

IN THE
SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs.

NO. 30935

WILLIAM DALY,
Defendant and Appellant.

APPELLANT'S BRIEF

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Notice of Appeal was filed on December 19, 2024

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PRELIMINARY STATEMENT

Throughout this brief Defendant and Appellant William Daly will be referred to as “Daly.” Plaintiff and Appellee, the State of South Dakota, will be referred to as the “State.” References to the settled record will be referred to as “SR,” followed by the page number from the Clerk’s index. References to the transcript of the Arraignment will be designated as “ARR.” References to the transcript of the Status Hearing “SH” followed by the number of status hearing held. References to the transcript of the Change of Plea Hearing will be designated as “COP.” References to the transcript of the Sentencing Hearing will be designated as “ST.” References to the appendix hereto will be designated as “APP.” The appropriate page number will follow each reference.

JURISDICTIONAL STATEMENT

Daly appeals from a judgment of conviction for Manslaughter in the First Degree, entered on November 20, 2024, and filed on November 25, 2024, before the Honorable Matthew Brown, Seventh Judicial Circuit Court Judge, Rapid City, Pennington County, South Dakota. (SR, 730). Appeal is by right pursuant to SDCL § 23A-32-2. Notice of appeal was filed on December 19, 2024. (SR, 737).

STATEMENT OF THE LEGAL ISSUES

- I. The State’s sentencing argument was an obvious violation of the plea agreement to recommend a term of years after they stated on the record that they would **not** be recommending life in prison when in fact they asked for an 80-year sentence, resulting in a de facto life sentence.

State v. Olvera, 2012 S.D. 84, 824 N.W.2d 112

State v. Guziak, 2021 S.D. 68, 968 N.W.2d 196

II. The Circuit Court's sentence of 80 years of prison, violated Daly's Eighth Amendment Rights.

Eighth Amendment to the United States Constitution

Article VI, Section 23 of the South Dakota Constitution

State v. Holler, 2020 S.D. 28

STATEMENT OF THE CASE AND FACTS

On August 13, 2021, officers were dispatched in the area of North Maple Avenue and Van Buren St., in Rapid City, SD for a report of gunshots and a victim. (SR, 354). Dispatch advised law enforcement that a white Cadillac with paper plates was seen leaving the area. Quickly thereafter, Officer Russell spotted a white Cadillac matching the description very close to the area, going southbound on East Boulevard North. (SR, 354). Officer Russell pulled over the white Cadillac and was able to get consent for a search of the vehicle. The driver was identified as William Daly. (SR, 354).

Meanwhile, other officers located the victim, Austin Freeman, on the scene and transported him to the hospital. Unfortunately, the victim died as a result of his injuries. (SR, 354).

Law enforcement officers arrived at the scene where Daly had been stopped, and a search of the vehicle was conducted. As a result of the search, a shell casing was located, along with 4 large bags of marijuana, 2 bags containing a brown powder suspected to be heroin, and several containers of THC wax and paraphernalia. (SR, 403).

A witness to the shooting, Amber Manzoni, was able to give some details to law enforcement. (SR, 405). Amber told law enforcement that she was southbound

on N. Maple Ave. When she was stopped at the four-way stop at Van Buren St. she noticed a white Cadillac parked in the alley to the south of her, on the east side of N. Maple Ave. (SR, 405). The passenger door of the Cadillac was open and the male in the front passenger seat appeared to be talking with the victim, who was standing on the sidewalk, right next to the car. As Amber was driving by the Cadillac, she saw the male in the front passenger seat, who appeared to have a small handgun in his hand, lean out and extend his arm toward the stomach of the victim. (SR, 405). Amber could not describe the gun in detail, but she did hear a pop and realized it was a gunshot. She also saw the victim fall backward onto his back after being shot by the male in the front passenger seat. (SR, 405). When asked to identify the shooter comparing him to the detained driver of the white Cadillac, Amber indicated that she was about 80% sure that it was William Daly.

Law enforcement eventually was able to obtain video footage of the incident. Upon the review of different video footage from different locations, law enforcement determined that the driver of the white Cadillac captured in the footage was William Daly. (SR, 412). Law enforcement also obtained video from Youth and Family Services (YFS) that had captured the entire incident. (SR, 433). The video shows the white Cadillac stopped and a male wearing the same sweatshirt that Daly was wearing when arrested, sitting in the front passenger seat with the car door open. (SR, 433). The victim is seen approaching the car and a conversation takes place between him and the front seat passenger. A few moments later, a shot is heard, and the victim falls to the ground. The Cadillac starts its engine and drives South onto Maple St. (SR, 433).

On August 14, 2021, an inmate at the Pennington County jail, Brendon Tyon,

requested to talk to law enforcement regarding Daly. (SR, 420). Brendan explained that he had been cleaning the pod when Daly had arrived at jail. Brendan advised that Daly told him he was [here] for murder. Brendan then asked Daly as to who he had killed. According to Brendan, Daly replied “I ain’t saying no names, but the dude took my necklace off me so I fucking shot him.” (SR, 420).

Another video footage obtained from a nearby home, also shows Daly and a female passenger, stop in an alleyway where police believed that Daly had disposed of his weapon in trash cans. (SR, 415). Law Enforcement was able to go through the trash cans and they found a black Glock 19 gen 9 mm handgun with 1 round in the chamber as well as a Glock handgun magazine with 21 rounds. (SR, 416). Ballistics testing matched the fired cartridge to the gun found in the alleyway trash cans. (SR, 498 and 637-638).

Upon his arrest, a warrant was authorized for testing Daly’s bodily fluids. (SR, 433). Preliminary drug testing showed that Daly had in his system: Opiates, Benzodiazepines, Oxycodone, Methamphetamine, and THC. (SR, 433). Daly also made statements to law enforcement regarding use of Fentanyl. (SR, 433).

A Complaint was filed against Daly on August 16, 2021, charging him with Count 1: First Degree Murder, a Class A felony, Count 2: Possession of Marijuana with Intent to Distribute, a Class 3 felony, Count 3-5: Unauthorized Ingestion of Controlled Substance to wit: Benzodiazepam, Methamphetamine, and Fentanyl, all Class 5 felonies. (SR, 1). Count 1 was the most serious charge and carried a sentence of mandatory life in prison with a potential for the death penalty, as well as a fine of \$50,000. A Part II Information was also filed on August 26, 2021. (SR, 74).

