

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 30840

STATE OF SOUTH DAKOTA
Plaintiff/Appellee

vs.

PHILIP CHIPS
Defendant/Appellant

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

HONORABLE CRAIG PFEIFLE, CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

In accordance with *State v. Korth*, 2002 S.D. 101, 650 N.W.2d 528, and
State v. Arabie, 2003 S.D. 57, 663 N.W.2d 250

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Notice of Appeal was filed on September 16, 2024.

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PRELIMINARY STATEMENT

Throughout this Brief, Philip Chips, will be referred to as “Mr. Chips” or “Appellant.” The State of South Dakota will be referred to as “State.” References to documents in the record herein will be designated as follows:

- Arraignment Transcript (October 19, 2023).....ARR
- Non-Evidentiary Motions Hearing (November 16, 2023)...MH
- Status Hearing (February 22, 2024) . . . SH
- Change of Plea Hearing Transcript (June 20, 2024) . . . COP
- Sentencing Hearing (August 12, 2024) . . . SENT

In filing this brief, counsel has attempted to follow the guidelines this Court discussed in *State v. Korth*, 2002 S.D. 101, 650 N.W.2d 528, and *State v. Arabie*, 2003 S.D. 57, 663 N.W.2d 250. *Korth* adopted the procedures set forth in *State v. Balfour*, 814 P.2d 1069 (Ore. 1991), regarding criminal appeals that present no meritorious issues. Additionally, *Arabie* sets forth the governing standards for the filing of a “*Korth* brief.” *Arabie*, 2003 S.D. 57 at ¶¶ 8-18, 663 N.W.2d at 254-56. Counsel has identified no arguably meritorious issues for appeal in spite of a thorough examination of the record. If, however, the Court should find any arguably meritorious issues, counsel respectfully requests that he be afforded the opportunity to file a supplemental brief to address the same. *See Korth*, 2002 S.D. 101, ¶ 16, n.16, 650 N.W.2d at 535.

Regarding Part B of this *Korth* brief, Counsel for the Appellant contacted Mr. Chips, provided reasonable opportunity to identify a claim of error, but Mr. Chips did not identify any claim of error for inclusion in this brief. *See Korth*, 2002 S.D. 101 n.6.

JURISDICTIONAL STATEMENT

Mr. Chips appeals from the Judgment entered by the Honorable Craig Pfeifle in the Seventh Judicial Circuit, on September 5, 2024. Notice of Appeal was timely filed on September 16, 2024. This Court has jurisdiction over this matter pursuant to SDCL § 23A-32-2.

SECTION A

STATEMENT OF FACTS AND CASE HISTORY

Chips was alleged to have stabbed Michael White to death on September 15, 2023, in Rapid City, South Dakota. He made his initial appearance on the charge on September 19, 2023. At that hearing, he was fully advised of his rights, the elements of the charged offense, the pleas available to him, and the maximum penalties available at law.

Subsequent to his initial appearance, Chips was charged by indictment with one count of first degree murder. He was arraigned on that charge on October 19, 2023.

At that hearing, Chips was advised of his right to court appointed counsel, to remain silent, to confront his accusers, and to a speedy public jury trial. ARR 2-3. He was also advised of the State's burden of proof, ARR 2, the maximum penalties he faced, ARR 9, and the pleas available to him, ARR 4. Chips was personally addressed by the court, and in that colloquy the court established that Chips was 50 years old, reads and writes English, was not under the influence of any substances that interfered with his ability to concentrate, and had a copy of the indictment. ARR 8. Present counsel was with Chips during the arraignment, and the court had the State read the indictment out loud to Chips. ARR 8. Based on counsel's request, after the afore-mentioned

advisement, the court entered a not guilty and not guilty by reason of insanity plea on Chips' behalf. ARR 9-10.

On October 3, 2023, Chips counsel filed an ex parte Motion for Appointment of Psychologist for Competency and Liability Evaluation. The court granted that motion and issued an order authorizing funding for the endeavor (October 3, 2023). As a result, Dr. Tricia Aiken was appointed to conduct a competency and sanity/liability evaluation.

On November 16, 2023, a standard non-evidentiary motions hearing was held in Chips' case. Chips and counsel were present. The court issued its rulings regarding various discovery and pre-trial matters at the hearing.

On February 22, 2023, a status hearing was held. Chips and counsel appeared via video from the jail. At that hearing, Chips' counsel advised the court and State that, based on the results of the afore-mentioned evaluation, Chips would not be tendering either an insanity defense or asserting that he was incompetent to stand trial. SH 2-3. At the hearing the State also provided formal notice that it was not seeking the death penalty in Chips' case. SH 3. A trial date was set at a time requested by Chips' counsel. SH 3-4.

On June 7, 2024, the State offered Chips a plea agreement wherein he would plead guilty to an information alleging the offense of first degree manslaughter. The State further offered that, in exchange for Chips' plea, it would cap its request for prison time at 25 years. That offer was memorialized in a letter dated June 7, 2024, which was filed with the court on June 20, 2024.

On June 20, 2024, a change of plea hearing was held. Chips was present with counsel. The court went through the terms of the plea agreement with Chips, that he had seen the June 7, 2024, plea letter, and confirmed that Chips understood the agreement.

