

---

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

Appeal No. 31071

---

STATE OF SOUTH DAKOTA,  
Appellee,

vs.

ISRAEL MYERS,  
Appellant.

---

APPEAL FROM THE CIRCUIT COURT  
OF THE  
SIXTH JUDICIAL CIRCUIT  
HUGHES COUNTY, SOUTH DAKOTA

---

HONORABLE CHRISTIE KLINGER, CIRCUIT COURT JUDGE

---

APPELLANT'S BRIEF

---

MARTY JACKLEY  
and SARAH THORNE  
Attorney General  
State of South Dakota  
1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501  
Telephone: (605) 773-3215

CASEY DEIBERT  
Hughes County State's Attorney  
104 East Capitol Avenue  
Pierre, South Dakota 57501  
Telephone: (605) 773-7462

DAVID W. SIEBRASSE  
Attorney for Appellant  
Post Office Box 118  
Pierre, South Dakota 57501  
Telephone: (605) 224-8111

---

Notice of Appeal Filed April 30, 2025

## TABLE OF CONTENTS

	Page
TABLE OF CONTENTS .....	II
TABLE OF AUTHORITIES .....	III
PRELIMINARY STATEMENT .....	4
JURISDICTIONAL STATEMENT .....	4
STATEMENT OF THE ISSUES .....	5
STATEMENT OF THE FACTS AND CASE .....	7
STANDARD OF REVIEW .....	11
ARGUMENT AND AUTHORITY	
ISSUE I: THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT SAID AT SENTENCING THAT IT WAS GOING TO HONOR THE PLEA AGREEMENT MADE WITH THE STATES ATTORNEY BUT THEN FALED TO FOLLOW THE PORTION OF PARAGRAPH 11(A)(4) OF THE PLEA AGREEMENT TO RUN THE HUGHES COUNTY SENTENCE CONCURRENT WITH APPELLANT'S EXISTING PENNINGTON COUNTY SENTENCE APPELLANT WAS SERVING IN THE STATE PENITTENTIARY. .....	11
ISSUE II: THE TRIAL COURT COMMITTED REVERSBILE ERROR WHEN IT FAILED TO GRANT APPELLANT CREDIT FOR TIME SERVED TOWARDS THE SENTENCE WHEN HIS PAROLE WAS DENIED DUE TO THE EXISTENCE OF THE PENDING HUGHES COUNTY CHARGES. .....	14
CONCLUSION .....	18
CERTIFICATE OF SERVICE .....	20
APPENDIX TABLE OF CONTENTS .....	21

## TABLE OF AUTHORITIES

<b>CASES</b>	<b>PAGE</b>
<u>State v. Shumaker</u> , 2010 S.D. 95, 792 N.W.2d 174 .....	6, 12, 13
<u>State v. Reaves</u> , 2008 S.D. 105, 757 N.W.2d 580 .....	6, 11, 12, 13
<u>State v. Hale</u> , 2018 S.D. 9 .....	6, 13
<u>State v. Rice</u> , 2016 S.D. 18, 877 N.W.2d 75 .....	7, 11, 15
<u>State v. Sorenson</u> , 2000 S.D. 127, 617 N.W.2d 146 ...	7, 16
<u>State v. Green</u> , 524 N.W.2d 613 (S.D. 1994) .....	7, 16
<u>State v. Chips</u> , 2016 S.D. 8, 874 N.W.2d 475 .....	11, 15
<u>State v. Ledbetter</u> , 2018 S.D. 79, 920 N.W.2d 760 .....	11
<u>MacKaben V. MacKaben</u> , 2015 S.D. 86, 871 N.W.2d 617 ....	15
<u>State v. Grosh</u> , 387 N.W.2d 503 (S.D. 1986) .....	15
<u>State v. Pulfrey</u> , 1996 S.D. 54, 548 N.W.2d 34 .....	15
<u>State v. Toavs</u> , 2017 S.D. 93, 906 N.W.2d 354 .....	15
<u>State v. Talla</u> , 2017 S.D. 34, 897 N.W.2d 351 .....	15
 <b>STATUTES</b>	 <b>PAGE</b>
SDCL 22-18-1.1 .....	8
SDCL 22-30-1 .....	4, 8
SDCL 22-30-6 .....	4, 8
SDCL 22-30-7 .....	4, 8
SDCL 22-30A-1 .....	8
SDCL 22-30A-17 .....	8
SDCL 23A-7-8 .....	6, 11

SDCL 23A-7-9 .....	6, 11
SDCL 23A-11-2 .....	6
SDCL 23A-32-2 .....	5
SDCL 24-15A-18 .....	6, 14
SDCL 24-15A-19 .....	6, 14

**OTHER AUTHORITIES**

**PAGE**

NONE



**PRELIMINARY STATEMENT**

For purposes of brevity and clarity, the Appellant will use the following abbreviations throughout this brief:

Israel Myers, Appellant ..... Appellant/Defendant  
The Honorable Christie Klinger, Circuit Court  
Judge ..... Trial Court  
State of South Dakota ..... State  
Appendix ..... APP

The Settled Record consists of Hughes County file number 32CRI23-000584. It will be cited as "SR" followed by the page number(s) of the page(s) cited. The exhibits will be referred to as "EX" followed by the exhibit number, and, where applicable, a short description of a document included within the exhibit.

Finally, the transcripts referred to in this brief will be cited in the following manner followed by the page number(s):

Sentencing, March 28, 2025 ..... SENT

**JURISDICTIONAL STATEMENT**

Appellant appeals from a Judgment of Conviction filed on March 31, 2025. SR 88 and APP 1-2. On January 8, 2025, Appellant plead guilty to Second Degree Robbery in violation of SDCL 22-30-1, 22-30-6 and 22-30-7. APP 1-2. An updated pre-sentence investigation report was ordered by the Court and sentence was imposed on March 28, 2025. See generally SENT. Judge Christie Klinger presided over all

matters taking place in the Hughes County Circuit Court for this case.

This appeal arises from the Judgement of Conviction filed on March 31, 2025, in Hughes County 32CRI23-000584. APP 1-2 and SR 88. Appellant is not challenging his sentence in Stanley County file 58CRI24-000102 as the plea agreement by the prosecutor was different and did not make the same sentencing recommendations as the Hughes County prosecutor agreed to make.

Appeal is by right pursuant to SDCL 23A-32-2. Notice of appeal was filed on April 30, 2025. SR 1153.

#### **STATEMENT OF THE ISSUES**

**ISSUE I: DID THE TRIAL COURT COMMIT REVERSIBLE ERROR WHEN IT SAID AT SENTENCING THAT IT WAS GOING TO HONOR THE PLEA AGREEMENT MADE WITH THE STATES ATTORNEY BUT THEN FALED TO FOLLOW THE PORTION OF PARAGRAPH 11(A)(4) OF THE PLEA AGREEMENT TO RUN THE HUGHES COUNTY SENTENCE CONCURRENT WITH APPELLANT'S EXISTING PENNINGTON COUNTY SENTENCE APPELLANT WAS SERVING IN THE STATE PENITTENTIARY?**

The State and Appellant entered into a global plea agreement for the resolution of the charges in this matter in which the Hughes County State's Attorney agreed to make a recommendation of a ten year sentence with seven years suspended and to recommend that this sentence run concurrent to Appellant's existing state penitentiary sentence for file 51CRI22-1225. At sentencing the Trial Court said it was going to honor the agreement that

Appellant made with the States attorney of ten years in the state penitentiary with seven years suspended but failed to order that sentence to run concurrent to the sentence in 51CRI22-1225. SENT 30-32.

**Most relevant cases:**

State v. Shumaker, 2010 S.D. 95, 792 N.W.2d 174

State v. Reaves, 2008 S.D. 105, 757 N.W.2d 580

State v. Hale, 2018 S.D. 9

**Most relevant statutes:**

SDCL 23A-7-8

SDCL 23A-7-9

SDCL 23A-11-2

SDCL 24-15A-18

SDCL 24-15A-19

**ISSUE II: DID THE TRIAL COURT ERR WHEN IT FAILED TO GRANT APPELLANT CREDIT FOR TIME SERVED TOWARDS THE SENTENCE WHEN HIS PAROLE WAS DENIED DUE TO THE EXISTENCE OF THE PENDING HUGHES COUNTY CHARGES?**

Appellant asked the Trial Court to grant him four hundred nine (409) days credit for time served towards the Hughes County sentence as his parole on file 51CRI22-1225 had been denied by the parole board due to the Hughes County charges. SENT 15-16 and APP 12-13. This request was not granted.

**Most relevant cases:**

State v. Rice, 2016 S.D. 18, 877 N.W.2d 75

State v. Sorenson, 2000 S.D. 127, 617 N.W.2d 146

State v. Green, 524 N.W.2d 613 (S.D. 1994)

**Most relevant statutes:**

None

**STATEMENT OF THE FACTS AND CASE**

While a juvenile, Appellant committed the offense of First-Degree Robbery in Pennington County on April 28, 2020. APP 14-17. Appellant received a sentence of twenty-five (25) years with seventeen (17) years suspended. On February 3, 2023, Appellant had his sentence modified to twenty-five (25) years with nineteen (19) years suspended. APP 14-17.

