

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

APPEAL NO. 30801

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,
v.
LIONEL EAGLE HAWK
Defendant and Appellant.

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

THE HONORABLE BOBBI RANK
Circuit Court Judge

APPELLANT'S KORTH BRIEF

ATTORNEY FOR APPELLANT

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Notice of Appeal filed on the August 14, 2024

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PRELIMINARY STATEMENT

Citations to the certified record will be referred to as “CR” followed by the page number. Citations to the appendix will be referred to as “App” followed by the number for the appendix exhibit number.

JURISDICTIONAL STATEMENT

Lionel Eagle Hawk (“Eagle Hawk”) requests a review of the Judgment and Sentence filed in his case on July 26, 2024 by the circuit court; namely case number 61CRI24-33. Eagle Hawk filed a timely Notice of Appeal in this case on August 14, 2024 and respectfully submits that this Court has jurisdiction pursuant to S.D.C.L. § 15-26A-3, S.D.C.L. § 23A-32-2, and S.D.C.L. § 23A-32-9.

PART A

The following is submitted in compliance with *State v. Korth*, 650 N.W.2d 528 (S.D. 2002). I certify that I have: (1) thoroughly reviewed the records of all prior proceedings herein, including the court file, the transcripts, and the defense attorney’s file; (2) discussed this case with the Appellant through in person communication; (3) discussed this case with Appellant’s trial counsel; and (4) noted that no substantive motions had been filed in the Appellant’s trial court file. By signing this Brief, I certify that I have not identified any arguably meritorious issue to justify appeal.

STATEMENT OF THE CASE

Eagle Hawk was charged in a three count Indictment on April 3, 2024 with Third Degree Rape, Sexual Contact with a Person Incapable of Consenting, and Abuse or Neglect of Elder or Adult with a Disability. CR 1-2. Eagle Hawk was arraigned and appointed counsel in April of 2024. CR 335.

On May 9, 2024, Eagle Hawk signed a plea agreement, entered a guilty plea on May 15, 2024, and a pre-sentence investigation (“PSR”) was ordered. CR 121; CR 21. At the plea hearing, Eagle Hawk plead guilty to Count One: Third-Degree Rape, and the State dismissed the other counts. CR 336. Thereafter, Eagle Hawk submitted to the PSR, which included a psycho-sexual evaluation. CR 257-263.

On July 24, 2024, Eagle Hawk was sentenced on the Third-Degree Rape charge to twenty-five (25) years in the South Dakota State Penitentiary with ten (10) years suspended and credit for 113 days in the county jail. CR. 337. Eagle Hawk filed his Notice of Appeal on August 14, 2024. CR 339.

STATEMENT OF THE FACTS

On or about April 17, 2022, Eagle Hawk was working as a caretaker at Community Connections (“CCI”) in Winner, Tripp County, South Dakota where M.K. was a resident. CR 22-61. M.K. was, at the time, a 38-year-old woman diagnosed with Cerebral Palsy. CR 63. On April 17, 2022, M.K. disclosed to staff a CCI that Eagle Hawk raped her while he was working the

overnight shift the night prior. CR 22-61. Initially, M.K. disclosed this to Jessica Eagle Hawk, the wife of Eagle Hawk, and stated Eagle Hawk “inserted his fingers into [M.K.’s] vagina, causing [M.K.] pain.” CR 78. M.K. also initially stated Eagle Hawk helped her bathe during the night, laid in bed with her, and removed his pants. CR 78.

M.K. is mostly non-verbal, and relies on sign language and help from others to communicate. CR 78. M.K., with the help of her mother, was questioned in the presence of law enforcement and stated that Eagle Hawk had just rubbed on the outside of her pajamas in her vaginal area. CR 171. Later, M.K. indicated Eagle Hawk had touched her hard and that it hurt. Id.

M.K. also participated in a sexual assault examination and evidence was collected, particularly, a swab from M.K.’s “vaginal cervical and external vaginal/internal vaginal hair” region. Id. This swab was found to contain DNA from a single male source in which Eagle Hawk, or his paternally related male relatives, could not be excluded, such DNA “not expected to occur more frequently than 1 in 747 individuals.” Id. A couple other males from CCI were also DNA tested, but were excluded as the source of DNA. CR 81.