Daly appeared for his Initial Appearance on August 16, 2021. (SR, 45). An

Indictment was filed on August 26, 2021, carrying all the charges in the Complaint as well as an additional charge on Count 2 for Commission of a felony with Firearm, a Class 2 felony. (SR, 70). Daly appeared in front of the Honorable Joshua Hendrickson on September 24, 2021, where he entered a Not Guilty plea and a denial to the Part II, after he was advised of his rights in a group setting as well as individually. (SR, 800-802). Daly was also advised of the maximum penalties he was facing during that hearing.

Approximately, 15 Status Hearings were held between 10/29/2021 and June 17, 2024. (SR, 810, 815, 820, 825, 980, 837, 844, 849, 854, 864, 873, 878, 883, 888, 895, 990.) A suppression hearing to challenge a violation of Daly's Fifth Amendment rights was held on February 15, 2023. The Honorable Judge Matthew Brown denied Daly's Motion to Suppress on July 24, 2023. (SR, 243-250).

In July of 2023, Daly's attorney withdrew and he and was appointed two new attorneys. (SR, 237, 239, 252).

On July 2, 2024, subsequent to a colloquy with Judge Brown concerning all of his rights, Daly pled guilty to an amended charge of Manslaughter in the first degree, a Class C felony, punishable with up to Life and/or \$50,000, pursuant to a plea agreement dismissing the Part 2, with a sentencing recommendation for a term of years of imprisonment. (SR, 913-915, 296, 300)¹. The court ordered a Pre-Sentence Investigation (PSI) prior to sentencing. (SR, 918). A Psychological Evaluation was also performed in preparation for Sentencing. (SR, 340). The PSI was voluminous. (SR, 929).

¹ An Amended Plea Agreement was filed on July 12, 2024, including all of the terms explained at the Change of Plea hearing.

In his PSI, Daly talked extensively about the fear he experienced on the day he encountered the victim, and how his past trauma affected his reaction. He was adamant in his PSI that he did not intend to kill the victim and offered the fact that he only shot once, and had the gun pointed in his lower abdomen rather than the victim's chest or face. Daly relayed to the PSI writer that the victim had robbed him 5 days prior to the incident. (SR, 347)

A sentencing hearing was held on November 20, 2024. (SR, 928). A number of victim impact letters were received by the court. (SR, 931). During the State's portion of the sentencing hearing, the prosecutor had prepared a presentation that they displayed on the projector as well as calling, Tori Freeman, the victim's sister to read her letter (SR, 932). The State also read into the record two other letters from the victim's family. (SR, 936- 943).

At the conclusion of all testimony for the sentencing hearing, the State asked that an 80-year penitentiary sentence be imposed on Daly. The State also asked for Restitution of \$4,414.57, court costs of \$116.50, and transcript costs of \$120.00, as well as a No Contact order with the Freeman family for the entirety of the sentence. (SR, 943). In her sentencing argument, the State was not remiss to Daly's life struggles such as his mistreatment by adults when he was younger. (SR, 950). In citing the events that resulted in Freeman's death, the State emphasized Daly's criminal history and drug use in support of an 80-year penitentiary sentence.

The Defense asked for a sentence of 25 years of incarceration relying on the fact that he would have to serve most of that sentence before becoming parole eligible. (SR,954). Defense counsel made reference to Daly's Psychologic Evaluation which indicated that he did suffer from a heightened sense of anxiety and exhibited

exaggerated startled responses due to his past trauma. (SR, 953). Daly's Defense counsel also emphasized that Daly in no way intended to kill Freeman on August 13, 2021. (SR, 952).

Daly gave a statement to the court as well. He told the court and Austin's family that he felt deep remorse for his actions. (SR, 955). In his statement, Daly apologized to Austin's family. (SR, 955).

Daly was ultimately sentenced to 80 years in prison, with credit for time served of 1,194 days. (SR, 730).

LEGAL ISSUES

- I. The State's sentencing argument was an obvious violation of the plea agreement to recommend a term of years after they stated on the record that they would **not** be recommending life in prison when in fact they asked for an 80-year sentence, resulting in a de facto life sentence.

STANDARD OF REVIEW

To preserve a breach of plea agreement claim for appeal, Defendant must contemporaneously object to the prosecutorial breach at the trial level. State v. Olvera, 824 N.W.2d 112, 115. This Court reviews unpreserved issues for plain error. State v. Guziak, 2021 S.D. 68, ¶ 10, 968 N.W.2d 196, 200. In this case, the record does not indicate that a contemporaneous objection was raised at sentencing. Therefore, the circuit court's sentence should be analyzed for plain error.

ARGUMENT

Daly argues that the State breached the plea agreement when they asked for a de facto life sentence of 80 years, after having stated during the change of plea hearing that they "would not walk in here and ask for life in prison." Allowing the government to

breach a promise that induced a guilty plea violates due process. United States v. E.V., 500 F.3d 747, 751 (8th Cir. 2007). “The inquiry is not whether or not the trial court was affected by the breach of the agreement, but whether the state's attorney met his or her obligation.” State v. Olvera, 2012 S.D. 84, ¶ 6, 824 N.W.2d 112, 114.

Plea agreements are contractual in nature and should be interpreted according to general contractual principles. United States v. E.V., 500 F.3d 747, 751 (8th Cir. 2007). “We use a ‘straight-forward interpretation’ of the State's promise when examining whether a breach occurred.” State v. Guziak, 2021 S.D. 68, ¶ 12, 968 N.W.2d 196, 200

“[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” Santo Bello, 404 U.S. at 262, 92 S.Ct. 495.