COP 2. Because Chips was pleading to a new charge, the court advised him of his right to a preliminary hearing and probable cause determination on the charge, and accepted Chips' waiver of that right. COP 3. The court then re-advised Chips of all his statutory and constitutional rights, including the right to court-appointed counsel, a jury trial in Pennington County, to confront his accusers, to testify in his own defense or to remain silent, and advised him of the State's burden of proof. COP 3-4. The court also advised Chips of the pleas available to him, the maximum penalties for the new charge, and that the plea agreement was a recommendation by the parties but not binding on the court. COP 5-6.

After the advisement and arraignment on the new charge, Chips entered a guilty plea to the charge of first degree manslaughter. COP 7. And, Chips provided an oral statement of facts supporting the elements of the plea, to wit that he recklessly but without a design to kill Michael White, did cause White's death by stabbing him with a knife, in Pennington County. COP 7-9. The court also considered the autopsy report and the grand jury transcript in support of Chips' guilty plea. At the conclusion of the hearing, the court made findings that Chips' plea was intelligent and voluntary, that he was freely and voluntarily waived his trial rights, and that it would accept his guilty plea. COP 9. Chips was then adjudicated to be guilty of the manslaughter charge. COP 10. A pre-sentence investigation was ordered, and a sentencing date set. COP 10.

Sentencing was held on August 12, 2024. The court noted that it had reviewed the pre-sentence report (PSR) and its attachments, which included the psychological evaluation conducted by Dr. Aiken. SENT 3. Prior to imposition of sentence, Chips stated that he felt that "something ain't right." The court determined that there was no

legal reason not to proceed, even though Chips felt uncomfortable being at the hearing. SENT 4. The court allowed both parties and Chips an opportunity to speak and call witnesses if they chose to do so. SENT 5-11. Chips' counsel outlined mitigating facts, SENT 8-10, and Chips personally addressed the court, SENT 10-11.

After presentations by the parties and Chips, the court identified various aggravating and mitigating sentencing factors. SENT 12-14. The court then imposed a 25 year prison sentence, with Chips receiving credit for time served awaiting resolution of the case. SENT 14.

STATEMENT OF COUNSEL

1. This brief is being submitted pursuant to *State v. Korth*, 2002 S.D. 101, 650 N.W.2d 528, and *State v. Arabie*, 2003 S.D. 57, 663 N.W.2d 250.
2. Counsel has thoroughly reviewed the record in this case.
3. Counsel was Appellant's attorney throughout the proceeding before the circuit court.
4. Counsel has discussed this case and any and all possible appellate issues with Appellant.
5. Counsel has identified no arguably meritorious issues for appeal.
6. Counsel advised Appellant that he has identified no arguably meritorious issues for appeal. Nonetheless, Appellant indicated his desire to proceed with the appellate process.

SECTION B

STATEMENT OF APPELLANT

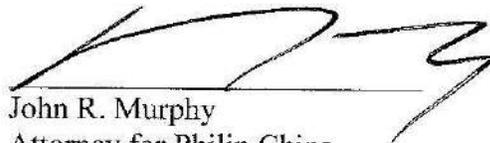
Appellant Chips, after being advised that counsel had not identified any meritorious appellate issues, and after being advised he had the right to submit his own statement for the Court's consideration of issues that he believe warranted an appeal, provided the following statement¹:

Reason to Appeal: Would it be better in my interest to plead to no contest because this was self defense not intentional. I know my actions costed a life but my actions were not my intentions. I never wanted to hurt nobody. I just was scared and felt my life was in danger. All I'm asking is to change my plea to no contest. I feel like I was given way to much time. Like I said something really is not right. I wanna stand trial if I have to. I've never been in trouble like this before. I feel like a suspended sentence and time on probation to prove I'm not this kind of person would be more of the right sentence for me. Thank you.

Sincerely, Philip Chips.

Dated this 18 day of November, 2024.

MURPHY LAW OFFICE, P.C.



John R. Murphy
Attorney for Philip Chips
328 E. New York Street, Suite 1
Rapid City, SD 57701
(605) 342-2909

¹ The original, hand-written statement by Mr. Chips has been reproduced in the addendum.

CERTIFICATE OF COMPLIANCE

I certify that Appellant's Brief is within the limitation provided for in SDCL 15-26A- 66(b) using Times New Roman typeface in 12-point type. Appellant's Brief contains approximately 1595 words and 6 pages. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated November 18, 2024.



John R. Murphy
328 E. New York St., Ste. 1
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 18, 2024, a true and correct copy of Appellant's Brief in the matter of The State of South Dakota v. Philip Chips, was served via electronic mail upon the individuals listed below:

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And served via United States Postal Service to:

Philip Chips #76833
SD State Penitentiary
PO Box 5911
Sioux Falls, SD 57117

Dated November 18, 2024.



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JUDGMENT OF CONVICTION 1-2

STATEMENT OF APPELLANT 3

Check if applicable:

- The sentence shall run concurrent with ____.
- The sentence shall run consecutive to ____.