Appellant was out on parole from the state penitentiary when on or about August 19, 2023, Appellant was involved in the robbery of the Hardees restaurant in Pierre. See PSI in SR 90 for this and the remainder of this paragraph. Appellant was asked by his friend, Anthony Richards, to help him rob Hardees so as to get the money in the restaurant safe. Appellant initially declined the request but after peer pressure and being offered an ounce of methamphetamine, Appellant agreed to help Richards. Richards arranged with an employee of Hardees for that employee to leave a door unlocked during closing. Wearing

dark clothing and masks, Richards and Appellant took a gun and baton and went into Hardees after closing through that unlocked door. Various threats were made, and Richards hit the store manager with the baton to get him to put the money into bags. Richards and Appellant got most of the money from the tills and part of the money from the safe and fled the restaurant. Law enforcement found various items of money from the restaurant two to three blocks away and at a nearby business they found some dark clothing matching the description of the clothing worn by the two individuals who robbed the restaurant. DNA was obtained off the items and compared to the codis DNA of Richards and Appellant showing some matches. Ultimately the cooperating employee identified Richards as one of the suspects. Appellant was never identified by any of the witnesses and the State relied upon his DNA being on items of clothing for their charges. On November 28, 2023 Appellant was indicted for the Hardees incident and charges with First Degree Robbery (SDCL 22-30-1, 22-30-6, 22-30-7), Aggravated assault (SDCL 22-18-1.1(2)), Aggravated Assault (SDCL 22-18-1.1(5)), and Grand Theft (SDCL 22-30A-1 and 22-30A-17).<sup>1</sup> SR 1. Appellant had a habitual offender information filed

---

<sup>1</sup> Appellant also was charged with two counts of simple assault in Hughes County file 32CRI23-000439 and Tampering with a witness in Hughes County file 32CRI24-000015. APP 3-4.

against him enhancing the punishment for the Hughes County felonies by one level. SR 3.

On September 16, 2023, in Fort Pierre, SD Appellant assisted two others in committing a Burglary of a residence in Fort Pierre, South Dakota. These charges were investigated but not charged by the State Attorney General's office until November 26, 2024.

In late September or early October 2023, Appellant had his parole revoked and he was returned to the state penitentiary in Sioux Falls.

On February 14, 2024, Appellant had his parole denied by the State Board of Pardons and Parole due to the existence of the Hughes County charges. APP 12-13. The appellant then contacted the Hughes County Clerk of Courts and requested that his three pending Hughes County files be prosecuted so as to lift the impediment for him being granted parole on his Pennington County file.

Appellant asked for court appointed counsel and one was appointed on February 29, 2024. SR 5. Appellant wrote directly to the Court on May 6, 2024, when nothing was happening during a change of legal counsel. SR 16.

Appellant was arraigned on all three Hughes County files on June 11, 2025, and plead not guilty and requested

a jury trial on all charges in all files. Various motions were filed by the parties and granted by the Trial Court.

The trial was originally set for November 20-22, 2024. SR 42. The State requested a continuance of this jury trial, and the matter was scheduled for jury trial on January 8-10, 2025. SR 47 and 48.

In the meantime, the Attorney General's office indicted Appellant on November 26, 2024 for the Stanley County matters that occurred on September 16, 2023. Appellant was charged with First Degree Burglary, Second Degree Burglary, Conspiracy to Commit Burglary, three counts of Grand Theft, and four counts of Possession of a Firearm by one with prior violent crime conviction. APP 4.

When faced with more charges, Appellant negotiated a global plea agreement. APP 3-11. Appellant entered his guilty pleas on January 8, 2025, and was sentenced on March 28, 2025. Appellant requested the Court run all his sentences concurrent with a ten-year sentence and seven suspended. SENT 11-12. Appellant also asked that the four hundred nine days he remained in the state penitentiary after the parole board required him to clear up the Hughes County charges be given as credit applied towards the Hughes County sentence. SENT 15-16. The Trial Court denied these requests.

The Written Judgment of Conviction was filed March 31, 2025, and Notice of Appeal was filed April 30, 2025. SR 88 and 1153.

#### **STANDARD OF REVIEW**

Whether a trial court complied with a binding plea agreement is a question of law under the de novo standard of review. State v. Reaves, 2008 S.D. 105, ¶ 4, 757 N.W.2d 580, 582.

This Court reviews the sentencing court's decision for an abuse of discretion." State v. Rice, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (quoting State v. Chipps, 2016 S.D. 8, ¶ 31, 874 N.W.2d 475, 486).

#### **ARGUMENT AND AUTHORITY**

**ISSUE I: THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT SAID AT SENTENCING THAT IT WAS GOING TO HONOR THE PLEA AGREEMENT MADE WITH THE STATES ATTORNEY BUT THEN FALED TO FOLLOW THE PORTION OF PARAGRAPH 11(A)(4) OF THE PLEA AGREEMENT TO RUN THE HUGHES COUNTY SENTENCE CONCURRENT WITH APPELLANT'S EXISTING PENNINGTON COUNTY SENTENCE APPELLANT WAS SERVING IN THE STATE PENITTENTIARY.**

"Generally circuit courts are not bound by plea agreements." See SDCL 23A-7-9 and State v. Ledbetter, 2018 S.D. 79, ¶ 19, 920 N.W.2d 760, 764 (quoting State v. Reaves, 2008 S.D. 105 Para 7, 757 N.W.2d 580, 582). But a trial court may agree to be bound by the parties' plea agreement made pursuant to SDCL 23A-7-8(3). State v.



Shumaker, 2010 S.D. 95, Para 6, 792 N.W.2d 174, 175 (citing Reaves, 2008 S.D. 105, Para 7, 757 N.W.2d at 582).

At the sentencing in this matter, the Trial Court stated, "I'm going to honor the agreement that you made with the State's attorney of ten years in the State Penitentiary, suspend seven of that, and you're going to have to serve three years." SENT 30:23-31:1. The Trial Court goes on to say that, "I'm going to run that consecutive with 51CRI22-1225." SENT 31:2-3.

Appellant submits that by saying, "I'm going to honor the agreement that you made with the State's attorney . . ." that the Trial Court accepted the plea agreement and the recommendations of the parties as to the Hughes County sentence and it became binding on the Trial Court. This would mean that the Trial Court should have ordered that the sentence for the Hughes County matter be ordered to run concurrent with Appellant's existing state penitentiary sentence from Pennington County file 52CRI22-1225. See paragraph 11(a)(4) of the plea agreement. APP 8. Instead, the Trial Court ordered the sentence in this matter to run consecutive to the existing sentence for the Pennington County case and then ordered the sentence for the Stanley Court case to run consecutive to each both the Hughes

County and Pennington County sentences.<sup>2</sup> SENT 32:12. This sentence is contrary to the Trial Court's agreement to "honor the agreement" Appellant made with the States attorney which is for the Hughes County sentence to run concurrent to Appellant's existing Pennington County sentence. See Schumaker and Reaves supra.

Appellant anticipates that the State will argue that the Trial Court's language was not specific enough to signify acceptance to be bound to the specific sentence being recommended by the Hughes County States Attorney. To that argument, Appellant would point this Court to the case of State v. Hale, 2018 S.D. 9 where this Court found that the Trial Court can implicitly accept a plea agreement through the words used during the change of plea hearing and at the sentencing. Appellant submits that by the language used and the distinction within the plea agreement between the Hughes County recommendations and the Stanley County recommendations that the Trial Court implicitly agreed to follow the Hughes County State's attorney's plea agreement in its entirety, which includes ordering the sentence to run concurrent to Appellant's Pennington County

---

<sup>2</sup> The State through its Assistant Attorney General did not agree to make the same recommendation of concurrent sentences to the Pennington County sentence but rather remained silent on the issue of consecutive vs. concurrent.

sentence which he was currently serving at the state penitentiary.

Additionally, Appellant submits that Trial Courts should consider the consequences of their sentencing decisions, including the impact on parole eligibility. Here, Appellant submits that the effect of the Trial Court making the Hughes County sentence consecutive to the Pennington County sentence and then the Stanley County sentence consecutive to both the Hughes County and Pennington County sentences was to stack the sentences on top of each other making Appellant become parole eligible on his first number (Pennington County) before starting his second sentence for the Hughes County matter and then becoming parole eligible on Hughes County before he starts his Stanley County sentences. Compare SDCL 24-15A-18 and 24-15A-19. The effect of consecutive sentencing extends Appellant's Pennington County sentence to the point where he almost has to flat time that sentence before being paroled. Appellant submits this is fundamentally unfair and thus the Hughes County sentence should be remanded back for it to be ordered concurrent to the Pennington County matter.

**ISSUE II: THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO GRANT APPELLANT CREDIT FOR TIME SERVED TOWARDS**

**THE SENTENCE WHEN HIS PAROLE WAS DENIED DUE TO THE  
EXISTENCE OF THE PENDING HUGHES COUNTY CHARGES.**

This Court reviews a sentencing court's decision based upon the abuse of discretion standard. State v. Rice, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83 (quoting State v. Chipps, 2016 S.D. 8, ¶ 31, 874 N.W.2d 475, 486). "An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices." Id. (quoting MacKaben v. MacKaben, 2015 S.D. 86, ¶ 9, 871 N.W.2d 617, 622). Sentencing courts possess broad discretion "[w]ithin constitutional and statutory limits" to determine "the extent and kind of punishment to be imposed." Rice, 2016 S.D. 18, ¶ 23, 877 N.W.2d at 83 (emphasis omitted) (quoting State v. Grosh, 387 N.W.2d 503, 508 (S.D. 1986)). Courts should consider the traditional sentencing factors of retribution, deterrence—both individual and general—rehabilitation, and incapacitation without regarding any single factor as preeminent over the others. State v. Pulfrey, 1996 S.D. 54, ¶ 15, 548 N.W.2d 34, 38). "The factors are to be weighed 'on a case-by-case basis' depending on the circumstances of the particular case." State v. Toavs, 2017 S.D. 93, ¶ 10, 906 N.W.2d 354, 357); see also State v. Talla, 2017 S.D. 34, ¶ 14, 897 N.W.2d 351, 355.

With regard to receiving credit for time served, this Court has recognized that indigent defendants must be given credit for pre-sentence time served that results from indigency. State v. Sorenson, 2000 S.D. 127, ¶ 15, 617 N.W.2d 146, 149. The appointment of counsel is sufficient to establish defendant is indigent and applies from the date the court approves an application for court appointed counsel. State v. Green, 524 N.W.2d 613, 61 (S.D. 1994).

Although Appellant was not in custody specifically for the Hughes County charges, his parole was denied and thus he remained in custody because of the pending Hughes County charges.