“The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called “plea bargaining,” is an essential component of the administration of justice.” (Santo Bello v. New York, 404 U.S. 257, 260 92 S.Ct. 495, 30 L. Ed. 2d 427 (1971)). “Properly administered, it is to be encouraged. If every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities.” *Id.* When the State breaches the terms of a plea agreement, the proper remedy is remand for resentencing before a new judge. Vanden Hoek v. Weber, 2006 S.D. 102, ¶ 25, 724 N.W.2d 858, 865

As stated in the Standard of Review section, Daly did not contemporaneously objection to the State’s breach of plea agreement at sentencing. Therefore, the standard of review available is plain error. “We invoke our discretion under the plain error rule

cautiously and only in exceptional circumstances. 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 we exercise our discretion to notice the error if (4) it seriously affects the fairness, integrity, or public reputation of the judicial proceedings. State v. Olvera, 2012 S.D. 84, ¶ 9, 824 N.W.2d 112, 115.

In this particular case, Daly negotiated and bargained with the prosecutor in order to avoid a life sentence from his conviction. During the plea hearing, as the State was clarifying the terms of the plea agreement to the court, the prosecutor, Ms. Hammond specifically stated “Your Honor, I plan to ask for a term of years. I will not walk in and say I believe he should get life in prison.” (SR, 912). The court then turned to Daly, and in summarizing Ms. Hammond’s statement to him, said “And the State has just stated they’re not going to walk in and say he should spend the rest of his life in prison. They’re going to give a term of years.” (SR, 913). There were no ambiguities about the expectations of the parties based on the terms of the plea agreement. Daly was not expecting to spend the rest of his life in prison once he pled guilty pursuant to this plea agreement and promise from the State.

However, when making her sentencing argument to the court, Ms. Hammond asked for a penitentiary sentence of 80 years and the sentencing court granted that request. SDCL 24-15A-32 outlines the parole eligibility calculations for offenders in the South Dakota prison system. A review of Daly’s Offender Locator summary indicates an initial parole date of August 14, 2081, and a sentence completion date of August 14, 2101. (App., 1).

Daly was born on September 1, 1989. At the time of sentencing in this case he was 35 years old and had already spent 1,194 days in custody pending final resolution. (SR, 345). On his first projected parole date, he would have to be a couple of weeks shy of 92 years old. If he would have to sit his entire time, he would have to be a couple of weeks shy of 112 years old. The age of 92 is quite advanced and not many people ever reach their nineties, especially after having spent over 55 years in prison. The assurance given by Ms. Hammond at the change of plea hearing definitely induced Daly to plea of guilty pursuant to the plea agreement as he was led to believe that the State would not ask for him to spend his entire life in prison. His reliance on Ms. Hammond's promise of not asking for a life sentence is corroborated by his statement to the court at the conclusion of his sentencing hearing: "Your Honor, when we did the change of plea, you had—talked about not sentencing me to a life sentence, and 80 years is a life sentence." (SR, 963)

As this Court has previously noted, "[o]nce an accused agrees to plead guilty in reliance upon a prosecutor's promise to perform a future act, the accused's due process rights demand fulfillment of the bargain. State v. Olvera, 2012 S.D. 84, ¶ 12, 824 N.W.2d 112, 115. "This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to ensure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that, when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." Santo Bello, 262.

“The defendant waives significant rights by entering into a plea agreement and that waiver is “not in exchange for the actual sentence or impact on the judge, but for the prosecutor's *statements* in court.” Vanden Hoek v. Weber, 2006 S.D. 102, ¶ 22, 724 N.W.2d 858, 864. Daly’s question/statement to the court at the end of his sentencing hearing sums up the promise he had relied on in exchange for waiving his rights and pleading guilty pursuant to a plea agreement.

There is no indication on the record that the sentencing court had thought about sentencing Daly to 80 years independently of the State’s request. The fact that the court followed the State’s recommendation for sentencing, shows how that request prejudiced Daly. The sentencing court was taking cues from the State on the amount of time to impose on Daly as the State was representing the family’s wishes in their request. Therefore, if the State had asked for a reasonable term of years that would have allowed some realistic possibility for Daly not to spend all of his life in prison, the court would have likely followed that recommendation.

A sentence that requires a 35-year-old to spend approximately 57 years in prison before being considered for parole is effectively a life sentence, and as such, a breach of the plea agreement Daly accepted in exchange for his guilty plea. The average prisoner dies behind bars at the age of 64.²

² Blagg, D., Brown, M., Buchanan, A., et al (2015). *Life Without Parole Sentences in Washington State*. Seattle: University of Washington, Law, Societies, and Justice Program.

Nellis, A. (2013). *Life Goes On: The Historic Rise in Life Sentences in America*. Washington, D.C.: The Sentencing Project

LEGAL ISSUE

- II. Whether the Circuit Court Judge's sentence of 80 years of prison imposed on Daly, violated his Eighth Amendment Rights.

STANDARD OF REVIEW

Daly contends that the trial court abused its discretion in sentencing him to 80 years in prison, and that such sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment. "A circuit court's sentencing decision is generally reviewed for an abuse of discretion." State v. Holler, 2020 S.D. 28, 4. "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. Holler, 2020 S.D. 28, 4. "However, whether a sentence violates the Eighth Amendment is reviewed de novo." State v. Holler, 2020 S.D. 28, 5.

ARGUMENT

The Eighth Amendment to the United States Constitution and Article VI, Section 23 of the South Dakota Constitution state: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." "To determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to "the evolving standards of decency that mark the progress of a maturing society." (Graham v. Florida,³ 130 S.Ct. 2011, 2021 (2010), *citing* Estelle v. Gamble, 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)). "This is because [t]he standard of

³ Graham v. Florida was superseded by statutes enacted in Florida, in 2014, for the purpose of trying juveniles as adults. Reeters v. Israel, 2017 Fla. App. LEXIS 9420, 42 Fla. L. Weekly D 1460.

extreme cruelty is not merely descriptive but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.” (Kennedy v. Louisiana, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008) (*quoting* Furman v. Georgia, 408 U.S. 238, 382, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972))). “Courts should consider the traditional sentencing factors of retribution, deterrence—both individual and general—rehabilitation, and incapacitation.” State v. Klinetobe, 2021 S.D. 24, 12.