Additionally, M.K. was given the Saint Louis University Metal Status (SLUMS) Examination and was declared to be “significantly cognitively impaired and therefore incapable of granting consent for the sexual intercourse being investigated.” CR 82.

On November 16, 2022, Eagle Hawk was questioned by detectives regarding M.K.'s allegations. CR 83. Initially, Eagle Hawk denied anything sexual happened between him and M.K., and he confirmed that none of his male relatives work at CCI. Id. Law enforcement showed him the South Dakota Forensic Laboratory results indicating that his DNA cannot be excluded from the sample taken from M.K.'s vaginal area. CR 84. Eagle Hawk then stated "[M.K.] made him use his finger to penetrate her vagina." Id. At the direction of the detective, Eagle Hawk drew his hand on a piece of paper and shaded in the portion of this finger that penetrated M.K. Id. Eagle Hawk said M.K. asked for his help with her shower, and he was helping her wash the front part of her body when M.K. "grabbed his hand and forced his finger into her vagina." Id. He stated he immediately pulled away and told her to finish the shower on her own. Id.

Eagle Hawk stated M.K. asked him to "put a finger in" but when the detective stated M.K. was mostly non-verbal, Eagle Hawk said he could just tell that she wanted sexual contact with him. Id. He stated he inserted his finger into her vagina for approximately five to ten seconds, realized it was a bad idea, and then left. Id. Eagle Hawk confirmed that he knew M.K. did not have the cognitive ability to consent to this sexual conduct. Id.

Eagle Hawk was not charged and arrested until April of 2024. While arguing bond and at sentencing on this case, the State sought to use other uncharged sexual allegations against Eagle Hawk. However, the circuit

court explicitly stated it would not consider any uncharged allegations in making a sentencing decision, and that the sentence would be based “on the charge for which he has plead and the facts and circumstances surrounding this charge and this victim.” CR 450.

Dated this 14th day of January, 2025.

Respectfully submitted,
DAKOTA LAW FIRM, PROF. L.L.C.
KRISTI L. JONES



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PART B

Part B, as required by *Korth*, is meant to include Appellant's submission, unedited by counsel. I have informed Appellant in person that I could not find or present any non-frivolous issues, and have also asked Appellant to provide me with information regarding his case. I have received the following from Appellant:

I feel like I was never given a proper chance to get enough evidence of my own.

felt like every time I went to court the story kept changing on their side while mine was the same.

Was informed that this will help a civil suit go faster, for the defendant.

I remember when everything was said, Judge told everyone that more was said that was not on docket. Told everyone to ignore it and not let it be part of sentencing. On which I feel it was a big part of my sentence.

Felt like the plea agreement was ignored by all parties.

Was told about the old cases that would be used against me, so I ended up getting scared into taking the Plea Deal.

State added more to their story as claiming that I woke her up, when she was already awake.

Did not document until morning. Computer was down.

She has a fiancé and is currently in a relationship.

has pictures of herself with another guy on his lap.

Has been trying to send facebook friend requests to my wife. constantly trying to write messages to her.

They tried to use old cases that are old, and never happened there was no real evidence and all were not followed up by State.

The DNA was inconclusive.

Got busy to write report down.

I feel discriminated against with the fact of everything that happened.

had a case of E.D. also needed pills.

Lionel Eagle Hawk

11-21-24

A month in they put a civil suit out on company. lawyer said would be good to get case out of way for that. Shows they wanted money.

I was traumatized in my job. She would follow me and make it so I never wanted to work at location. I enjoyed working with the people there.

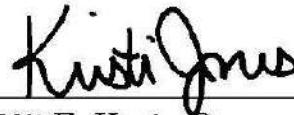
Lionel Eagle Hawk

CONCLUSION

After a thorough review of the record, the Appellant's issues, and research, in counsel's professional opinion, there are no non-frivolous grounds for relief which exist.