- That Defendant pay court costs of \$116.50.
- That Defendant's attorney's fees will be a civil lien pursuant to SDCL 23A-40-11.
- That Defendant pay prosecution costs: UA \$ __, Drug Test \$ __, Blood \$ __, SART Bill \$ __; Transcript \$78.40.
- That Defendant pay prosecution costs from dismissed file __: UA \$ __, Drug Test \$ __, SART Bill \$ __; Blood \$ __, Transcript \$ __.
- That Defendant pay the statutory fee of \$ __ DUI, \$ __ DV.
- That Defendant pay fines imposed in the amount of \$ __.
- That the Defendant pay restitution through the Pennington County Clerk of Courts in the amount of \$ __ to __.

Other Conditions:

- _____
- _____

Pursuant to SDCL 22-6-11, a Court shall sentence a Defendant convicted of a Class 5 or Class 6 felony to a term of probation unless the Court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation; and the Court having found the following aggravating factors exist justifying a deviation, to-wit:

- | | |
|--|---|
| <input type="checkbox"/> Failure to comply with terms of probation | <input type="checkbox"/> Criminal history |
| <input type="checkbox"/> Poor performance on bond | <input type="checkbox"/> Multiple files |
| <input type="checkbox"/> Escalating behavior | <input type="checkbox"/> Picking up new files while on bond |
| <input type="checkbox"/> Failure to accept responsibility | <input type="checkbox"/> On Parole when committed offense |
| <input type="checkbox"/> _____ | |

Pursuant to agreement of the parties, the State's Attorney is dismissing all remaining counts to include any Part II information, if applicable.


 Amber Watkins, Clerk of Courts
 By  Deputy

BY THE COURT:



 HON. CRAIG A. PFEIFLE CIRCUIT JUDGE



You are hereby notified you have a right to appeal as provided for by SDCL 23A-32-15. Any appeal must be filed within thirty (30) days from the date that this Judgment is filed.

FILED
 Pennington County, SD
 IN CIRCUIT COURT

SEP 05 2024

Amber Watkins, Clerk of Courts
 By  Deputy

Requesting

Reason to appeal

Would it be better in my interest to plead to no contest because this was self defense not intentional, I know my actions costed a life but my actions were not my intentions. I never wanted to hurt nobody, I just was scared and felt my life was in danger. All Im asking is to change my plea to no contest

I feel like I was given way to much time, like I said something really is not right

I wanna stand trial if I have to. I've never been in trouble like this before.

I feel like a suspended sentence and time on probation to prove Im not this kind of person would be more of the right sentence for me. thank you

Sincerely Philip Chips

IN THE SUPREME COURT
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No. 30840

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

PHILIP ANDREW CHIPS,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE CRAIG A. PFEIFLE
Circuit Court Judge

APPELLEE'S BRIEF

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AND APPELLANT

Notice of Appeal filed September 16, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30840

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

v.

PHILIP ANDREW CHIPS,
Defendant and Appellant.

PRELIMINARY STATEMENT

Throughout this brief, Defendant and Appellant, Philip Andrew Chips, will be called “Chips.” Plaintiff and Appellee, State of South Dakota, will be called “State.” All other individuals will be referred to by name. The settled record in the underlying criminal case, *State of South Dakota v. Philip Andrew Chips*, Pennington County Criminal File No. 23-3769, will be called “SR.” Any reference to Chips’ brief will be designated as “CB.” The various transcripts will be cited as follows:

- Arraignment Hearing – October 19, 2023..... AH
- Status Hearing – February 22, 2024..... Status
- Change of Plea Hearing – June 20, 2024..... CPH
- Sentencing Hearing – August 12, 2024 SH

All such references will be followed by the appropriate page designation as well as citation to the settled record.

JURISDICTIONAL STATEMENT

On September 5, 2024, the Honorable Craig A. Pfeifle, Circuit Court Judge, Seventh Judicial Circuit, entered a Judgment of Conviction in *State of South Dakota v. Philip Andrew Chips*, Pennington County Criminal File No. 23-3769. SR:225-26. Chips filed his Notice of Appeal on September 16, 2024. SR:229. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

PART A

PURSUANT TO *STATE V. KORTH*, CHIPS' COUNSEL DID NOT RAISE ANY ISSUES IN HIS BRIEF.

Chips' attorney has filed a brief pursuant to *State v. Korth* stating that the attorney did not find any arguably meritorious issues to appeal. 2002 S.D. 101, 650 N.W.2d 528; CB:5. Pursuant to *Korth* and *State v. Arabie*, the State concurs with counsel that there are no arguably meritorious issues raised on this record. 2002 S.D. 101, 650 N.W.2d at 528; 2003 S.D. 57, 663 N.W.2d 250; CB:5. Should this Court identify any arguably meritorious issues for appeal, the State will comply with any directions issued. *See Arabie*, 2003 S.D. 57, ¶ 19, 663 N.W.2d at 256.

PART B

I

WHETHER CHIPS CAN CHANGE HIS GUILTY PLEA TO NO CONTEST?

The circuit court did not rule on this issue.