“The Eighth Amendment, which forbids cruel and unusual punishments, contains a “narrow proportionality principle” that “applies to noncapital sentences.” (Ewing v. California, 538 U.S. 11, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003) *citing* Harmelin v. Michigan, 501 U.S. 957, 111 S.Ct. 2680, 115 L. Ed. 2d 836 (1991) *citing* Weems v. United States, 217 U.S. 349, 371 30 S.Ct. 544, 54 L.Ed. 793 (1910))). “The Eighth Amendment’s prohibition of cruel and unusual punishment ‘guarantees individuals the right not to be subjected to excessive sanctions.’” (Miller v. Alabama, 132 S.Ct. 2455, 2463 567 U.S. 460, 183 L.Ed.2d 407 (2012), *citing* Roper v. Simmons, 543 U.S. 551, 560, 125 S.Ct. 1183, 161 L.Ed.2d 1, (2005))). However, research of the law on this issue shows that there is no clarity regarding what factors may indicate excessive punishment disproportionate to the crime. (Lockyer v. Andrade, 538 U.S. 63, 72 123 S.Ct. 1166, 155 L.Ed.2d 144, (2003)).

“For a defendant's sentence to violate the Eighth Amendment, “it must be grossly disproportionate to the offense.” State v. Holler, 2020 S.D. 28, 5. Our inquiry for determining gross disproportionality is well established:

“First, we look to the gravity of the offense and the harshness of the penalty.”
... If the penalty imposed appears to be grossly disproportionate to the gravity of the

offense, then we will compare the sentence to those “imposed on other criminals in the same jurisdiction” as well as those “imposed for commission of the same crime in other jurisdictions.” State v. Holler, 2020 S.D. 28, 5.

“If the threshold question does not lead to an inference of gross disproportionality, the analysis ends there.” *Id.* “[O]ther conduct relevant to the crime” is considered in making “the threshold comparison between the crime and the sentence [.]” State v. Holler, 2020 S.D. 28, 5. Rehabilitation prospects should also be considered. State v. Hinger, 1999 S.D. 91, ¶ 21, 600 N.W.2d 542, 548.

The case at hand involves a plea agreement in place between the parties whereas Daly pled guilty to Manslaughter in the First Degree and the state dismissed his Part II Information and promised to ask for a sentence of a term of years.

Daly was adamant in his PSI that he never intended to kill Austin Freeman. (SR, 347). As it has been mentioned above, Daly was under the effect of many drugs which were in his system. In fact, Daly has a long and severe history of drug use. (SR, 357-358). His psychological evaluation sheds meaningful light into who Daly is and what his life has been like. It is clear from that evaluation that Daly suffered trauma that deeply shaped his life. He was subjected to childhood physical abuse. (SR, 341). He was sexually assaulted in prison, but also as a child. His life as an addict has landed him in dire situations and rendered him a victim himself on many occasions. (SR, 341). Despite his tough exterior, the evaluator determined that he showed characteristics of insecurity and inferiority to the point that he anticipates ridicule and rejection. (SR, 342). He often experiences thoughts of self-loathing. His use of illicit substances is consistent with his desire to numb his feelings and emotions. (SR, 343).

The letter submitted from Daly's cousin is raw and revealing, allowing for a deeper understanding of why things went so wrong in Daly's life. (SR, 335). Daly never received the help, love, and support that it seems he so desperately needed. He was physically abused by his parents and did not have a way to seek help. The cousin also alludes to some sexual abuse that Daly later referred to in his psychological evaluation as well. The letter definitely exposes problems that perhaps even Daly has been reluctant to address for much of his life, which definitely has had a negative outcome for him. (SR, 337). Even the court and the State acknowledged that Daly had not had an easy life.

What is most remarkable in Daly's case, is his meticulous outline of his future goals and aspirations. (SR, 362) It is not often that a Defendant puts in such time and detail in outlining a rehabilitation plan while facing the prospect of many years in prison. Daly has included in his PSI the certificates he holds as a personal trainer and yoga instructor. (SR, 376). He plans to build on those skills and use those skills to make a living as well as enhance the quality of life for community members in need. It is notable that Daly incorporates his desire to honor his victim through good deeds in his future. He wants to go out in the world and be a better person so that he redeems himself while honoring Austin's life and legacy. It is impressive that he wants to become a champion for his victim and carry his legacy to other parts of the country while trying to help other people who are facing the kind of challenges Daly faced as a young man. It is apparent that Daly takes accountability for his crime and that he has done a lot of introspection about what he would need to do to rehabilitate himself and leave behind the life of crime and addiction. Thus, a sentence of 80 years of imprisonment in Daly's case is excessive, cruel, and disproportionate.

CONCLUSION

Based upon the above facts, arguments, and authorities, Daly's sentence imposed on November 20, 2024, should be reversed.

REQUEST FOR ORAL ARGUMENT

Daly respectfully requests that he be allowed to present oral argument on these issues.

Dated this 2nd day of May 2025.

Respectfully Submitted,

/s/Ilisja Duffy

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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 4,577 words and is 16 pages in length.

I certify that the word processing software used to prepare this brief is Microsoft Word Version 16.44.

/s/ Ilisja Duffy
Ilisja Duffy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of May 2025, a true and correct copy of the foregoing Appellant's Brief was served via eFileSD, at the e-mail addresses listed below, upon these individuals:

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/s/ Ilisja Duffy
Ilisja Duffy

APPENDIX

JUDGMENT.....	1.1
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SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

STATE OF SOUTH DAKOTA, **DEC 26 2024** IN CIRCUIT COURT
COUNTY OF PENNINGTON *Shirley Johnson Legal* SEVENTH JUDICIAL CIRCUIT
Clerk
STATE OF SOUTH DAKOTA,)
Plaintiff,)
vs.)
WILLIAM DALY,)
DOB: 9/1/89)
Defendant.)

