, and that counsel never promised Applicant a specific sentence.

At the PCR hearing, Mr. Culbertson testified that Applicant and her husband visited counsel's office seeking representation on Greenwood County charges and then later returned asking counsel to represent them on the Anderson County charges. Mr. Culbertson testified that he received the discovery materials concerning the Anderson County charges and met with Applicant and Mr.



Gamble. Mr. Culbertson testified that he never promised he could get Applicant a three year sentence. Mr. Culbertson testified that during a meeting with Mr. Gamble it was decided that Mr. Culbertson was not needed at the guilty plea hearing and that Applicant was fully aware that Mr. Culbertson would not be present at the guilty plea hearing.

This Court finds that Applicant has failed to meet her burden of proof. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U.S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). ~~Here, the Applicant could not point to~~ any specific matters counsel failed to discover which would have caused her to proceed with a jury trial instead of pleading guilty. The Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. The Applicant did not produce any witnesses or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. Therefore, this Court finds that this allegation is denied and dismissed.

As to Applicant's allegation that she was promised a certain sentence, this Court finds

Applicant's testimony on the matter is not credible. This Court finds Mr. Gamble and Mr. Culbertson to be credible. The Applicant has failed to present any credible evidence that she was promised a three year sentence or a 65% sentence by either one of her attorneys. At the guilty plea hearing Applicant acknowledged that there was a recommendation of ten to twelve years and that the plea judge was not required to go along with the recommendation. (Tr. p.5, lines16-23). The Applicant was received a sentence of eight (8) years, well below the recommendation by the State. This Court finds that Applicant was not promised a specific sentence by either of her attorneys and that Mr. Gamble was able to obtain a sentence lower than the State recommended. This Court finds that Applicant has failed to show that her either of her attorney's performances was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

#### **Involuntary Guilty Plea**

To the extent Applicant is making a claim that her guilty plea was rendered involuntary due to ineffective assistance of counsel, this Court finds that Applicant has failed to meet her burden of proof. At the guilty plea hearing Applicant indicated that she voluntarily signed a plea agreement and that nobody had threatened Applicant with anything if Applicant did not sign the plea agreement.

(Tr. p.3, lines2-9). The Applicant indicated that she understood what she doing at the guilty plea hearing. (Tr. p.3, lines13-22). The plea judge asked Applicant if she understood that by pleading guilty Applicant would have to waive her constitutional rights, including her right to a jury trial, her right to remain silent, her right to confront her accuser, and her right to put up a defense, and the Applicant indicated that she wished to waive her rights. (Tr. p.3, line23 -- p.4, lines11). Additionally, the Applicant stated that she had plenty of time to speak with both of her attorneys. (Tr. p.4, line12 -- p.5, line15). The Applicant informed that plea judge that she wanted to plead guilty the charges and

that she was guilty of those charges. (Tr. p.5, line24 – p.6, line3). Furthermore, the Applicant agreed with the assistant attorney general's recitation of the facts of Applicant's case. (Tr. p.6, line5 – p.8, line7). This Court finds the overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that to the extent Applicant claims her guilty plea was involuntary this Court finds the allegation is denied and dismissed.

#### **All Other Claims**

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). ~~The Applicant's failure to address these~~  
issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

#### **IV. CONCLUSION**

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCPP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 28 day of August, 2012.



Alexander S. Macaulay  
Presiding Judge

Waltham, South Carolina

FILED-CLERK'S OFFICE  
ANDERSON SC  
2012 AUG 29 P 1:09  
COMMON PLEAS AND  
GENERAL SESSIONS

JUL 23 2008

JAMES R. PARKS  
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

VS.

JIMMY SEXTON,  
JUDY DIANE SEXTON,  
WESLEY SEXTON,  
JAMES DONALD NELSON,  
FREDA LUKER,  
GREGORY BARRETT,  
TERESA COLLIER,  
STEPHANIE ELLEDGE,  
CURTIS MICHAEL GAULT,  
KATERA NICOLE BALLEW,

DEFENDANTS.