At sentencing, Appellant submitted a statement showing that his parole on his Pennington County sentence in file 51CRI22-1225 was denied on February 14, 2024, due to the pending charges in Hughes County. APP 12-13. Appellant was serving a sentence for his conviction in Pennington County file 51CRI22-1225. APP 14-17. This is the file that Appellant was out on parole when the new charges in Hughes and Stanley occurred. Appellant submits that since his parole was denied due to the Hughes County matters, that he should receive credit for the time he remained incarcerated while attempting to get the Hughes County charges resolved.

At sentencing Appellant's counsel requested the Trial Court grant Appellant four hundred nine (409) days credit for the time he was serving in the state penitentiary, waiting for the Hughes County charges to be resolved. SENT 15:4-16:10. Counsel submits that but for the Hughes County warrant, Appellant would have been granted parole again and would not have had to serve those 409 days in the state penitentiary. Alternatively that he would have been arrested on the Hughes County warrant and been incarcerated in the Hughes County jail awaiting the resolution of the Hughes County charges.

Appellant submits that the Trial Court intended for Appellant to receive credit for time served as she stated, "the intent is that he receive credit for one of the three cases for all the time that he's sat." SENT 32:4-5. But the Trial Court erred by not assigning that credit for time served to the Hughes County matter as that has allowed the parole board to keep Appellant incarcerated longer under their complex rules.

Appellant tried to get the pending matters resolved to the best of his ability while being incarcerated. He asked for court appointed counsel and one was appointed on February 29, 2024. SR 5. Appellant wrote directly to the Court on May 6, 2024, when nothing was happening during a

change of legal counsel. SR 16. Trial was originally set for November 20-22, 2024. SR 42. The State requested a continuance of this jury trial, and the matter was scheduled for jury trial on January 8-10, 2025. SR 47 and 48. In the meantime, the Attorney General's office indicted Appellant on November 26, 2024, for the Stanley County matters that occurred on September 16, 2023.

Then when faced with more charges, Appellant negotiated a global plea agreement and entered his guilty pleas on January 8, 2025, and was sentenced on March 28, 2025. However, when counsel for Appellant requested credit be applied towards the Hughes County sentence it was not ordered by the Trial Court and that was an abuse of discretion.

Therefore, Appellant submits that the Court abused its discretion by not adequately considering the issue of credit for time served and its interaction between existing sentences and the fact that Appellant had to serve more of his Pennington County sentence while he was meeting the condition of the parole board to get his Hughes County matters resolved before being considered for parole.

#### **CONCLUSION**

WHEREFORE, for the above and foregoing reasons, Appellant respectfully requests this Court reverse the

Trial Court and order that Appellant receive four hundred nine (409) days credit toward the Hughes County sentence and that said sentence run concurrent to Appellant's sentence in Pennington County file 51CRI22-1225.

Respectfully submitted this 1<sup>st</sup> day of July 2025.

SIEBRASSE LAW OFFICE, P.C.

**/s/ David W. Siebrasse**

David W. Siebrasse  
Attorney for Appellant  
P.O. Box 118  
Pierre, SD 57501  
(605) 224-8111  
siebrasse@pie.midco.net



**CERTIFICATE OF SERVICE**

David W. Siebrasse, Attorney for Appellant, Israel Myers, hereby certifies that a true and correct copy of the Appellant's Brief were served by electronic service upon:

MARTY JACKLEY	CASEY DEIBERT
Attorney General	Hughes County State's Attorney
SARAH THORNE	104 East Capitol Avenue
Assistant Attorney General	Pierre, South Dakota 57501
State of South Dakota	<u>Casey.deibert@co.hughes.sd.us</u>
1302 East Highway 14, Suite 1	
Pierre, South Dakota 57501	
<u>atgservice@state.sd.us</u>	
<u>sarah.thorne@state.sd.us</u>	

and one true and correct copy of the Appellant's Brief was served by first class mail, postage fully prepaid, upon:

ISRAEL MYERS  
Inmate No. 66954  
South Dakota State Penitentiary  
1600 North Drive  
Sioux Falls, SD 57117

Dated this 1<sup>st</sup> day of July 2025.

SIEBRASSE LAW OFFICE, P.C.

**/s/David W. Siebrasse**  
David W. Siebrasse  
Attorney for Appellant  
P.O. Box 118  
Pierre, SD 57501  
(605) 224-8111  
siebrasse@pie.midco.net

**APPENDIX TABLE OF CONTENTS**

	<b>PAGE</b>
JUDGMENT OF CONVICTION FROM 3/28/25 SENTENCING.....	APP 1 - 2
PLEA AGREEMENT .....	APP 3-11
PAROLE DENIAL STATEMENT .....	APP 12-13
AMENDED JUDGMENT - 51CRI22-1225 .....	APP 14-17

STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
  
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ISRAEL JAMES MYERS, )  
DOB: 02/07/2005 )  
 )  
Defendant. )

**JUDGMENT OF CONVICTION**

32Cri23-584

An Amended Information was filed with this Court on the 8th day of January, 2025, charging Defendant with Robbery – Second Degree (SDCLS 22-30-1, 22-30-6, and 22-30-7), a Class 4 Felony.

Defendant was arraigned on said Amended Information and received a copy thereof on the 8th day of January, 2025. Defendant, Defendant's attorney, Dave Siebrasse, and Casey Jo Deibert, prosecuting attorney, appeared at Defendant's arraignment. The Court advised Defendant of all of the constitutional and statutory rights pertaining to the charges that had been filed against Defendant, including but not limited to the right against self-incrimination, the right of confrontation, and the right to a jury trial. Defendant pled guilty to Robbery – Second Degree (SDCLS 22-30-1, 22-30-6, and 22-30-7), a Class 4 Felony, said offense having been committed on or about the 19th day of August, 2023.

It is the determination of this Court that Defendant has been regularly held to answer for said offense; that said plea was voluntary, knowing, and intelligent; that Defendant was represented by competent counsel; that Defendant understood the nature and consequences of the plea at the time said plea was entered; and that a factual basis existed for the plea.

It is therefore the JUDGMENT of this Court that Defendant is guilty of Robbery – Second Degree (SDCLS 22-30-1, 22-30-6, and 22-30-7), a Class 4 Felony.

**SENTENCE**

On the 28th day of March, 2025, the Court asked Defendant, if any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

ORDERED that the Defendant shall be committed to the custody of the South Dakota Department of Corrections for placement at an appropriate facility for ten (10) years, with seven (7) years suspended, on the charge of Robbery – Second Degree (SDCLS 22-30-1, 22-30-6, and 22-30-7), a Class 4 Felony. It is further

ORDERED that the Defendant shall pay court costs of \$116.50; transcript costs of \$68.60 (payable to Hughes County, 104 E. Capitol Ave., Pierre, SD 57501); restitution of \$300.00 (payable to Mitchell Fox, 420 E. Dakota, Apt. 1, Pierre, SD 57501); restitution of \$1,417.73 (payable to Northland Restaurant Group, Attn: AR 232, 3112 Golf Road, Eau Claire, WI 54701); and, court-appointed attorney fees submitted by Dave Siebrasse (payable to Hughes County Auditor, Second Floor, 104 E. Capitol Ave., Pierre, SD 57501), while on parole and on a schedule prescribed by Defendant's Parole

Officer. It is further

ORDERED that this sentence shall run consecutively to the sentence announced in the Defendant's Pennington County file. It is further

ORDERED that the Court reserves the right to amend any or all of the terms of this Order at any time.

DATED this 3/31/2025 10:52:19 AM

BY THE COURT:



Christina Klinger  
Circuit Court Judge

Attest:  
Deuter-Cross, TaraJo  
Clerk/Deputy



### NOTICE OF RIGHT TO APPEAL

You, ISRAEL JAMES MYERS, are hereby notified that you have a right to appeal as provided by SDCL 23A-32-15, which you must exercise by serving a written notice of appeal upon the Attorney General of South Dakota and the State's Attorney of Hughes County and by filing a copy of the same, together with proof of such service with the Clerk of this Court within thirty (30) days from the date that this Judgment is filed with said Clerk.

STATE OF SOUTH DAKOTA     )  
  ) ss  
COUNTY OF HUGHES         )

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

ISRAEL MYERS,

Defendant.

32 CRI 24-000015

32 CRI 23-000584

32 CRI 23-000439

58 CRI 24-000102

PLEA AGREEMENT

COMES NOW, the Defendant, Israel James Myers, by and through his attorney, David W. Siebrasse, and the State of South Dakota by and through Hughes County State's Attorney, Casey Deibert, and the State of South Dakota by and through Assistant Attorney General, Nolan Welker, in the above-captioned matter and jointly agree that this plea agreement will be presented to the Court for its consideration. It is understood by each party that the Court is free to implement or disregard the plea agreement as the Court sees fit in its own discretion.