File No. CRI21-3527

JUDGMENT

Appearance at sentencing:

Prosecutor: Roxanne Hammond Defense attorney: Angela Colbath and Greg Sperlich

Date of sentence: 11/20/24
Date of offense: 8/13/21
Charge: First Degree Manslaughter
Class: C Felony SDCL: 22-16-15(3)
Plea of guilty entered on 7/2/24

CRIME QUALIFIER: (CHECK IF APPLICABLE):

☐ Accessory 22-3-5 ☐ Aiding or Abetting 22-3-3 ☐ Attempt 22-4-1
☐ Conspiracy 22-3-8 ☐ Solicitation 22-4A-1

Habitual offender admitted on: _____

☐ SDCL 22-7-7 ☐ SDCL 22-7-8 ☐ SDCL 22-7-8.1

Part 2 Information (DUI) admitted on _____

☐ Third Offense; SDCL 32-23-4 ☐ Fourth Offense; SDCL 32-23-4.6
☐ Fifth Offense; SDCL 32-23-4.7 ☐ Sixth or Subsequent Offense; SDCL 32-23-4.9

Part 2 Information (ASSAULT) admitted on _____

☐ SDCL 22-18-1

Part 2 Information (VPO DV/ VNCO DV) admitted on _____

☐ SDCL 25-10-13

☒ The Defendant having pled guilty and the Court finding the plea was made knowingly and voluntarily, and with a sufficient factual basis for the entry of the plea and having asked whether any legal cause existed to show why judgment should not be pronounced, and no cause being offered:

IT IS HEREBY ORDERED THAT the Defendant is sentenced to serve:

80 years in the South Dakota State Penitentiary with 0 suspended and 1194 days credit plus each day served in the Pennington County jail.

☐ Fully Suspended Pen

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 \$120.58.
- ☐ 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 \$ 4414.57 to South Dakota Crime Victim's Compensation.

Other Conditions:

- ☒ NCO with the family of Austin Freeman
- ☐ _____

☐ 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.

Attest:
Ricke, Jolonda
Clerk/Deputy



11/22/2024 4:12:47 PM

BY THE COURT

Matthew Brown
HON. MATTHEW M. BROWN 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.

23A-32-15
I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears on record in my office this

DEC 19 2024

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Amber Watkins
Clerk of Courts, Pennington County

By *JB* Deputy

Filed on: 11/22/2024 Pennington County, South Dakota 51CR121-003527

1.2

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30935

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

WILLIAM DALY,

Defendant and Appellant.

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

THE HONORABLE MATTHEW M. BROWN
Circuit Court Judge

APPELLEE'S BRIEF

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AND APPELLANT

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

Notice of Appeal filed December 19, 2024

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30935

STATE OF SOUTH DAKOTA,

Plaintiff and Appellee,

v.

WILLIAM DALY,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Appellant, William Daly, is referred to as “Daly.” Appellee, the State of South Dakota, is referred to as “State.” The victim is referred to by his initials “A.F.” References to the Settled Record, 51CRI21-3527, are denoted “SR.” References to the Appellant’s Brief are denoted “AB.” The proper page number(s) follows the references.

JURISDICTIONAL STATEMENT

This is an appeal of a Judgment and Sentence entered on November 22, 2024. SR:737. Daly filed a Notice of Appeal on December 19, 2024. SR:737; SDCL 23A-32-15. Thus, this Court has jurisdiction to hear this appeal under SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I.

WHETHER THE STATE VIOLATED THE PLEA AGREEMENT?

The circuit court did not rule on this issue.

- *State v. Guziak*, 2021 S.D. 68, 968 N.W.2d 196
- *State v. Olvera*, 2012 S.D. 84, 824 N.W.2d 112

II.

WHETHER THE CIRCUIT COURT PROPERLY SENTENCED DALY?

The circuit court did not rule on this issue.

- *State v. Deleon*, 2022 S.D. 21, 973 N.W.2d 241
- *State v. Rice*, 2016 S.D. 18, 877 N.W.2d 75
- *State v. Martin*, 2025 S.D. 15, 19 N.W.3d 9

STATEMENT OF THE CASE

An indictment was filed against Daly for first degree murder, commission of felony with a firearm, possession of marijuana with intent to distribute, and three counts of unauthorized ingestion of controlled drug or substance, specifically benzodiazepam, fentanyl, and methamphetamine (“meth”). SR:70-71. The State also filed a habitual offender information.¹ SR:74.

Daly pled guilty to first degree manslaughter; in exchange, the State dismissed the remaining charges and habitual offender

¹ The habitual offender information alleged Daly had prior felony convictions for being a felon in possession of a firearm, possession of a controlled substance with intent to distribute, possession of controlled substance for sale, and aggravated assault with deadly weapon. SR:74.

information. SR:730, 911-15; SDCL 22-16-15(3). At sentencing, the State asked that an 80-year prison sentence be imposed. SR:951. Daly requested a 25-year sentence. SR:954. The circuit court sentenced Daly to 80 years in prison with credit for 1,194 days served. SR:730, 962.

STATEMENT OF THE FACTS

On August 13, 2021, Daly woke up in a stranger's garage, suffering from withdrawal² symptoms. SR:358. To subside his withdrawal symptoms, Daly sought heroin. SR:358.

Around 10:00 a.m., Daly and a female drove in a white Cadillac to buy heroin. SR:358, 479. The female drove the Cadillac down an alley and parked on the sidewalk. SR:355, 432, 433. Daly exited the Cadillac and obtained clothing from the trunk. SR:485. Daly returned to the Cadillac, took off his shorts, and put on black pants. SR:485.

Correspondingly, around 10:00 a.m., A.F. left his apartment and headed to his grandmother's house to borrow some sugar to bake cookies. SR:943. As A.F. walked on the sidewalk, he encountered the white Cadillac parked haphazardly. SR:485, 943. It appeared, via video surveillance, that Daly and A.F. briefly conversed. SR:485.

Suddenly, Daly held a gun out of the passenger door and quickly pulled it into the vehicle. SR:355. Then, Daly extended the gun again

² It is unclear from the record what Daly was withdrawing from. See SR:358

and shot A.F. SR:355. A.F. collapsed, grasped his abdomen, and started screaming.³ The Cadillac drove away. SR:355, 485.

Nearby, law enforcement stopped the Cadillac. SR:155. Daly was the sole occupant of the vehicle. SR:155. Daly was arrested and provided consent to search the Cadillac. SR:155. In the Cadillac was a shell casing, over a pound of marijuana, THC wax, two bags of a brown substance, which appeared to be heroin, and drug paraphernalia. SR:157, 403, 413. Daly was transported to the jail and told staff he was high on fentanyl. SR:433. Daly had opiates, benzodiazepines, oxycodone, meth, and THC in his system. SR:433.

ARGUMENTS

I.

THE STATE'S SENTENCING ARGUMENT DID NOT VIOLATE THE PLEA AGREEMENT.