CASE NO. 2008GS 47 09

INDICTMENT FOR  
UNLAWFUL DRUGS

Trafficking Methamphetamine (Conspiracy)  
S.C. Code Ann. § 44-53-375(C)(3)

Manufacturing Methamphetamine  
S.C. Code Ann. § 44-53-375(B)(1)  
(3 counts)

Possession of Pseudoephedrine  
S.C. Code Ann. § 44-53-375(E)(1)(a)  
(2 counts)

Possession With Intent to Distribute  
Methamphetamine (Proximity)  
S.C. Code Ann. § 44-53-445(B)(1)  
(2 counts)

Possession With Intent to Distribute  
Methamphetamine  
S.C. Code Ann. § 44-53-375(B)(1)  
(2 counts)

Possession of a Firearm During the Commission  
of a Violent Crime  
S.C. Code Ann. § 16-23-490  
(2 counts)

Trafficking Methamphetamine  
S.C. Code Ann. § 44-53-375(C)(1)(a)  
(4 counts)

Possession of Methamphetamine  
S.C. Code Ann. § 44-53-375(A)

Distribution of Methamphetamine  
S.C. Code Ann. § 44-53-375(B)(1)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on July 23, 2008, the State Grand Jurors present upon their oath:

**COUNT ONE**  
**TRAFFICKING METHAMPHETAMINE (CONSPIRACY)**  
**S.C. Code Ann. § 44-53-375 (C)(3)**

That JIMMY SEXTON, JUDY DIANE SEXTON, WESLEY SEXTON, JAMES DONALD NELSON, FRED A LUKER, GREGORY BARRETT, TERESA COLLIER, STEPHANIE ELLEDGE, CURTIS MICHAEL GAULT, KATERA NICOLE BALLEW and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson, Greenville and Laurens Counties, South Carolina, from September 1, 2007 until the present, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State one hundred (100) grams or more but less than two-hundred (200) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

**COUNT TWO**  
**MANUFACTURING METHAMPHETAMINE**  
**S.C. Code Ann. § 44-53-375(B)(1)**

That JIMMY SEXTON, JUDY DIANE SEXTON, WESLEY SEXTON, and JAMES DONALD NELSON did in Greenville County, South Carolina, from September 1, 2007 until

January 31, 2008, knowingly manufacture, aid, abet, attempt, or conspire to manufacture a quantity of methamphetamine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT THREE**  
**MANUFACTURING METHAMPHETAMINE**  
**S.C. Code Ann. § 44-53-375(B)(1)**

That JIMMY SEXTON, JUDY DIANE SEXTON, FRED A LUKER and JAMES DONALD NELSON did in Anderson County, South Carolina, from February 1, 2008 until the present, knowingly manufacture, aid, abet, attempt, or conspire to manufacture a quantity of methamphetamine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT FOUR**  
**TRAFFICKING METHAMPHETAMINE**  
**S.C. Code § 44-53-375(C)(1)(a)**

That JAMES DONALD NELSON did in Laurens County, South Carolina, on or about January 3, 2008, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State more than ten (10) grams but less than twenty-eight (28) grams of methamphetamine ( "ice" or "crank" ), a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as

amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

**COUNT FIVE**  
**POSSESSION OF A FIREARM DURING THE COMMISSION OF VIOLENT CRIME**  
**S.C. Code§ 16-23-490**

That JAMES DONALD NELSON, did in Laurens County, South Carolina, on or about January 3, 2008, possess or visibly display a firearm, described as a Hi Point 9 mm pistol, during the commission of a violent crime, to wit, Trafficking Methamphetamine, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

**COUNT SIX**  
**TRAFFICKING METHAMPHETAMINE**  
**S.C. Code Ann. § 44-53-375(C)(1)(a)**

That JAMES DONALD NELSON, did in Laurens County, South Carolina, on or about January 12, 2008 knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State more than ten (10) grams or more but less than twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

**COUNT SEVEN**  
**POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE**  
**(PROXIMITY)**  
**S.C. Code Ann. § 44-53-445(B)(1)**

