

STATEMENT OF ISSUES

I. WHETHER THE IMPOSITION OF THE DEATH SENTENCE WAS CONSTITUTIONALLY INFIRM?

A. Factual Errors.

B. Judicial Errors.

C. Legal Errors.

- (1) Do the rules of evidence and the right of confrontation apply to a 23A-27A "presentence hearing?"
- (2) Evidence admitted as "prior record" and "circumstances of behavior" went beyond the intended scope of SDCL 23-A-27A-2(3).
- (3) Victim Impact Evidence.
- (4) Reviewability of the record.
- (5) Evolving standard of decency.

Trial Court found the procedure constitutional.

Most Relevant Cases: Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954 (1978); Payne v. Tennessee, 501 U.S. 808, 111 S.Ct. 2597 (1991); State v. Page, 2006 S.D. 2, 709 N.W.2d 739.

II. WHETHER WAIVER OF THE RIGHT TO A SENTENCING JURY WAS KNOWING AND INTELLIGENT?

Trial court found it was.

Most Relevant Cases: State v. Piper, 2006 S.D. 1, 709 N.W.2d 783.

III. WHETHER THE DEATH SENTENCE WAS EXCESSIVE OR DISPROPORTIONATE TO THE PENALTY IMPOSED IN SIMILAR CASES?

- A. External Proportionality.
- B. Internal Proportionality.

Trial court did not determine proportionality.

Most Relevant Cases: State v. Rhines, 1996 S.D. 55, 548 N.W.2d 415; State v. Piper, 2006 S.D. 1, 709 N.W.2d 783.