A. Standard of review

To preserve the right to appeal a claim that the prosecution violated the terms of a plea agreement, the defendant must make a timely objection during sentencing. *State v. Guziak*, 2021 S.D. 68, ¶ 10, 968 N.W.2d 196, 200 (citing *Puckett v. United States*, 556 U.S. 129, 142-43 (2009)). Daly asserts he did not object to the State's sentencing argument and, consequently, asks this Court to review the unpreserved issue for plain error. AB:7, 8.

³ A.F. was transported to the Hospital and died of his injuries. SR:441.

“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 [the court] exercise [its] discretion to notice the error if (4) it seriously affect[s] the fairness, integrity, or public reputation of the judicial proceedings.” *Guziak*, 2021 S.D. 68, ¶ 10, 968 N.W.2d at 200 (internal citation omitted). Under the plain error analysis, the defendant bears the burden of showing the error was prejudicial. *Id.* ¶ 24, 968 N.W.2d at 203.

1. No error existed.

The first inquiry is the presence of error. This Court “appl[ies] ordinary principles of contract law to determine whether the State breached a plea agreement.” *Id.* ¶ 12, 968 N.W.2d at 200 (citing *State v. Slotsky*, 2016 S.D. 54, ¶ 5, 883 N.W.2d 738, 740). “Like all contracts, plea agreements include an implied obligation of good faith and fair dealing.” *Id.* ¶ 12, 968 N.W.2d at 200 (citation omitted).

Finding a breach also implicates the defendant’s substantial rights. *See State v. Olvera*, 2012 S.D. 84, ¶ 13, 824 N.W.2d 112, 115 (explaining that a breach of the plea agreement implicates the defendant’s substantial rights but does not automatically establish prejudice). “[O]nce an accused agrees to plead guilty in reliance upon a prosecutor’s promise to perform a future act, the accused’s due process rights demand fulfillment of the bargain.” *Guziak*, 2021 S.D. 68, ¶ 13, 968 N.W.2d at 200-01 (quoting *State v. Waldner*, 2005 S.D. 11, ¶ 13, 692

N.W.2d 187, 191). The State must fulfill its obligations under the express terms of the plea agreement and its implied obligation of good faith. *Id.* The inquiry is not whether the trial court was affected by the breach of the agreement, but whether the state’s attorney met their obligation. *Olvera*, 2012 S.D. 84, ¶ 6, 824 N.W.2d at 114 (quoting *State v. Morrison*, 2008 S.D. 116, ¶ 6, 759 N.W.2d 118, 121).

Here, the plea agreement reads: “At the time of sentencing the State would recommend a term of years, otherwise both sides would be free to comment.” SR:300. At the change of plea, the State commented, it planned “to ask for a term of years” and “will not walk in and say [it] believe[s] he should get life in prison.” SR:912. At sentencing the “State request[ed] a sentence of 80 years in prison.” SR:951.

As the circuit court noted, “[t]here is a difference in the law between the court [imposing] life and . . . a term of years.” SR:963. Case law and statutory provisions support the circuit court’s differentiation. A life sentence “completely eschews the goal of rehabilitation,” while a “term of years allows for rehabilitation and hope.” *State v. Pulfrey*, 548 N.W.2d 34, 38 (1996); *see State v. Lemley*, 1996 S.D. 91, 552 N.W.2d 409. SDCL 24-5-1 provides that inmates sentenced for any term less than life are entitled to deductions from their sentence for good conduct. Whereas defendants sentenced to a life sentence are not eligible for parole. *See* South Dakota Department of Corrections, Frequently Asked Questions: Parole, <https://docadultlookup.sd.gov/about/faq/parole>.

aspx#:~:text=Are%20inmates%20sentenced%20to%20life,to%20a%20nu
mber%20of%20years (“In South Dakota, life means life. Inmates
sentenced to life in prison serve the rest of their life in prison unless their
sentence is reduced to a number of years.”).

Daly argues the State breached its obligation by “ask[ing] for a de
facto life sentence of 80 years, after having stated during the change of
plea hearing that they ‘would not walk in here and ask for life in prison.’”
AB:7. The State promised it would recommend a term of years, not the
maximum penalty of life; the State abided by its promise. As discussed,
a term of year sentence is not equivalent to a life sentence. The State
followed its plea agreement; thus, no error exists.

2. No plain error occurred.

“An error is ‘plain’ when it is clear or obvious.” *Guziak*, 2021 S.D.
68, ¶ 16, 968 N.W.2d at 201 (quoting *State v. McMillen*, 2019 S.D. 40,
¶ 23, 931 N.W.2d 725, 732). This requirement “means that lower court
decisions that are questionable but not plainly wrong (at time of trial or
at time of appeal) fall outside the Rule’s scope.” *Id.*

Here, the plea agreement left open an opportunity for the State to
argue for any term of year sentence and the State did not argue beyond
that. See SR:943-51. The State agrees with Daly that “[t]here were no
ambiguities about the expectations of the parties based on the terms of
the plea agreement.” AB:9. The record does not establish that the

State's argument was a clear and obvious violation of the plea agreement; consequently, Daly failed to establish plain error.

3. Daly's substantive rights were not implicated.

Daly's claim also fails on the third prong of plain error. "Plain error review requires [Daly] to establish prejudice." *Guziak*, 2021 S.D. 68, ¶ 32, 968 N.W.2d at 202 (citing *Olvera*, 2012 S.D. 84, ¶ 13, 824 N.W.2d at 115 (a breach of the plea agreement implicates the defendant's substantial rights but does not automatically establish prejudice)). "To prevail on the prejudice prong, [Daly] must show that the error affected the outcome of the proceedings." *Id.* (quoting *State v. Jones*, 2012 S.D. 7, ¶ 17, 810 N.W.2d 202, 206).

To show prejudice, Daly must establish "a 'reasonable probability' that, but for the error, the result of the proceeding would have been different." *Guziak*, 2021 S.D. 68, ¶ 21, 968 N.W.2d at 202-03 (citation omitted). This Court "adhere[s] to [its] well-established plain error rule that an appellate court does not have the authority to correct an error resulting from a breach of a plea agreement unless the defendant meets her burden of proving prejudice." *Id.* ¶ 25, 968 N.W.2d at 204 (citing *Olvera*, 2012 S.D. 84, ¶ 14, 824 N.W.2d at 116; *Jones*, 2012 S.D. 7, ¶ 17, 810 N.W.2d at 206).