In consideration of the mutual promises set forth below, the State of South Dakota and Israel James Myers, specifically agree as follows:

1. Defendant acknowledges that he has been advised by his attorney and understands that he is charged by Indictment dated January 3, 2024 in State vs. Israel James Myers, Hughes County 32 CRI 24-000015 with one count Witness Tampering (Class 4 Felony) in violation of SDCL § 22-11-9. Defendant acknowledges that he has been advised by his attorney and understands that he is charged by Indictment and Part II Information for Habitual Offender dated November 28, 2023 in State vs. Israel James

Defendant Initials: IM  
Page 1 of 9

*State v. Israel James Myers, Hughes Co. 32 CRI 24-015, 23-584, 23-439, Stanley Co. 58 CRI 24-102*  
*Plea Agreement*

Myers, Hughes County 32 CRI 23-000584 with one count one count of Robbery – 1<sup>st</sup> Degree (Class 1 Felony) in violation of SDCL § 22-30-1, 22-30-6, 22-30-7, one count of Aggravated Assault (Class 2 Felony) in violation of SDCL § 22-18-1.1, one count of Aggravated Assault (Class 5 Felony) in violation of SDCL § 22-18-1.1 and one count of Grant Theft (Class 5 Felony) in violation of SDCL § 22-30A-1 and 22-30A-17. Defendant acknowledges that he has been advised by his attorney and understands that he is charged by Information dated September 29, 2023 in State vs. Israel Myers, Hughes County 32 CRI 23-000439 with two counts Simple Assault (Class 1 Misdemeanor) in violation of SDCL § 22-18-1. Defendant acknowledges that he has been advised by his attorney and understands that he is charged by Indictment and Part II Information for Habitual Offender dated November 26, 2024 in State vs. Israel Myers, Stanley County 58 CRI 24-000102 with one count 1<sup>st</sup> Degree Burglary (Class 1 Felony) in violation of SDCL § 22-32-1(2), 2<sup>nd</sup> Degree Burglary (Class 2 Felony) in violation of SDCL § 22-32-3, one count Conspiracy to Commit Burglary (Class 2 Felony) in violation of SDCL § 22-3-8 and 22-32-3, two counts Grand Theft (Class 5 Felony) in violation of SDCL § 22-30A-1 and 22-30A-17(2), one count Grand Theft (Class 3 Felony) in violation of SDCL § 22-30A-1 and 22-30A-17, and four counts Possession of Firearm by One With Prior Violent Crime Conviction (Class 5 Felony) in violation of SDCL §22-14-15.

2. Defendant acknowledges that he has been advised by his attorney and understands that the penalty for Witness Tampering (Class 4 Felony) carries a maximum sentence of ten (10) years imprisonment in the state penitentiary and/or a fine of twenty thousand dollars (\$20,000.) Defendant acknowledges that he has been advised by his attorney and understands that the penalty for Robbery – 1<sup>st</sup> Degree (Class 1 Felony)

*Defendant Initials* IM  
*Page 2 of 9*

carries a maximum sentence of fifty (50) years imprisonment in the state penitentiary and/or a fine of fifty thousand dollars (\$50,000,) Aggravated Assault (Class 2 Felony) carries a maximum sentence of twenty-five (25) years imprisonment in the state penitentiary and/or a fine of fifty thousand dollars (\$50,000,) Aggravated Assault (Class 5 Felony) carries a maximum sentence of five (5) years imprisonment in the state penitentiary and/or a fine of ten thousand dollars (\$10,000) and Grand Theft (Class 5 Felony) carries a maximum sentence of five (5) years imprisonment in the state penitentiary and/or a fine of ten thousand dollars (\$10,000.) Defendant acknowledges that he has been advised by his attorney and understands that the penalty for EACH OF THE 2 COUNTS Simple Assault (Class 1 Misdemeanor) carries a maximum sentence of one (1) year imprisonment in the county jail and/or a fine of two thousand dollars (\$2,000.) Defendant acknowledges that he has been advised by his attorney and understands that the penalty for First Degree Burglary (Class 1 Felony) carries a maximum sentence of fifty (50) years imprisonment in the state penitentiary and/or a fine of fifty thousand dollars (\$50,000,) the penalty for Second Degree Burglary (Class 2 Felony) carries a maximum sentence of twenty-five (25) years imprisonment in the state penitentiary and/or a fine of fifty thousand dollars (\$50,000,) the penalty for Conspiracy to Commit Burglary (Class 2 Felony) carries a maximum sentence of twenty-five (25) years imprisonment in the state penitentiary and/or a fine of fifty thousand dollars (\$50,000,) the penalty for EACH OF THE 2 COUNTS Grand Theft (Class 5 Felony) carries a maximum sentence of five (5) years imprisonment in the state penitentiary and/or a fine of ten thousand dollars (\$10,000,) the penalty for Grand Theft (Class 3 Felony) carries a maximum sentence of fifteen (15) years imprisonment in the state penitentiary and/or a fine of thirty thousand dollars (\$30,000,)

*Defendant Initials* IM  
*Page 3 of 9*

and the penalty for EACH OF THE 4 COUNTS OF possession OF Firearm by One with Prior Violent Crime Conviction (Class 5 Felony) carries a maximum sentence of five (5) years imprisonment in the state penitentiary and/or a fine of ten thousand dollars. (\$10,000.)

3. Defendant acknowledges that the Court may also order that restitution be made to the victim of any of the crimes listed above as a part of the sentence for these charges.

4. Defendant understands that he has the right to be represented by an attorney and has exercised that right. David W. Siebrasse is Defendant's attorney and Defendant is satisfied with his representation and desires he continue his representation. Defendant acknowledges that David W. Siebrasse has explained to his satisfaction the statutory and constitutional rights and the consequences of entering a guilty plea(s) as set forth herein.

5. Defendant acknowledges that he has received and read a copy of each Indictment, Information, Part II Information for Habitual Offenders, and discovery for charges and understands the nature of the charges made against him and the elements of the charge(s). Defendant acknowledges that he has told his attorney all he knows about the matters referred to in it.

6. Defendant acknowledges that his attorney has explained to him the nature of the charges against him, his constitutional rights, and the maximum punishment and/or penalty that could be imposed by the Court upon a finding of guilt by Judge/Jury or a plea of guilty.

7. Defendant understands that if he pleads not guilty to any count or counts:



- (a) He is presumed under the law to be innocent of the charges against him in such count or counts until the State has proven him guilty of the offense charged beyond a reasonable doubt;
- (b) He would be entitled to a speedy, public trial by an impartial jury in the county in which it has been charged and that the burden would be upon the Government to establish his guilt beyond a reasonable doubt to the satisfaction of all twelve jurors;
- (c) He would be entitled to remain silent and no inference could be drawn against him because of his silence;
- (d) He could, if he wished, testify on his own behalf;
- (e) He would be entitled to confront and cross-examine all witnesses against him; and
- (f) He would be entitled to compulsory process (subpoena) of the Court to obtain witnesses to testify and evidence to be offered in his defense.

8. Defendant understands that if his plea of guilty to any count or counts is accepted by the Court, he waives and gives up the foregoing rights with respect to such count or counts and the Court will have the same power to sentence him as if a jury had brought in a verdict of guilty with respect to such count or counts. Defendant further understands by pleading guilty he is waiving any defenses he may have to the charges and waives the right to raise any alleged violation of his constitutional rights.

9. Defendant acknowledges that his decision to plead guilty is freely and voluntarily made. He has not been induced to plead guilty to any count by any promises or by any statements other than those promises in the plea agreement set forth herein. Defendant acknowledges that he has not been promised any leniency, a lesser sentence, or any other consideration if he pleads guilty instead of going to trial. Defendant further

acknowledges that he has not been induced to plead guilty by any threats, force, coercion, pressure or fear.

10. Defendant acknowledges that he is pleading guilty because, after discussing the case with his attorney he believes that he is guilty.

11. There is a Plea Agreement in this matter. The Plea Agreement is as follows:

(a) In Hughes County file number 32CRI23-000584:

1) the Defendant agrees to enter a plea of guilty to an amended information charging the offense of Second-Degree Robbery (Class four felony) in violation of SDCL §22-30-1, 22-30-6 and 22-30-7 and waive a preliminary hearing on the amended information. Second Degree Robbery carries a maximum sentence of ten (10) years in the state penitentiary, a twenty thousand dollar fine and the Court may order restitution if any is requested.

2) The State, through Hughes County States Attorney Casey Deibert, will dismiss all other pending charges and the part two habitual offender information in files 32CRI23-000584, 32CRI23-000439 and 32CRI24-000015.

3) The State further agrees to not file any other criminal charges for acts that are known or can become known through the exercise of due diligence by the prosecution and/or law enforcement as of the date the prosecution signs this plea agreement.

4) The State agrees to recommend a sentence of ten (10) years with seven (7) years suspended and recommend this sentence run concurrent with his existing state penitentiary sentence.

(b) In Stanley County file number 58CRI24-000102:

1) Defendant agrees to plead to Count 2 – Second Degree Burglary (Class 3 felony) in violation of SDCL 22-32-3 and Count 10 – Possession of Firearm by one with Prior Violent Crime conviction (Class 6 felony) in violation of SDCL 22-14-15. Second Degree Burglary

carries a maximum sentence of fifteen (15) years in the state penitentiary, a thirty thousand dollar fine and the Court may order restitution if any is requested. Possession of a Firearm by one with Prior Violent Crime conviction carries a maximum sentence of two (2) years in the state penitentiary, a four thousand dollar fine and the Court may order restitution if any is requested.

2) The State, through Assistant Attorney General Nolan Welker, intends to recommend that the sentences for counts 2 and count 10 of the Stanley County matter run consecutive with the sentence in Hughes County file 32CRI23-0000584 but will agree to remain silent as to whether the sentence should be concurrent or consecutive with Defendant's sentence he is currently serving in the state penitentiary.

3) The State will remain free to put forth an argument in conformity with applicable law and the plea agreement.

4) The State will dismiss all other pending charges and the part two habitual offender information in file number 58CRI24-000102.

5) The State further agrees to not file any other criminal charges for acts that are known or can become known through the exercise of due diligence by the prosecution and/or law enforcement as of the date the prosecution signs this plea agreement.

(c) Beyond what is set forth above, Defendant acknowledges and understands that he, his attorney and the prosecutor are free to make any sentencing recommendations to the Court.

12. Defendant acknowledges and understands that the Court is not bound by any Plea Agreement and can impose any Sentence within the statutory maximums and has complete discretion in imposing the Sentence.

13. Defendant acknowledges that he is of sound mind and not under the influence of any substance, such as narcotics or alcohol that would affect his ability to understand the nature and consequences of his action in pleading guilty.

*Defendant Initials* SM  
*Page 7 of 9*



This plea agreement is hereby accepted by me on behalf of Stanley County, State  
of South Dakota on the 8<sup>th</sup> day of January, 2025.