SDCL 23A-27-11

State v. Carter, 2023 S.D. 67, 1 N.W.3d 674

II

WHETHER THE CIRCUIT COURT PROPERLY SENTENCED CHIPS?

The circuit court sentenced Chips to 25 years in prison for the First Degree Manslaughter of Michael White.

State v. Mitchell, 2021 S.D. 46, 963 N.W.2d 326

State v. Peltier, 2023 S.D. 62, 998 N.W.2d 333

STATEMENT OF THE CASE

The State filed a Complaint against Chips in September 2023 alleging one count of First Degree Murder violating SDCL 22-16-4(1). SR:1. Chips entered a plea agreement in June 2024 where he pled to one count of First Degree Manslaughter, violating SDCL 22-16-15, in exchange for the State dismissing the murder charge and recommending a 25-year prison sentence. *Id.* at 101; CPH:2. After an August 2024 Sentencing Hearing, the circuit court entered a Judgment in September 2024 sentencing Chips to 25 years in prison. SR:225-26; SH:14.

STATEMENT OF FACTS

The investigation of Michael White's death by Rapid City police began when a Montana Dakota Utilities Company worker called dispatch in September 2023. SR:141. The worker saw White lying in a field between Rapid Creek to the north and the intersection of Omaha and 1st Street to the south. *Id.* at 125. Law enforcement arrived at about 9:30 a.m. and observed Michael flat on his back with his arms at his sides. *Id.* at 125, 141. An officer checked Michael's pulse and found that he was cold and obviously dead. *Id.* at 126. Law enforcement discovered Michael had a stab wound in the lower left side of his abdomen below his rib cage, which had a large amount of yellow body fat spilling from it. *Id.* at 141. He also had dried blood on his abdomen. *Id.* A single puncture in his shirt matched the area and size of the stab wound. *Id.* at 126.

Law enforcement set up a perimeter around the crime scene. *Id.* at 125. They found a kitchen knife with a black handle and 6-inch silver blade about 5 yards from Michael's corpse. *Id.* at 126, 141. Law enforcement placed a traffic cone by the knife, which had body fat on the blade matching that hanging from Michael's wound. *Id.* The officers eventually took the knife into evidence, as well as a black backpack found near Michael that had men and women's clothing, hygiene products, and ten cell phones in it. *Id.* They transported Michael to the hospital for an autopsy, where his cause of death was

found to be the stab wound having punctured his abdominal aorta, causing him to bleed to death. *Id.* at 141, 175.

An officer familiar with the Rapid City homeless population identified Michael at the crime scene. *Id.* at 126. The officer knew that Michael often spent time with his stepbrother Craig Returns From Scout and a woman named Jordan Buckman, who were also homeless. *Id.* at 127, 155. Law enforcement also knew from an unwanted subject call at about 7:00 a.m. that morning that Craig and Jordan were recently seen together at 36 East Chicago Street. *Id.* at 127. During the investigation of the crime scene, Jordan arrived and asked if Michael was dead. *Id.* at 125. Jordan agreed to an interview and law enforcement transported her to the Public Safety Building in a patrol vehicle. *Id.* Meanwhile, officers located Craig in a nearby alleyway and took him in for questioning at the Public Safety Building, though he was intoxicated and blew a .238. *Id.* at 127. Officers also obtained a security video from 36 East Chicago Street which showed Craig, Jordan, and an unidentified Native American male arriving at the address and going to sleep on the porch. *Id.* at 141, 147.

As law enforcement left the crime scene with Jordan, another homeless individual, Benjamin Kills In Water, flagged down the patrol vehicle. *Id.* at 151. Benjamin informed law enforcement that he camped about 50 yards from the crime scene the night prior and saw Michael with Jordan and a man named "Philip from Rosebud." *Id.*

Benjamin reported that he heard arguing and yelling coming from their campsite at about 3:00 a.m., and that Michael said things like “just kill me then” and “I have bad sprits in me.” *Id.* Michael yelled at Benjamin when he asked them to quiet down, but eventually they moved farther away from him. *Id.* Benjamin also said the man with Michael and Jordan introduced himself as “Philip Little Thunder.” *Id.*

During the search for the unknown Philip, interviews with Jordan and Craig took place. *Id.* at 142. At about 3:30 p.m., Jordan agreed to an interview after being given a *Miranda* warning, and she told law enforcement she was in an on-again-off-again relationship with Michael. *Id.* She and Michael had set up camp to sleep in the field north of 1st and Omaha the previous night when a man approached after dark and asked if he could sleep near them. *Id.* She did not know the man’s name, but he told her he was from Kyle. *Id.* She described him as having crooked and missing teeth and wearing a black hat and glasses. *Id.* Jordan relayed that she agreed to let the man sleep near them. *Id.* He laid down, but after a few minutes asked to move because the location smelled like urine. *Id.*