Dated this 14th day of January, 2025.

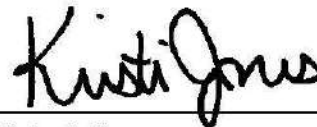
Respectfully submitted,
DAKOTA LAW FIRM, PROF. L.L.C.
KRISTI L. JONES

A handwritten signature in black ink, reading "Kristi Jones", written over a horizontal line.

795 E. Kevin Dr.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of January, 2025 a true and correct copy of the foregoing brief was served on the Attorney General's Office via email to atgservice@state.sd.us

A handwritten signature in black ink, reading "Kristi Jones", written over a horizontal line.

Kristi Jones
Attorney for Appellant

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
	: SS	
COUNTY OF TRIPP)	SIXTH JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA)	
)	61 Cri. 24-33
Plaintiff,)	
)	
vs.)	
)	JUDGMENT OF CONVICTION
LIONEL LEE EAGLE HAWK,)	
DOB: 11/20/1985)	
)	
Defendant.)	

An Indictment was filed with this Court on the 3rd day of April 2024, charging LIONEL LEE EAGLE HAWK with the crimes of COUNT 1: **THIRD-DEGREE RAPE**, in violation of SDCL 22-22-1(3), a Class 2 felony; COUNT 2: **SEXUAL CONTACT WITH A PERSON INCAPABLE OF CONSENTING**, in violation of SDCL 22-22-7.2, a Class 4 felony; and COUNT 3: **ABUSE OR NEGLECT OF AN ELDER OR ADULT WITH A DISABILITY**, in violation of SDCL 22-46-2, a Class 6 felony, to have been committed on or about the 17th day of April, 2022. The Defendant was arraigned on the Indictment on the 11th day of April 2024. The Defendant, the Defendant's attorney, Robert Konrad, and Amanda Miiller, Assistant Attorney General, appeared at the Defendant's arraignment. The Court advised the Defendant of all constitutional and statutory rights pertaining to the charges filed against him. The Defendant entered a plea of not guilty.

On May 15, 2024, the Defendant appeared for a change of plea hearing. The Defendant, the Defendant's attorney, Robert Konrad, and Amanda Miiller, Assistant Attorney General, appeared at the change of plea. The Court advised

the Defendant of all constitutional and statutory rights pertaining to the charges that had been filed against him. The Defendant pleaded guilty to COUNT 1: **THIRD-DEGREE RAPE**, in violation of SDCL 22-22-1(3), a Class 2 felony. The State dismissed COUNT 2: **SEXUAL CONTACT WITH A PERSON INCAPABLE OF CONSENTING**, in violation of SDCL 22-22-7.2, a Class 4 felony and COUNT 3: **ABUSE OR NEGLECT OF AN ELDER OR ADULT WITH A DISABILITY**, in violation of SDCL 22-46-2, a Class 6 felony, per the plea agreement.

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

It is, therefore, the JUDGMENT of this Court that Defendant is guilty of COUNT 1: **THIRD-DEGREE RAPE**, in violation of SDCL 22-22-1(3), a Class 2 felony.

SENTENCE

On the 24th day of July 2024, the Defendant appeared personally and was represented by his attorney, Robert Konrad, and the State appeared by and through Amanda Müller, Assistant Attorney General. The Court asked whether any legal cause existed to show why sentence should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

ORDERED that, as to COUNT 1: **THIRD-DEGREE RAPE**, in violation of SDCL 22-22-1(3), the Defendant shall be incarcerated in the South Dakota State Penitentiary for a period of **twenty-five (25) years, with credit for time served in county jail in the amount of 113 days**, there to be kept, fed and clothed according to the rules and discipline governing said penitentiary;

IT IS FURTHER ORDERED that **ten (10) years** of the penitentiary sentence shall be suspended on the following conditions:

- (a) The Defendant must maintain a good disciplinary record and comply with all programming required by the Department of Corrections and Board of Pardons and Parole pursuant to SDCL 23A-27-18.6;
- (b) The Defendant shall participate in any evaluations and/or treatment as required by the Department of Corrections and the Board of Pardons and Parole, including completion of the recommendations set forth in the psychosexual evaluation, that being completion of a treatment program committed to the care of sex offenders and who follow the guidelines established by the Association for Treatment of Sex Abusers (ATSA) and the following the Good Lives model of treatment.
- (c) The Defendant shall pay all financial obligations imposed in this judgment according to a payment plan with the Department of Corrections and Board of Pardons and Paroles.