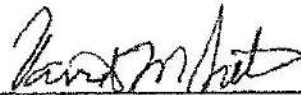


Nolan Welker  
Assistant Attorney General

### STATEMENT OF ATTORNEY

I, David W. Siebrasse, the attorney for the above-named Defendant, have reviewed the foregoing with him; have explained to him the nature of the charges against him, his constitutional rights, and the punishment that could be imposed upon his guilty plea(s). I have also advised him concerning my opinion about his possible defenses to the count(s) to which he is pleading guilty and fully advised him of his constitutional and statutory rights. To the best of my knowledge, information and belief, the statements, representations, and declarations acknowledged by the Defendant in the foregoing are accurate and true. The Plea made by the Defendant accords with my understanding of the facts the Defendant has related to me. In my opinion the plea(s) are voluntary and knowingly made.

DATED the 6<sup>th</sup> day of January, 2025.



David W. Siebrasse  
Attorney for Defendant

State v. Israel Myers – Stanley County 58 CRI 24-000102

And

State v. Israel Myers – Hughes County 32 CRI 23-000584

Parole Denial in support of Request for Credit for Time Served to apply  
to current Sentences

1111 841

58CRS 24-000102 and 32CRS 23-000584

South Dakota Board of Pardons and Paroles  
Parole Decision (to be shared with offender)

Name: MYERS, ISRAEL JAMES

DOC ID: 0000066954

Applicable Transaction(s): 54887

Dated this: 14-FEB-24

Type: NEW Location: Jameson Annex

The following decision is made after considering: (1) all factors listed in SDCL 24-13-7; (2) Structured Decision Making Framework considerations, including: statistical risk assessment, offender criminal history, offender ability to control his/her behavior, responsivity (appropriate programming related to risk and need), offender's institutional and community behavior, level of change exhibited by offender as related to institutional programming, offender release plan, and other case specific factors brought out during the parole hearing; and (3) the standards set forth in Parole Board Policy 8.1.A.5 Parole Decision - Setting of Next Parole Review Dates. The following is meant to assist the offender in his/her rehabilitation and neither this document nor the statutes or rules upon which they are based are to be used to establish a constitutionally protected liberty, property or due process interest in any inmate.

DECISION: GRANT PAROLE -

BOARD ORDER -

(SCRAM, GPS, no contact, travel restriction, halfway house)

X DENY PAROLE - NEXT REVIEW DATE: AUGUST 2024

(Month, Year)

BOARD RECOMMENDATION(S):

CONTINUE HEARING TO:

(Reason, Month, Year)

Return: DAYS of Street Time / Good Time / Dead Time

RETURN ENOUGH TIME to make release effective:

Reason(s) for granting of parole	
<input type="checkbox"/>	You have maintained a satisfactory disciplinary record.
<input type="checkbox"/>	You have either completed programming or have a plan to complete programming while on parole.
<input type="checkbox"/>	There is a short time remaining on your sentence, and you need to be out and under supervision before the end of your sentence.
<input type="checkbox"/>	You have developed a viable parole plan
<input type="checkbox"/>	Other:

Reason(s) for denial of parole	
<input type="checkbox"/>	You have had a poor supervision record on previous releases
<input type="checkbox"/>	You have not maintained a satisfactory disciplinary record
<input type="checkbox"/>	You have failed to complete programming, or you have refused core programming.
<input type="checkbox"/>	You have not developed a viable parole plan
<input checked="" type="checkbox"/>	Not enough time has elapsed since your return to the institution on a violation.
<input type="checkbox"/>	Given the nature and circumstances of your offense(s), you have not been incarcerated for a sufficient length of time.
<input checked="" type="checkbox"/>	Other: <b>Clear up Hughes County Pending Charges before next hearing</b>
<input type="checkbox"/>	What you need to address before the next parole hearing:

Recommending Hearing Officer (single panel) / Board Chair (if a Full Board hearing)

Myron L. Rau  
Myron L. Rau (Feb 14, 2024 2:01 PM CST)  
PAROLE BOARD MEMBER

Kurt Hall  
Kurt Hall (Feb 14, 2024 2:01 PM CST)  
PAROLE BOARD MEMBER



STATE OF SOUTH DAKOTA, )  
 )SS  
COUNTY OF PENNINGTON. )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )  
Plaintiff, )  
 )  
vs. )  
 )  
ISRAEL JAMES MYERS, )  
DOB: 2/7/05 )  
CR#: 20-102940 )  
Defendant. )

File No. CRI22-1225

**AMENDED JUDGMENT**

On the 3rd day of February, 2023, the Defendant, ISRAEL JAMES MYERS, being present personally and being represented by and through his attorney, Angela Colbath, Rapid City; the State being represented by Deputy State's Attorney, Angela R. Shute; the Defendant having previously been arraigned on an Information alleging the offense of FIRST DEGREE ROBBERY (CLASS 2 FELONY), committed on or about April 28, 2020, in violation of SDCL 22-30-1, SDCL 22-30-6 and SDCL 22-30-7; the Defendant having entered a plea of guilty on May 17, 2022, to the Information as charged; the Court finding the plea to have been entered knowingly, freely, and voluntarily; a factual basis having been found for accepting the plea; the Defendant having been fully advised of his rights, and the Court having affixed this day as the date for pronouncing sentence; the Defendant having been asked whether there was any legal cause to show why a judgment should not be pronounced against him in accordance with the law and no cause being shown; it is hereby

**ORDERED AND ADJUDGED**, and the sentence is that you, ISRAEL JAMES MYERS, upon your conviction for the crime of FIRST DEGREE ROBBERY (CLASS 2 FELONY), be and you hereby are sentenced to serve TWENTY-FIVE (25) years in the South Dakota State Penitentiary, Sioux Falls, South Dakota; that the last **NINETEEN (19)** years are herein suspended; and that he/she receive credit for time already served in the Western South



Dakota Juvenile Services Center in the amount of **ONE THOUSAND AND ELEVEN (1011)** days plus credit for each day served in the Western South Dakota Juvenile Services Center and/or the Pennington County Jail while awaiting transport to the South Dakota State Penitentiary; and it is further

**ORDERED**, that the Defendant pay through the Pennington County Clerk of Courts liquidated court costs pursuant to SDCL 23-3-52 which have been incurred in these proceedings in the amount of Forty Dollars (\$40.00); plus the crime victims' compensation surcharge pursuant to SDCL 23A-28B-42 in the amount of Five Dollars (\$5.00); plus the unified judicial system court automation surcharge pursuant to SDCL 16-2-41 in the amount of Sixty-one Dollars and Fifty Cents (\$61.50); and it is further

**ORDERED**, that the Defendant pay restitution to be paid through the Clerk of Court's Office as follows:

1. \$599.50 to Corner Pantry (on a joint and several basis with M.S. in File J20-414)
2. \$267.33 to Claims Associates (from J21-402) and it is further

**ORDERED**, that, in accordance with SDCL 23A-40-11 through SDCL 23A-40-13, the determined amount for services and expenses of court-appointed counsel that may be filed as a lien against the property of Defendant by the county or municipality is to be determined; and it is further

**ORDERED**, that the Court, the State, and defense counsel shall have access to and receive status reports from the Department of Corrections related to the Defendant while serving his sentence at the Western South Dakota Juvenile Services Center, Pennington County Jail, and/or South Dakota State Penitentiary, with such status reports being disseminated to the State and defense counsel when they are provided to the Court. Defense counsel shall leave her file in this

matter open in order to have access to and receive such status reports from the Department of Corrections or the Court; and it is further

**ORDERED**, that the suspended portion of the Defendant's penitentiary sentence is herein suspended on the following terms and conditions

1. That all of the court-ordered financial obligations and restitution ordered herein be paid;

and it is further

**ORDERED**, that upon the Defendant's release from incarceration the conditions ordered herein as part of his/her suspended sentence be included as part of his/her parole; and it is further

**ORDERED, ADJUDGED AND DECREED**, that at the time of the commencement of the suspended portion of this Court's sentence, the Defendant shall execute and deliver to the South Dakota Board of Pardons and Paroles or to a representative of the Board, Parole Services or the South Dakota Department of Corrections (as the Board may direct), such Suspended Sentence Agreement, Parole Agreement, or other Supervision Agreement, as the Board may deem necessary, appropriate, or advisable for the supervision of the Defendant and which agreements may thereafter be modified as the Board may determine necessary, appropriate, or advisable; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Defendant shall comply with each and every term and condition set forth in such agreements or otherwise required by the Board; and it is further

**ORDERED, ADJUDGED AND DECREED**, that each of the terms and conditions set forth in such agreements or as may be otherwise required of the Defendant by the Board, Parole Services or other representatives of the Board are hereby made a part of and incorporated into this Judgment as a term and condition of the suspension of sentence; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Defendant obey all rules and regulations of the South Dakota Board of Pardons and Paroles; and it is further

**ORDERED, ADJUDGED AND DECREED**, that violation of any of the conditions set forth by this Court, the Department of Corrections, Parole Services or the Board of Pardons and Paroles shall be a violation of the terms of the Defendant's suspension of sentence; and it is further

**ORDERED**, that any bond which has been posted in this matter be discharged and the bondsman exonerated; and it is further

**ORDERED**, that the Defendant be remanded to the custody of the Pennington County Sheriff for transportation and delivery to the Warden of the South Dakota State Penitentiary, Sioux Falls, South Dakota.

2/9/2023 8:15:00 AM

Attest:  
Ricke, Jolonda  
Clerk/Deputy



BY THE COURT.  
  
The Honorable Heidi Linngren  
Circuit Court Judge  
Seventh Judicial Circuit

### NOTICE OF RIGHT TO APPEAL

You, ISRAEL JAMES MYERS, are hereby notified that you have a right to appeal as provided for by SDCL 23A-32-15, which you must exercise by serving a written notice of appeal upon the Attorney General of the State of South Dakota and the State's Attorney of Pennington County and by filing a copy of the same, together with proof of such service with the Clerk of this Court within Thirty (30) days from the date that this Judgment is filed with said clerk.

IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

---

No. 31071

---

STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

ISRAEL JAMES MYERS,

*Defendant and Appellant.*

---

APPEAL FROM THE CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT  
HUGHES COUNTY, SOUTH DAKOTA

---

THE HONORABLE CHRISTINA L. KLINGER  
Circuit Court Judge

---

**APPELLEE'S BRIEF**

---

MARTY J. JACKLEY  
ATTORNEY GENERAL

David W. Siebrasse.  
Siebrasse Law Office, P.C.  
PO Box 118  
Pierre, SD 57501  
Telephone: (605) 224-8111  
Email: siebrasse@pie.midco.net

Erin E. Handke  
Assistant Attorney General  
1302 E. SD Highway 1889, Suite 1  
Pierre, SD 57501-8501  
Telephone: (605) 773-3215  
Email: atgservice@state.sd.us

ATTORNEY FOR DEFENDANT  
AND APPELLANT

ATTORNEYS FOR PLAINTIFF  
AND APPELLEE

---

Notice of Appeal filed April 30, 2025

## TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES .....	ii
PRELIMINARY STATEMENT.....	1
JURISDICTIONAL STATEMENT .....	1
STATEMENT OF LEGAL ISSUES AND AUTHORITIES.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
ARGUMENTS	
I.    THE CIRCUIT COURT WAS NOT BOUND BY THE PLEA AGREEMENT.....	4
II.   MYERS WAS NOT ENTITLED TO CREDIT FOR TIME SERVED.....	9
CONCLUSION.....	11
CERTIFICATE OF COMPLIANCE.....	12
CERTIFICATE OF SERVICE .....	12

## TABLE OF AUTHORITIES

<b>STATUTES CITED:</b>	<b>PAGE</b>
SDCL 23A-7-8 .....	5
SDCL 23A-7-8(3) .....	5
SDCL 23A-7-11 .....	6
SDCL 23A-7-11(3).....	6
SDCL 23A-32-2 .....	2
 <b>CASES CITED:</b>	
<i>State v. Ainsworth</i> , 2016 S.D. 40, 879 N.W.2d 762.....	2, 9, 10
<i>State v. Berget</i> , 2014 S.D. 61, 853 N.W.2d 45 .....	9
<i>State v. Fuller</i> , 2024 S.D. 72, 14 N.W.3d 614.....	2, 10
<i>State v. Green</i> , 524 N.W.2d 613 (S.D. 1994) .....	10
<i>State v. Guziak</i> , 2021 S.D. 68, 968 N.W.2d 196.....	4
<i>State v. Heer</i> , 2024 S.D. 54, 11 N.W.3d 905 .....	5
<i>State v. Holler</i> , 2020 S.D. 28, 944 N.W.2d 339 .....	9
<i>State v. Klinetobe</i> , 2021 S.D. 24, 958 N.W.2d 734 .....	9
<i>State v. Ledbetter</i> , 2018 S.D. 79, 920 N.W.2d 760 .....	2, 5, 6, 8
<i>State v. McMillen</i> , 2019 S.D. 40, 931 N.W.2d 725 .....	5
<i>State v. Reaves</i> , 2008 S.D. 105, 757 N.W.2d 580 .....	2, 5
<i>State v. Scott</i> , 2024 S.D. 27, 7 N.W.3d 320.....	2, 4, 6, 8
<i>State v. Seidel</i> , 2020 S.D. 73, 953 N.W.2d 301 .....	9
<i>State v. Shumaker</i> , 2010 S.D. 95, 792 N.W.2d 174.....	2, 5
<i>State v. Sorenson</i> , 2000 S.D. 127, 617 N.W.2d 146 .....	9, 10

IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

---

No. 31071

---

STATE OF SOUTH DAKOTA,

*Plaintiff and Appellee,*

v.

ISRAEL JAMES MYERS,

*Defendant and Appellant.*

---

**PRELIMINARY STATEMENT**

In this brief, Appellant, Israel James Myers, is referred to as “Myers.” Appellee, the State of South Dakota, is referred to as “State.”

References to documents are designated as follows:

Settled Record (Hughes Criminal File No. 23-584)..... SR

Change of Plea Transcript (January 8, 2025) ..... CP

Sentencing Transcript (March 28, 2025) .....ST

Myers’s Appellant’s Brief ..... AB

Myers’s Appellant’s Brief Appendix ..... AB App.

All document designations are followed by the appropriate page number(s).

**JURISDICTIONAL STATEMENT**

Myers appeals from the Judgment of Conviction entered by the Honorable Christina L. Klinger, Circuit Court Judge, Hughes County, Sixth Judicial Circuit. SR 88-89. The Judgment of Conviction and

Sentence was filed on March 31, 2025. SR 88-89. Myers filed a Notice of Appeal on April 30, 2025. SR 1153. This Court has jurisdiction pursuant to SDCL 23A-32-2.

### **STATEMENT OF LEGAL ISSUES AND AUTHORITIES**

#### **I. WHETHER THE CIRCUIT COURT WAS BOUND BY THE PLEA AGREEMENT?**

This issue is being raised for the first time on appeal.

*State v. Ledbetter*, 2018 S.D. 79, 920 N.W.2d 760

*State v. Reaves*, 2008 S.D. 105, 757 N.W.2d 580

*State v. Scott*, 2024 S.D. 27, 7 N.W.3d 320

*State v. Shumaker*, 2010 S.D. 95, 792 N.W.2d 174

#### **II. WHETHER MYERS WAS ENTITLED TO CREDIT FOR TIME SERVED?**

The circuit court found that Myers was being held in prison for conduct arising out of Pennington County and was therefore not entitled to credit for time served.

*State v. Ainsworth*, 2016 S.D. 40, 879 N.W.2d 762

*State v. Fuller*, 2024 S.D. 72, 14 N.W.3d 614

### **STATEMENT OF THE CASE**

The Hughes County Grand Jury indicted Myers on four counts: first-degree robbery, two counts of aggravated assault, and grand theft. SR 1-2. The State alleged Myers had a prior felony conviction for first-degree robbery in a Part II Information. SR 3. The State later filed an Amended Information, charging Myers with second-degree robbery.



SR 81. Pursuant to a plea agreement, Myers plead guilty to second-degree robbery.<sup>1</sup> SR 72-80.

The circuit court sentenced Myers to ten years in prison with seven years suspended. SR 88. The court ordered the sentence to run consecutive to his Pennington County sentence.<sup>2</sup> SR 89.

### **STATEMENT OF THE FACTS**

On August 19, 2023, M.F. was finishing his work for the night at Hardee's. SR 232. Because it was the end of the night, M.F. was the only one left in the restaurant; he was in the back counting receipts. SR 232 (Sealed). He was listening to music on his earphones and did not hear two people come in. SR 232 (Sealed). The two people were dressed in black and had black masks on. SR 232 (Sealed). The two attacked M.F. SR 321 (Sealed). One of the attackers hit him with a metal baton while the other pointed a gun at the back of M.F.'s head. SR 321 (Sealed), SR 239 (Sealed). The two assailants forced M.F. to place money from the cash tills into their backpack. SR 239 (Sealed). While M.F. was doing that, one of the assailants removed more money from the floor safe. SR 239 (Sealed).

---

<sup>1</sup> The plea agreement involved four different criminal files, three from Hughes County and one from Stanley County. SR 72-80.

<sup>2</sup>At the time of his change of plea and sentencing hearing, Myers was in prison for charges arising out of Pennington County. SR 87, AB App. 13-17.

One assailant tried to take M.F.'s cell phone, but it was plugged into the wall. SR 239 (Sealed). So instead, he opted for smashing it with a baton. SR 239 (Sealed). Before fleeing, one assailant hit M.F. in the head with a money till. SR 240 (Sealed).

The incident was reported to law enforcement. SR 230 (Sealed). And a subsequent investigation revealed Myers was one of the assailants. SR 266 (Sealed).

## **ARGUMENTS**

### **I. THE CIRCUIT COURT WAS NOT BOUND BY THE PLEA AGREEMENT.**

Myers claims the circuit court agreed to be bound by the plea agreement but then did not adhere to it. AB 11-14. But the agreement entered by the parties was not binding on the court, so it was not required to follow it.

#### **A. *Standard of Review.***

“Whether a plea agreement was binding on the circuit court is a question of law, but where the issue is not preserved, we review a claim that the circuit court overlooked a binding plea agreement under the plain error doctrine.” *State v. Scott*, 2024 S.D. 27, ¶ 16, 7 N.W.3d 320, 327 (citing *State v. Guziak*, 2021 S.D. 68, ¶ 10, 968 N.W.2d 196, 200). “To establish plain error, an appellant must show ‘(1) error, (2) that is plain, (3) affecting substantial rights; and only then may this Court exercise its discretion to notice the error if, (4) it seriously affects the

fairness, integrity, or public reputation of judicial proceedings.” *State v. Heer*, 2024 S.D. 54, ¶ 12, 11 N.W.3d 905, 909 (quoting *State v. McMillen*, 2019 S.D. 40, ¶ 13, 931 N.W.2d 725, 729).

*B. The circuit court was not bound by the plea agreement.*

The prosecution and defense are allowed to engage in plea negotiations. SDCL 23A-7-8. These negotiations can include the prosecutor dismissing charges (or agreeing to not bring additional charges), make a sentence recommendation (or not oppose the defendant’s sentence request), agreeing to a specific sentence, or “perform other specified acts to be made a part of the agreement.” SDCL 23A-7-8. But the circuit court cannot participate in plea negotiations. SDCL 23A-7-8.