The trio got up and moved to another part of the field. *Id.* Michael, who was intoxicated, then became cruel toward Jordan and began yelling at and hitting her. *Id.* She told the officers he sometimes behaved this way when drinking. *Id.* Jordan claimed she then got up and left Michael at the field, but the unknown man followed her and

asked if Michael treated her that way often. *Id.* When she said he did, the man went back toward Michael, but she kept walking away. *Id.* Soon after, the man caught back up with her and told her he stabbed Michael. *Id.* Jordan said she kept walking not only because she did not believe him when he said this, but also because she knew someone who had been stabbed and was fine, and because she was mad at Michael. *Id.* Jordan claimed not to remember anything after that until law enforcement located her and Craig the next morning at 36 East Chicago Street. *Id.* When asked why she had approached the crime scene inquiring if Michael died, Jordan responded that it was because of what the man told her the night before. *Id.* She drew a map for law enforcement showing where she had been, moved to, and walked after leaving the field. *Id.* She concluded by stating a woman named “Weezy,” whose real name is Katy Medicine Eagle, and a man named “James,” whose real name is Glennard Gunn, could verify her story. *Id.*

At about 5:00 p.m., law enforcement read Craig his *Miranda* warning and he agreed to an interview.¹ *Id.* Craig relayed that he knew Jordan from the streets and that the night prior she woke him up from sleeping behind Time Square Liquor. *Id.* at 143. A male whom Craig did not know was with her when she did this. *Id.* Craig described the male as wearing glasses, a blue sweatshirt, dark pants, and a small

¹ The record shows that this was Craig’s first interview of two. SR:143-44. Law enforcement also brought him in for questioning regarding the unrelated death of Glennard “James” Gunn, who was killed the same morning as Michael. *Id.*

backpack. *Id.* Jordan invited Craig to sleep at 36 East Chicago Street, and he went with her and the unknown male. *Id.* at 141, 143.

Law enforcement began looking for the unidentified male. *Id.* They located a “Philip Little Thunder” in a database but discovered he passed away. *Id.* at 151. But in the video obtained from 36 East Chicago Street, audio revealed that Jordan called the unidentified male “Kermit.” *Id.* Law enforcement retrieved still photos from the video depicting the unknown male. *Id.* at 143, 148. Law enforcement later located a man walking on the bike path who matched Craig and Jordan’s descriptions, as well as the 36 East Chicago Street still photos. *Id.* at 143, 183, 215. When officers called out “Kermit,” Chips looked back. *Id.* at 143. Law enforcement arrested Chips and brought him to the Public Safety Building. *Id.* at 139, 143. They identified him as Philip Chips from his tribal identification card. *Id.* at 139.

While with law enforcement, Chips slurred his speech and smelled of alcohol. *Id.* at 139, 156. Officers put Chips in an interview room, but when they briefly stepped out he turned off the light and tried to sleep on the floor. *Id.* at 128. They told Chips he had to keep the light on, and served him with a Search Warrant. *Id.* at 128, 182-83. Forensic examiners processed Chips by photographing him, collecting his clothing and possessions, and searching him for biological evidence. *Id.* at 128, 183. Chips behaved aggressively toward the examiners. *Id.* at 139, 156. Chips said, “I don’t bother no one, and when they bother

me I take care of them,” and “I have nothing to hide.” *Id.* at 128. After processing, law enforcement took Chips to a detox center before interviewing him. *Id.* at 139.

Two days after Chips’ arrest, employees at the detox center called law enforcement to come retrieve him. *Id.* Officers located Chips exiting the center and arrested him. *Id.* They transported Chips to the Public Safety Building, read him his *Miranda* warning, and interviewed him at about 1:00 p.m. *Id.* at 145. The interview began by telling Chips there had been an assault between a male and female, but he said he did not remember it. *Id.* Chips said he had recently been sleeping at Maplewood Apartments with family members. *Id.* He also described staying with his mother in Manderson before coming to Rapid City, and sleeping in bushes near Roosevelt Park. *Id.* When again asked about the assault, Chips said he saw a male treating a female badly, but he walked away because he did not want to be involved. *Id.* Chips explained where he saw the male and female and drew a map that depicted the same area Jordan said she was at with Michael and an unknown male. *Id.*

When law enforcement pressed Chips about the male who treated the female poorly, he described Michael as being in his 20s, but didn’t know more because it was dark. *Id.* When asked about moving sleeping locations due to the smell of urine, Chips agreed he did, but ultimately left the location after Michael became abusive. *Id.* He also

described drinking with Michael and Jordan. *Id.* Chips denied seeing any weapons and said after he left he went elsewhere, went to sleep, woke up, and had breakfast. *Id.* He said he then went to the area of M Hill before continuing down the bike path before being arrested. *Id.* Law enforcement explained that Jordan told them Chips tried to help her. *Id.* Chips responded she tried to leave with him, but he left by himself. *Id.* He offered without prompting that he heard at detox that someone had been stabbed. *Id.*

Law enforcement confronted Chips about being dishonest, and eventually he said he would be done with the lies. *Id.* at 146. Law enforcement showed Chips a still photo of him at 36 East Chicago Street, and Chips agreed it was him. *Id.* Law enforcement then asked why the video the still photo came from showed him with Jordan when he said he left without her. *Id.* After continuing to press him on the truthfulness of his story, Chips eventually admitted he stabbed Michael. *Id.* at 146, 156. He demonstrated stabbing Michael by taking a pen and jabbing it out in front of him. *Id.* He did not remember where he got the knife, but thought it was sitting at the scene of the attack. *Id.* Chips explained Michael fell right after the stabbing, which was a single stab with his right hand. *Id.* Chips said he left with Jordan, who he met only that night, but they split up after being at 36 East Chicago