IT IS FURTHER ORDERED that Defendant shall pay court costs of \$116.50; cost of psychosexual evaluation of \$3,500; costs of Dr. Scovel evaluation of \$3,000, and court-appointed attorney fees associated with this file to be paid to the Tripp County Clerk of Courts, 200 E. Third Street, PO Box 311, Winner, SD 57580-0311.

Dated this ____ day of July, 2024.

7/26/2024 11:57:19 AM

BY THE COURT:

Attest:
Cihak-Brozik, Sally
Clerk/Deputy



Bobbi J Rank

Hon. Bobbi Rank
Circuit Court Judge

RIGHT TO APPEAL

You, LIONEL LEE EAGLE HAWK, 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 Tripp County State's Attorney and Attorney General of the State of South Dakota 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 of Conviction was signed, attested and filed.

I feel like I was given a proper chance to
get enough evidence of my own.

felt like every time I went to court the story just
wasn't on their side while mine was the same.

was informed that this was not an action but
rather for the defendant.

I remember when everything was said. Judge
told everyone that more was said that was not
a secret. Told everyone to ignore it and not
be part of something. On which I feel
it was a big part of my sentence.

Felt like the plea agreement was ignored by
the court.

was told about the old cases that would be
used against me, but I was not getting scored
into taking the plea deal.

State added their indictment after as a surprise
and I was not aware of it when the plea was given.

Did not understand until morning. Computer was
down.

She has a fiancé and is currently in a relationship.

was found with another guy on his lap.

has been trying to send Facebook friend requests to many of her contacts, constantly trying to write messages to her.

They tried to use old case that are old, and never happened. There was no real evidence and all were not followed up by the police.

The WITK was inconclusive.

and the police report down.

I got a significant report with the fact of everything that happened.

had a case of E.H. from the police.

David Engelhardt

A month in. they put a civil suit out
 on company. lawyer said would be paid for
 it. cost out of way for that. Shows they
 wanted money.

I was traumatized in my job. We would solve
 the end of the 13 so I was coming to work. I
 was in the house. I was in the house. I was in the house.

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STATE OF SOUTH DAKOTA

No. 30801

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

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LIONEL EAGLE HAWK,

Defendant and Appellant.

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

THE HONORABLE BOBBI RANK
Circuit Court Judge

APPELLEE'S BRIEF

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ATTORNEY FOR DEFENDANT
AND APPELLANT

Notice of Appeal filed August 14, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30801

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

LIONEL EAGLE HAWK,

Defendant and Appellant.

PRELIMINARY STATEMENT

Throughout this brief, Defendant/Appellant, Lionel Eagle Hawk, is referred to as “Eagle Hawk.” Plaintiff/Appellee, the State of South Dakota, is referred to as “State.” The settled record will be denoted as “SR.” All references to the settled record will be followed by the e-record pagination. The victim will be denoted as “M.K.” Eagle Hawk’s brief is denoted as “EB.” The transcripts from the case are designated as follows:

May 15, 2024, Change of Plea HearingCP

July 24, 2024, Sentencing.....ST

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

JURISDICTIONAL STATEMENT

On July 26, 2024, the Honorable Bobbi Rank, Circuit Court Judge, Sixth Judicial Circuit, filed Eagle Hawk's Judgment of Conviction in Tripp County Criminal File No. 24-000033. SR:335-39. Eagle Hawk filed a Notice of Appeal on August 14, 2024. SR:339-41. This Court has jurisdiction under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

PART A

IN ACCORDANCE WITH *STATE V. KORTH*, 2002 S.D. 101, 650 N.W.2D 528, EAGLE HAWK'S COUNSEL DID NOT RAISE ANY ISSUES IN APPELLANT'S BRIEF.