Typically, plea agreements are not binding on the circuit court. *State v. Ledbetter*, 2018 S.D. 79, ¶ 19, 920 N.W.2d 760, 764 (quoting *State v. Reaves*, 2008 S.D. 105, ¶ 4, 757 N.W.2d 580, 582). But if the court accepts a *binding* plea agreement under SDCL 23A-7-8(3), then the court is bound to sentence the defendant within the terms of the plea agreement. *Ledbetter*, 2018 S.D. 79, ¶ 19, 920 N.W.2d at 764 (cleaned up). The circuit court can implicitly agree to be bound by the plea agreement by “indicating it is bound by the agreed sentencing caps *before* a guilty plea is entered.” *Ledbetter*, 2018 S.D. 79, ¶ 19, 920 N.W.2d at 764 (citing *State v. Shumaker*, 2010 S.D. 95, ¶ 7-8, 792 N.W.2d 174, 176). (emphasis added). If the parties intend a plea

agreement to be binding, but the court does not intend to be bound by the plea agreement, the court must give “the defendant an opportunity to withdraw the guilty plea.” *Scott*, 2024 S.D. 27, ¶ 19, 7 N.W.3d at 328 (citing SDCL 23A-7-11).

Myers entered into a global written plea agreement involving four different criminal files. SR 72-80. The agreement called for Myers to plead guilty to second-degree robbery. SR 77. The State agreed to *recommend* the circuit court sentence Myers to ten years in prison with seven years suspended. SR 77. (emphasis added). It further agreed to *recommend* Myers’s sentence run concurrent with his current penitentiary sentence. SR 77. (emphasis added). The plea agreement specifically stated, “[Myers] acknowledges and understands that the [c]ourt is *not* bound by any [p]lea [a]greement and can impose *any* [s]entence within the statutory maximums and has *complete discretion* in imposing the Sentence.” SR 78. (emphasis added). The language of the plea agreement does not suggest or support the argument the circuit court was bound by this plea agreement.

Not only did the written plea agreement explicitly state that it was not binding on the court, nothing suggests that the agreement was meant to be a binding plea agreement under SDCL 23A-7-11(3). This is similar to the plea agreement reached in *State v. Ledbetter*. Ledbetter

reached an agreement<sup>3</sup> with the prosecutor where it “agreed to cap its argument for actual penitentiary time to thirty years.” *State v. Ledbetter*, 2018 S.D. 79, ¶ 6, 920 N.W.2d at 762. The agreement also stated that “if there are any agreements between the [prosecutor] and Ledbetter, the court is not bound to accept any such agreements as to sentencing. In other words, if there are such agreements, including as to sentencing, the court can accept or reject such agreements.” *Id.* ¶ 7, 920 N.W.2d at 762. This Court found that the language of the plea agreement was the State’s agreement as to the sentence *recommendation*, not a binding agreement on the circuit court. *Id.* ¶ 21, 920 N.W.2d at 765. It further pointed out that the agreement expressly stated it was not a binding agreement on the court. *Id.*

It is the same for Myers. His agreement specifically states that the State would *recommend* a sentence. The language in the plea agreement does not indicate the parties intended to bind the court to the agreement.

But Myers argues the circuit court agreed to be bound by it when it said it would honor the plea agreement. AB 12. At sentencing the circuit court stated that “I’m going to honor the agreement you made with the State’s Attorney of ten years in the State Penitentiary, suspend seven of that, and you’re going to have to serve three years.” ST 30-31. No where did the circuit court say that it would be bound to all terms of

---

<sup>3</sup> Ledbetter’s plea agreement was memorialized in writing, titled: “Petition to Plead Guilty and Statement of Factual Basis. *State v. Ledbetter*, 2018 S.D. 79, ¶ 5, 920 N.W.2d 760, 762.

the plea agreement. Therefore, it was free to order Myers sentence run consecutive to his Pennington County file.

This Court looks at the “words used during the proceeding” to determine whether the circuit “court implicitly agreed to be bound by the plea agreement[.]” *Ledbetter*, 2018 S.D. 79, ¶ 24, 920 N.W.2d at 766. At the change of plea hearing, the circuit court specifically asked Myers if he understood that the plea agreement was just a recommendation by the State and that it could impose the maximum sentence. CP 23-24. It also specifically informed Myers it was not bound by the plea agreement. CP 23-24. It further explained that it could order his sentence to run consecutive to the time he was already serving for his Pennington County criminal charges. CP 15. Nothing in the change of plea hearing nor sentencing hearing suggested that the circuit court was explicitly or implicitly bound by the agreement.

Since the plea agreement was not a binding plea agreement, the circuit court did not err when it ordered Myers’s sentence to run consecutive instead of concurrent. And because there is no err, there is no need to continue the plain-error analysis. *See Scott*, 2024 S.D. 27, ¶ 24, 7 N.W.3d at 329 (“We conclude the circuit court did not commit any error, and we need not consider the remaining three elements of the plain error test.”).

## II. MYERS WAS NOT ENTITLED TO CREDIT FOR TIME SERVED

Myers argues he was entitled to credit for the time he served while in prison. AB 16-18. He argues that since he was not parole eligible until he concluded his pending criminal matters, he was entitled to receive credit for the time that lapsed from when he reached out to the circuit court until he was sentenced. AB 16-18. But Myers was serving time in prison for a separate crime, it was not because he could not afford bond. Therefore, whether he received credit for that time was at the circuit court's discretion.

### A. *Standard of Review.*

Sentencing is at the discretion of the circuit court, unless there is a statutory or constitutional limitation. *State v. Ainsworth*, 2016 S.D. 40, ¶ 5, 879 N.W.2d 762, 764 (citing *State v. Sorenson*, 2000 S.D. 127, ¶ 14, 617 N.W.2d 146, 149). An abuse of discretion is “a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.” *State v. Seidel*, 2020 S.D. 73, ¶ 47, 953 N.W.2d 301, 317 (quoting *State v. Holler*, 2020 S.D. 28, ¶ 10, 944 N.W.2d 339, 342). This Court won't overturn a sentence, unless there is prejudicial error. *State v. Klinetobe*, 2021 S.D. 24, ¶ 26, 958 N.W.2d 734, 740 (citing *State v. Berget*, 2014 S.D. 61, ¶ 13, 853 N.W.2d 45, 52).

### B. *Myers was not entitled to credit for time served while he was in prison.*

When incarceration results from a defendant's inability to post bond, "the Fourteenth Amendment equal protection clause requires that credit be given for all presentence custody [that] results from indigency." *Ainsworth*, 2016 S.D. 40, ¶ 5, 879 N.W.2d at 764 (*Sorenson*, 2000 S.D. 127, ¶ 15, 617 N.W.2d at 149). And a defendant's indigent status can be established by the fact the court appointed him counsel. *Ainsworth*, 2016 S.D. 40, ¶ 5, 879 N.W.2d at 764 (citing *State v. Green*, 524 N.W.2d 613, 614 (S.D. 1994)). But "this due process exception is limited to instances in which a defendant's indigency prevents the defendant from paying the amount of a bond to obtain pretrial, or pre-revocation, liberty. In other words, it does not apply where the defendant is held without bond, creating a circumstance in which *no* defendant, indigent or not, may be released." *State v. Fuller*, 2024 S.D. 72, ¶ 39, 14 N.W.3d 614, 624 (citing *Sorenson*, 2000 S.D. 127, ¶¶ 21-23, 617 N.W.2d at 150-51).

Myers was in prison and denied parole because he had outstanding charges, including this case. ST 15. So he contacted the court and was appointed an attorney. ST 15. 409 days elapsed from the time he was denied parole until his sentencing hearing. ST 15. He argues because parole was denied due to his pending charge in this case, he should receive credit for that time. AB 16-18.

But Myers was not sitting in prison because he was indigent. He was in prison for his criminal conduct in Pennington County. Further,



his parole was not denied just because of the pending criminal charges, it was also denied because “not enough time has elapsed since [his] return to the institution on a violation.” AB App. 13.

As the circuit court correctly pointed out at sentencing, Myers was in prison for his crimes committed in Pennington County. ST 31. It also stated that if, for some reason, that time did not count towards his Pennington County case, it would reconsider giving Myers credit for time served on Hughes County case. ST 31-32.

Given that Myers was not in prison because he could not afford bond, but because he was serving time on a different conviction, he was not constitutionally entitled to credit for time served. Therefore, the circuit court did not abuse its discretion when it did not give him credit for time served.

### **CONCLUSION**

The State respectfully requests that Myers’s conviction and sentence be affirmed.

Respectfully submitted,

**MARTY J. JACKLEY**  
**ATTORNEY GENERAL**

/s/ Erin E. Handke

Erin E. Handke  
Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre, SD 57501-8501  
Telephone: (605) 773-3215  
E-mail: atgservice@state.sd.us

### **CERTIFICATE OF COMPLIANCE**

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 2,255 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 16th day of October 2025.

/s/ Erin E. Handke

Erin E. Handke

Assistant Attorney General

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 16, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Israel James Myers* was served electronically through Odyssey File and Serve on David W. Siebrasse at siebrasse@pie.midco.net.

/s/ Erin E. Handke

Erin E. Handke

Assistant Attorney General

---

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

Appeal No. 31071

---

STATE OF SOUTH DAKOTA,  
Appellee,

vs.

ISRAEL MYERS,  
Appellant.