Street.² *Id.* He concluded the interview by expressing relief that law enforcement knew the truth of what happened. *Id.*

The State charged Chips with First Degree Murder the day after his interview, and he initially pled not guilty and not guilty by reason of insanity. *Id.* at 1; AH:10. But after a psychological evaluation deemed him competent, Chips withdrew his insanity plea. Status:2; CPH:10. The State eventually offered to recommend a 25-year sentence and drop the murder charge in exchange for Chips' guilty plea to First Degree Manslaughter. CPH:2, 7; SR:101. Chips accepted the offer and pled guilty. CPH:2, 7. The circuit court found a factual basis existed and accepted Chips' plea. *Id.* at 8-10.

At sentencing, the Court found no legal reason not to move forward despite Chips expressing his discomfort with the situation. SH:4. The circuit court outlined that it had read and heard statements from Chips, and it listened to arguments from counsel. *Id.* at 3-9. It also reviewed Chips' PSI report and all the attachments to it, including a psychological evaluation. *Id.* at 3, 12-14. Chips claimed that he did not feel good about proceeding because, in his eyes, he acted in self-defense. SH:4-5. But his attorney explained that Chips was highly impressionable and had come to believe that having felt any fear when

² About four months later, law enforcement investigated a Pennington County Jail inmate tip. SR:169-70. The inmate claimed Chips told him he had met Jordan in the streets weeks before killing Michael, and they conspired to kill Michael together. *Id.* at 170. The inmate said he told the officers these things to get it off his conscience and wanted nothing in return. *Id.* at 171.

he stabbed Michael meant that he had acted in self-defense. *Id.* at 8-9. Counsel offered that given what Chips admitted to and maintained factually, no self-defense claim could reasonably be made. *Id.* at 9. The circuit court highlighted Chips' fear in anticipating his sentence. *Id.* at 11-12. It noted that the maximum available sentence for First Degree Manslaughter was life imprisonment. *Id.* at 13. It also discussed Chips having claimed self-defense in his PSI interviews despite entering a guilty plea, and how the circuit court's interpretation of that was Chips wanting to distance himself from his actions and not take full responsibility. *Id.* at 13-14. The circuit court ultimately sentenced Chips to 25 years imprisonment. *Id.* at 14.

ARGUMENTS

PART A

PURSUANT TO *STATE V. KORTH*, CHIPS' COUNSEL DID NOT RAISE ANY ISSUES IN HIS BRIEF.

Chips' attorney has filed a brief pursuant to *State v. Korth*. 2002 S.D. 101, 650 N.W.2d 528; CB:2. Counsel has made the statements required by *Korth* and *State v. Arabie*. 2002 S.D. 101, ¶ 16 n.6, 650 N.W.2d at 535 n.6; 2003 S.D. 57, ¶¶ 13-14, 663 N.W.2d 250, 255; CB:2-3. Counsel has prepared a thorough statement of facts and statement of the case. CB:2-5. Counsel also included a statement that he thoroughly reviewed the case and did not identify any arguably meritorious issues for appeal. CB:5.

The State will address the issues raised by Chips in Part B of his brief. CB:6. Should this Court identify any other arguably meritorious issues for appeal, the State will comply with any directions issued. *See Arabie*, 2003 S.D. 57, ¶ 19, 663 N.W.2d at 256.

PART B

I

CHIPS CANNOT CHANGE HIS GUILTY PLEA TO NO CONTEST.

A. Background

Chips argues that he should be permitted to plead no contest because he claims he acted in self-defense and never intended to kill Michael.³ CB:6.

B. Standard of Review

Chips never moved to withdraw his guilty plea. “A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice a court after sentence may set aside a judgment of conviction and permit the defendant to withdraw his plea.”

³ Chips writes, “would it be better in my interest to plead to no contest because this was self-defense not intentional.” CB:6. The State interprets this as Chips asserting that he should have been allowed to plead no contest at sentencing because he also states, “all I’m asking is to change my plea to no contest.” *See id.* But his Part B could also be read as asking this Court for advice on whether he should or can change his plea to a no contest plea. *See id.* This Court may not advise Chips. *See* S.D. Const. Art. V, Sec. 5 (outlining this Court’s powers and jurisdiction).

SDCL 23A-27-11. Thus, without filing a Motion for a change of plea, there is no decision ripe for review on the appellate level. *Id.*

By failing to file a Motion, Chips forfeited the issue for review on appeal. *State v. Carter*, 2023 S.D. 67, ¶¶ 49-50, 1 N.W.3d 674, 691-92. All the same, this Court has ruled, “when an issue is not preserved for appeal, this Court is limited to review for plain error.” *Id.* ¶ 50, 1 N.W.3d at 692 (quoting *State v. Robertson*, 2023 S.D. 19, ¶ 18, 990 N.W.2d 96, 101). “To demonstrate plain error, [the appellant] must establish that there was: (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 affect[s] the fairness, integrity, or public reputation of the judicial proceedings.” *Id.* (quoting *Robertson*, 2023 S.D. 19, ¶ 18, 990 N.W.2d at 101).