The State concurs with Eagle Hawk's counsel that there are no arguably meritorious issues based on the settled record.

State v. Korth, 2002 S.D. 101, 650 N.W.2d 528

PART B

I

WHETHER EAGLE HAWK'S GUILTY PLEA WAS KNOWING AND VOLUNTARY?

Eagle Hawk accepted a plea agreement proposed by the State.

Monette v. Weber, 2009 S.D. 77, 771 N.W.2d 920

State v. King, 2014 S.D. 19, 845 N.W.2d 908

II

WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION IN SENTENCING EAGLE HAWK?

The circuit court sentenced Eagle Hawk to twenty-five years in the state penitentiary with ten years suspended.

State v. Caffee, 2023 S.D. 51, 996 N.W.2d 351

State v. Klinetobe, 2021 S.D. 24, 958 N.W.2d 734

State v. Manning, 2023 S.D. 7, 985 N.W.2d 743

STATEMENT OF THE CASE AND THE FACTS¹

Lionel Eagle Hawk worked at Community Connections, Inc. (CCI) in Winner, South Dakota. SR:68 (sealed document). CCI is a group home service provider for people who have developmental disabilities. SR:68 (sealed document). M.K. was a resident of CCI. SR:68 (sealed document). M.K. communicates mostly non-verbally and often relies on sign language or those who know her well to interpret for her. SR:78 (sealed document).

On April 17, 2022, Eagle Hawk raped M.K. SR:78 (sealed document); CP14-15.² According to Eagle Hawk, when he helped M.K. shower, Eagle Hawk inserted his finger into M.K.'s genitals for five to ten

¹ The Statement of the Case and the Facts have been combined for brevity and clarity.

² The facts are unclear. The factual basis stated at the change of plea hearing established that Eagle Hawk accomplished sexual penetration of M.K.'s genitals with his finger. CP:13-14 (sealed document). However, the State and M.K. still maintained the rape was penile-vaginal. ST:19 (sealed document).

seconds. SR:84 (sealed document). Eagle Hawk also helped M.K. bathe before lying in bed with her and taking his pants off. SR:78-79 (sealed document).

M.K. disclosed that Eagle Hawk inserted his fingers into her genitals, which caused M.K. pain, to another CCI employee.³ SR:92 (sealed document). M.K. then submitted to a sexual assault evidence collection kit. SR:92-93 (sealed document). Eagle Hawk's DNA could not be excluded from the non-sperm cell fractions from inside M.K.'s genitals. SR:92-93 (sealed document). In an interview with Avera St. Mary's medical examiner Angela Lisburg, M.K. indicated that Eagle Hawk penetrated her genitals with his penis in addition to his fingers. SR:63 (sealed document).

On April 3, 2024, a Tripp County grand jury indicted Eagle Hawk on the following three counts:

- Count I: Third Degree Rape, a Class 2 felony in violation SDCL 22-22-1(3);
- Count II: Sexual Contact with a Person Incapable of Consenting, a Class 4 felony in violation of SDCL 22-22-7.2; and
- Count III: Abuse or Neglect of Elder or Adult with a Disability, a Class 6 felony in violation of SDCL 22-46-2.

³ The CCI employee was Jessica Eagle Hawk, Lionel's wife. SR:92 (sealed document).

SR:1-3. A warrant was issued for Eagle Hawk's arrest. SR:4-7. The circuit court appointed Eagle Hawk counsel two days later. SR:9.

The Winner Police Department and the Division of Criminal Investigation (DCI) investigated the case. SR:22-80 (sealed document). DCI Agent Charles Swanson interviewed Eagle Hawk. SR:83-85 (sealed document). During the interview, Eagle Hawk admitted he raped M.K. in the shower, inserting his finger into her genitals for "five to ten seconds." SR:84 (sealed document). Eagle Hawk further agreed that he knew M.K. was cognitively impaired and could not grant consent. SR:84 (sealed document).