That JAMES DONALD NELSON, did in Laurens County, South Carolina, on or about January 12, 2008, knowingly, manufacture, distribute, dispense, deliver, purchase, or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver a quantity of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, while in, on, or within a half-mile radius of the grounds of a public or private elementary, middle or secondary school; a public or vocational trade school or a technical educational center; or a public or private college or university, to wit: Martha Dendy Sixth Grade School, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT EIGHT**  
**TRAFFICKING METHAMPHETAMINE**  
**S.C. Code Ann. § 44-35-375(C)(1)(a)**

That STEPHANIE ELLEDGE did in Laurens County, South Carolina, on or about January 12, 2008 knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State more than ten (10) grams or more but less than twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such

conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

**COUNT NINE**  
**POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE**  
**(PROXIMITY)**  
**S.C. Code§ 44-53-445(B)(1)**

That STEPHANIE ELLEDGE did in Laurens County, South Carolina, on or about January 12, 2008, knowingly, manufacture, distribute, dispense, deliver, purchase, or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver a quantity of methamphetamine ( "ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, while in, on, or within a half-mile radius of the grounds of a public or private elementary, middle or secondary school; a public or vocational trade school or a technical educational center; or a public or private college or university, to wit: Martha Dendy Sixth Grade School, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT TEN**  
**POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE**  
**S.C. Code Ann. §44-53-375(B)(1)**

That JIMMY SEXTON did in Greenville County, South Carolina, on or about January 16, 2008 knowingly, manufacture, distribute, dispense, deliver, purchase or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture,

distribute, dispense, deliver a quantity of methamphetamine ( "ice" or "crank" ), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county in this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT ELEVEN**  
**POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE**  
**S.C. Code Ann. § 44-53-375(B)(1)**

That JUDY DIANE SEXTON did in Greenville County, South Carolina, on or about January 16, 2008, knowingly manufacture, distribute, dispense, deliver, purchase or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver a quantity of methamphetamine ( "ice" or "crank" ), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county in this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT TWELVE**  
**TRAFFICKING METHAMPHETAMINE**  
**S.C. Code Ann. § 44-53-375(C)(1)(a)**

That FRED A LUKER, did in Anderson County, South Carolina, on or about May 20, 2008, knowingly sell, manufacture, cultivate, deliver, purchase, or provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, cultivate, deliver or purchase or possess (actually or constructively), or bring into this State more than ten (10) grams or more but less than twenty-eight (28) grams of methamphetamine ( "ice" or "crank" ), a controlled substance under the

provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

**COUNT THIRTEEN**  
**POSSESSION OF PSEUDOEPHEDRINE**  
**S.C. Code Ann. § 44-53-375(E)(1)(a)**

That FRED A LUKER did in Anderson County, South Carolina, on or about May 20, 2008 knowingly possess more than twelve (12) grams but less than twenty-eight (28) grams of pseudoephedrine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT FOURTEEN**  
**POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME**  
**S.C. Code Ann. § 16-23-490**

That FRED A LUKER did in Anderson County, South Carolina on or about May 20, 2008 possess or visibly display a firearm, described as a .22 caliber pistol, during the commission of a violent crime, to wit, Trafficking Methamphetamine, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county in this State.

**COUNT FIFTEEN  
POSSESSION OF METHAMPHETAMINE  
S.C. Code Ann. § 44-53-375(A)**

That CURTIS MICHAEL GAULT did in Greenville County, South Carolina, on or about May 29, 2008, possess or attempt to possess a quantity of methamphetamine, a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county in this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT SIXTEEN  
MANUFACTURING METHAMPHETAMINE  
S.C. Code Ann. § 44-53-375(B)(1)**

That CURTIS MICHAEL GAULT, did in Greenville County, South Carolina, on or about May 29, 2008, knowingly manufacture, aid, abet, attempt, or conspire to manufacture a quantity of methamphetamine, a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT SEVENTEEN  
DISTRIBUTION OF METHAMPHETAMINE  
S.C. Code Ann. § 44-53-375(B)(1)**