C. Analysis

Chips’ argument fails because the circuit court never committed error, let alone plain error. *Id.* Chips expressed that he was not comfortable moving forward at sentencing, but when the circuit court examined why, Chips could not produce a reason not to proceed, and the circuit court could not identify one. SH:4. But Chips now argues that he should be able to change his plea because he acted in self-defense. CB:6.

Chips told police that he attacked Michael and agreed at his Change of Plea Hearing that he stabbed him. SR:146, 156; CPH:8-9.

But he claimed self-defense in his psychological evaluation and in a personal statement he wrote for sentencing. SR:188, 220. In his personal statement, he changed his story to that he stuck a knife out in fear when Michael ran at him, and that Michael ran into the knife. SR:188. But this story differed from his interview with law enforcement, where he demonstrated a stabbing motion with a pen and admitted he stabbed Michael, as well as the factual basis provided when he pled guilty. SR:146, 156; CPH:8-9. Further, this self-defense assertion has no legal basis because nothing outside of Chips' changed story shows he ever faced imminent harm authorizing the use of deadly force. SH:8; SDCL 22-18-4.1. Thus, the circuit court did not err when it stuck with the agreed upon facts and sentenced Chips on his guilty plea. SH:13-14.

Chips also argues that because he did not intend Michael's death, he should be permitted to change his plea to no contest. CB:6. But the crime he pled to was First Degree Manslaughter, which already accounts for not having intent to effect death. CPH:7; SDCL 22-16-15. There is no reason to allow Chips to change his plea, and this is not a scenario that this Court should exercise any discretion under plain error review. *See Carter*, 2023 S.D. 67, ¶ 50, 1 N.W.3d at 692; SDCL 23A-27-11.

II

THE CIRCUIT COURT PROPERLY SENTENCED CHIPS.

A. Background

Chips argues “I feel like I was given way to[o] much time . . . I feel like a suspended sentence and time on probation to prove I’m not this kind of person would be more of the right sentence for me.” CB:6.

Thus, Chips challenges the appropriateness of the sentence imposed by the circuit court. *Id.*

B. Standard of Review

This Court “review[s] the sentencing court’s decision for an abuse of discretion.” *State v. Mitchell*, 2021 S.D. 46, ¶ 27, 963 N.W.2d 326, 332 (quoting *State v. Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d 75, 83). 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. Delehoy*, 2019 S.D. 30, ¶ 22, 929 N.W.2d 103, 109. “In handing down a sentence, ‘[c]ourts 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. Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d 333, 342 (quoting *Mitchell*, 2021 S.D. 46, ¶ 28, 963 N.W.2d at 333). “Courts may determine ‘which theory is accorded priority’ in a particular case.”

State v. Caffee, 2023 S.D. 51, ¶ 27, 996 N.W.2d 351, 360 (quoting *State v. Talla*, 2017 S.D. 34, ¶ 14, 897 N.W.2d 351, 355).

This Court has said that “‘circuit courts must look at both the person before them and the nature and impact of the offense[,]’ and should ‘acquire a thorough acquaintance with the character and history of the [person] before it.’” *Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342 (quoting *Mitchell*, 2021 S.D. 46, ¶ 29, 963 N.W.2d at 333). “This requires studying ‘a defendant’s general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, occupation, and previous criminal record.’” *Id.* (quoting *Mitchell*, 2021 S.D. 46, ¶ 29, 963 N.W.2d at 333). “In addition, courts must consider sentencing evidence tending to mitigate or aggravate the severity of a defendant’s conduct and its impact on others. Sentencing courts are often required, in this regard, to accurately assess the ‘true nature of the offense.’” *Mitchell*, 2021 S.D. 46, ¶ 30, 963 N.W.2d at 333 (quoting *State v. Klinetobe*, 2021 S.D. 24, ¶ 36, 958 N.W.2d 734, 742).

C. Analysis

i. Character and History

The circuit court outlined that it had read and heard the statements from Chips, listened to arguments from counsel, and reviewed Chips’ PSI report and all the attachments to it. SH:3, 12-14. In doing so, the circuit court appropriately considered Chips’ character

and history. *See Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342. The PSI report thoroughly describes Chips' life history, work history, and familial relationships. SR:216-22. These details informed the circuit court of Chips' family, social environment, age, tendencies, habits, occupation, and mentality. *Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342.

Chips' psychological evaluation included numerous mental health diagnoses, all of which often went untreated. SR:222. Statements from friends and family members described Chips as having comprehension issues, but always being kind to them. *Id.* at 205-13. Counsel explained to the circuit court that Chips was meek when sober but a different person when drunk. SH:9-10. Thus, the circuit court further considered Chips' moral character, mentality, family, and tendencies. *Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342. Chips' PSI report also outlined his juvenile and adult criminal history. SR:218. His adult record dated back to 1992 and included convictions of petty theft, resisting arrest, simple assault, obtaining public assistance by fraud, and possession of a controlled substance. *Id.* at 191-203. The circuit court therefore had a thorough insight of Chips' moral character, previous criminal record, and aversion or inclination to commit crime. *Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342.