Daly argues he was prejudiced by the State's recommendation of 80 years' incarceration because

[t]he sentencing court was taking cues from the State on the amount of time to impose on Daly as the State was

representing the family's wishes in their request. Therefore, if the State had asked for a reasonable term of years that would have allowed some realistic possibility for Daly not to spend all of his life in prison, the court would have likely followed that recommendation.

AB:11. The record does not support Daly's claim that the State's sentencing recommendation had an impact on the circuit court's sentence.

The circuit court was provided video and audio of A.F.'s murder; based on the content, the circuit court stated:

The thoughtlessness, the callousness, the lack of necessity, it's profound to watch what actually took place and then hear from Mr. Daly his rendition of what he thought was going on and what was necessary under the circumstances, they just absolutely don't match up with each other. They just don't. It is truly grotesque what took place, senseless.

. . .

This [c]ourt's seen a lot of pain that people have caused upon each other[,] and this is one of the most grotesque and unbelievable acts that [its] seen against a truly innocent individual.

SR:957, 960.

In its sentence colloquy, the circuit court thoroughly discussed the many aggravating factors it found without referring to the State's recommendation. SR:958-62. The circuit court highlighted Daly's inexcusable actions, victim impact statements, risk to others, criminal history, and lack of understanding of the severity of his action. SR:958-61. The circuit court stated, "the facts of this case are stunning in their gravity in which [Daly] moved on to taking the life of an individual because of a perceived threat or perceived harm that they've caused

[Daly] in the past.” SR:962. The circuit court concluded its comments by stating:

Ultimately, the State’s request of 80 years in the penitentiary, this [c]ourt finds to be wholly appropriate. [The court is] sentencing [Daly] to [] 80 years in the penitentiary. . . . As [this court stated], [it has] not seen the depravity and the grotesqueness of the level of action and the effect of an individual who takes another’s life such as this in this [c]ourt’s history, and [this court] think[s] that the sentence that this [c]ourt is imposing is, again, wholly appropriate for what’s been done and what’s been taken away.

SR:962-63.

At his change of plea hearing, Daly stated they “talked about not sentencing [him] to a life sentence, and 80 years is a life sentence.”

SR:963. The circuit court responded, “[t]here is a difference in the law between the court [imposing] life and . . . a term of years.” SR:963. The circuit court then said it “strongly considered all the factors, the submissions, and everything else that’s been put in front of the [c]ourt today and before, and that is the [c]ourt’s sentence and [its] going to stick with it.” SR:964. The circuit court found the State’s request of 80 years imprisonment “to be wholly appropriate.” SR:962.

The circuit court’s statements do not demonstrate that the State’s sentencing argument influenced the circuit court’s sentencing decision. Daly failed to show “the circuit court imposed a harsher sentence or that [h]e would have received [some other sentence] absent the State’s argument.” *Guziak*, 2021 S.D. 68, ¶ 25, 968 N.W.2d at 204. As such, Daly’s argument fails, and the issue whether the error seriously affected

the fairness, integrity, or public reputation of the judicial proceedings need not be addressed. *See Id.* ¶ 26, 968 N.W.2d at 204.

II.

THE CIRCUIT COURT PROPERLY SENTENCED DALY.

A. Eighth Amendment analysis

“The question whether a noncapital sentence violates the Eighth Amendment requires [this Court] to determine de novo whether the sentence imposed is grossly disproportionate to its corresponding offense.” *State v. Rice*, 2016 S.D. 18, ¶ 13, 877 N.W.2d 75, 80 (citing *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991); *State v. Chipps*, 2016 S.D. 8, 874 N.W.2d 475). In determining whether the sentence imposed is grossly disproportionate, this Court:

first compare[s] the gravity of the offense—i.e., ‘the offense’s relative position on the spectrum of all criminality’—to the harshness of the penalty—i.e., ‘the penalty’s relative position on the spectrum of all permitted punishments.’ ‘If the penalty imposed appears to be grossly disproportionate to the gravity of the offense, then [this Court] compare[s] the sentence to those “imposed on other criminals in the same jurisdiction” as well as those “imposed for commission of the same crime in other jurisdictions.” The challenged sentence is cruel and unusual only if these comparisons ‘validate [the] initial judgment that [the] sentence is grossly disproportionate to [the] crime.’

Id. (internal citations omitted).

The analysis begins by examining the gravity of Daly’s offense. Daly pled guilty to first degree manslaughter; “as a lesser form of the highest crime, the gravity of first-degree manslaughter is relatively great on the spectrum of criminality.” *Rice*, 2016 S.D. 18, ¶ 14, 877 N.W.2d at

80; *see State v. Ceplecha*, 2020 S.D. 11, ¶ 59, 940 N.W.2d 682, 698 (“First-degree manslaughter is a grave offense when viewed on the spectrum of criminality.”).

The circuit court opined “the facts of this case are stunning in their gravity in which [Daly took] the life of an individual because of a perceived threat or perceived harm that they’ve caused [him] in the past.” SR:962. The circuit court further stated, “this is one of the most grotesque and unbelievable acts that [its] seen against a truly innocent individual.” SR:960.

Next, the harshness of Daly’s sentence is examined. The circuit court sentenced Daly to 80 years in prison. SR:730, 962. The spectrum of all permitted punishments in South Dakota includes the possibility of death and mandatory life imprisonment. *See* SDCL 22-6-1. It is undisputed that Daly’s sentence is towards the higher end of the spectrum for all permitted punishments. But Daly’s sentence when compared to the gravity of the offense is not grossly disproportionate; thus, ending the review of his constitutional claim. *State v. Manning*, 2023 S.D. 7, ¶ 50, 985 N.W.2d 743, 758.