Eagle Hawk and the State entered into a plea agreement. SR:116-122; CP:2 (sealed document). Under the agreement, Eagle Hawk would plead guilty to Count I of the Indictment. In exchange, the State would dismiss the remaining counts in the Indictment, as well as another of Eagle Hawk's files.⁴ SR:120-21. The State further agreed not to file additional charges against Eagle Hawk as a result of any reports that it had in its possession. SR:121.

At a change of plea hearing on May 15, 2024, the circuit court advised Eagle Hawk of his rights. CP:3-5 (sealed document). After this advisement, Eagle Hawk confirmed he was satisfied with defense counsel's representation and that he was not under the influence of

⁴ The additional file dismissed was 61MAG24-12. SR:120-21.

alcohol or drugs. CP:7-8. The circuit court further reminded Eagle Hawk that it was not bound by the State's sentencing recommendation in the plea agreement. CP:10. Eagle Hawk then pleaded guilty to Third-Degree Rape. CP:12. Defense counsel provided the factual basis. CP:13-15. The circuit court canvassed Eagle Hawk, who confirmed that he penetrated M.K.'s vagina with his finger and that he knew M.K. had cerebral palsy and had mental disabilities. CP:14-15. The circuit court then found Eagle Hawk's plea was knowing and voluntary. CP:16.

A pre-sentence investigation report was prepared. SR:123-334 (sealed document). Eagle Hawk appeared for sentencing on July 24, 2024. ST:1 (sealed document). In argument, defense counsel stated that Eagle Hawk entered into a plea agreement quickly, saving the State costs of a trial and that he had a minimal prior record consisting of traffic offenses. ST:6-9 (sealed document). He also emphasized Eagle Hawk's psychosexual evaluation, which showed a low risk to re-offend and showed no problematic sexual interests. ST:9-14 (sealed document). Defense counsel further mentioned that prior allegations were not charged out and believed that the reports were deficient. ST:14-16 (sealed document).

The State argued that Eagle Hawk was entrusted to care for the developmentally delayed and physically disabled M.K. as an aggravating factor. ST:19 (sealed document). It said that it was the State's and victim's view that the rape was a penile/vaginal rape, even though that

was not the factual basis. ST:19 (sealed document). The State emphasized Eagle Hawk failed to take accountability for his actions and minimized his involvement and role. ST:18-20 (sealed document).

The State laid out the timeline of events, arguing that Eagle Hawk waited until other workers were gone before he went into M.K.'s room in the middle of the night. ST:20-21 (sealed document). They mentioned that Eagle Hawk's documentation of that night says nothing about his version of events, that M.K. tried to force herself on him in the shower. ST:20-21 (sealed document). The State emphasized the circuit court can consider uncharged conduct if it is established by a preponderance of the evidence. ST:23 (sealed document). In closing, the State asked for twenty-five years in the penitentiary, with twelve and a half years suspended. ST:23-24 (sealed document). M.K., through her mother and a victim's advocate, also gave statements to the circuit court. ST:24-27 (sealed document).

The circuit court remarked that for sentencing, it considered the Presentence Investigation Report in its entirety, the comments, and testimony, and all these facts. ST:30-31 (sealed document). It formally made a finding of guilt as to Eagle Hawk's rape charge that he pleaded to. ST:30 (sealed document). The circuit court then remarked it would not consider any uncharged conduct and would sentence Eagle Hawk based on the current case. ST:31-32 (sealed document). It observed that Eagle Hawk's current charge was a substantial charge. ST:31 (sealed

document). It found that Eagle Hawk's version of events did not match up with M.K.'s injuries and determined that Eagle Hawk was not taking full responsibility for his actions. ST:33 (sealed document). The circuit court emphasized it considered all of Eagle Hawk's circumstances, the effect on the victim, and the traditional sentencing factors. ST:32-35 (sealed document).