That JUDY DIANE SEXTON did in Greenville County, South Carolina, on or about July 7, 2008, knowingly, manufacture, distribute, dispense, deliver, purchase or aid, abet, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver a quantity of methamphetamine ( "ice" or "crank" ), a controlled

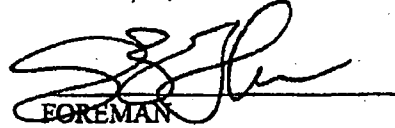
substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county in this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT EIGHTEEN  
POSSESSION OF PSEUDOEPHEDRINE  
S.C. Code Ann. § 44-53-375(E)(1)(a)**

That JUDY DIANE SEXTON did in ~~Greenville~~ **GREENVILLE** County, South Carolina, on or about July 7, 2008, knowingly possess more than twelve (12) grams but less than twenty-eight (28) grams of pseudoephedrine, a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

A TRUE Bill

  
FOREMAN

  
HENRY McMASTER (cap)  
ATTORNEY GENERAL

**FILED**

Count 1

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson  
STATE

JUN 0 2010

JAMES R. PARKS  
CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2008 -GS- 47 - 09

vs.  
Freda Elaine Luker

AKA: \_\_\_\_\_  
Race: W Sex: M Age: \_\_\_\_\_  
DOB: 8/12/1962 SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

Date of Offense: 9/1/2007 - 7/23/2008  
S.C. Code §: 44-53-375(C)(3)  
CDR Code #: 0368

SENTENCE SHEET (7-85 yrs)

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
TO: trafficking methamphetamine 38-100 grams (Conspiracy) 1st offense  
In violation of § 44-53-375(C)(2) of the S.C. Code of Laws, bearing CDR Code # 0392  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  \$17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: \_\_\_\_\_ 77512 Freda Elaine Luker Robert Noble 2322  
Solicitor SC Bar # \_\_\_\_\_ Defendant Attorney for Defendant SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of \_\_\_\_\_ days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are  
incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 6/1/2010 Pleas  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department  
of Corrections. 1 year  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling

\*Fine: \$ \_\_\_\_\_  
§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_  
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00  
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \_\_\_\_\_  
§56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
§56-1-288 (DUI Breath Test) \$25 \$ \_\_\_\_\_  
\$47.12 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
§14-1-213 (Drug Court Surcharge) \$100 \$ 100.00  
§50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
§90.7(SCCJA Surcharge) \$5 \$ 5.00  
3% to County (if paid in installments) \$ 6.90  
TOTAL \$ 236.90

Random Drug/Alcohol Testing   
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_  
\_\_\_\_\_

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court Deputy Clerk Maryann J. Self  
Court Reporter: Jo Rice

Presiding Judge: J. Hester  
Judge Code: 131  
Sentence Date: 6/1/10

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson  
STATE

JUN 01 2010

INDICTMENT/CASE#: 2008 GS 47-09

vs. Freda Elaine Luker

JAMES R. PARKS

CLERK, STATE GRAND JURY

AKA: \_\_\_\_\_  
Race: W Sex: F Age: \_\_\_\_\_  
DOB: 8/18/1960 SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

Date of Offense: 2-1-2008 - 7-23-2008  
S.C. Code §: 44-53-375 (B)(1)  
CDR Code #: 0112

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS (0-15 yrs) (i.e. Not less than) \$25K  
To: manufacturing methamphetamine, first offense  
In violation of § 44-53-375 (B)(1) of the S.C. Code of Laws, bearing CDR Code # 0112  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  \$17-25-45  
(CSC w/minor 1<sup>st</sup> or Lowd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTORNEY: [Signature] 72512 Freda Luker Robert [Signature] 2322  
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
for a determinate term of \_\_\_\_\_ days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are  
incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 6/1/2010 Pleas  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department  
of Corrections.  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.  
Pursuant to 18 U.S.C. Section §22, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$	100.00
§56-6-2995 (DUI Assessment)	\$	12.00
§56-1-286 (DUI Breath Test)	\$	25.00
§47.12 (Public Def/Prob)	\$	500.00
§14-1-212 (Law Enforce. Funding)	\$	25.00
§14-1-213 (Drug Court Surcharge)	\$	100.00
§50-21-114 (BUI Breath Test Fee)	\$	50.00
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	
§90.7(SCCJA Surcharge)	\$	5.00
3% to County (if paid in installments)	\$	4.40
TOTAL	\$	226.50