The record shows that the circuit court had a precise knowledge of Chips' life before pronouncing his sentence. *Id.* The circuit court also remarked:

[The] agreement with the State shows the recognition of Mr. Chips' position. It shows the challenges that Mr. Chips faced in terms of [the] evening in question as well as the response to this particular charge, and to the extent that leniency is being requested by Mr. Chips, I think it has been given to the extent that the plea agreement recognizes those challenges.

SH:13. This statement, particularly the references to "challenges," shows that the circuit court considered the many hardships that Chips has faced in life. *Id.*; *Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342. The circuit court also commented on Chips' self-defense assertion, saying it viewed it as Chips trying to distance himself from what he did and not take full responsibility. SH:13-14; *Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342.

The 25-year sentence illustrates that the circuit court made the appropriate considerations and issued a fair sentence. *Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342. The true nature of the offense is that Chips killed a man and faced a maximum term of life in prison. SH:12; SDCL 22-16-15; SDCL 22-6-1; *Mitchell*, 2021 S.D. 46, ¶ 30, 963 N.W.2d at 333. A sentence of 25 years reflects the seriousness of taking someone's life, but not imposing life imprisonment shows that the circuit court considered Chips' mitigating factors. *Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342; *Mitchell*, 2021 S.D. 46, ¶ 30, 963 N.W.2d at

333. It was also the sentence recommended in the State’s plea offer Chips accepted. SR:101; CPH:2, 7. The circuit did not abuse its discretion with a 25-year sentence. *Mitchell*, 2021 S.D. 46, ¶ 27, 963 N.W.2d at 332.

ii. Traditional Sentencing Factors

“In handing down a sentence, [c]ourts 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.” *Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342 (quoting *Mitchell*, 2021 S.D. 46, ¶ 28, 963 N.W.2d at 333). The circuit court gave retribution due weight by outlining the seriousness of the offense. SH:12-14. The circuit court specifically described “the heinous nature of the actions that you took on the night in which Michael was killed.” *Id.* at 13. But the circuit court also acknowledged “the challenges Mr. Chips faced in terms of [the] evening in question . . .” so it did not give retribution undue weight despite the crime involving homicide. *Id.* A 25-year sentence on a maximum of life reflected the appropriate consideration given to retribution by the circuit court.

The circuit court also balanced deterrence. *See Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342. The traditional sentencing factors include both individual and general deterrence. *Id.* Chips’ criminal record includes convictions for assault in addition to the most recent

manslaughter conviction. SR:191-203. He also described multiple physical altercations that occurred throughout his life, including attacking a bootlegger for alcohol. *Id.* at 218. Chips was 50 years old when sentenced, and will be 75 if he serves his full sentence. *Id.* at 215. The significant time spent in prison toward the end of his life will deter him from committing more physical assaults when released.

Chips' sentence also serves as a general deterrent. *See Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342. On the same morning Chips' victim was found, another body also turned up. SR:143. Counsel rightfully commented that this case reflects how difficult and dangerous it is to be homeless in Rapid City. SH:9. The fact that Chips is serving a sentence of 25 years communicates that homicide will be punished, even if death was not an intended result. *See* CB:6. This deters more violence.

The circuit court appropriately balanced incapacitation. *See Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342. Counsel outlined that Chips became more aggressive while drinking, and the PSI report showed that Chips struggled with alcohol his entire life. SH:9-10; SR:218. The psychological evaluation said that Chips having been attacked by younger Native Americans fueled his aggression when he killed Michael. SR:216, 222. Removing Chips from the streets should limit his access to alcohol and triggering situations that remind him of being attacked in the streets. *See id.*

Finally, the circuit court considered rehabilitation. *See Peltier*, 2023 S.D. 62, ¶ 30, 998 N.W.2d at 342. The circuit court noted “the expectation . . . is that [Chips] recognized the wrongfulness of [his] actions” but Chips was “trying to distance [himself] from that” SH:13-14. The circuit court’s statements reflect that Chips is less likely to achieve rehabilitation if he will not fully acknowledge the extent of his wrongdoing. *Id.* The circuit court did not go into extensive detail on this factor, but “courts should weigh these factors ‘on a case-by-case basis[.]’” *State v. Bear Robe*, 2024 S.D. 77, ¶ 15 (quoting *Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d at 360). Further, “courts may determine ‘which theory is accorded priority’ in a particular case.” *Id.* (quoting *Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d at 360). The circuit court did not abuse its discretion by imposing the recommended 25 years that Chips accepted to begin with. *Mitchell*, 2021 S.D. 46, ¶ 27, 963 N.W.2d at 332; SR:101; CPH:2, 7.

CONCLUSION

The State respectfully requests that Chips' sentence be affirmed in all respects.

Respectfully submitted,

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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 4,904 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 2nd day of January 2025.

/s/ Jacob R. Dempsey
Jacob R. Dempsey
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of January 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Philip Andrew Chips* was served by electronic mail on John Murphy at john@murphylawoffice.org.

/s/ Jacob R. Dempsey
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