---

APPEAL FROM THE CIRCUIT COURT  
OF THE  
SIXTH JUDICIAL CIRCUIT  
HUGHES COUNTY, SOUTH DAKOTA

---

HONORABLE CHRISTIE KLINGER, CIRCUIT COURT JUDGE

---

---

APPELLANT'S REPLY BRIEF

---

MARTY JACKLEY	CASEY DEIBERT
Attorney General	Hughes County State's Attorney
and ERIN HANDKE	104 East Capitol Avenue
Assistant Attorney General	Pierre, SD 57501
State of South Dakota	Telephone (605) 773-7462
1302 East Highway 14, Suite 1	
Pierre, South Dakota 57501	Telephone: (605) 773-3215

DAVID W. SIEBRASSE  
Attorney for Appellant  
Post Office Box 118  
Pierre, South Dakota 57501  
Telephone: (605) 224-8111

---

Notice of Appeal Filed April 30, 2025

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF CONTENTS.....	II
TABLE OF AUTHORITIES.....	III
PRELIMINARY STATEMENT.....	1
JURISDICTIONAL STATEMENT.....	1
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE FACTS AND CASE.....	2
STANDARD OF REVIEW.....	12
ARGUMENT AND AUTHORITY	
ISSUE I: THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT SAID AT SENTENCING THAT IT WAS GOING TO HONOR THE PLEA AGREEMENT MADE WITH THE STATES ATTORNEY BUT THEN FALED TO FOLLOW THE PORTION OF PARAGRAPH 11(A)(4) OF THE PLEA AGREEMENT TO RUN THE HUGHES COUNTY SENTENCE CONCURRENT WITH APPELLANT'S EXISTING PENNINGTON COUNTY SENTENCE APPELLANT WAS SERVING IN THE STATE PENITTENTIARY. .....	2
ISSUE II: THE TRIAL COURT COMMITTED REVERSBILE ERROR WHEN IT FAILED TO GRANT APPELLANT CREDIT FOR TIME SERVED TOWARDS THE SENTENCE WHEN HIS PAROLE WAS DENIED DUE TO THE EXISTENCE OF THE PENDING HUGHES COUNTY CHARGES. .....	5
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	7
APPENDIX TABLE OF CONTENTS.....	NONE

## TABLE OF AUTHORITIES

<b>CASES</b>	<b>PAGE</b>
<u>State v. Hale</u> , 2018 S.D. 9.....	4-5
<u>State v. Lohnes</u> , 344 N.W.2d 686 (S.D. 1984).....	4
<u>State v. Waldner</u> , 2005 S.D. 11, 692 N.W.2d 187.....	4
<u>State v. Howard</u> , 630 N.W.2d 244 (Wis. Ct. App. 2001) .	4-5
<u>Brewer II v. Starcher</u> , 465 S.E.2d 185 (W.Va. Sup. Ct. 1995) .....	4
<u>Santobellow v. New York</u> , 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971).....	5

<b>STATUTES</b>	<b>PAGE</b>
SDCL 23A-7-9.....	3,
SDCL 23A-7-10.....	3,
SDCL 23A-7-11.....	3, 4, 5

<b>OTHER AUTHORITIES</b>	<b>PAGE</b>
NONE	

**PRELIMINARY STATEMENT**

For purposes of brevity and clarity, the Appellant will use the following abbreviations throughout this brief:

Israel Myers, Appellant.....Appellant/Defendant  
The Honorable Christie Klinger, Circuit Court  
Judge.....Trial Court  
State of South Dakota.....State  
Appendix.....APP

The Settled Record consists of Hughes County file number 32CRI23-000584. It will be cited as "SR" followed by the page number(s) of the page(s) cited. The exhibits will be referred to as "EX" followed by the exhibit number, and, where applicable, a short description of a document included within the exhibit.

Finally, the transcripts referred to in this brief will be cited in the following manner followed by the page number(s):

Change of Plea, January 8, 2025.....COP  
Sentencing, March 28, 2025.....SENT

**JURISDICTIONAL STATEMENT**

Appellant will rely upon his jurisdictional statement in his Appellant's Brief.

**STATEMENT OF THE ISSUES**

Appellant will rely upon his statement of the issues and most relevant cases and most relevant statutes in Appellant's Brief.

### STATEMENT OF THE CASE

Appellant will rely upon his statement of the Case in his Appellant's Brief.

### STATEMENT OF THE FACTS

Appellant will rely upon his original statement of facts concerning the allegations against him and this Reply Brief.

### STANDARD OF REVIEW

Appellant will rely upon his standard of review set forth in his Appellant's Brief.

### ARUGUMENT AND AUTHORITY

**ISSUE I: THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT SAID AT SENTENCING THAT IT WAS GOING TO HONOR THE PLEA AGREEMENT MADE WITH THE STATES ATTORNEY BUT THEN FALED TO FOLLOW THE PORTION OF PARAGRAPH 11(A)(4) OF THE PLEA AGREEMENT TO RUN THE HUGHES COUNTY SENTENCE CONCURRENT WITH APPELLANT'S EXISTING PENNINGTON COUNTY SENTENCE APPELLANT WAS SERVING IN THE STATE PENITTENTIARY.**

The State argues that the Trial Court was not bound by the plea agreement due to the canvassing during the change of plea hearing. See Appellee's Brief pages 4-8. However, Appellant argues that once the Trial Court said at sentencing, "I'm going to honor the plea agreement", all the statements made by the Court at the change of plea hearing of imposing a different sentence or the maximum sentence were no longer applicable. Since the Trial Court

deviated from the recommendation of the State to impose a concurrent sentence, the Defendant's rights were violated. See SDCL 23A-7-9. SDCL 23A-7-9 requires the Court to either accept the plea agreement or if rejecting it, follow specific procedures protecting the Defendant's rights. Defendant submits that if the Trial Court saying "going to honor the plea agreement" meant that the Court was accepting the plea agreement as it applied to the State's recommendations and the Court was required to "embody in the judgment and sentence the disposition provided for in the plea agreement." SDCL 23A-7-10.

If the Trial Court did not mean it was going to order that the sentence for the Hughes County matter be ordered to run concurrent with Appellant's existing state penitentiary sentence from Pennington County file 52CRI22-1225 by saying "I'm going to honor the plea agreement", then Defendant should have been allowed the opportunity to withdraw his guilty plea. SDCL 23A-7-11 requires that if the Court is rejecting any part of the plea agreement that it must inform the parties on the record that it rejects the agreement, advise the defendant personally that the court is not bound by the agreement and afford the defendant the opportunity to withdraw his guilty plea. At the sentencing hearing, this was not done and therefore,



the consecutive sentence was in violation of the Trial Court's statement of "going to honor the plea agreement". These statutory protections are mandatory. They exist because a defendant's guilty plea must be knowing, intelligent and voluntary, and a plea premised on a particular sentencing outcome cannot be voluntary if the court says it is going to "honor the plea agreement" and then imposes a sentence inconsistent with the agreed upon recommendation from the State or giving the Defendant the opportunity to withdraw his guilty plea pursuant to SDCL 23A-7-11.

These statutory protections are mandatory. They exist because a defendant's guilty plea must be knowing, intelligent, and voluntary, and a plea premised on a particular sentencing outcome or recommendation cannot be voluntary if the court accepts the plea but then imposes a sentence inconsistent with the agreement without granting withdrawal.

As stated in State v. Hale, 2018 S.D. 9, Para 19:

In State v. Lohnes, we explained that "the duty of the state to perform its part of a plea bargain applies with equal force to the trial court{.}" 344 N.W.2d 686, 688 (S.D. 1984); accord Brewer II v. Starcher, 465 S.E.2d 185, 192-92 (W.Va. Sup.Ct. 1995). Indeed, "once the defendant has given up his 'bargaining chip' by pleading guilty, due process requires that the defendant's expectations be fulfilled." State v. Waldner, 2005 S.D. 11, Para 13, 692 N.W.2d 187, 191 (quoting State v. Howard, 630 N.W.2d 244,

250 (Wis.Ct.App. 2001) see Santobellow v. New York, 404 U.S. 257, 261-62, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971).

Because the Court said it was going to honor the plea agreement, Defendant submits he is entitled to specific performance of the plea agreement by the Hughes County sentence being imposed concurrently to the Pennington County sentence. The Judge's failure to comply with statute deprived the Defendant of a substantive right designed to protect the voluntariness of the plea. The Trial Court's was bound to impose a concurrent sentence when it stated, "I'm going to honor the agreement that you made with the State's attorney of ten years in the State Penitentiary, suspend seven of that, and you're going to have to serve three years." SENT 30:23-31:1. If it was going to impose a consecutive sentence, Defendant should have been advised of that and given a chance to withdraw his guilty plea pursuant to SDCL 23A-7-11. Since this was not done, the Defendant is entitled to specific performance of the plea agreement or the opportunity to withdraw his guilty plea.

**ISSUE II: THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO GRANT APPELLANT CREDIT FOR TIME SERVED TOWARDS THE SENTENCE WHEN HIS PAROLE WAS DENIED DUE TO THE EXISTENCE OF THE PENDING HUGHES COUNTY CHARGES.**

Appellant is going to rely upon his arguments and authority in his original Brief concerning this issue and urges the Court to remand the matter back to the Trial Court with the specific instruction that his 409 days should be credited as time served for the Hughes County matter since his parole was denied because of the pending Hughes County charges.

### **CONCLUSION**

WHEREFORE, for the above and foregoing reasons, Appellant respectfully requests this Court reverse the Trial Court and order that Appellant receive four hundred nine (409) days credit toward the Hughes County sentence and that said sentence run concurrent to Appellant's sentence in Pennington County file 51CRI22-1225.

Respectfully submitted this 17<sup>th</sup> day of November, 2025.

SIEBRASSE LAW OFFICE, P.C.

**David W. Siebrasse**

David W. Siebrasse  
Attorney for Appellant  
P.O. Box 118  
Pierre, SD 57501  
(605) 224-8111  
siebrasse@pie.midco.net

**CERTIFICATE OF SERVICE**

David W. Siebrasse, Attorney for Appellant, Israel Myers, hereby certifies that electronically served and also mailed one true and correct copy of the Appellant's Reply Brief by first class mail, postage fully prepaid, upon and emailed to:

MARTY JACKLEY  
and ERIN HANDKE  
Assistant Attorney General  
State of South Dakota  
1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501

CASEY DEIBERT  
Hughes County State's Attorney  
104 East Capitol Avenue  
Pierre, South Dakota 57501

Dated this 17<sup>th</sup> day of November, 2025.

SIEBRASSE LAW OFFICE, P.C.

**David W. Siebrasse**

David W. Siebrasse  
Attorney for Appellant  
P.O. Box 118  
Pierre, SD 57501  
(605) 224-8111  
Siebrasse@pie.midco.net