Daly argues his sentence was “excessive, cruel, and disproportionate” because he “never intended to kill A.F.,” had a difficult life, took “accountability for his crime[,]” and had “future goals and aspirations.” AB:14-15. But this Court does “not analyze characteristics or facts particular to the defendant, but [] looks ‘only to whether the

penalty imposed is grossly disproportionate to the gravity of the offense.” *State v. Deleon*, 2022 S.D. 21, ¶ 33, 973 N.W.2d 241, 249 (quoting *State v. Bausch*, 2017 S.D. 1, ¶ 38, 889 N.W.2d 404, 415). As discussed, Daly’s sentence is not grossly disproportionate; accordingly, Daly’s constitutional argument lacks merit.

B. Abuse of discretion analysis

In addition to his Eighth Amendment challenge, Daly also contends the circuit court’s sentence was an abuse of discretion. AB:12. “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. Martin*, 2025 S.D. 15, ¶ 26, 19 N.W.3d 9, 14 (quoting *State v. Lanpher*, 2024 S.D. 26, ¶ 25, 7 N.W.3d 308, 317). Consequently “a sentence within the statutory maximum generally will [generally] not be disturbed on appeal.” *Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d at 83 (internal citation omitted).

In assessing the nature of the offense, a sentencing court has “wide discretion with respect to the type of information used as well as its source.” *Martin*, 2025 S.D. 15, ¶ 28, 19 N.W.3d at 14 (quoting *State v. Arabie*, 2003 S.D. 57, ¶ 21, 663 N.W.2d 250, 257). “This broad range of information may include evidence that would be inadmissible at trial[.]” *Id.* (quoting *State v. Banks*, 2023 S.D. 39, ¶ 19, 994 N.W.2d 230, 235). Thus, a court may rely on an extensive sentencing record and is not confined “to the information contained in a stipulated factual basis

statement used to support a defendant’s guilty plea.” *Id.* (citing *State v. Caffee*, 2023 S.D. 51, ¶ 28, 996 N.W.2d 351, 360).

In determining an appropriate sentence, “[c]ourts should consider the traditional sentencing factors of retribution, deterrence—both individual and general—rehabilitation, and incapacitation.” *Caffee*, 2023 S.D. 51, ¶ 27, 996 N.W.2d at 360 (quoting *State v. Klinetobe*, 2021 S.D. 24, ¶ 28, 958 N.W.2d 734, 741). Courts should weigh these factors “on a case-by-case basis” and may determine “which theory is accorded priority” in a particular case. *Id.* (internal citation omitted).

In this case, the circuit court did not abuse its discretion in sentencing Daly. To assist in fashioning an appropriate sentence, the circuit court ordered court services to conduct a Presentence Investigation (PSI). SR:918. The PSI contained, among other things, information regarding Daly’s extensive criminal history, family history, education, employment history, and social circumstances. SR:308-729.

The circuit court also reviewed Daly’s psychological examination. SR:929, 959; *see* SR:340-43. Based on Daly’s psychological examination, the circuit court opined it believes Daly poses a risk to others due to his “perception of reality and the reactivity that [he] ha[s]. . . . If [he is] prone to react in the way that [he] did in this case because of [his] background and history, [he] pose[s] a danger to absolutely anyone and everyone in the community.” SR:959-60.

The circuit court found “the facts of this case [to be] stunning in their gravity[.]” SR:962. In determining Daly’s sentence, the circuit court considered Daly’s “grotesque and unbelievable acts[.]” victim impact statements, risk to others, criminal history, danger to others, and lack of understanding of the severity of his action. SR:958-61.

The circuit court also considered mitigating factors including Daly’s personal history and his “remorse about what took place.” SR:960-61. The circuit court commented that Daly’s personal history led him to a downhill path and due to his history and substance abuse, it “altered the way that [he] perceive[s] and see[s] things.” SR:961. Daly’s personal history “doesn’t excuse what [he] did, but” the circuit court “appreciate[s] and [has] considered that aspect of what took place and the background.” SR:961.

The circuit court concluded its comments by stating, it found the “the State’s request of 80 years in the penitentiary . . . to be wholly appropriate.” SR:962. The circuit court then remarked:

As [this court] said, [it has] not seen the depravity and the grotesqueness of the level of action and the effect of an individual who takes another’s life such as this in this [c]ourt’s history, and [this court] think[s] that the sentence that this [c]ourt is imposing is, again, wholly appropriate for what’s been done and what’s been taken away.

SR:962-63. The circuit court’s commentary illustrates it considered the traditional sentencing factors of retribution, deterrence, incapacitation, and rehabilitation in making its decision.

Daly pled guilty to first degree manslaughter, which carries a maximum sentence of life imprisonment and a fine of \$50,000. SR:730, 911-15; SDCL 22-16-15(3); SDCL 22-6-1. The circuit court sentenced Daly to 80 years imprisonment. SR:92-93. Daly's sentence was within the statutory maximum; therefore, his sentence should not be disturbed on appeal. *See Rice*, 2016 S.D. 18, ¶ 23, 877 N.W.2d at 83.

Daly contends the circuit court abused its discretion because mitigating circumstances exist. AB:14-15. That said, "the mere presence of mitigating evidence does not entitle a defendant to a diminished sentence, but rather forms a part of the larger sentencing record, all of which the sentencing court must consider." *Klinetobe*, 2021 S.D. 24, ¶ 41, 958 N.W.2d at 744. Contrary to Daly's statement, the circuit court properly considered the sentencing factors when making its decision. It is clear from the record that the circuit court listened to counsels' arguments in determining that Daly committed "one of the most grotesque and unbelievable acts that [its] seen against a truly innocent individual." SR:959-60.

The circuit court considered many factors when sentencing Daly. It thoroughly familiarized itself with who Daly is by reading the PSI and psychosexual evaluation. And it ultimately determined the "grotesque and unbelievable acts" Daly committed warranted a harsh sentence. The circuit court's sentence was not beyond the range of permissible choices

and in the circuit court's view was necessary to protect the public. It, therefore, did not abuse its discretion when it sentenced Daly.

CONCLUSION

Based on the foregoing arguments and authorities, the State requests that Daly's conviction and sentence be affirmed.

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 3,630 words.

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

Dated this 5th day of June 2025.

/s/ Renee Stellagher
Renee Stellagher
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 5, 2025, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. William Daly* through Odyssey File and Serve upon on Ilisja Duffy at ilisja@duffylaw.us.

/s/ Renee Stellagher

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