Random Drug/Alcohol Testing   
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ Beginning  
\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

Appointed PD or appointed other counsel,  
§47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/Deputy Clerk Margaret J. Self  
Court Reporter: [Signature] Rice

Presiding Judge [Signature]  
Judge Code: 161  
Sentence Date 6/1/10

**FILED**

Count 12

STATE OF SOUTH CAROLINA

JUN 01 2010

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson

JAMES B. PARKS

CLERK, STATE GRAND JURISDICTION/CASE#: 2008-GS-47-09

AKA: Freda Elaine Luker

Race: W Sex: F Age: \_\_\_\_\_

DOB: 8/19/11 SSN: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_ SID# \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

AW#: \_\_\_\_\_  
Date of Offense: 5-30-08  
S.C. Code §: 44-53-375(c)(1)(a)  
CDR Code #: 0450

**SENTENCE SHEET**

(7-2545)

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Trafficking Methamphetamine 10-28 grams, 1st offense

in violation of § 44-53-375(c)(1)(a) of the S.C. Code of Laws, bearing CDR Code # 0450

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: \_\_\_\_\_ 17512 Freda Luker \_\_\_\_\_ 2322  
Solicitor Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 8 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 6/1/2010 Pleas

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 1 year

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

**SPECIAL CONDITIONS:**

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \_\_\_\_\_ \$ \_\_\_\_\_ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_ Substance Abuse Counseling

\*Fine: \_\_\_\_\_ Random Drug/Alcohol Testing

§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Fine may be pd. in equal, consecutive weekly/monthly

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \_\_\_\_\_ \$ \_\_\_\_\_ Paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§58-1-288 (DUI Breath Test) \$25 \$ \_\_\_\_\_

§47.12 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$100 \$ 100.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§58-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

§90.7(SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 6.75

TOTAL \$ 236.98

Clerk of Court/Deputy Clerk Margaret J. Sero

Court Reporter: Joe Rice

Presiding Judge [Signature]

Judge Code: 131

Sentence Date 6/1/10

Count 13

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson

JUN 0 2010

vs. Freda Elaine Luker

JAMES R. PARKS CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2008 GS- 47- 09

AKA: Race: W Sex: F Age: DOB: 8-18-62 SS#: Address: City, State, Zip: DL# SIL# \*CDL Yes No CMV Yes No Hazmat Yes No

Date of Offense: 5-20-08 S.C. Code §: 44-53-375(F)(1)(a) CDR Code #: 2023

SENTENCE SHEET

(3-104-2)

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Possession of Pseudoephedrine 1st offense

In violation of § 44-53-375(F)(1)(a) of the S.C. Code of Laws, bearing CDR Code # 2023

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury, (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections or County Detention Center, for a determinate term of days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 6/1/2010 Pleas

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED

Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning Substance Abuse Counseling

Table with 2 columns: Description and Amount. Includes items like \$14-1-206 (Assessments 107.5%), \$14-1-211 (AX1)(Conv. Surcharge) \$100, \$14-1-211 (AX2)(DUI Surcharge) \$100, \$56-5-2895 (DUI Assessment) \$12, \$56-1-288 (DUI Breath Test) \$25, \$47.12 (Public Def/Prob) \$500, \$14-1-212 (Law Enforce. Funding) \$25, \$14-1-213 (Drug Court Surcharge) \$100, \$50-21-114 (BUI Breath Test Fee) \$50, \$56-5-2942(J) (Vehicle Assessment) \$40/ea, \$90.7(SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$6.40, TOTAL \$236.90

Random Drug/Alcohol Testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning \$ Paid to Public Defender Fund Other: Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk Court Reporter: Margaret J. Seiff

Presiding Judge Judge Code: 431 Sentence Date: 6/1/10