Following its remarks, the circuit court sentenced Eagle Hawk to twenty-five years in the state penitentiary, with ten years suspended. SR:336-37. The circuit court further ordered Eagle Hawk to pay \$116.50 in court costs, \$3,500 for the psychosexual evaluation, and \$3,000 for Dr. Scovel's evaluation. SR:337-38.

ARGUMENT

PART A

IN ACCORDANCE WITH *STATE V. KORTH*, 2002 S.D. 101, 650 N.W.2D 528, EAGLE HAWK'S COUNSEL DID NOT RAISE ANY ISSUES IN APPELLANT'S BRIEF.

Eagle Hawk's counsel filed a brief under *State v. Korth*, 2002 S.D. 101, 650 N.W.2d 528, after concluding no arguably meritorious legal issue existed for appeal. AB:1. After a thorough review of the settled record, the State concurs with Eagle Hawk's counsel that no arguably meritorious issue exists for appeal. The State requests that this Court affirm the circuit court's Judgment of Conviction.

PART B

The State addresses issues that it believes Eagle Hawk raised with his Part B. The State considers any other argument not addressed here to not have any meritorious legal significance. If this Court finds a meritorious legal issue that the State did not address in this Appellee's Brief, the State requests an opportunity to address those issues after an order for supplemental briefing.

I.

EAGLE HAWK'S GUILTY PLEA WAS KNOWING AND VOLUNTARY.

A. *Standard of Review.*

"An alleged violation of a defendant's constitutional right to due process is reviewed de novo." *State v. King*, 2014 S.D. 19, ¶ 4, 845 N.W.2d 908, 910.

B. *Eagle Hawk's Guilty Plea was Knowing and Voluntary.*

In reviewing a guilty plea, this Court examines the "totality of the circumstances, using an objective standard, and determine[s] if the plea was knowingly and voluntarily given." *King*, 2014 S.D. 19, ¶ 6, 845 N.W.2d at 910.

For a guilty plea to be knowing and voluntary, the record must "affirmatively show a free and intelligent waiver by the defendant of his constitutional rights." *Id.* (further citation omitted). These constitutional rights include the right to a jury trial, the right to confront witnesses against him and the right against self-incrimination. *Id.* In addition, a

defendant must understand the “nature and consequences” of the guilty plea. *Id.* In determining whether a guilty plea was knowing and voluntary, this Court also considers “the procedure and in-court colloquy.” *Id.* Other factors considered are a defendant’s age, any prior criminal record, whether the defendant is represented by counsel, whether there was a plea agreement, and the length of time between the “advisement of rights and entering a plea of guilty.” *Monette v. Weber*, 2009 S.D. 77, ¶ 12, 771 N.W.2d 920, 925 (further citation omitted).

In Part B of his brief, Eagle Hawk claims that because of the threat of “old cases that would be used against [him], so [he] ended up getting scared into taking the Plea Deal.” EB:6.

Eagle Hawk’s guilty plea was knowing and voluntary. First, there was a plea agreement that the State and Eagle Hawk agreed to. SR:116-23; CP:2 (sealed document). Next, Eagle Hawk was fully advised of his rights. During the change of plea hearing, the circuit court advised Eagle Hawk that he had the right to be represented by an attorney at every stage of the proceedings; that Eagle Hawk was presumed innocent and had the right to a speedy public trial; a right to remain silent; his ability to call witness to court; and his right to appeal a guilty verdict. CP:2-4 (sealed document). Eagle Hawk confirmed he understood those rights and that a guilty plea waived those rights. CP:4 (sealed document). The circuit court then asked Eagle Hawk if he read and understood the plea agreement, and if he was satisfied with defense counsel’s representation.

CP:6-7 (sealed document). Again, Eagle Hawk answered affirmatively to those questions. CP:6-7 (sealed document). Finally, Eagle Hawk confirmed he was not under the influence of drugs or alcohol, and that he was able to understand court proceedings. CP:7-8 (sealed document).

In short, Eagle Hawk's guilty plea was knowing and voluntary. *See King*, 2014 S.D. 19, ¶ 4, 845 N.W.2d at 910. The advisement of Eagle Hawk's rights took place right before his guilty plea; he confirmed he understood those rights and that a guilty plea would waive them. *See Weber*, 2009 S.D. 77, ¶ 12, 771 N.W.2d at 925. Further, there was also a plea agreement, something this Court takes into consideration. *Id.*

II.

THE CIRCUIT COURT SENTENCED EAGLE HAWK WITHIN ITS DISCRETION.

A. *Standard of Review.*

A circuit court's sentencing decision is reviewed for an abuse of discretion. *State v. Klinetobe*, 2021 S.D. 24, ¶ 26, 958 N.W.2d 734, 740. 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." *Id.* (cleaned up). An abuse of discretion will not be overturned "unless that 'error is demonstrated and shown to be prejudicial error.'" *Id.* (further citation omitted).

B. *The Circuit Court's Sentence was Within its Discretion.*

“Circuit courts have broad discretion in sentencing.” *Klinetobe*, 2021 S.D. 24, ¶ 28, 958 N.W.2d at 741. The sentencing court should “acquire a thorough acquaintance with the character and history” of the defendant being sentenced. *State v. Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d 351, 360. Information that should be available to a sentencing court includes a defendant’s “general moral character, mentality, habits, social environment, tendencies, age, aversion or inclination to commit crime, life, family, family, occupation, and previous criminal record.” *Id.* (citing *Klinetobe*, 2021 S.D. 24 ¶ 28, 958 N.W.2d at 741) (further citation omitted). A circuit court must evaluate the defendant before it as well as the “nature and impact of the offense.” *Caffee*, 2023 S.D. 51, ¶ 28, 996 N.W.2d at 360. In addition, the traditional sentencing factors of retribution, deterrence, rehabilitation, and incapacitation should be weighed by a sentencing court on case-by-case basis. *State v. Lanpher*, 2024 S.D. 26, ¶ 26, 7 N.W.3d 308, 317.

A circuit court may rely on an “extensive sentencing record” in assessing the nature of a defendant’s offense, one that is not limited to the information in a factual basis. *Caffee*, 2023 S.D. 51, ¶ 28, 996 N.W.2d at 360. In assessing the true nature of an offense, a sentencing court may consider uncharged conduct or conduct that served as the “basis for charges that later resulted in a dismissal” if the conduct is proved by a preponderance of the evidence. *Id.*

Eagle Hawk argues that the circuit court improperly considered uncharged conduct in its sentencing decision. EB:6. But the circuit court specifically stated on the record that it did not consider any of Eagle Hawk's uncharged conduct, only the case in front of it. ST:31 (sealed document). The circuit court further relied on the entire record, considered the Presentence Investigative report, the circumstances of Eagle Hawk, as well as the impact of the crime on M.K. ST:20-35 (sealed document). Here, the circuit court considered the traditional sentencing factors of retribution, deterrence, incapacitation, and rehabilitation. ST:32-33 (sealed document). In short, it "acquire[d] a thorough acquaintance with the character and history of" Eagle Hawk. *State v. Bear Robe*, 2024 S.D. 77, ¶ 12, 15 N.W.3d 460, 465. The circuit court also had access to a large amount of information in fashioning Eagle Hawk's sentence. *See also State v. Manning*, 2023 S.D. 7, ¶ 52, 985 N.W.2d 743, 758 (stating a sentencing court should have access to "the fullest information possible concerning the defendant's life and characteristics.>").

Eagle Hawk cannot show the sentencing court made a "choice outside the range of permissible choices." *Klinetobe*, 2021 S.D. 24, ¶ 26, 958 N.W.2d at 740. Thus, the State requests that this Court affirm Eagle Hawk's Judgment of Conviction.

CONCLUSION

The State requests that this Court affirm Eagle Hawk's Judgment of Conviction.

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 2,479 words.

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

Dated this 27th day of February 2025.

/s/ Stephen G. Gemar

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of February 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Lionel Eagle Hawk* was served via electronic mail upon Kristi Jones at kristi@dakotalawfirm.com.

/s/ Stephen G. Gemar

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